TOWN OF BROOKLINE
MASSACHUSETTS

REPORTS OF SELECTMEN AND ADVISORY COMMITTEE

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

I hereby certify that the actions as indicated on the within pages were taken at the Special Town Meeting called for Tuesday, November 19, 2013 at 7:00 P.M., and dissolved on Wednesday, November 20, 2013 at 9:34 P.M.

ATTEST:

Patrick Joseph Ward
Town Clerk

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Harry K. Bohrs, Chair, 97 Toxteth Street 566-3556
Carla Benka, Vice-Chair, 26 Circuit Road 277-6102
Clifford M. Brown, 9 Hyslop Road 739-9228
Sumner J. Chertok, 80 Park Street, #65 734-1169
Lea Cohen, 1060 Beacon Street, #11 947-9713
John Doggett, 8 Penniman Place 566-5474
Benjamin J. Franco, 275 Cypress Street 453-9413
Bernard Green 25 Alton Court, #1 857-225-0402
Kelly Hardebeck, 18 Littell Road 277-2685
Nancy Heller, 40 Abbottsford Rd 277-6108
Amy Hummel, 226 Clark Road 731-0549
Sytske V. Humphrey, 46 Gardner Road 277-1493
Angela Hyatt, 87 Walnut Street 734-3742
Alisa G. Jonas, 333 Russett Road 469-3927
Janice Kahn, 63 Craftsland Road 739-0606
Bobbie M. Knable, 243 Mason Terrace 731-2096
Fred Levitan, 1731 Beacon Street 734-1986
Pamela Lodish, 195 Fisher Avenue 566-5533
Sean M. Lynn-Jones, 53 Monmouth Street 738-6228
Shaari S. Mittel, 309 Buckminster Road 277-0043
Michael Sandman, 115 Sewall Ave., No. 4 232-7125
Lee L. Selwyn, 285 Reservoir Road 277-3388
Stanley L. Spiegel, 39 Stetson Street 739-0448
Charles Swartz, 69 Centre Street 731-4399
Leonard A. Weiss, 46 Hawthorn Road 277-8403
Karen Wenc, 84 Summit Avenue 232-4983
Christine M. Westphal, 31 Hurd Road 738-7981

Anne Braudy, Executive Assistant, Town Hall 730-2115

NOVEMBER 19, 2013
SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

ARTICLE NUMBER	TITLE
1.	Approval of unpaid bills. (Selectmen)
2.	Approval of collective bargaining agreements. (Human Resources Director)
3.	FY2014 budget amendments. (Selectmen)
4.	Amendments to Article 8.23 of the Town's By-Laws – Tobacco Control -- technical changes. (Petition of Thomas J. Vitolo)
5.	Amendment to Article 8.30 of the Town's By-Laws – Fingerprint-Based Criminal Record Background Checks -- require applicants for a Registered Marijuana Dispensary (RMD) license to submit to fingerprinting by the Police Department. (Police Chief)
6.	Amendment to the Town's By-Laws – creation of Article 8.32 (Registered Marijuana Dispensary (RMD) Licenses) -- establishment of a local licensing framework for RMD's. (Board of Selectmen)
7.	Amendments to the Zoning By-Law – Section 2.13.1 (Medical Marijuana Treatment Center) and creation of Section 4.12 (Registered Marijuana Dispensary) -- allow medical marijuana dispensaries in commercial zones by special permit with strict safeguard regulations. (Department of Planning and Community Development)
8.	Amendments to the Zoning By-Law – Section 4.07, Use #5 (Table of Use Regulations), Table 5.01 (Table of Dimensional Requirements), and Section 2.07 ("G" Definitions) -- require a special permit for attached dwellings in a T-zone for consistency with attached dwellings in the F district and limit the number of attached dwellings on a lot in the F district to three, add F-1.0 district references omitted when zone was created, and limit the requirement to include space above 12 feet in the gross floor area to one, two and three family buildings, not multifamily or commercial buildings. (Department of Planning and Community Development)
9.	Amendment to the Zoning By-Law – Section 4.07, Use #53 (Table of Use Regulations) -- limit accessory dwelling units for domestic employees to S-40 districts with lots greater than 40,000 s.f. and the dwelling not to exceed 1,200 s.f. in floor area. (Department of Planning and Community Development)
10.	Amendment to the Zoning By-Law – Section 6.02 (Table of Off-Street parking Spaces) -- amend parking requirements for residential uses by requiring less parking for studio and one bedroom dwelling units. (Board of Selectmen)

11. Amendments to the Zoning By-Law - Section 6.06 (Off-Street Loading Regulations) and Section 6.07 (Design and Layout of Off-Street Loading Facilities) -- allow special permits for reducing the number of required loading bays and/or dimensions of loading bays, where demonstrated it is warranted. (Department of Planning and Community Development)

12. Authorize the leasing of the Singletree Reservoir site for hosting a ground-mounted Solar Photovoltaic Installation. (Board of Selectmen)

13. Revocation of the acceptance of Massachusetts General Laws Ch. 149, Sec. 33B -- overtime eligibility. (Human Resources Director)

14. Request that the Selectmen conduct an annual review of the Town's pension and retiree healthcare liabilities under different accounting methods. (Petition of Sundar Srinivasan)

11/19

15. Request that the Selectmen require the Building Commissioner to specify in all decisions relating to condominium common areas a date by which any required action must be taken. (Petition of Ruthann Sneider)

11/20

16. Resolution to Fill Vacancies on the Human Relations Commission. (Petition of the Diversity Committee of the Human Relations Commission -- Brooks Ames, Mariela Ames, Larry Onie, Georgi Vogel Rosen)

17. Resolution Opposing a U.S. Attack on Syria. (Petition of John Bassett, Frank Farlow, David Klafter, M K Merelice)

18. Resolution Opposing Police Surveillance Cameras from the Department of Homeland Security. (Petition of Clint Richmond, Sarah Wunsch, Frank Farlow, and Eunice White)

19. Reports of Town Officers and Committees. (Selectmen)

2013 SPECIAL TOWN MEETING WARRANT REPORT

The Board of Selectmen and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2013 Special Town Meeting to be held on Tuesday, November 19, 2013 at 7:00 pm.

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

ARTICLE 1

FIRST ARTICLE

Submitted by: Board of Selectmen

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

or act on anything relative thereto.

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.

SELECTMEN'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 September 17, 2013.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
This article appears in every Town Meeting Warrant in the event unpaid bills from a prior fiscal year come to the attention of Town Meeting. Massachusetts General Law requires Town Meeting's authorization to pay bills from a prior fiscal year with funds from the current year's appropriations.

DISCUSSION:
The Advisory Committee is not aware of any unpaid bills from a prior fiscal year. Therefore, no motion is being made under this Article.

RECOMMENDATION:
The Advisory Committee by a vote of 21-0-0 recommends a vote of NO ACTION.
XXX
No Action - Voted Unanimously

ARTICLE 2

MEMORANDUM OF AGREEMENT

BETWEEN

THE TOWN OF BROOKLINE

AND

THE SCHOOL TRAFFIC SUPERVISORS UNIT, LOCAL 1358, AFSCME, AFL-CIO

October 2013

This Memorandum of Agreement ("MOA") is made between the Town of Brookline ("Town") and the School Traffic Supervisors Unit, Local 1358, AFSCME, AFL-CIO ("Union"), collectively referred to as the "Parties". Except as specifically modified by this MOA, the terms and provisions of the Parties' July 1, 2009- June 30, 2012 collective bargaining agreement shall continue in full force and effect. The Parties agree as follows:

1. **Duration:** July 1, 2012- June 30, 2015

2. **Article VII Compensation**

   A. Replace Section 1 of Article VII with the following:
   The general hourly wages in effect on July 1, 2011 shall be increased in accordance with the following schedule:

Effective Date	Increase
July 1, 2012	2.0%
July 1, 2013	2.0%
July 1, 2014	2.0%

   (The Parties agree to update the hourly rates in the Pay Schedule in Appendix A to reflect the above increases.)

   B. Longevity
      A. Amend Article VII, Section 4(a) by adding the following new section before the last sentence in Section 4(a):

Effective July 1, 2013, longevity will be paid in accordance with the following schedule:

10-15 years - $290	20-30 years - $375
15-20 years - $320	30 or more years - $450

B. Amend Article VII, Section 4(b) by adding the following prior to the last sentence which is in parenthesis:

Effective July 1, 2013 Group 1 employees who have completed the equivalent of at least 10 years of full-time service in the bargaining unit shall be eligible for the following longevity:
10-15 years of full-time service as of their employment anniversary date $650.
15-20 years of full-time service as of their employment anniversary date $800.

C. Direct Deposit
Amend Article VII to require that all employees, without regard to date of hire, designate an account(s) to which the Town shall directly deposit the employee's compensation and the Town shall pay compensation to employees through direct deposit to the account(s) designated by each employee.

D. Electronic Pay Advisories
Effective no earlier than July 1, 2013, the Town may provide employees with electronic pay advisories in lieu of paper paystubs.

3. Article IX Section 4) Length of Vacation.

A. Re-label the section "Length of Vacation" as "Length of Vacation for employees hired before July 1, 2013". (Includes 4 paragraphs)

B. Insert the following new section "Length of Vacation for employees hired on or after July 1, 2013":

Length of Vacation for employees hired on or after July 1, 2013. (See paragraph 2 above to calculate years/months of service.) Group 1 employees who have acquired vacation status as indicated below shall be credited as of June 30 with earned vacation leave with pay not to exceed the following schedule:

Service as of June 30th	Vacation
Less than 7 months	1 work day for each full calendar month of service
7 full calendar months but less than five years	2 calendar weeks
5 full calendar years but less than 15 years	3 calendar weeks

15 full calendar years or more	4 calendar weeks

4. **Article XI Sick Leave Section 6)**

   Amend Section 6) to provide that each employee who is required to produce doctor's certificates for his/her absences pursuant to Section 4) shall also produce such a certificate for each absence for serious illness in immediate family pursuant to Section 6); such certificate shall contain the following information:

   (a) the employee's name;
   (b) the name and relationship of the immediate family member with a serious illness to the employee; and
   (c) a statement:
      (i) that the immediate family member has a serious illness,
      (ii) with the date(s) of such serious illness and the date(s) such doctor examined and/or treated the immediate family member.

5. **Article V (Specialist Assignment)**

   Amend the Specialist Assignment section of Article V by adding the following to the end of the Specialist Assignment paragraph:

   The Chief will select and appoint a substitute working supervisor at the Chief's discretion to cover for the working supervisor when the working supervisor is absent three or more consecutive work days, and such substitute working supervisor shall receive a $1.00 per hour stipend while she/he is serving in such assignment.

6. The Parties agree to amend their "Shared Work School Traffic Post" Agreement dated the 4th day of March 2010 by adding the following to Section # 5:

   Effective with the first pay period in January 2014, Group 4 employees shall receive the same transportation/mileage allowance as Group 1 employees and employees in Group 2B and 2C shall receive a prorated transportation/mileage allowance based on the number of hours each such employee is regularly assigned to work as compared to a full time Group 1 and 4 employee. (For example if a Group 2C employee is regularly assigned to work hours equal to 50% of a full time Group 4 employee, such Group 2C employee shall receive a prorated transportation mileage allowance equal to 50% of the transportation/mileage allowance.)

7. Ratification, Approval, Funding

This MOA is subject to ratification by the Union, approval by the Board of Selectmen, and funding by Town Meeting at the next regularly scheduled Town Meeting.

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.

TOWN of BROOKLINE
Massachusetts

HUMAN RESOURCES OFFICE
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Brookline, MA 02445
(617) 730-2120
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Sandra A. DeBow, Director
Human Resources Office

October 29, 2013

To: Board of Selectmen

From: Sandra DeBow, Director
Human Resources Office

Re: Article 2, Approval of Collective Bargaining Agreements, November 2013 Town Meeting,

1. School Traffic Supervisors. Local 1358, American Federation of State, County, Municipal Employees, Council 93, AFL-CIO (AFSCME)

Summary: The Town of Brookline and AFSCME, Local 1358 came to an Agreement on or about October 17, 2013 regarding the parties' collective bargaining agreement. The Agreement was approved by the Board of Selectmen on October 29, 2013 and ratified by the members of Local 1358 on October 29, 2013 by a vote of 11 (in favor) and 0 (against).

Description: The contract is a three-year agreement commencing on July 1, 2012 and expiring on June 30, 2015. Under the Agreement, AFSCME, School Traffic Supervisors agreed to a wage package of:

Effective July 1, 2012	2%
Effective July 1, 2013	2%
Effective July 1, 2014	2%

The overall cost of the three-year contract is approximately 6.2%.

Under this Agreement, the Town will be able to improve administrative efficiencies by moving all AFSCME members to a direct deposit and electronic pay advisories system. Also, new employees will now accrue their maximum vacation allotment at a slower rate than current employees and no new employee will accrue more than four calendar weeks in any year. Finally, the Town made an adjustment to the longevity pay schedule, adding a greater benefit for those with 20 or more years of service, relative to those with lesser years of service. The travel stipend, paid to certain employees who use their own vehicles to travel across town was increased to include an additional six to seven part-time employees who also use their personal vehicles.

ITEM	FY13	FY14	FY15	TOTAL
7/1/12 - 2%	11,830	11,830	11,830	**35,489**
7/1/13 - 2%		12,066	12,066	**24,133**
7/1/14 - 2%			12,308	**12,308**
Longevity Pay		263	263	**526**
Mileage Allowance		1,050	1,050	**2,100**
TOTAL ROLL-OUT COSTS	**11,830**	**25,209**	**37,517**	**74,556**

Each 1% =	5,915	6,033	6,274	
New Wages - $ =	11,830	13,379	12,308	
New Wages - % =	2.0%	2.2%	2.0%	6.2%
Wages on Base - $ =	11,830	13,379	12,308	
Wages on Base - % =	2.0%	2.2%	2.0%	6.2%

SELECTMEN'S RECOMMENDATION

Article 2 asks Town Meeting to approve funding for a three-year (FY13-FY15) contract with the School Traffic Supervisors union. The contract calls for a base wage increase of 6% over the course of the contract (2% in each FY13, FY14, and FY15) and includes an adjustment to the Longevity Pay schedule. The 2% base wage increase fits within the budgeted Collective Bargaining Reserves for both FY13 and FY14.

Under the agreement, the Town will be able to improve administrative efficiencies by moving all members to a direct deposit and electronic pay advisories system. Another key feature of the contract is that new employees will now accrue their maximum vacation allotment at a slower rate than current employees and no new employee will accrue more than four calendar weeks in any year.

The Selectmen thank the Town's negotiating team and the unions for reaching an agreement that matches the realities of the current economic climate and does not exacerbate the long-term financial challenges the Town faces. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 30, 2013, on the following:

VOTED: To approve and fund by an appropriation, provided for in the FY2013 (Item #20) and FY2014 (Item #20) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2012 and expires on June 30, 2015:

School Traffic Supervisors, AFSCME Council 93, Local 1358

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated October 29, 2013, which report is incorporated herein by reference. [See Supplement #1]

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
The Town of Brookline and the School Traffic Supervisors bargaining unit of AFSCME agreed to a 3 year contract, retroactive to July 1, 2012. The Union ratified the contract on October 29, 2013 and the Board of Selectmen approved the MOA on that same date. The School Traffic Supervisors act as school crossing guards during the time needed for that function, and then act as parking control personnel.

This contract essentially follows the model established in the previously approved AFSCME agreements of last spring. It is a three year agreement with a similar wage package:

Effective July 1, 2012	+ 2%
Effective July 1, 2013	+ 2%
Effective July 1, 2014	+ 2%

The financial provisions increased the longevity payment base by $25 for those below 20 years, and $50 for those 20 years and above. And the mileage allowance provision was extended to those part-time employees who use their own vehicles to travel within the town for work. The overall three-year wage increase is 6.2% and total rollout cost of this contract is $ **74,556.** Included are a chart with a breakout of those costs and a copy of a memo from Human Resources Director Sandra DeBow.

The contract also contains other provisions similar to AFSCME contracts which Town Meeting approved last spring. These include:

1. Direct Deposit: All employees in the AFSCME bargaining units will now receive pay advisories electronically (no paper) and will receive direct deposit of pay.

2. Vacation Accrual Change: New employees will receive a maximum of four weeks of vacation and will receive it at 15 years of service, as opposed to five weeks at 10 years as is currently the case. The payout of vacation accrual is an unfunded liability and the Town wanted better management in this area. This change should reduce that unfunded liability as employees will not carry over as much vacation and will prevent large vacation banks from accruing which are paid out upon retirement.

3. Sick Certificates: Other AFSCME union contracts have language that allows a supervisor to put an overly absent employee on "sick notes" if he/she is absent for X number of days, depending on the collective bargaining agreement for the unit involved. The School Traffic Supervisors have also agreed that when an employee is required to bring in sick notes, then a supervisor may ask that employee to provide a sick certificate when he/she is out due to a family sick day as well. This new provision closes a contractual loophole whereby people could simply claim to be out due to a family illness whithout requisite documentation.

4. Assignment of Supervisor: Currently, when the one unit supervisor making assignments is on vacation or extended sick leave, there is some confusion about who substitutes for that person. In this contract, the Police Chief now has the authority to nominate a temporary supervisor to fulfill those duties at an increase in pay of $1 per hour during that coverage.

DISCUSSION:

At its meeting on Tuesday, October 29, 2013, the Advisory Committee discussed both the wages and contract provisions. Generally, the contract is very similar to the other AFSCME contracts which we have approved earlier in 2013. It fairly provides increased

wages while managing future liabilities. The contract was ratified by an 11-0 vote of the AFSCME bargaining unit membership. Police Chief Daniel O'Leary appeared before us and stated that he is satisfied with this contract and believes that it is fair, provides a similar increase in wages to other employees of the Town of Brookline, and has some provisions which will give the Town better management tools.

RECOMMENDATION:
The Advisory Committee unanimously (23-0-0) voted FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

ARTICLE 3

THIRD ARTICLE

Submitted by: Board of Selectmen

To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2014 budget or transfer funds between said accounts;

B) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required.

SELECTMEN'S RECOMMENDATION

Article 3 of the Warrant for the 2013 Fall Town Meeting proposes amendments to the FY14 budget. The article is required to address two operating budget issues:

1. *State Aid* – the final State budget resulted in a Local Aid figure that is $193,398 less than the amount assumed in the Town budget approved by Town Meeting in May.

2. *Police Budget* – the Town recently moved to a new handheld parking enforcement system and the Town will now be invoiced monthly for the convenience fee associated with the on-line payment of parking tickets rather than having that amount netted against revenue. As a result, the Police Department budget needs to be increased by $72K and the revenue needs to be increased by the same amount.

STATE AID

When the Town's FY14 budget was being developed, the State Aid figures from the budget presented by the Governor in January were not used. He proposed a 5.4% ($226.2 million) statewide increase in Chapter 70 Education Aid and created a new $31 million "Annual Formula Local Aid" program. For Brookline, the Governor's proposal resulted in an increase of $2.9 million (19.9%), driven primarily by a $2.8M (31%) increase in Ch. 70 aid. Since his budget proposal was based on approval of his ambitious tax plan that would have generated $1.9 billion in new state revenue, and that legislative approval was uncertain, the Financial Plan was based on a lower level of State Aid than proposed by the Governor: a $1.74M (12%) increase was assumed.

As expected, the House and Senate versions of the budget, which followed in April and May, were less beneficial to local government than the Governor's because they did not use the $1.9B tax package which helped afford that large increase in Ch. 70 funding. The final State budget resulted in $16.1M of Local Aid for Brookline, an increase of $1.53M (10.5%) over FY13, but $193,398 below the amount assumed in the budget approved by Town Meeting in May. The table below shows how the final State budget results in $193K less in Net State Aid:

	FY13	FY14 FIN. PLAN	FY14 STATE BUDGET	VERSUS FINANCIAL PLAN	
RECEIPTS					
Ch. 70	8,949,381	10,700,000	10,369,466	(330,534)	-3.1%
Unrestricted General Gov't Aid	5,370,029	5,370,029	5,496,965	126,936	2.4%
Vets Benefits	103,202	84,663	82,258	(2,405)	-2.8%
Exemptions	38,557	38,730	38,730	0	0.0%
Charter School Reimbursements	4,190	14,176	3,960	(10,216)	-72.1%
TOTAL RECEIPTS	**14,465,359**	**16,207,598**	**15,991,379**	(216,219)	-1.3%
CHARGES					
County	715,791	766,133	766,133	0	0.0%
Air Pollution Dist.	24,993	26,690	26,690	0	0.0%
MAPC	18,502	18,965	18,965	0	0.0%
RMV Surcharge	262,660	247,820	247,820	0	0.0%
MBTA	4,965,929	5,019,840	5,019,840	0	0.0%
SPED	55,275	66,535	66,814	279	0.4%
School Choice Sending Tuition	5,000	10,000	13,250	3,250	32.5%
Charter School Sending Tuition	39,669	66,750	40,400	(26,350)	-39.5%
TOTAL CHARGES	**6,087,819**	**6,222,733**	**6,199,912**	(22,821)	-0.4%
OFFSETS					
School Lunch	27,780	28,666	28,666	0	0.0%
Libraries	81,380	82,360	82,360	0	0.0%
TOTAL OFFSETS	**109,160**	**111,026**	**111,026**	0	0.0%
NET LOCAL AID	**8,486,700**	**10,095,891**	**9,902,493**	(193,398)	-1.9%

The final State budget also included increases in non-Cherry Sheet aid. Specifically, both the Special Education "Circuit Breaker" and METCO accounts were increased (the Governor level-funded both): Circuit Breaker by 10% ($22M) and METCO by 3% ($500K). These increases will provide the School budget with approx. $225K of additional budget capacity in FY14.

In late-April when the budget article was being voted on by the Selectmen and the Advisory Committee, the Town Administrator committed to holding the School budget harmless from any shortfalls resulting from the final local aid package. Based on that commitment, the recommended plan to address the $193K shortfall excludes reducing the school budget by the $96,699 it would have been cut by under the Town/School Partnership. To balance the budget, the following reductions are recommended:

- Utility Budgets – these can be reduced by $40K because of gasoline being procured at more favorable prices. The reductions would come from the following departments:
    - DPW = $19K
    - Police = $10K
    - DPW – Parks = $5K
    - Fire = $5K
    - Building = $1K
- Overlay Reserve – this can be reduced by $153,398 due to the current balance in prior year accounts. The Chief Assessor is comfortable with reducing the $1.7M Overlay to $1.55M knowing that there are previous year balances that could be utilized if FY14 abatements/exemptions exceeded budget.

POLICE BUDGET

In June, the Town switched its handheld parking enforcement technologies from Velosum to a product made by Duncan. Included in the switch-over was the on-line payment portal. Since the Town began offering the option of paying parking tickets on-line in FY03, there has been a $2 convenience fee. Originally the Town collected the $2 fee and then paid the various companies involved in the transaction on a monthly basis, meaning there were both a revenue and an expense. When the Town moved to the Velosum product in FY10, the company netted the $2 convenience fee against the revenue it sent back to the Town. With the new Duncan system, the Town will revert to the original model where the $2 fee is sent to the Town along with all revenue from tickets paid on-line and then invoiced monthly.

Approximately 3,000 tickets are paid on-line monthly, resulting in $72K of convenience fee revenue (3K x $2 x 12). That revenue will come into the Town and be offset by adding the same $72K to the Police Dept. budget to pay for the monthly expense. There is no net impact to the Town budget.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 1, 2013, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
When the Town's FY14 budget was developed, uncertainty existed about the amount of State Aid Brookline would receive. The state budget, including final State Aid figures, is not finalized until after Town Meeting passes the Town's budget. As a result, the budget that was proposed, and ultimately adopted by Town Meeting in May was based on assumptions about the funding the Town would receive from the Commonwealth. Specifically, the budget assumed that the final state budget would include a 12% increase in State Aid to Brookline.

Governor Patrick proposed a budget that relied upon a $1.9 billion package of new revenue. The revenue package allowed the Governor to propose a $2.9 million increase to Brookline's State Aid. The budget the Legislature passed included a smaller revenue package than the Governor sought. As a result, the final state budget increased State Aid to the Town by $1.53 million, less than the Governor's proposal and the assumptions on which the Town's budget was based. The Town Meeting passed budget assumed Brookline would receive $193,000 more in State Aid than it now will. (When the financial plan was developed it was determined that the Governor's proposed increase to Brookline's State Aid was unrealistic, so a smaller increase was assumed.) As a result of the receipt of lower than expected State Aid, the Town's budget is now out of balance and Town Meeting must act to bring the budget into balance by either cutting $193,000 in expenses or finding an additional $193,000 in revenue.

In May, Town Meeting approved a budget that provided the School Department with a larger appropriation than was required under the Town-School Partnership. Town Meeting appropriated funds beyond the required amount in order to minimize the need for programmatic reductions that were publicly discussed during the School's budget writing process. Separately, over the past few years the Schools have experienced increased enrollment. The enrollment pressure caused the Town to form the Brookline School Population and Capacity Exploration Committee (B-SPACE) to provide guidance on school programming and space planning. The committee determined that enrollment can reasonably be expected to continue to grow over the next several years and recommended expansion of some school buildings to accommodate the increased number of students. The conclusions and recommendations of the B-SPACE Committee will have both capital and operational implications for future town budgets. Both because of Town Meeting's action in May and because of the looming school budget pressures, the Advisory Committee is not proposing to reduce the schools budget in order to close any of the current budget shortfall. Under the Town-School Partnership, the School Department would have been expected to absorb approximately $97,000 in cuts had the conscious decision to hold the schools harmless not been made. (It should be noted that the schools received higher than expected Circuit Breaker and METCO funding in the

State budget, and as a result, the School Department has approximately $225,000 more budget capacity in FY14 than was anticipated in May.)

DISCUSSION:
The Advisory Committee heard several recommendations from the Administration about how the Town's budget should be balanced. The Administration is proposing to make targeted reductions to certain Town accounts in order to close the budget shortfall.

The proposal is as follows:

- Utility Budgets – Reduce fuel budgets across several Town Departments to close a portion of the budget shortfall. The Town was able to lock in prices for diesel and gasoline fuels at a lower price than expected, and as a result the FY14 utility budget accounts contain more dollars than are necessary. (The budget assumed a price of $3.25 for gasoline and $3.41 for diesel; a price of $3.12 for gasoline and $3.17 for diesel was locked in.) A reduction of $40,000 is proposed across the Public Works, Police, Fire and Building Departments' budgets.

- Overlay Reserve – The Board of Assessors is comfortable foregoing $153,398 of the Town's FY14 appropriation into the Overlay Account thereby freeing these funds up for use to plug the current budget shortfall. This would reduce the Overlay Account's balance to $1.55 million. The Chief Assessor believes this balance is adequate to cover FY14 abatements and exemptions should they exceed the budgeted amounts.

- Police Budget – Town Meeting is also being asked to redistribute money in the Police Budget because of a recent change to the Town's parking enforcement technology. The proposed change has no net impact on the Town's Budget. In June, Duncan Inc. began to service Brookline's online parking enforcement payment portal. Since the Town began offering the ability to pay parking tickets online a $2.00 convenience fee has been charged to cover the cost of credit card and administrative charges. Originally, Brookline collected the fee and then paid the companies involved in the transaction on a monthly basis. This resulted in both the Town incurring a receipt and expense in a given month. However, under the payment portal contract prior to June, the company that administered the parking enforcement payment portal's netted the convenience fee against the revenue it sent back to the Town. Under the current contract, the Town will be returning to the original model. The fee will be sent directly to the Town along with all the revenue collected and the Town will be invoiced monthly for costs.

  This change requires moving $72,000 to the police budget to cover the monthly service payment portal service charges and increasing parking ticket receipts by $72,000. This figure was arrived at by assuming that the current parking enforcement trends would continue and that approximately 3,000 tickets would be paid on line monthly (3,000 x $2.00 x 12).

Several members of the Advisory Committee expressed hesitance about the use of the appropriation relying on the Overlay Account as a partial solution to the current budget

shortfall. Members were worried that use of the Overlay Account appropriation could set a precedent and that Town Meeting might be tempted in the future to use the appropriation for other onetime operational and/or capital expenses. The concern was noted, but there was agreement that mid-year reductions to other budget line items should be avoided if an alternative exists. More importantly, use of the Overlay Account is not at the discretion of Town Meeting. Funds are only available when released by the Board of Assessors. In this case, their release benefits the budget amendment process.

RECOMMENDATION:
The Advisory Committee by a vote of 21-0-0 recommends FAVORABLE ACTON on Article 3 as follows:

VOTED: That the Town:

1. Amend the FY2014 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
9. Police Department	$15,131,074	+$62,000	$15,193,074
10. Fire Department	$13,024,946	-$ 5,000	$13,019,946
11. Building Department	$ 7,011,359	-$ 1,000	$ 7,010,359
12. Department of Public Works	$13,812,488	-$24,000	$13,788,488

XXX

FY14 AMENDED BUDGET - TABLE 1

		FY13 BUDGET	FY14 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY14 AMENDED BUDGET	$$ CHANGE FROM FY13	% CHANGE FROM FY13
	REVENUES						
	Property Taxes	170,137,611	175,604,001		175,604,001	5,466,389	3.2%
	Local Receipts	21,084,438	22,047,366	- 72,000	22,119,366	1,034,928	4.9%
	State Aid	15,131,276	16,875,381	(216,219)	16,659,162	1,527,886	10.1%
	Free Cash	5,336,413	7,655,155		7,655,155	2,318,742	43.5%
	Overlay Surplus	1,750,000	0		0	(1,750,000)	-100.0%
	Other Available Funds	10,144,344	6,846,435		6,846,435	(3,297,909)	-32.5%
	TOTAL REVENUE	**223,584,082**	**229,028,337**	**(144,219)**	**228,884,118**	**5,300,037**	**2.4%**
	EXPENDITURES						
	DEPARTMENTAL EXPENDITURES						
	1 . Selectmen	625,898	647,749		647,749	21,851	3.5%
	2 . Human Resources	507,186	510,979		510,979	3,793	0.7%
	3 . Information Technology	1,463,774	1,667,878		1,667,878	204,104	13.9%
	4 . Finance Department	2,966,751	2,848,636	0	2,848,636	(118,115)	-4.0%
	5 . Legal Services	784,384	801,094		801,094	16,709	2.1%
	6 . Advisory Committee	21,118	23,643		23,643	2,525	12.0%
	7 . Town Clerk	625,299	533,900		533,900	(91,400)	-14.6%
	8 . Planning and Community Development	619,572	652,202	0	652,202	32,630	5.3%
	9 . Police	14,877,838	15,131,074	62,000	15,193,074	315,236	2.1%
	10 . Fire	12,435,279	13,024,946	(5,000)	13,019,946	584,667	4.7%
	11 . Building	6,890,412	7,011,359	(1,000)	7,010,359	119,947	1.7%
(1)	12 . Public Works	13,506,966	13,812,488	(24,000)	13,788,488	281,522	2.1%
	a. Administration	*794,483*	*807,490*		*807,490*	*13,006*	*1.6%*
	b. Engineering/Transportation	*1,099,701*	*1,206,829*		*1,206,829*	*107,128*	*9.7%*
	c. Highway	*4,776,451*	*4,850,441*	*(19,000)*	*4,831,441*	*54,991*	*1.2%*
	d. Sanitation	*2,938,452*	*2,944,662*		*2,944,662*	*6,210*	*0.2%*
	e. Parks and Open Space	*3,478,101*	*3,602,455*	*(5,000)*	*3,597,455*	*119,354*	*3.4%*
	f. Snow and Ice	*419,777*	*400,610*		*400,610*	*(19,167)*	*-4.6%*
	13 . Library	3,683,992	3,636,885		3,636,885	(47,107)	-1.3%
	14 . Health	1,122,059	1,229,088		1,229,088	107,029	9.5%
	15 . Veterans' Services	290,996	292,074		292,074	1,078	0.4%
	16 . Council on Aging	858,351	816,036		816,036	(42,315)	-4.9%
	17 . Human Relations	104,251	0		0	(104,251)	-100.0%
	18 . Recreation	1,014,283	1,028,713		1,028,713	14,430	1.4%
(2)	19 . Personnel Services Reserve	715,000	715,000		715,000	0	0.0%
(2)	20 . Collective Bargaining - Town	1,775,000	1,900,000		1,900,000	125,000	7.0%
	Subtotal Town	*64,888,409*	*66,283,741*	*32,000*	*66,315,741*	*1,427,332*	*2.2%*
	21 . *Schools*	*79,079,824*	*82,780,770*		*82,780,770*	*3,700,946*	*4.7%*
	TOTAL DEPARTMENTAL EXPENDITURES	**143,968,234**	**149,064,511**	**32,000**	**149,096,511**	**5,128,278**	**3.6%**
	NON-DEPARTMENTAL EXPENDITURES						
(1)	22 . Employee Benefits	45,547,008	50,100,251	0	50,100,251	4,553,244	10.0%
(3)	*a. Pensions*	*15,767,048*	*17,385,688*		*17,385,688*	*1,618,640*	*10.3%*
	b. Group Health	*23,078,372*	*24,618,704*		*24,618,704*	*1,540,332*	*6.7%*
	c. Health Reimbursement Account (HRA)	*125,000*	*70,000*		*70,000*	*(55,000)*	*-44.0%*
(3)	*d. Retiree Group Health Trust Fund (OPEB's)*	*2,601,928*	*3,514,360*		*3,514,360*	*912,431*	*35.1%*

		FY13 BUDGET	FY14 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY14 AMENDED BUDGET	$$ CHANGE FROM FY13	% CHANGE FROM FY13
	e. Employee Assistance Program (EAP)	*28,000*	*28,000*		*28,000*	*0*	*0.0%*
	f. Group Life	*130,000*	*132,500*		*132,500*	*2,500*	*1.9%*
	g. Disability Insurance	*16,000*	*16,000*		*16,000*	*0*	*0.0%*
(3)	*h. Worker's Compensation*	*1,200,000*	*1,720,000*		*1,720,000*	*520,000*	*43.3%*
(3)	*i. Public Safety IOD Medical Expenses*	*560,660*	*400,000*		*400,000*	*(160,660)*	*-28.7%*
(3)	*j. Unemployment Compensation*	*350,000*	*450,000*		*450,000*	*100,000*	*28.6%*
	k. Medical Disabilities	*30,000*	*40,000*		*40,000*	*10,000*	*33.3%*
	l. Medicare Coverage	*1,660,000*	*1,725,000*		*1,725,000*	*65,000*	*3.9%*
(2)	23 . Reserve Fund	1,946,946	2,161,799		2,161,799	214,853	11.0%
	24 Stabilization Fund	0	250,000		250,000	250,000	#DIV/0!
	25 Affordable Housing	251,363	555,106		555,106	303,743	120.8%
	26 . Liability/Catastrophe Fund	253,669	154,115		154,115	(99,554)	-39.2%
	27 . General Insurance	275,000	335,000		335,000	60,000	21.8%
	28 . Audit/Professional Services	130,000	130,000		130,000	0	0.0%
	29 . Contingency Fund	15,000	15,000		15,000	0	0.0%
	30 . Out-of-State Travel	3,000	3,000		3,000	0	0.0%
	31 . Printing of Warrants & Reports	20,000	25,000		25,000	5,000	25.0%
	32 . MMA Dues	12,729	11,686		11,686	(1,043)	-8.2%
	Subtotal General	*2,907,707*	*3,640,706*	*0*	*3,640,706*	*732,999*	*25.2%*
(1)	33 . Borrowing	10,046,874	9,583,111	0	9,583,111	(463,763)	-4.6%
	a. Funded Debt - Principal	*7,422,382*	*7,207,338*		*7,207,338*	*(215,044)*	*-2.9%*
	b. Funded Debt - Interest	*2,464,492*	*2,215,772*		*2,215,772*	*(248,719)*	*-10.1%*
	c. Bond Anticipation Notes	*100,000*	*100,000*		*100,000*	*0*	*0.0%*
	d. Abatement Interest and Refunds	*60,000*	*60,000*		*60,000*	*0*	*0.0%*
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**58,501,588**	**63,324,067**	**0**	**63,324,067**	**4,822,479**	**8.2%**
	TOTAL GENERAL APPROPRIATIONS	**202,469,822**	**212,388,579**	**32,000**	**212,420,579**	**9,950,756**	**4.9%**
	SPECIAL APPROPRIATIONS						
	34 . Garage Floor Sealant and Water/Oil Separators (revenue financed)		25,000		25,000		
	35 . Technology Applications (revenue financed)		256,000		256,000		
	36 . Commercial Areas Improvements (revenue financed)		50,000		50,000		
	37 Riverway Park Pedestrian/Bike Path - Design (revenue financed)		40,000		40,000		
	38 Historic Building Rehab (Devotion House & Putterham School) (revenue financed)		85,000		85,000		
	39 . Fire Engine #3 (revenue financed)		510,000		510,000		
	40 . Fire Station Renovations (revenue financed)		245,000		245,000		
	41 . Bicycle Access Improvements (revenue financed)		40,000		40,000		
	42 . Woodland Rd. / Hammond St. Study (revenue financed)		45,000		45,000		
	43 . Street Rehabilitation (revenue financed)		1,510,000		1,510,000		
	44 . Sidewalk Repair/Reconstruction (revenue financed)		283,000		283,000		
	45 . LED Streetlight Conversion (revenue financed)		540,000		540,000		
	46 . Transfer Station Floor (revenue financed)		70,000		70,000		
	47 . Brookline Ave. Playground - Design (revenue financed)		87,000		87,000		
	48 . Larz Anderson Park - roadway/pathway improvements (revenue financed)		660,000		660,000		
	49 . Playground Equipment, Fields, Fencing (revenue financed)		295,000		295,000		
	50 . Town/School Grounds Rehab (revenue financed)		85,000		85,000		
	51 Tennis Courts / Basketball Courts (revenue financed)		100,000		100,000		
	52 Comfort Stations (revenue financed)		50,000		50,000		

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	FY13 BUDGET	FY14 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY14 AMENDED BUDGET	$$ CHANGE FROM FY13	% CHANGE FROM FY13
53 . Tree Removal and Replacement (revenue financed)		170,000		170,000		
54 . Walnut Hills Cemetery - roadway work (special revenue fund)		100,000		100,000		
55 . School Furniture Upgrades (revenue financed)		50,000		50,000		
56 . Town/School ADA Renovations (revenue financed)		65,000		65,000		
57 . Town/School Elevator Renovations (revenue financed)		250,000		250,000		
58 . Town/School Emergency Generator Replacement (revenue financed)		125,000		125,000		
59 . Town/School Energy Conservation Projects (revenue financed)		150,000		150,000		
60 . Town/School Energy Management Systems (revenue financed)		150,000		150,000		
61 . Town/School Building Security / Life Safety (revenue financed)		345,000		345,000		
62 . School Technology (revenue financed)		175,000		175,000		
63 . Pierce School Electric Distribution Upgrade (revenue financed)		375,000		375,000		
64 . Classroom Capacity (revenue financed)		1,750,000		1,750,000		
65 . Municipal Service Center Renovations (bond)		2,500,000		2,500,000		
66 . Fisher Hill Field/Playground - Town (bond)		1,200,000		1,200,000		
67 . Town/School Building Roof Repair/Replacement (bond)		1,350,000		1,350,000		
68 . Old Lincoln School Renovations (bond)		3,000,000		3,000,000		
4) TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS	12,933,500	8,581,000	0	8,581,000	(4,352,500)	-33.7%
TOTAL APPROPRIATED EXPENDITURES	215,403,322	220,969,579	32,000	221,001,579	5,598,256	2.6%
NON-APPROPRIATED EXPENDITURES						
Cherry Sheet Offsets	109,160	111,026		111,026	1,866	1.7%
State & County Charges	6,087,819	6,222,733	(22,821)	6,199,912	112,093	1.8%
Overlay	1,958,780	1,700,000	(153,398)	1,546,602	(412,178)	-21.0%
Deficits-Judgments-Tax Titles	25,000	25,000		25,000	0	0.0%
TOTAL NON-APPROPRIATED EXPEND.	8,180,759	8,058,759	(176,219)	7,882,540	(298,219)	-3.6%
TOTAL EXPENDITURES	223,584,082	229,028,338	(144,219)	228,884,119	5,300,036	2.4%
SURPLUS/(DEFICIT)	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 #33).

FY14 ~~AMENDED~~ BUDGET - TABLE 2

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)	619,901	14,118	4,000	7,600		2,130			647,749
Human Resources Department (Human Resources Director)	269,086	200,503	9,000	31,000		1,390			510,979
Information Technology Department (Chief Information Officer)	946,386	614,322	33,850	32,550		40,769			1,667,878
Finance Department (Director of Finance)	1,986,207	754,949	43,697	18,865	2,318	42,600			2,848,636
Legal Services (Town Counsel)	562,335	127,559	2,800	105,400		3,000			801,094
Advisory Committee (Chair, Advisory Committee)	20,503		2,275	570		295			23,643
Town Clerk (Town Clerk)	443,663	77,887	9,750	1,400		1,200			533,900
Planning and Community Department (Plan. & Com. Dev. Dir.)	619,215	16,025	9,212	4,550		3,200			652,202
Police Department (Police Chief)	13,570,473	457,669	221,750	64,000	438,897	440,284			15,193,074
Fire Department (Fire Chief)	12,217,122	154,755	146,260	27,650	242,024	232,134			13,019,946
Public Buildings Department (Building Commissioner)	1,977,182	2,213,679	23,170	5,350	727,078	63,100			7,010,359
Public Works Department (Commissioner of Public Works)	7,331,492	3,391,940	915,750	40,900	1,380,406	700,000	20,000		13,788,488
Public Library Department (Library Board of Trustees)	2,560,256	173,834	552,460	3,700	320,634	26,000			3,636,885
Health Department (Health Director)	963,409	196,963	19,700	4,570	40,896	3,550			1,229,088
Veterans' Services (Veterans' Services Director)	155,120	2,609	650	133,185		510			292,074
Council on Aging (Council on Aging Director)	678,482	42,732	18,000	2,900	68,722	5,200			816,036
Human Relations/Youth Resources (Human Relations Dir.)									
Recreation Department (Recreation Director)	704,520	74,982	70,980	12,400	162,231	3,600			1,028,713
School Department (School Committee)									82,780,770
Total Departmental Budgets	**45,625,353**	**8,514,525**	**2,083,304**	**496,590**	**5,392,006**	**1,568,962**	**20,000**		**146,481,511**
DEBT SERVICE									
Debt Service (Director of Finance)								9,583,111	9,583,111
Total Debt Service								**9,583,111**	**9,583,111**
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	17,255,688								17,255,688
Non-Contributory Pensions Contribution (Director of Finance)	130,000								130,000
Group Health Insurance (Human Resources Director)	24,618,704								24,618,704
Health Reimbursement Account (HRA) (Human Resources Director)	70,000								70,000
Retiree Group Health Insurance - OPEB's (Director of Finance)	3,514,360								3,514,360
Employee Assistance Program (Human Resources Director)	28,000								28,000
Group Life Insurance (Human Resources Director)	132,500								132,500
Disability Insurance	16,000								16,000
Workers' Compensation (Human Resources Director)	1,720,000								1,720,000
Public Safety IOD Medical Expenses (Human Resources Director)	400,000								400,000
Unemployment Insurance (Human Resources Director)	450,000								450,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	1,725,000								1,725,000
Total Employee Benefits	**50,100,251**								**50,100,251**
GENERAL / UNCLASSIFIED									
Reserve Fund (*) (Chair, Advisory Committee)				2,161,799					2,161,799
Stabilization Fund (Director of Finance)				250,000					250,000
Liability/Catastrophe Fund (Director of Finance)				154,115					154,115
Housing Trust Fund (Planning & Community Develpoment Dir.)				555,106					555,106
General Insurance (Town Administrator)		335,000							335,000
Audit/Professional Services (Director of Finance)		130,000							130,000
Contingency (Town Administrator)				15,000					15,000
Out of State Travel (Town Administrator)		3,000							3,000
Printing of Warrants (Town Administrator)	5,000	10,000	10,000						25,000
MMA Dues (Town Administrator)				11,686					11,686
Town Salary Reserve (*) (Director of Finance)	1,900,000								1,900,000
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	**2,620,000**	**478,000**	**10,000**	**3,147,706**					**6,255,706**
TOTAL GENERAL APPROPRIATIONS	**98,345,604**	**8,992,525**	**2,093,304**	**3,644,296**	**5,392,006**	**1,568,962**	**20,000**	**9,583,111**	**212,420,579**

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

Voted by the Maximum as Vote

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ARTICLE 4

FOURTH ARTICLE

Submitted by: Thomas Vitolo

To see if the Town will amend the General By-laws, Article 8.23, Tobacco Control as follows (language to be deleted appears as a strike-out and new language is underlined):

ARTICLE 8.23
TOBACCO CONTROL

SECTION 8.23.1 PURPOSE

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

SECTION 8.23.2 DEFINITIONS

a. Tobacco - Cigarettes, cigars, snuff or tobacco in any of its forms.

b. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product.

c. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco products by self service, with or without assistance by a clerk or operator.

d. Minor - A person under nineteen years of age.

e. Employee - A person who performs work or services for wages or other consideration.

f. Employer - A person, partnership, association, corporation, trust or other organized group, including the Town of Brookline and any department or agency thereof, which utilizes the services of ~~three~~ one (~~3~~1) or more employees.

g. Workplace - Any enclosed area of a structure in the Town of Brookline, at which ~~three~~ one or more employees perform services for an employer.

~~h. Food Service Establishment - An establishment having one or more seats at which food is served to the public.~~

~~i. Function Room – A separate, enclosed room used exclusively for private functions within a food service establishment.~~

~~j. Bar/Lounge - An area within a food service establishment which is devoted primarily to serving alcoholic beverages for consumption by guests on the premises, and in which the consumption of food is only incidental to the consumption of such beverages.~~

~~k~~h. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

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

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

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

l. Membership Association – a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

(1) a society, organization or association of a fraternal nature that operates under the lodge system, and having one (1) or more affiliated chapters or branches incorporated in any state; or

(2) a corporation organized under M.G.L. c. 180; or

(3) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or

(4) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having one (1) or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

SECTION 8.23.3 REGULATED CONDUCT

~~a. Food Service Establishments~~

~~(1) All food service establishments shall be 100% non-smoking except as otherwise specifically permitted under this by-law.~~

~~(2) Waiver of non-smoking provision for bars and lounges – The owner or operator of a food service establishment containing a bar/lounge may apply for a waiver of the non-smoking provision of Section 8.23.2(1) with respect to the bar/lounge. The application shall state when the waiver shall terminate, provided, always, that such termination shall not be later than January 1, 2000. Application shall be made in writing to the Director of Public Health (Director), stating the reasons and justification for the request. Following no less than two weeks public notice, the Director shall conduct a public hearing on the request, at which the owner or operator shall present the request and the basis for the request. After the hearing the Director may grant the requested waiver, provided:~~

~~a. the owner or operator has owned or operated the establishment continuously since November 15, 1994;~~

~~b. on November 15, 1994, the establishment contained a bar/lounge according to the records of the Town;~~

~~c. the number of the seats in the bar/lounge do not exceed 25% of the establishment's total seating capacity;~~

~~d. the bar/lounge occupies a separate, enclosed room;~~

~~e. the bar/lounge is equipped with a separate ventilation system that provides an air circulation rate of at least 60 cubic feet per minute per person and exhausts air at a rate of at least 110% of supply to produce a negative air environment; and~~

~~f. the configuration of the establishment is not such as to require dining patrons to pass through any portion of the bar/lounge when entering or exiting the establishment.~~

~~(3.) The Director of Public Health may adopt regulations providing for the implementation of Section 8.23.2(2) of this by-law.~~

~~b.~~ a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public

is permitted. This includes, but is not limited to, any food service establishment, health care facility, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public. Premises occupied by a membership association are not considered Public Places for the purposes of Section 8.23.3(a), but are subject to Section 8.23.3(b).

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free ~~Vehicles~~vehicles. ~~in accordance with the following schedule:~~

~~a. As of 3/1/94, 25% of all vehicles~~
~~b. As of 1/1/95, 100% of all vehicles~~

The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. ~~Non-smoking v~~Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate at least 90% of individual dwelling units or rooms as non-smoking. ~~in accordance with the following schedule:~~

~~a. As of 3/1/94, 25% of individual dwelling units or rooms,~~
~~b. As of 1/1/95, 50% of dwelling units or rooms,~~
~~c. As of 1/1/96, 90% of dwelling units or rooms.~~

~~c.~~ b. Workplaces

(1.) ~~Every employer shall establish, post and implement a workplace smoking policy and shall, upon request, furnish a written copy of such smoking policy to any employee or to the Director of Public Health. A workplace smoking policy shall include a grievance procedure whereby an employee may seek relief if he/she is exposed to tobacco smoke in the course of his/her work duties. Upon written request by three or more employees, an employer may, but is not required to, designate a "Smoking Area", provided that such a smoking area shall not adversely affect the health and well being of nonsmoking employees or members of the public. An employer may furnish a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for non-smoking employees. All s~~Smoking in ~~the~~ workplaces ~~shall be~~ is prohibited ~~on or before January 1, 1995~~.

~~2. Workplaces with function rooms must establish and post a workplace policy that states "Employees are not required to work at private functions in which smoking is allowed." Employees who do not want to work at such functions must so inform their~~

~~employer in writing, and employers must abide by their employees stated wishes in this regard.~~

(2) Notwithstanding subsection (1), smoking may be permitted in the following places and circumstances:

a. Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility;

b. Premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building, and if the space is occupied solely by the members, invited guests of members, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of a membership association under this subsection.

c. A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, which is rented to a guest and designated as a smoking room.

(3~~.~~) Hotels must establish and post a workplace policy that states "Employees are not required to work in rooms in which smoking is allowed." Employees who do not want to work in such rooms must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

~~4. Food service establishments that permitsmoking under the waiver provisions of Section 8.23.2 (2) shall establish and post a workplace policy that states: "Employees are not required to work in the bar/lounge.~~

~~5~~(4~~.~~) Every establishment in which smoking is permitted pursuant to this ~~B~~by-law shall designate all positions that require the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may requires continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

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

~~7~~(6). No establishment in which smoking is permitted pursuant to this ~~B~~by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

~~8~~(7). No establishment in which smoking is permitted pursuant to this ~~B~~by-law may designate more smoking positions, as a proportion of the total number of service positions, than the number of seats in proportion of the establishment in which smoking is permitted bears to the total number of seats legally permitted in the establishment.

~~9~~(8). It is the intent of this ~~B~~by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. ~~C~~c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

~~10~~(9). Each establishment in which smoking is permitted pursuant to this ~~B~~by-law shall post, and make available to all job applicants, a statement inviting employees and job applicants to notify the Board of Selectmen regarding any violation of the policies in this section (~~Workplaces~~8.23.3(b)).

SECTION 8.23.4 POSTING REQUIREMENTS

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

~~b. Food service establishments in which smoking is permitted under the waiver provisions of Section 8.23.2(2) shall post in a conspicuous location, at each entrance used by the general public, a notice provided by the Director of Public Health. This notice, which shall not be smaller than 80 square inches nor larger than 120 square inches in overall area, shall state that smoking is permitted in the establishment and contain a warning concerning the risks of environmental tobacco smoke.~~

SECTION 8.23.5 SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

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

b. Tobacco Vending Machines - The sale of tobacco products by means of vending machines is prohibited.

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

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

e. Advertising/Promotion - From and after January 1, 1995, free standing tobacco product displays in retail locations, where a tobacco product is accessible to the public, shall be within twenty feet and the unobstructed view of a check-out or cash register location.

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

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

SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who knowingly violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of not more than $50 for each offense.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of not more than $100 for each offense.

c. Any entity violating any other section of this by-law shall receive a fine of three hundred dollars ($300.00) for each offense.

d. Employees who violate any provision of Section 8.23.2(c) shall be punished by a fine of not more than $100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a non-criminal manner as provided in PART X of the Town ~~B~~by-~~L~~laws.

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

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

SECTION 8.23.7 SEVERABILITY

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

It is expected that Brookline will debate a number of new tobacco control policies in the next few years. Smoking restrictions in public parks or near the Brookline High School may be debated, as might prohibitions in dormitories, public housing, or lodging houses. Policies restricting the use of e-cigarettes and flavored tobacco may be pursued. Prohibiting tobacco advertisements in store windows or even displaying the product itself within stores may warrant consideration. These potential changes in Brookline's tobacco policy will require substantial debate.

This warrant article does not seek any change in Brookline's tobacco control policy.

Brookline has been at the forefront of tobacco control, recognizing the harm that tobacco use inflicts on both smokers and non-smokers alike. In 1982, Brookline Town Meeting required that 25 percent of the seats in large restaurants be reserved for non-smokers. In 1987, that requirement was increased to 50 percent. Brookline bars and restaurants went smoke-free in 1994. Brookline phased out smoking in taxis and liveries in the mid-1990s. In the same period, the Town phased in smoke-free hotel and motel rooms, ratcheting up the minimum requirement of smoke-free rooms from no minimum to the current minimum requirement of 90 percent. Within the past few years, the Town Meeting has voted to prohibit medical and educational facilities from selling tobacco, and to increase the purchasing age to 19 years old.

This warrant article does not seek any change in Brookline's tobacco control policy.

Because the Brookline tobacco control policies have been modified so many times over the past thirty-plus years, the tobacco control by-law (Article 8.23) is riddled with language which is no longer appropriate. Language detailing how restaurants and bars will transition to smoke-free, and the accompanying waiver process, need no longer be included. The fraction of taxis and liveries which must be smoke-free by a series of specific dates is not required because they are now all required to be smoke-free. The portion of the by-law detailing the circumstances by which employees can request that their employer create a smoking lounge expired before some Brookline residents now old enough to purchase tobacco products in Town were even born.

This warrant article does not seek any change in Brookline's tobacco control policy.

This is a housekeeping article that seeks to remove impotent and no-longer-relevant language from the by-law. The segments of Article 8.23 rendered moot by Town or state legislation that has broadened smoking prohibitions as well as by the simple passage of time have been deleted. Because the state law has been modified over the years as well, there are portions of the Town by-law which are more permissive than state law; those portions of the Town by-law must be made as restrictive as the Massachusetts General Laws if the complete set of revisions is to be approved by the Attorney General. This is why *Membership Associations* is added to the list of definitions, and why the workplace smoking prohibition exemptions in private residences, membership associations, and hotels are made explicit. These definitions and exceptions come directly from M.G.L. c. 270 s. 22, and are necessary for Article 8.23 to comply with state law. This warrant article also corrects the current tobacco control by-law's inconsistencies in spelling and numbering.

This warrant article does not seek any change in Brookline's tobacco control policy.

SELECTMEN'S RECOMMENDATION

Article 4 is a petitioned article that seeks to update the Town's Tobacco Control By-Law, Article 8.23. It is a "house-keeping" article that brings the Town's by-law into conformity with the State's tobacco control statute, removes sections of the by-law that are no longer relevant, corrects inconsistencies in spelling, numbering and punctuation, and re-writes phrases to clarify language. Updating this by-law is important if the Town wants to consider more substantive policy changes to the by-law in the future, a likely possibility since the issues of e-cigarettes and flavored tobacco are gaining greater attention.

The Selectmen thank the Petitioner for bringing these amendments to the Tobacco Control By-Law forward and recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 30, 2013, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
The petitioner of Article 4 seeks to modify the Tobacco Control By-law of the Town of Brookline. The Town's original restrictions on tobacco smoking became effective in 1982, when large restaurants were required to set aside 25% of seats for non-smokers. Since that time, Brookline first increased the non-smoking seat requirement to 50% in 1987, and enacted a substantial modification in 1993, when smoking was banned in all restaurants and bars. Other amendments to the by-law by Town Meeting include the restriction on smoking in taxis and liveries and the phased-in requirement of smoke free hotel and motel rooms to the current 90%. The Massachusetts legislature has also adopted a tobacco control statute for the entire state; since 2004, all workplaces, restaurants and bars in Massachusetts are required to be smoke-free.

At the Fall 2011 and May 2012 Town Meetings, additional amendments were adopted and were incorporated into by-law. These legislative efforts have resulted in current by-law language that is sometimes redundant, frequently unnecessary and often contradictory.

The petitioner's stated purpose is to "clean-up" the Town's Tobacco Control by-law so that it reflects the current situation, both at the local level and at the state level when the state statute affects workplaces and food establishments in Brookline. In his original explanation, the petitioner emphasizes the sentence, "This warrant article does not seek any change in Brookline's tobacco control policy."

The petitioner expects that Town Meeting will consider some new tobacco control policies in the future and believes that it will be helpful to have a clean version of our Tobacco Control Bylaw as the starting point for future debates on this issue.

DISCUSSION:
The Advisory Committee discussion focused on the various deletions and additions that the petitioner proposes. We also considered changes in wording suggested by Town Counsel. To frame the discussion, it is helpful to categorize the reasons for the deletions and additions as follows:

1. Brings the Town's Tobacco Control by-law into conformity with the Tobacco Control statute of the Commonwealth of Massachusetts. Parts of that state statute are more stringent than the Town of Brookline By-law and therefore, the more stringent provisions of the Massachusetts statute apply to Brookline, in effect superimposed onto the Town's by-law.

2. Deletes the sections of the Town of Brookline By-law which are no longer relevant because the references are to phasing in provisions on dates long ago or the sections describe processes which only applied when the 1994 by-law was being phased in, and adds language to insure that the intent of the deleted portions is maintained.

3. Corrects the Town By-Law's inconsistencies in spelling, numbering and punctuation which have resulted from the several amendments passed over the last several years.

4. Deletes or reinstates provisions of the petitioner's first submission of Article 4, since the petitioner subsequently discovered mistakes in his first submission.

5. Rewords phrases to sharpen the focus and/or clarify language but preserve the meaning.

The proposed "housekeeping" changes to the Town's current by-law are:

Changes in Article 8.23.1 Purpose:
In the current by-law, Section 8.23.1 entitled Purpose, the proposed article inserts in two places the phrase: **of and public exposure to** which focuses the language but preserves the meaning of the by-law and its various amendments. Public exposure relates to regulated conduct in public places which are enumerated in the by-law. See Section 8.23.3a. in our recommendation.

Changes in Article 8.23.2 Definitions:
In Section 8.23.2 entitled Definition, the proposal strikes in subsections f and g the word and number "three/3" and replaces it with "one/1". The reason is that the proposed and more stringent wording conforms to Massachusetts law.

In Section 8.23.2 entitled Definition, subsection h, originally stricken in the petitioner's original proposal, has been reinstated, the petitioner having concluded that the definition is necessary.

In Section 8.23.2 entitled Definition, subsections i. and j. have been deleted, since restaurants are now 100% smoke-free.

On page 3 of the proposed by-law, the petitioner had first added a definition on Membership Associations, but has removed it in the current proposal as unnecessary since no smoking would be allowed in such a venue under The Town of Brookline's current by-law,

Changes in Article 8.23.3 Regulated Conduct:
Beginning on page 3 and continuing onto page 4 and the top of page 5 of proposed Warrant Article 4, in Section 8.23.3 entitled Regulated Conduct, the petitioner has removed all language in section a entitled Food Service Establishment. That language described how to become smoke-free; since all food service establishments are now 100% smoke free, the language is unnecessary and can cause confusion.

On page 5 of the proposed by-law, still in the Section 8.23.3 entitled Regulated Conduct, now section a(1) includes "food service establishment". Since the language in the section on Food Service Establishment would be deleted under the proposal, food service establishment needs to be among the list of public places where smoking is prohibited. Also, Town Counsel recommended changing the words "health care facility" to "health care institutions" to match the words in the definition section of the by-law.

Also in that same paragraph, the petitioner had first inserted language concerning Membership Associations, but now proposes to delete that same language. Its inclusion would allow smoking in Membership Associations and that would be a change in policy, not just a housekeeping change.

In proposed Section a(2) (again under Regulated Conduct) regarding Taxi/Livery service, the scheduled phase in for becoming smoke free are deleted as unnecessary and language reworked to reflect current law.

In proposed Section a(2) regarding Hotels, etc, the language about a phase in of the number of smoke-free rooms is eliminated, and the current by-law of 90% of smoke-free rooms is clearly stated. Dr. Balsam noted that there are two hotels in Brookline. Both have opted to have 100% non-smoking rooms, even though both could have 10% of their rooms designated as smoking ones.

In proposed Section b. entitled Workplaces, most language has been removed to conform to the Town's current policy and state law. In the Section b(2)(b) of the first proposal by the petitioner, he has removed language relating to Membership Associations for the reasons given earlier and added language which reflects current law. And the Advisory Committee added parentheses to the (a) and (b) of Section 8.23.3b(2)

In proposed Section b(4), the current by-law language is removed regarding permissible smoking areas of food service establishments since all food establishments are now 100% smoke-free.

Town Counsel requested wording changes in Section b(4): replace "that require" with 'where", and "requires" with "cause". The petitioner has incorporated those changes into the latest version, after obtaining approval from the Moderator.

In Section b(5), the word "before" is added to clarify that employees hired after November 1, 1994 are not subject to an employer's requirement to accept a designated smoking position as a condition of continued employment by the employer.

Town Counsel questioned whether Section b(7) from the petitioner's original proposal was necessary since the paragraph refers to seats in restaurants – currently, no smoking is permitted in any restaurant so the petitioner's revised Warrant Article does not contain that paragraph and the remaining paragraphs are renumbered. Again, the Moderator's agreement is necessary and petitioner has obtained that.

In the last paragraph under the section Regulated Conduct, the words "this by-law" in the petitioner's first version were eliminated and specific reference to "8.23.3(b)(2)b" was inserted. Currently, our by-law mandates posting of notices by employers to hotels and not to private residences, even though those private residences may not permit smoking when used for a business purpose. Extending the notice posting to private residences used for business functions would require a change in policy.

Changes in Section 8.23.4 Posting Requirements:

In this section, paragraph b is eliminated because no waivers are allowed under current law.

Changes in Section 8.23.5 Sale and Distribution of Tobacco Products:
In an attempt to have parallel subtitles in paragraphs a thru g, the petitioner first proposed eliminating "Prohibition Against the" from the paragraphs f and g. However, the subcommittee and Town Counsel preferred that the subtitles of the paragraphs indicate that these paragraphs were restrictions or prohibitions. The petitioner subsequently obtained the Moderator's approval and the wordings of all paragraphs in this section are revised as contained in our recommendation.

Changes in Section 8.23.6 Violations and Penalties:
In paragraph d of this section, a reference to the section # is corrected, such that Section 8.23.3(b), i.e. Workplaces, is inserted instead of 8.23.2(e), which was a mistaken reference made 2 years ago. Dr. Balsam noted that the State policy is to fine both the employer and employee in cases of a violation, and the petitioner pointed out that if the State fines are higher, then Brookline must use the higher amounts.

After reviewing all the changes proposed by the petitioner with input from Town Counsel and Dr. Balsam, and having had the suggestions and changes approved by the Moderator as within the scope of the original submission by the petitioner, the Advisory Committee is satisfied that the revised article below is a "housekeeping" revision of the Town of Brookline's Tobacco Control By-law, Article 8.23.3..

RECOMMENDATION:
The Advisory Committee voted unanimously for FAVORABLE ACTION (25-0-0) on the following motion:

Voted: That the Town adopt a revised version of its Tobacco Control By-law, Article 8.23 as follows:

ARTICLE 8.23
TOBACCO CONTROL

SECTION 8.23.1 PURPOSE

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

SECTION 8.23.2 DEFINITIONS

a. Tobacco - Cigarettes, cigars, snuff or tobacco in any of its forms.

b. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product.

c. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco products by self service, with or without assistance by a clerk or operator.

d. Minor - A person under nineteen years of age.

e. Employee - A person who performs work or services for wages or other consideration.

f. Employer - A person, partnership, association, corporation, trust or other organized group, including the Town of Brookline and any department or agency thereof, which utilizes the services of ~~three~~ one (~~3~~1) or more employees.

g. Workplace - Any enclosed area of a structure in the Town of Brookline, at which ~~three~~ one or more employees perform services for an employer.

h. Food Service Establishment - An establishment having one or more seats at which food is served to the public.

~~i. Function Room - A separate, enclosed room used exclusively for private functions within a food service establishment.~~

~~j. Bar/Lounge - An area within a food service establishment which is devoted primarily to serving alcoholic beverages for consumption by guests on the premises, and in which the consumption of food is only incidental to the consumption of such beverages.~~

~~k~~i. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

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

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

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

SECTION 8.23.3 REGULATED CONDUCT

~~a. Food Service Establishments~~

~~(1) All food service establishments shall be 100% non-smoking except as otherwise specifically permitted under this by-law.~~

~~(2) Waiver of non-smoking provision for bars and lounges The owner or operator of a food service establishment containing a bar/lounge may apply for a waiver of the non-smoking provision of Section 8.23.2(1) with respect to the bar/lounge.~~

~~The application shall state when the waiver shall terminate, provided, always, that such termination shall not be later than January 1, 2000. Application shall be made in writing to the Director of Public Health (Director), stating the reasons and justification for the request. Following no less than two weeks public notice, the Director shall conduct a public hearing on the request, at which the owner or operator shall present the request and the basis for the request. After the hearing the Director may grant the requested waiver, provided:~~

~~a. the owner or operator has owned or operated the establishment continuously since November 15, 1994;~~

~~b. on November 15, 1994, the establishment contained a bar/lounge according to the records of the Town;~~

~~c. the number of the seats in the bar/lounge do not exceed 25% of the establishment's total seating capacity;~~

~~d. the bar/lounge occupies a separate, enclosed room;~~

~~e. the bar/lounge is equipped with a separate ventilation system that provides an air circulation rate of at least 60 cubic feet per minute per person and exhausts air at a rate of at least 110% of supply to produce a negative air environment; and~~

~~f. the configuration of the establishment is not such as to require dining patrons to pass through any portion of the bar/lounge when entering or exiting the establishment.~~

~~(3.) The Director of Public Health may adopt regulations providing for the implementation of Section 8.23.2(2) of this by-law.~~

~~b.~~ a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public

is permitted. This includes, but is not limited to, any food service establishment, health care ~~facility~~institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free ~~Vehicles~~vehicles. ~~in accordance with the following schedule:~~

~~a. As of 3/1/94, 25% of all vehicles~~
~~b. As of 1/1/95, 100% of all vehicles~~

The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. ~~Non-smoking v~~Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate at least 90% of individual dwelling units or rooms as non-smoking. ~~in accordance with the following schedule:~~

~~a. As of 3/1/94, 25% of individual dwelling units or rooms,~~
~~b. As of 1/1/95, 50% of dwelling units or rooms,~~
~~c. As of 1/1/96, 90% of dwelling units or rooms.~~

~~c.~~ b. Workplaces

(1.) ~~Every employer shall establish, post and implement a workplace smoking policy and shall, upon request, furnish a written copy of such smoking policy to any employee or to the Director of Public Health. A workplace smoking policy shall include a grievance procedure whereby an employee may seek relief if he/she is exposed to tobacco smoke in the course of his/her work duties. Upon written request by three or more employees, an employer may, but is not required to, designate a "Smoking Area", provided that such a smoking area shall not adversely affect the health and well being of nonsmoking employees or members of the public. An employer may furnish a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for non-smoking employees. All s~~Smoking in ~~the~~ workplaces ~~shall be~~ is prohibited ~~on or before January 1, 1995~~.

~~2. Workplaces with function rooms must establish and post a workplace policy that states "Employees are not required to work at private functions in which smoking is allowed." Employees who do not want to work at such functions must~~

~~so inform their employer in writing, and employers must abide by their employees stated wishes in this regard.~~

(2) Notwithstanding subsection (1), smoking may be permitted in the following places and circumstances:

a. Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility;~~.~~

b. A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, which is rented to a guest and designated as a smoking room.

(3~~.~~) Hotels must establish and post a workplace policy that states "Employees are not required to work in rooms in which smoking is allowed." Employees who do not want to work in such rooms must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

~~4. Food service establishments that permit smoking under the waiver provisions of Section 8.23.2 (2) shall establish and post a workplace policy that states: "Employees are not required to work in the bar/lounge.~~

~~5~~(4~~.~~) Every establishment in which smoking is permitted pursuant to this ~~B~~by-law shall designate all positions ~~that require~~where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may ~~requires~~cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

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

~~7~~(6)~~.~~ No establishment in which smoking is permitted pursuant to this ~~B~~by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

~~8(7). No establishment in which smoking is permitted pursuant to this Bby-law may designate more smoking positions, as a proportion of the total number of service positions, than the number of seats in proportion of the establishment in~~

~~which smoking is permitted bears to the total number of seats legally permitted in the establishment.~~

~~9~~(7)~~.~~ It is the intent of this ~~B~~by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. ~~C~~c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

~~10~~(8)~~.~~ Each establishment in which smoking is permitted pursuant to ~~this Bylaw~~8.23.3(b)(2)(b) shall post, and make available to all job applicants, a statement inviting employees and job applicants to notify the Board of Selectmen regarding any violation of the policies in this section (~~Workplaces~~8.23.3(b)).

SECTION 8.23.4 POSTING REQUIREMENTS

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

~~b. Food service establishments in which smoking is permitted under the waiver provisions of Section 8.23.2(2) shall post in a conspicuous location, at each entrance used by the general public, a notice provided by the Director of Public Health. This notice, which shall not be smaller than 80 square inches nor larger than 120 square inches in overall area, shall state that smoking is permitted in the establishment and contain a warning concerning the risks of environmental tobacco smoke.~~

SECTION 8.23.5 SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

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

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

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

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

e. Restrictions on Advertising~~/~~ and Promotion - From and after January 1, 1995, free standing tobacco product displays in retail locations, where a tobacco product is accessible to the public, shall be within twenty feet and the unobstructed view of a check-out or cash register location.

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

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

SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who knowingly violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of not more than $50 for each offense.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of not more than $100 for each offense.

c. Any entity violating any other section of this by-law shall receive a fine of three hundred dollars ($300.00) for each offense.

d. Employees who violate any provision of Section ~~8.23.2(c)~~8.23.3(b) shall be punished by a fine of not more than $100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a non-criminal manner as provided in PART X of the Town ~~B~~by-~~L~~laws.

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

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

SECTION 8.23.7 SEVERABILITY

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

XXX

Passed by a majority vote

ARTICLE 5

FIFTH ARTICLE

Submitted by: Police Chief

To see if the Town will amend the General By-Laws, Article 8.30, Fingerprint-Based Criminal Record Background Checks, Section 8.30.2, as follows (new language is underlined):

Section 8.30.2 Applicant's Submission to Fingerprinting by the Brookline Police Department

Any applicant for a **Town of Brookline** license to engage in any of the following occupational activities within the Town shall submit a full set of fingerprints taken by the Brookline Police Department within ten (10) days of the date of the application for a license for the purpose of conducting a state and national criminal record background check to determine the suitability of the applicant for the license:

Liquor Licensee;
Manager or Alternate Manager of a Liquor Licensee;
Registered Marijuana Dispensary (RMD) Licensee;
RMD Executives, Directors, and Managers;
Hawker and Peddler;
Hackney Carriage (Taxi) Operator;
Door-to-Door Solicitor;
Second-Hand Dealer;
Automobile Dealer; **and**
Ice Cream Truck Vendor.

At the time of fingerprinting, the Police Department shall notify the individuals fingerprinted that the fingerprints will be used to check the individual's FBI criminal history records.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In November 2011, the Special Town Meeting approved a new Article 8.30 of the Town's By-Laws proposed by Police Chief Daniel C. O'Leary providing for fingerprint-based criminal background checks of persons seeking a Town license to conduct certain

occupational activities within the Town. The occupations included in the By-Law were liquor licensees and their managers, hawkers and peddlers, taxi cab operators, door-to-door solicitors, second-hand dealers, automobile dealers, and ice cream truck vendors, as they are positions of trust involving interacting with vulnerable populations such as children and the elderly, gaining possession of the property of others, or assuming control of premises selling alcoholic beverages. Fingerprint-based criminal history checks permit searches of criminal histories utilizing the FBI's database, and therefore are national background checks into an applicant's federal and state criminal histories. Without fingerprint-based criminal history checks, licensing-related background investigations are limited to an applicant's Massachusetts criminal history. Federal law permits the FBI to assist with national criminal record background checks for municipal licensing purposes only when based on fingerprints and only for municipalities that have enacted a local law authorizing the FBI to do so. In addition, in 2010, the Massachusetts legislature amended the CORI law to authorize municipalities to enact by-laws permitting the FBI to assist with fingerprint-based national criminal record background checks as to such occupations that the by-law specifies. In February 2012, the Attorney General's Office approved Article 8.30 of the Town's By-Laws.

In November 2012, Massachusetts voters approved an initiative petition entitled "Law for the Humanitarian Use of Marijuana" (now codified at St. 2012, c. 369), legalizing the production and distribution of medical marijuana. In May 2013, the Massachusetts Department of Public Health (DPH) issued regulations now codified at 105 CMR 725 establishing a process by which it will entertain applications and issue registrations to medical marijuana treatment centers (once registered, medical marijuana treatment centers are called "registered medical dispensaries," or "RMDs"). Under 105 CMR, RMD board members, directors, employees, executives, managers and volunteers must themselves be registered with DPH, and they are precluded from doing so if they have a conviction for a felony drug offense anywhere in the country. In addition, under its regulations, DPH must determine whether applicants for registration are "suitable" by considering convictions, guilty pleas, pleas of nolo contendere or admissions of sufficient facts under any state, federal, military, territorial or Indian tribal authority criminal law, whether a felony or misdemeanor. However, RMDs must send to DPH Criminal Offender Record Information (CORI) reports that reflect Massachusetts offenses only. DPH will depend on RMDs to self-report relevant offenses under federal and non-Massachusetts law.

DPH's regulations explicitly permit "lawful local oversight and regulation" that do not "conflict or interfere with the operation of 105 CMR 725." Two other warrant articles related to medical marijuana regulation are before this Special Town Meeting. The first proposes Zoning By-Law amendments regulating RMD siting and certain facets of RMD operations. The second proposes a local licensing scheme for RMDs and annual inspections to assure the RMDs' compliance with legal requirements, such as those regarding security (DPH's regulations permit but do not mandate annual inspections). This proposed amendment to Article 8.30 of the Town By-Laws seeks to complement the second warrant article by providing potentially highly-relevant information regarding an applicant's suitability for a new Town RMD license, under the same strict protections and

policies applicable to fingerprint-based criminal background checks now conducted on other types of license applicants. As with other licensing-related fingerprint-based criminal background checks the Town conducts, these would only be conducted on a one-time basis in connection with an application for a new license (and not for renewals). The proposed by-law amendment provides that fingerprint-based criminal background checks be conducted on the RMD licensee itself (as is now done with the other licensees the by-law now lists), as well as the RMD's managers, officers, directors and executives (the DPH regulations define "executive" to mean the chair of the board of directors, chief executive officer, executive director, president, senior director, other officer, and any other executive leader of an RMD).

Medical marijuana is new to Massachusetts. Some of the expressions of interest the Town has received from potential RMDs have been from medical marijuana businesses that have already established themselves in other states. Given these circumstances, it would promote public safety to assure that national criminal background checks are conducted on businesses and their executives seeking to set up shop within the Town. Amending Article 8.30 to add RMDs and their executives, directors and managers will permit the Town to do so.

SELECTMEN'S RECOMMENDATION

Articles 5 through 7 deal with the matter of the Town hosting a Registered Marijuana Dispensary (RMD), the technical term for a facility licensed to sell medicinal marijuana. Article 5 was submitted by the Police Chief as a way to safeguard the community by having those who manage and work at a RMD be subjected to a national fingerprint-based criminal background check, the same background check in place for those seeking liquor licenses, hawkers and peddlers licenses, license to operate a taxi cab, door-to-door solicitors, second-hand dealers, automobile dealers, and ice cream truck vendors.

In November 2012, Massachusetts approved the legalization of the production and distribution of medical marijuana. In May 2013, the Massachusetts Department of Public Health (DPH) issued regulations (105 CMR 725) establishing a process by which it will entertain applications and issue registrations to RMDs. Under DPH's regulations, RMD board members, directors, employees, executives, managers and volunteers must themselves be registered with DPH and they are precluded from doing so if they have a conviction for a felony drug offense anywhere in the country. In addition, DPH must determine whether applicants for registration are suitable by considering convictions, guilty pleas, pleas of nolo contendere or admissions of sufficient facts under any state, federal, military, territorial or Indian tribal authority criminal law, whether a felony or misdemeanor. However, RMDs must send to DPH Criminal Offender Record Information (CORI) reports that reflect Massachusetts offenses only. DPH will depend on RMDs to self-report relevant offenses under federal and non-Massachusetts law.

If the proposed amendment to Article 8.30 under this Article 5 is approved, the Town will be provided with highly-relevant out-of-state criminal information under the same strict protections and policies applicable to fingerprint-based criminal background checks now conducted on other types of license applicants. As with other licensing-related fingerprint-based criminal background checks the Town conducts, these would only be conducted on a one-time basis in connection with an application for a new license (and not for renewals). The proposed by-law amendment provides that fingerprint-based criminal background checks be conducted on the RMD licensee itself (as is now done with the other licensees the by-law now lists), as well as the RMD's managers, officers, directors and executives.

The Selectmen unanimously favor this amendment, as it will help assure that any RMD established in Brookline is managed and operated by applicants with suitable backgrounds. If it's in the best interest of the public to undertake a national background check on those who sell ice cream to our children, then it certainly is in the Town's best interest to perform those same background checks on those who will be operating a newly-allowable establishment that will be responsible for the sale of medicinal marijuana. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 15, 2013, on the following:

VOTED: that the Town amend the General By-Laws, Article 8.30, Fingerprint-Based Criminal Record Background Checks, Section 8.30.2, as follows (new language is underlined):

Section 8.30.2 Applicant's Submission to Fingerprinting by the Brookline Police Department

Any applicant for a **Town of Brookline** license to engage in any of the following occupational activities within the Town shall submit a full set of fingerprints taken by the Brookline Police Department within ten (10) days of the date of the application for a license for the purpose of conducting a state and national criminal record background check to determine the suitability of the applicant for the license:

Liquor Licensee;
Manager or Alternate Manager of a Liquor Licensee;
Registered Marijuana Dispensary (RMD) Licensee;
RMD Executives, Directors, and Managers;
Hawker and Peddler;
Hackney Carriage (Taxi) Operator;
Door-to-Door Solicitor;
Second-Hand Dealer;
Automobile Dealer; **and**
Ice Cream Truck Vendor.

At the time of fingerprinting, the Police Department shall notify the individuals fingerprinted that the fingerprints will be used to check the individual's FBI criminal history records.

Passed by a Counted Vote of 182 In Favor and 4 Opposed.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
In November 2011, Town Meeting approved a new Article 8.30 of the Town's General By-Laws to provide for fingerprint-based criminal background checks of persons seeking a Town license to conduct certain businesses, including those that involve interactions with vulnerable populations, that gain possession of the property of others, or that assume control of premises where alcoholic beverages will be sold. In 2012, Massachusetts voted to approve the initiative petition, An Act for the Humanitarian Use of Marijuana for Medical Purposes, now codified as Session Law of 2012, chapter 369. With passage of this law, persons may apply to operate Registered Marijuana Dispensaries (RMDs) in Brookline. Warrant Article 5 would extend fingerprint-based criminal background checks to persons applying for these RMD licenses, including the RMD applicants' directors, executives and managers.

DISCUSSION:
With the legalization of marijuana usage for medical purposes only, marijuana stored and sold by RMDs will be vulnerable to diversion for illegal purposes. To minimize the likelihood of this from occurring, the Massachusetts Department of Public Health (DPH) has issued regulations specifying detailed security requirements for the RMDs. The regulations also require that all RMD executives, board members, employees, volunteers, and managers register with the DPH; but they will qualify for registration only if they do not have a conviction for a felony drug offense anywhere in the country. They also must be determined "suitable" for registration upon consideration of "convictions, guilty pleas, pleas of nolo contendere or admissions of sufficient facts under any state, federal, military, territorial or Indian tribal authority criminal law, whether a felony or misdemeanor." DPH will have limited ability to assess these measures of "suitability," however, since the only criminal records that the RMDs must provide to DPH are Criminal Offender Record Information (CORI) reports that reflect Massachusetts offenses only. DPH will depend on RMDs to self-report relevant offenses under federal law and in other states.

To provide oversight of DMRs operating in Brookline, Warrant Articles 5 through 7 have been filed by Brookline's Police Chief, the Board of Selectmen and the Department of Planning and Regulation, respectively. DPH's regulations explicitly permit such "lawful local oversight and regulation" of DMRs. Warrant Article 6 would require persons interested in establishing a DMR in Brookline to apply for a license. By applying Section 8.03 of the Town's General Laws to the executives, directors, and managers of RMD

applicants, Warrant Article 5 provides one of the tools to help the Town determine suitability of applicants for an RMD license. Like the applicants for other licenses governed by Section 8.03, these persons will be required to submit a full set of fingerprints to the police. These, in turn, are needed to permit searches of the FBI's database to obtain criminal background checks under federal and other states' laws.

The Advisory Committee was supportive of the warrant article. Obtaining nationwide background checks seems particularly appropriate for RMD applicants. Many of these likely already have experience operating marijuana dispensaries outside of Massachusetts, and thus do not necessarily reside in Massachusetts. Limiting criminal background checks to Massachusetts records under the CORI system thus would provide insufficient information. Furthermore, by requiring nationwide criminal background checks for persons applying to locate a dispensary in Brookline, this will improve DPH's ability to assess "suitability" of these applicants for registration at the state level.

Some members of the Advisory Committee expressed an interest in expanding the fingerprinting requirement to employees, noting that the State regulations for DPH require assessments of suitability and criminal backgrounds of employees in addition to managers, executives and directors. A potential RMD applicant present at the Subcommittee hearing also stated his support of such background checks for employees, as this would be in the interests of RMD operators. The Police Chief explained that the State authorization for Section 8.3 of the Town's By-Laws limits Brookline's ability to obtain fingerprints to only the executives, directors and managers of new applicants. If an RMD operator seeks to be relicensed, moreover, the Town may not do fingerprint-based background checks of newly hired executives, directors or managers.

RECOMMENDATION:
By a vote of 19-0-1, the Advisory Committee recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

XXX

ARTICLE 6

SIXTH ARTICLE

Submitted by: Board of Selectmen

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

ARTICLE 8.32 REGISTERED MARIJUANA DISPENSARY (RMD) LICENSES

Section 8.32.1 PURPOSE

The purpose of this By-Law is to prevent and minimize any possible adverse public health and safety consequences that could result from the establishment of Registered Marijuana Dispensaries ("RMDs") within the Town pursuant to Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana" (the "Act"), while at the same time recognizing the purpose of the Act to make medical marijuana available to qualifying patients.

Section 8.32.2 LICENSE

No person shall operate an RMD within the Town unless licensed to do so by the Board of Selectmen ("Board"). An RMD license shall be valid for a term of one year from the first day of January.

Each day of operation without an RMD license shall constitute a separate violation.

An RMD license shall be subject to the RMD's compliance with Massachusetts and Town laws, by-laws, regulations, and codes, including, but not limited to, 105 C.M.R. 725, the Town's Zoning By-Law, and any Town regulations adopted pursuant to this By-Law.

Section 8.32.3 REGULATIONS

The Board may issue regulations for the implementation of this By-Law.

Section 8.32.4 APPLICATIONS FOR NEW OR RENEWED RMD LICENSES

The Board shall specify the process and forms to be used by applicants for new and renewed RMD licenses. The Board or its designee may inspect an RMD and affiliated vehicles prior to the issuance of an RMD license or renewal of a license. All areas of an RMD and all RMD records may be subject to inspection consistent with applicable law.

The Board may, to the extent permitted under applicable law (including any Town regulations promulgated hereunder), 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 Massachusetts and Town laws, by-laws, regulations, and codes, including, but not limited to, 105 C.M.R. 725, the Town's Zoning By-Law, and any Town regulations adopted pursuant to this By-Law, may be cause for denial of an application for a new or renewed RMD license.

Section 8.32.5 IMPLEMENTATION

This By-Law shall not be implemented in a manner that conflicts or interferes with the Act or with 105 C.M.R. 725.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In November 2012, with voter approval of an initiative petition entitled "Law for the Humanitarian Use of Marijuana" (now codified as St. 2012, c. 369), Massachusetts became the nineteenth state to legalize the production and distribution of medical marijuana. The law defines a "medical marijuana treatment center," or "registered marijuana dispensary" ("RMD"), as a Massachusetts not-for- profit entity registered under this law 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 supplies or educational materials to qualifying patients or their personal caregivers. The law delegated to the Massachusetts Department of Public Health ("DPH") responsibility for formulating implementing regulations. It permitted DPH to issue registrations for up to 35 RMDs (with a minimum of one in each county and a maximum of five in any one county) during the first year after the law takes effect, and an additional number subsequently as DPH may deem sufficient to meet patient needs.

In May 2013, DPH adopted regulations that are now codified as 105 CMR 725. The regulations contain detailed provisions regarding the qualification and operating requirements applicable to RMDs. They permit RMDs to cultivate, manufacture, dispense and transport medical marijuana and marijuana-infused products ("MIPs") from the site. Under the regulations, RMDs are restricted-access locations that may dispense medical marijuana to qualified patients and their caregivers bearing DPH-issued registration cards. They may not sell products other than marijuana, MIPs, vaporizers and other products that facilitate the use of marijuana for medical purposes. There are detailed security requirements applicable to the RMD and related property, such as vehicles. While the regulations permit DPH to conduct inspections, they do not require that it do so on any regular basis. The regulations explicitly permit "lawful local

oversight and regulation, including fee requirements" that do not "conflict or interfere with the operation of 105 CMR 725."

The May 2013 Annual Town Meeting adopted a Zoning By-Law provision establishing a one-year moratorium on the siting of RMDs within the Town to afford the Town time to establish a framework for regulating RMDs that is consistent with and complementary to the State scheme. Under the provisions of this Zoning By-Law provision, the moratorium ceases on the earlier of an amendment to it or June 30, 2014. The Department of Planning and Community Development submits a warrant article proposing amendments to the Zoning By-Law that would permit the siting of RMDs under conditions the warrant article proposes.

The Board submits this proposed By-Law to complement the Planning Department's proposal. The Board proposes to establish a local licensing framework that would permit the Board to establish reasonable regulations to minimize any possible public health and safety concerns RMDs may pose, and to permit local inspections for compliance with applicable law, including 105 CMR and any regulations the Board adopts. A local regulatory scheme would assure that RMDs operate in Brookline both within the constraints of the law and without posing undue public safety and health concerns given local conditions and needs. Care would be taken to assure that the local licensing scheme and its implementation would not conflict or interfere with 105 CMR 725.

SELECTMEN'S RECOMMENDATION

Articles 5 through 7 deal with the matter of the Town hosting a Registered Marijuana Dispensary (RMD), the technical term for a facility licensed to sell medicinal marijuana. Article 6 was submitted by the Selectmen so that a local licensing framework could be established.

In November 2012, Massachusetts approved the legalization of the production and distribution of medical marijuana. In May 2013, the Massachusetts Department of Public Health (DPH) issued regulations (105 CMR 725) establishing a process by which it will entertain applications and issue registrations to RMDs. Under DPH's regulations, RMD board members, directors, employees, executives, managers and volunteers must themselves be registered with DPH and they are precluded from doing so if they have a conviction for a felony drug offense anywhere in the country. In addition, DPH must determine whether applicants for registration are suitable by considering convictions, guilty pleas, pleas of nolo contendere or admissions of sufficient facts under any state, federal, military, territorial or Indian tribal authority criminal law, whether a felony or misdemeanor. However, RMDs must send to DPH Criminal Offender Record Information (CORI) reports that reflect Massachusetts offenses only. DPH will depend on RMDs to self-report relevant offenses under federal and non-Massachusetts law.

The May, 2013 Annual Town Meeting adopted a Zoning By-Law provision that established a one-year moratorium on the siting of RMDs within the Town to afford the Town time to establish a framework for regulating RMDs that is consistent with and complementary to the State scheme. Under that vote, the moratorium ceases on the earlier of an amendment to it or June 30, 2014.

The Board submitted this Article 6 as a complement to Article 7, which proposes amendments to the Zoning By-Law that would permit the siting of RMDs under certain conditions. The Board proposes to establish a local licensing framework that would permit the Board to establish reasonable regulations to minimize any possible public health and safety concerns RMDs may pose, and to permit local inspections for compliance with applicable law. A local regulatory scheme would assure that RMDs operate in Brookline both within the constraints of the law and without posing undue public safety and health concerns given local conditions and needs.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 15, 2013, on the following:

VOTED: that the Town amend the General By-Laws by adding the following article:

ARTICLE 8.34 REGISTERED MARIJUANA DISPENSARY (RMD) LICENSES

Section 8.34.1 PURPOSE

The purpose of this By-Law is to prevent and minimize any possible adverse public health and safety consequences that could result from the establishment of Registered Marijuana Dispensaries ("RMDs") within the Town pursuant to Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana" (the "Act"), while at the same time recognizing the purpose of the Act to make medical marijuana available to qualifying patients.

Section 8.34.2 LICENSE

No person shall operate an RMD within the Town unless licensed to do so by the Board of Selectmen ("Board"). An RMD license shall be valid for a term of one year from the first day of January.

Each day of operation without an RMD license shall constitute a separate violation.

An RMD license shall be subject to the RMD's compliance with Massachusetts and Town laws, by-laws, regulations, and codes, including, but not limited to, 105 C.M.R. 725, the Town's Zoning By-Law, and any Town regulations adopted pursuant to this By-Law.

Section 8.34.3 REGULATIONS

The Board may issue regulations for the implementation of this By-Law.

Section 8.34.4 APPLICATIONS FOR NEW OR RENEWED RMD LICENSES

The Board shall specify the process and forms to be used by applicants for new and renewed RMD licenses. The Board or its designee may inspect an RMD and affiliated vehicles prior to the issuance of an RMD license or renewal of a license. All areas of an RMD and all RMD records may be subject to inspection consistent with applicable law.

The Board may, to the extent permitted under applicable law (including any Town regulations promulgated hereunder), 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 Massachusetts and Town laws, by-laws, regulations, and codes, including, but not limited to, 105 C.M.R. 725, the Town's Zoning By-Law, and any Town regulations adopted pursuant to this By-Law, may be cause for denial of an application for a new or renewed RMD license.

Section 8.34.5 IMPLEMENTATION

This By-Law shall not be implemented in a manner that conflicts or interferes with the Act or with 105 C.M.R. 725.

Passed by a Counted Vote
210 In Favor and 40 Opposed

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND
Article 6 is submitted by the Board of Selectmen.

In November 2012, Massachusetts voters approved Ballot Question 3 and Massachusetts became the 19th state to legalize marijuana for medical use. The law (codified as St. 2012, c. 369) became effective on January 1, 2013 and the final DPH regulations (codified as 105 C.M.R. 725) for patient and caregiver registration and operation of Registered Marijuana Dispensaries (RMDs) were approved in May 2013.

Town Meeting voted a temporary moratorium on RMDs in Brookline in May 2013 to allow the Town time to establish a licensing framework and zoning for RMDs. This article is part of a trio of articles that seek to establish regulations for Registered Marijuana Dispensaries in Brookline.

Article 6 seeks to modify the Town by-laws to empower the Board of Selectmen to establish licensure requirements, including the process, forms and inspection requirements for RMDs. The by-law establishes the term of an RMD license as one year from the first day of January with annual renewal required for continued operation. Licenses would need to be renewed annually and each day of operation without a valid license will be a separate violation. Penalties will be assessed according to Article 10.3 of the General By-laws and are set at $50.00 per offense.

The proposed amendments stipulate that a licensed RMD must comply with the state law, regulations, and codes as well as those enacted by the Town including, but not limited to the Town's By-law, Zoning By-Law and any regulations.

DISCUSSION

State regulations permit cities and towns in Massachusetts to establish local regulations around the oversight of Registered Marijuana Dispensaries provided that they do not conflict or interfere with the law. The regulations contain detailed provisions regarding the cultivation, manufacturing, dispensing, and transportation of medical marijuana and marijuana-infused products. Security requirements are also detailed in the regulations, but regular inspections of the RMD and related property, such as vehicles, are not required on a regular basis. The By-Law proposed by Article 6 would establish the licensing requirements for Registered Marijuana Dispensaries in Brookline and allow the Board of Selectmen to issue regulations related to its implementation.

The Advisory committee felt the wording in the first sentence ("The purpose of this By-Law is to prevent and minimize...") was contradictory. An amendment to change the word "and" to "or" in the sentence was proposed so the revised sentence reads: "The purpose of this By-Law is to prevent ***or*** minimize any possible adverse public health and safety consequences..." The Advisory Committee voted in favor of the amendment by a vote of 19-0-1.

RECOMMENDATION

By a vote of 20-0, the Advisory Committee voted FAVORABLE ACTION on Article 6 as offered by the Board of Selectmen.

XXX

ARTICLE 7
AMENDMENT

Offered by Sean M. Lynn-Jones – TMM #1

VOTED: To delete paragraph 5 of the main motion offered under Article 7.

Passed by a Majority Vote

ARTICLE 7

SEVENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend the Brookline Zoning By-Law as follows:

Amending Section 2.13.1, "M" Definitions, "Medical Marijuana Treatment Center" as follows: (new language in bold)

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 supplies, or educational materials to qualifying patients or their personal caregivers, which is properly licensed and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.

And amending Sec. 4.07, Table of Use Regulations, Use #20B, by changing the use name from Medical Marijuana Treatment Centers, to Registered Marijuana Dispensary, and change the use columns as follows (new language in bold):

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
20B. **Registered Marijuana Dispensary (RMD)*** *** To be eligible for a special permit under Use 20 B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, shall be met.**	No	No	No	No	No	~~No~~ **SP***	~~No~~ **SP***	~~No~~ **SP***	~~No~~ **SP***

And creating a new Sec 4.12, Registered Marijuana Dispensary (RMD with the following requirements: (new language in bold):

Sec. 4.12 - Registered Marijuana Dispensary (RMD)

1. Purpose

The intent of this section is to establish RMDs in appropriate locations and under strict safeguards to mitigate any possible adverse public health and safety consequences related to the establishment of RMDs in the Town of Brookline, in conformity with Chapter 369 of the Acts of 2012 (Question # 3 on the November 6, 2012 ballot).

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. General Restrictions

An RMD shall:

a. Have a valid license or permit as may be required by law, including 105 CMR 725 and the Town By-Law, and comply with all state provisions.

b. Be located more than 500 feet from an elementary or secondary school, public or private, as measured from lot boundary to lot boundary.

c. Not be located in a building that contains a day care center.

d. Not have direct access from a public way to the portion of the RMD where marijuana or related products or supplies are dispensed.

e. Have signage that conforms to the state regulations, is not internally illuminated, and is approved by the Brookline Planning Board under Article VII of the Brookline Zoning By-Law.

f. Require that if an RMD cultivates marijuana in Brookline, it shall be in an entirely enclosed building for security purposes.

g. Submit a detailed description of security measures for the RMD, such as lighting, fencing, gates, and alarms, etc., that comply with the requirements of 105 CMR 725, to ensure the safety of persons and protect the premises from theft.

3. Submittal Requirements prior to issuance of a Building Permit for an RMD

The following information shall be provided to the Building Department:

a. The name and address of each owner of the RMD.

b. Copies of any required licenses and permits relating to the operation of the RMD, or, if an application for a required license or permit is pending, a copy of the application.

c. Evidence of the Applicant's right to use the proposed site as an RMD, such as a deed or lease.

d. If the Applicant is a business organization, a statement disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners/trustees of such entities by listing the individuals' names and addresses.

4. Submittal Requirements prior to issuance of a Certificate of Occupancy for an RMD

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 persons with access to the facility when it is closed, to enable contact if operating problems should arise.**
b. **Proof that the Brookline Police Department has approved the proposed security measures and that all security measures have been installed or implemented.**

5. **Annual Reporting** *[Delete this section if a Town By-Law requiring annual licensing of RMDs by the Selectmen is approved by Town Meeting.]*

As a condition for the continuation of the Special Permit, the owner (s) or manager (s) of each RMD permitted under this By-law shall appear before the Zoning Board of Appeals no later than January 31st of each year, to demonstrate continued compliance with state and town requirements, submit proof that the Brookline Police Department has been given updated contact information, and has found security measures adequate.

And amending Sec 6.02.5, Off-Street Parking Space Regulations by adding "20B" to the list of Retail and Office uses after "20A"in the first sentence: (new language in bold):

5. Retail and Office uses of land or structures shall include Uses 18, 20, 20A, **20B**, 21, 26, 27, 29, 31-33 inclusive, 35-39 inclusive, 41, 58, and 59 as listed in Article IV.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Planning and Community Development Department is submitting this article with the support of the Selectmen's Zoning By-Law Committee. It ends the moratorium on the sale of medical marijuana or related uses in Brookline adopted by Town Meeting in May 2013 in response to the state having now adopted regulations regarding this use. Several departments have been working together – Planning, Building, Health, Police, and Town Counsel - to formulate zoning requirements that are not only consistent with the state regulations, but provide necessary restrictions and oversight.
An initiative petition titled "Law for the Humanitarian Medical Use of Marijuana" (Petition #11-11) was approved by the Massachusetts voters in the November 6, 2012 general election. More than 70 percent of Brookline voters approved the law, which took effect on January 1, 2013.

The new law defines a "medical marijuana treatment center" as a Massachusetts not-for-profit entity, registered under the new law, 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 supplies or educational materials to qualifying patients or their personal caregivers. The new law enables the Massachusetts Department of Public Health (DPH) to register up to 35 such centers within the first year of enactment, with a minimum of one and a maximum of five located within each county. DPH has now promulgated regulations for registration and administration of such centers. Thus far, the production and distribution of marijuana for medical use has been legalized in 18 states and the District of Columbia. Laws and regulations vary from state to state.

The proposed warrant article does the following:

- Amends the definition of Medical Marijuana Treatment Center by adding "also known as a Registered Marijuana Dispensary (RMD)" to be consistent with the wording used in the definition under the state regulations, 105 CMR 725.
- Changes the name of the use under 20B to "Registered Marijuana Dispensary (RMD)" from "Medical Marijuana Treatment Center" to be consistent with the state regulations (105 CMR 725), adds a footnote referring to requirements for all RMDs under a new Sec. 4.12, and changes the use columns under Local and General Business, Office and Industrial districts from a "No" to an "SP" to allow the siting of RMDs in these zoning districts. RMDs remain a prohibited use in all residential zones.
- Adds a new Section 4.12 listing requirements for all RMDs, including: state licensure, where an RMD may be located (not within 500 feet of a K-12 school, nor within a building with a daycare center, restrictions based on – but not as restrictive as – the "default" restrictions in state DPH regulation as discussed below); the type of entrance from the street to the area where marijuana products are dispensed (access must be through a lobby or vestibule, not directly onto the street, providing an additional margin for screening and security purposes); the type of signage (no internally illuminated signs); restricting any cultivation of marijuana in Brookline to be within an enclosed building; and requiring security measures. This section also requires specific submittals from the applicant prior to a Building Permit and then again prior to a Certificate of Occupancy to ensure that the Town has current information about all licenses, operators/owners of the site, and security measures.
- Inserts the new use, 20B, to the list of uses under the general parking requirements for retail and office uses.
- Lastly, adds an annual review of the special permit by the Board of Appeals. This should be deleted from the warrant article if a Town By-Law passes requiring an annual license by the Board of Selectmen.

A discussion of the procedural posture of this article is warranted. The Zoning By-Law Committee has proceeded on the premise that the regulations proposed in this article could be made more stringent during the by-law review process and still be within the

"scope of the warrant." The reasoning is that the Town's current Zoning By-Law flatly prohibits RMDs, so any additional restriction that may be added before the final Town Meeting vote would result in an outcome that is "between" the current situation (no RMDs) and the "looser" warrant article. In addition, the ZBLC recognizes that any by-law that is so stringent that it effectively forecloses RMDs in the Town could well be rejected by the Attorney General as inconsistent with the November 6, 2012 referendum.

To give an example, the proposed warrant article would prohibit RMDs within 500 feet of a K-12 school. That article adopts the 500-foot distance that would apply under state regulations in the absence of a Town By-Law. The "default" state regulations would, however, apply that 500-foot buffer zone not only to K-12 schools but also to daycare centers and "any facility in which children commonly congregate." The ZBLC did not recommend such language in recognition of the fact that – if the state language were adopted without modification -- the location of multiple daycare centers and parks throughout Brookline would effectively prohibit RMDs in much of the Town, including medical office buildings in commercial areas. At the same time, the ZBLC does recommend that RMDs not be located in the actual building where a daycare center is located.

As another example, an organization that is pursuing licensure as a non-profit RMD recommended a 1,000-foot buffer zone around schools, on the theory that federal authorities have exercised their discretion in adopting that distance for federal law enforcement purposes. This would, again, limit the areas in which RMDs could be located.

The ZBLC notes that the various boards, committees and commissions that will review this warrant article would have flexibility to recommend more stringent regulations than proposed in the article – for example, a buffer zone around daycare centers or parks, or a 1,000-foot (rather than 500-foot) buffer zone around schools. The final by-law will ultimately be decided by Town Meeting, with the recognition that any by-law must ultimately pass muster with the Attorney General.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to allowing registered marijuana dispensaries and is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen's Zoning By-Law Committee.

The proposed amendment would replace language adopted by Town Meeting in the spring of 2013, which established a temporary moratorium on medical marijuana treatment centers, with new language allowing them by special permit in business districts (General Business (G), Local Business (L), Office (O), and Industrial (I)) and creating consistency with state regulations promulgated by the state Department of Public Health. Those state regulations prefer the term "Registered Marijuana Dispensaries," or "RMDs," so the proposed amendment updates the Zoning By-law's definition of

"Medical Marijuana Treatment Center" under *Section 2.13.1* to include that reference, and Use #20B in *Section 4.07, Table of Use Regulations*, has been changed to use the same terminology.

Additionally, the proposed amendment would create a new *Section 4.12, Registered Marijuana Dispensary*. This section would establish general restrictions for RMDs, including that they be located at least 500 feet from any K-12 school, not in the same building as a daycare center, and without a direct entrance from the public way to the area where marijuana and related products are dispensed. Other regulations include that RMD signage not be illuminated, and that any and all marijuana cultivation occur only within an entirely enclosed building. *Section 4.12* also lays out requirements that any RMD must meet before being issued a building permit or certificate of occupancy. Additionally, *Section 6.02.5* will be modified so that the parking requirements that currently apply to retail and office uses also apply to RMDs.

Finally, the amendment includes a section requiring annual reporting, which will be eliminated should another warrant article (#VI) requiring annual licensing from the Selectmen be adopted. The Planning Board supports the concept of annual reporting, but believes such a process is more appropriately handled by the Board of Selectmen.

The Planning Board supports all of the proposed amendments as they will allow for the establishment of RMDs that meet the state licensing requirements within Brookline's commercially-zoned areas. More than 70 percent of Brookline's citizenry voted in favor of allowing medical marijuana use, and this article will establish appropriate safeguards to allow that use within Brookline. Brookline's commercial centers are unique and vibrant, and this amendment will allow RMDs within those areas without detracting from their lively streetscapes.

The Commonwealth's Department of Public Health regulations are extensive and quite complete; this amendment builds on those regulations to tailor the use to Brookline. For example, the proposed 500-foot buffer from K-12 schools was developed after extensive mapping analysis and discussion by town staff and the Zoning By-law Committee. Daycare centers were excluded from this buffer, because if they are included in the buffer, then the areas available for RMDs are drastically limited, including some medical office buildings that could be ideal locations for such facilities. The amendment does prohibit an RMD from being located in the same building as a daycare center. The 500-foot buffer ensures an RMD is located at least a 1½ football fields away from a K-12 school, but still allows for a number of location possibilities, unlike a 1,000-foot buffer, which is too extreme considering the existing locations of schools and Brookline's commercial centers.

Additionally, the Planning Board supports the article's emphasis on safety and security, especially the required separation between a public street and the interior of the RMD, the provision of security measures, and the required coordination with the Police Department prior to issuance of a certificate of occupancy.

The only change to the article that the Planning Board would recommend is to the first line of the purpose section under Sec. 4.12, which would be to substitute the more appropriate word "allow" for "establish".

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article 7, with an amendment under new Sec. 4.12, substituting the word "allow" for "establish", as follows:

To see if the Town will amend the Brookline Zoning By-Law, as follows:

Amending Section 2.13.1, "M" Definitions, "Medical Marijuana Treatment Center" as follows: (new language in bold)

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 supplies, or educational materials to qualifying patients or their personal caregivers, which is properly licensed and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.

And amending Sec. 4.07, Table of Use Regulations, Use #20B, by changing the use name from Medical Marijuana Treatment Centers, to Registered Marijuana Dispensary, and change the use columns as follows (new language in bold):

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
20B. **Registered Marijuana Dispensary (RMD)*** *** To be eligible for a special permit under Use 20 B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, shall be met.**	No	No	No	No	No	~~No~~ **SP***	~~No~~ **SP***	~~No~~ **SP***	~~No~~ **SP***

And creating a new Sec 4.12, Registered Marijuana Dispensary (RMD with the following requirements: (new language in bold):

Sec. 4.12 - Registered Marijuana Dispensary (RMD)
1. Purpose
The intent of this section is to ~~establish~~ *allow* RMDs in appropriate locations and under strict safeguards to mitigate any possible adverse public health and safety

consequences related to the establishment of RMDs in the Town of Brookline, in conformity with Chapter 369 of the Acts of 2012 (Question # 3 on the November 6, 2012 ballot).

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. General Restrictions
An RMD shall:

a. Have a valid license or permit as may be required by law, including 105 CMR 725 and the Town By-Law, and comply with all state provisions.
b. Be located more than 500 feet from an elementary or secondary school, public or private, as measured from lot boundary to lot boundary.
c. Not be located in a building that contains a day care center.
d. Not have direct access from a public way to the portion of the RMD where marijuana or related products or supplies are dispensed.
e. Have signage that conforms to the state regulations, is not internally illuminated, and is approved by the Brookline Planning Board under Article VII of the Brookline Zoning By-Law.
f. Require that if an RMD cultivates marijuana in Brookline, it shall be in an entirely enclosed building for security purposes.
g. Submit a detailed description of security measures for the RMD, such as lighting, fencing, gates, and alarms, etc., that comply with the requirements of 105 CMR 725, to ensure the safety of persons and protect the premises from theft.

3. Submittal Requirements prior to issuance of a Building Permit for an RMD
The following information shall be provided to the Building Department:

a. The name and address of each owner of the RMD.
b. Copies of any required licenses and permits relating to the operation of the RMD, or, if an application for a required license or permit is pending, a copy of the application.
c. Evidence of the Applicant's right to use the proposed site as an RMD, such as a deed or lease.
d. If the Applicant is a business organization, a statement disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners/trustees of such entities by listing the individuals' names and addresses.

4. Submittal Requirements prior to issuance of a Certificate of Occupancy for an RMD
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

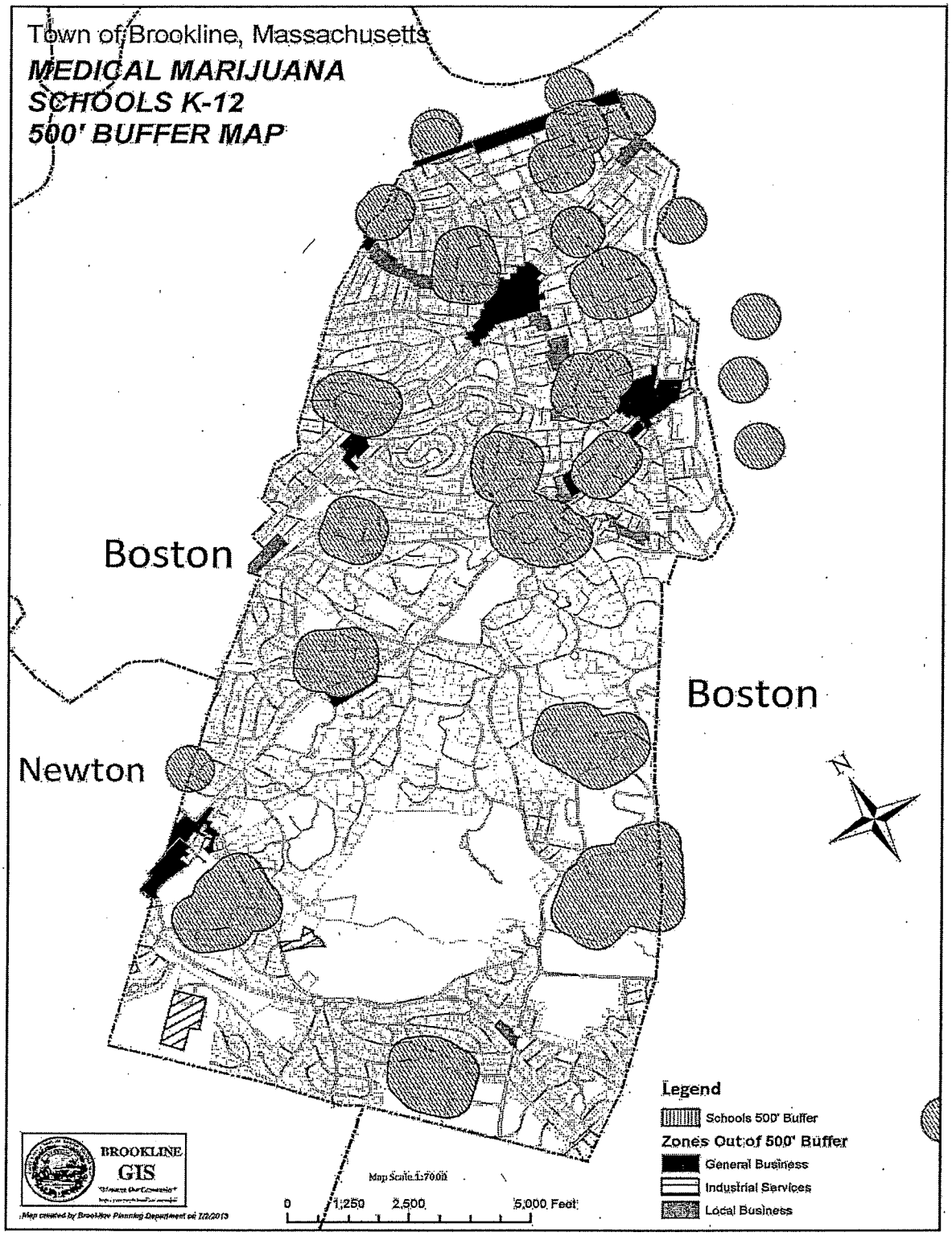
persons with access to the facility when it is closed, to enable contact if operating problems should arise.

b. Proof that the Brookline Police Department has approved the proposed security measures and that all security measures have been installed or implemented.

5. **Annual Reporting** *[Delete this section if a Town By-Law requiring annual licensing of RMDs by the Selectmen is approved by Town Meeting.]*
As a condition for the continuation of the Special Permit, the owner (s) or manager (s) of each RMD permitted under this By-law shall appear before the Zoning Board of Appeals no later than January 31st of each year, to demonstrate continued compliance with state and town requirements, submit proof that the Brookline Police Department has been given updated contact information, and has found security measures adequate.

And amending Sec 6.02.5, Off-Street Parking Space Regulations by adding "20B" to the list of Retail and Office uses after "20A"in the first sentence: (new language in bold):
5. Retail and Office uses of land or structures shall include Uses 18, 20, 20A, **20B**, 21, 26, 27, 29, 31-33 inclusive, 35-39 inclusive, 41, 58, and 59 as listed in Article IV.

Or act on anything relative thereto.


Town of Brookline, Massachusetts
MEDICAL MARIJUANA
SCHOOLS K-12
500' BUFFER MAP
Boston
Boston
Newton
N
Legend
Schools 500' Buffer
Zones Out of 500' Buffer
General Business
Industrial Services
Local Business
BROOKLINE
GIS
Map Scale 1:7000
0
1,250
2,500
5,000 Feet

SELECTMEN'S RECOMMENDATION

In November 2012, Massachusetts residents voted to allow medical marijuana to be used for the treatment of patients with certain medical conditions. Because the state's Department of Public Health had not yet developed regulations related to establishing and managing medical marijuana dispensaries, Town Meeting (May 2013) approved a temporary moratorium on marijuana dispensaries in Brookline through June 30, 2014, in order to allow the Town to formulate regulations in conformance with State regulations, which had not yet been adopted.

This proposed article would allow registered marijuana dispensaries (RMDs) in appropriate locations in Brookline with numerous safeguard restrictions and security measures. These were formulated with input from the Departments of Planning and Community Development, Public Health, Building and Police, as well as Town Counsel.

The Board of Selectmen supports the warrant article's originally proposed restriction to not allow the location of RMDs within a 500 foot buffer zone around K-12 schools. Larger potential buffer zones, such as those including parks with playgrounds and daycare centers in addition to schools, would effectively block RMDs from locating in Town.

The Selectmen also support the recommendation of the Advisory Committee not to allow RMDs in Local Business zones. They should be allowed only in General Business, Office and Industrial districts. The rationale for excluding them from Local Business zones is that retail stores and restaurants in those zoning districts are intended to serve the local area, whereas a General Business District is intended to serve a broader area. Since the number of RMDs in a county is limited, it is likely that an RMD in Brookline would attract residents not only from Brookline, but also from surrounding communities, and thus would be more appropriately located in a General Business zone. The Selectmen also believe that by excluding Local Business zones, the impact on adjacent residential neighborhoods as well as parking concerns would be minimized.

The Selectmen expect that the vote on Article 6 will occur before the vote on Article 7 at Town Meeting. Since the Selectmen are supporting Article 6, which requires that RMDs be licensed annually by the Board of Selectmen, they therefore support the recommendation of the Planning Board and Advisory Committee to delete Sec. 4.12.5 from Article 7, if Article 6 has been approved by Town Meeting. Section 4.12.5 of Article 7 would have required the applicant to appear before the Zoning Board of Appeals annually to demonstrate continued compliance with state and town requirements. This important annual oversight is more appropriately conducted by the Board of Selectmen, who also issue annual licenses for liquor establishments.

Therefore, the Board of Selectmen unanimously recommends FAVORABLE ACTION, by a vote 5-0 taken on October 22, 2013, on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND

Article 7 has been submitted by the Department of Planning and Community Development with the support of the Zoning By-Law Committee. It is the latest in a series of steps to create a legal framework for the distribution of marijuana for medical purposes in Massachusetts and Brookline. The Departments of Planning and Community Development, Health and Human Services, and Building, as well as the Police and Town Counsel have worked together to formulate zoning requirements and other Brookline regulations for medical marijuana.

In November 2012, the voters of Massachusetts approved Question 3, an initiative petition, "Law for the Humanitarian Medical Use of Marijuana." Over 70 per cent of Brookline voters supported this initiative, which eliminated state criminal and civil penalties related to the medical use of marijuana, thereby allowing patients with certain medical conditions access to marijuana. The initiative also provides for up to 35 Registered Marijuana Dispensaries (RMDs) to be established in Massachusetts. No more than five RMDs could be in any given county.

On May 8, 2013, the Massachusetts Department of Public Health approved detailed regulations to implement medical use of marijuana (105 CMR 725.000: Implementation of an Act for the Humanitarian Medical Use of Marijuana). The 52 pages of regulations include detailed standards for the registration and operation of RMDs. The following provision is particularly relevant to zoning requirements for RMDs in Brookline: "A RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be cited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate."

Brookline's May 2013 Annual Town Meeting imposed a moratorium on the operation of medical marijuana dispensaries in Brookline so that the Town could study the state regulations and amend its Zoning By-Law accordingly.

Article 7 lifts the moratorium and defines the requirements for operation of an RMD in Brookline. (Although, in theory, more than one could operate in Brookline, given that there will be no more than 35 in Massachusetts and a maximum of five per county, there probably will be no more than one, even though several potential operators have indicated an interest in Brookline. It is also highly unlikely that an RMD would cultivate marijuana in Brookline.) It also designates where any Brookline RMD could be located.

Articles 5 and 6 include other components of Brookline's legal and regulatory framework for medical marijuana.

Article 7, as submitted, allows RMDs by special permit only in local business, general business, office, and industrial zones. They could not be located within 500 feet of a K-12 school, nor within a building that contains a daycare center.

In addition to delineating where RMDs could be established in Brookline, Article 7 includes other requirements that apply to: the type of entrance from the street to the area where marijuana products are dispensed (access must be through a lobby or vestibule, not directly onto the street, providing an additional margin for screening and security purposes); the type of signage (no internally illuminated signs); and marijuana cultivation(restricting any cultivation of marijuana in Brookline to within an enclosed building); and required security measures. This section also requires specific submittals from the RMD applicant prior to issuance of a Building Permit and then again prior to obtaining a Certificate of Occupancy to ensure that the Town has current information about all RMD licenses, operators/owners, and security measures.

Article 7 also includes some technical amendments. It amends the definition of Medical Marijuana Treatment Center by adding "also known as a Registered Marijuana Registered Marijuana Dispensary (RMD)" to be consistent with the wording used in the definition under the state regulations, 105 CMR 725. It adds a footnote referring to requirements for all RMDs under a new Sec. 4.12. It inserts the new use, 20B, to the list of uses under the general parking requirements for retail and office uses.

The procedural background to the Article also merits attention. When the Zoning By-Law Committee voted on Article 7, it took into account the fact that any changes to make the Article *more* restrictive would be within the scope of the Article, because the current Zoning By-Law imposes a complete ban on RMDs in Brookline, at least until the moratorium expires on June 30. 2014. For example, the Article could be amended to prohibit RMDs in some of the zoning districts in which they would be allowed under Article 7 as submitted. As a result, the Zoning By-Law Committee may have taken a relatively permissive approach to RMDs, knowing that Article 7 could be amended to make it more restrictive. The Moderator was consulted and agreed that such amendments would fall within the scope of the Article.

DISCUSSION

The Case for Medical Marijuana

Proponents of Article 7 argue that medical marijuana alleviates the suffering of patients with multiple sclerosis, chronic pain, AIDS, Parkinson's disease, Crohn's disease, ALS, hepatitis C, cancer, and other serious illnesses. Proponents also point out that some Brookline residents would benefit from legal access to medical marijuana. Such residents have had a medical need for marijuana, but have encountered legal problems in their attempts to obtain and use it.

Community Concerns

Some residents of Brookline are uncomfortable with the idea of having an RMD in their neighborhood. It is not always clear what specific problems might arise from the presence of an RMD. Residents may have different images of an RMD. The Zoning By-Law Committee was guided by a vision of an RMD that operated as a nondescript office within a larger building—possibly a medical office building—and that had no direct access to the street. The state regulations also limit signs and other visible evidence of a RMD. Others may be concerned that RMDs will look like "head shops" from the 1970s or will be prominent free-standing buildings, such as the Brookline Bank building in Brookline Village.

Proponents of medical marijuana have emphasized that the detailed state regulations provide a legal framework that builds on the experience of other states. Proponents also argue that RMDs would not generate crime. The security measures around each might actually enhance public safety.

One issue is whether the state regulations provide adequate safeguards to prevent diversion of medical marijuana for illicit resale and use. Director of Health and Human Services Dr. Alan Balsam pointed out that this would be a felony, a fact that might deter potential offenders. Although the current state regulations do not fully provide for a database that would track purchases and thereby ensure that patients were not visiting multiple RMDs to obtain excessive amounts of marijuana, an electronic registration and dispensing tracking system will be implemented, according to Dr. Balsam. It is not clear whether diversion would pose grave risks to Brookline, but the problem can only be addressed at the state level, not by Brookline's zoning and regulations.

Regardless of the more general questions related to the operation of RMDs and the regulation of medical marijuana is Massachusetts, there is a need to define clearly where RMDs could be located in Brookline.

Regulating RMD Locations

The state regulations include "default" language regarding buffer zones in which RMDs cannot be located:

"A RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD."

The state regulations make it explicit that cities and towns can adopt their own local siting requirements, which may or may not include buffer zones. In Brookline, adopting a 500 foot buffer zone around daycare centers would almost certainly make it impossible to site an RMD anywhere in the town. Drawing such buffer zones is complicated by the fact

that there may be home daycare centers of which the Town is unaware, but the existence of daycare centers in most commercial districts would alone preclude the establishment of RMDs. Steps that would prevent any RMD from operating in Brookline might invite legal challenges to Brookline's zoning for RMDs, either by the Attorney General or other parties such as patients or potential RMD operators.

Article 7 as submitted thus only imposes a 500 foot buffer zone around schools. Note that RMDs would be "grandfathered" if a school were established within the 500 foot buffer zone after the RMD had been established.

Like the Zoning By-Law Committee, the Advisory Committee attempted to strike a balance that would address residents' potential concerns while allowing RMDs to operate in Brookline. One of the Advisory Committee's amendments makes Article 7 slightly more restrictive than the original version of the Warrant Article.

Advisory Committee Amendments to Article 7

The Advisory Committee voted to amend Article 7 in three ways.

The first amendment changes "establish" to "allow" in paragraph 1 of the proposed Sec. 4.12. This amendment was voted by the Planning Board to more accurately describe the purpose of the section.

The second amendment re-inserts "No" for L Business Districts in the Table of Use Regulations, Use #20B, so that RMDs will not be allowed by Special Permit in such districts. ("No" currently appears in the table, because the temporary moratorium on RMDs applies to all zoning districts.) RMDs are likely to be large establishments that draw customers and traffic from outside Brookline. They therefore should be excluded from local business districts, which are customarily the location for smaller businesses that serve local customers.

The third amendment is conditional on Town Meeting voting Favorable Action on Article 6. It would delete paragraph 5 of the proposed Sec. 4.12, because that paragraph would not be necessary if Article 6 passes and the Board of Selectmen regulates RMDs in Brookline.

The Advisory Committee also considered but voted No Action on two other amendments. One would have created 500 foot buffer zones around parks that contain children's play structures. The other would have prohibited RMDs in any building that contained one or more residential units. The Committee felt that these buffer zones would excessively restrict RMDs without providing any real benefit to the community. Although a buffer zone around daycare centers may seem analogous to a buffer zone around schools, children in daycare centers are heavily supervised and are least likely to be affected by proximity to a RMD.

Why Not Use the "Buffer Zones" Proposed in the State Regulations?

If Brookline did not offer its own requirements for locating RMDs, the buffer zones in the state regulations (see above) would apply by default. A 500-foot buffer zone would apply to schools as well as to daycare centers and to "any facility in which children commonly congregate."
If the state buffer zones were adopted without modification the location of multiple, schools, daycare centers, and parks throughout Brookline would effectively prohibit RMDs in virtually all of Brookline. Determining the full extent of the buffer zones would be difficult, because the Town may not be aware of all daycare centers—particularly family daycare centers—in Brookline. Moreover, the definition of a "facility in which children commonly congregate" could be ambiguous. Would it include parks, playgrounds, libraries, bookstores, toy stores, candy shops, etc.?

Adopting the state "default" buffer zones would create an interesting legal situation. It is possible that any by-law that is so stringent that it effectively forecloses RMDs in the Town would be rejected by the Massachusetts Attorney General as inconsistent with the November 2012 vote on Question 3. It is not clear whether the Attorney General would reject a by-law that explicitly or implicitly incorporated the buffer zones stipulated by the state regulations.

Even if adopting the state "default" buffer zones were to make it harder for the Attorney General to strike down the relevant sections of Article 7 as inconsistent with state law, the Town has an interest in adopting a policy that serves the will and needs of its residents. Not only did the residents of Brookline overwhelmingly vote for medical marijuana, but many would benefit from access to it. Adopting the state default buffer zones would effectively preclude RMDs in Brookline, imposing a hardship on Brookline residents who desire access to medical marijuana. The state regulations were deliberately written so that municipalities could adopt their own siting requirements. The "default" buffer zones were not intended to be universal.

RECOMMENDATION

By a vote of 19–0–2 the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: that the Town amend the Brookline Zoning By-Law as follows:

Amending Section 2.13.1, "M" Definitions, "Medical Marijuana Treatment Center" as follows: (new language in bold)

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 supplies,

or educational materials to qualifying patients or their personal caregivers, which is properly licensed and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.

And amending Sec. 4.07, Table of Use Regulations, Use #20B, by changing the use name from Medical Marijuana Treatment Centers, to Registered Marijuana Dispensary, and change the use columns as follows (new language in bold):

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
20B. **Registered Marijuana Dispensary (RMD)*** *** To be eligible for a special permit under Use 20 B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, shall be met.**	No	No	No	No	No	**NO**	~~No~~ **SP***	~~No~~ **SP***	~~No~~ **SP***

And creating a new Sec 4.12, Registered Marijuana Dispensary (RMD with the following requirements: (new language in bold):

Sec. 4.12 - Registered Marijuana Dispensary (RMD)

1. Purpose
The intent of this section is to ~~establish~~ allow RMDs in appropriate locations and under strict safeguards to mitigate any possible adverse public health and safety consequences related to the establishment of RMDs in the Town of Brookline, in conformity with Chapter 369 of the Acts of 2012 (Question # 3 on the November 6, 2012 ballot).

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. General Restrictions
An RMD shall:

a. Have a valid license or permit as may be required by law, including 105 CMR 725 and the Town By-Law, and comply with all state provisions.
b. Be located more than 500 feet from an elementary or secondary school, public or private, as measured from lot boundary to lot boundary.
c. Not be located in a building that contains a day care center.
d. Not have direct access from a public way to the portion of the RMD where marijuana or related products or supplies are dispensed.

e. **Have signage that conforms to the state regulations, is not internally illuminated, and is approved by the Brookline Planning Board under Article VII of the Brookline Zoning By-Law.**
f. **Require that if an RMD cultivates marijuana in Brookline, it shall be in an entirely enclosed building for security purposes.**
g. **Submit a detailed description of security measures for the RMD, such as lighting, fencing, gates, and alarms, etc., that comply with the requirements of 105 CMR 725, to ensure the safety of persons and protect the premises from theft.**

3. Submittal Requirements prior to issuance of a Building Permit for an RMD
The following information shall be provided to the Building Department:

a. **The name and address of each owner of the RMD.**
b. **Copies of any required licenses and permits relating to the operation of the RMD, or, if an application for a required license or permit is pending, a copy of the application.**
c. **Evidence of the Applicant's right to use the proposed site as an RMD, such as a deed or lease.**
d. **If the Applicant is a business organization, a statement disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the above are entities rather than persons, the Applicant must disclose the identity of the owners/trustees of such entities by listing the individuals' names and addresses.**

4. Submittal Requirements prior to issuance of a Certificate of Occupancy for an RMD
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 persons with access to the facility when it is closed, to enable contact if operating problems should arise.**
b. **Proof that the Brookline Police Department has approved the proposed security measures and that all security measures have been installed or implemented.**

Defeated by a majority vote

5. ~~**Annual Reporting** *[Delete this section if a Town By-Law requiring annual licensing of RMDs by the Selectmen is approved by Town Meeting.]*~~
~~**As a condition for the continuation of the Special Permit, the owner (s) or manager (s) of each RMD permitted under this By-law shall appear before the Zoning Board of Appeals no later than January 31st of each year, to demonstrate continued compliance with state and town requirements, submit proof that the Brookline Police Department has been given updated contact information, and has found security measures adequate.**~~

And amending Sec 6.02.5, Off-Street Parking Space Regulations by adding "20B" to the list of Retail and Office uses after "20A"in the first sentence: (new language in bold):

5. Retail and Office uses of land or structures shall include Uses 18, 20, 20A, **20B**, 21, 26, 27, 29, 31-33 inclusive, 35-39 inclusive, 41, 58, and 59 as listed in Article IV.

XXX

Passed as amended by a Counted Vote of 208 in Favor and 7 Opposed

ARTICLE 8

EIGHTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend the Brookline Zoning By-Law as follows:

Amending Sec. 4.07, Table of Use Regulations, Use#5, as follows: **(new language in bold)**

§4.07 – TABLE OF USE REGULATIONS

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
5. Attached dwelling occupied by not more than one family in each unit between side walls, provided that no row of such units shall consist of more than two such units in T Districts **or more than three such units in F Districts.** *Except as permitted by Use 1A above and §5.11.	No*	No	**SP** ~~Yes~~	SP	SP	SP	No	SP	No

And amending Table 5.01, Table of Dimensional Requirements, as follows: **(new language in bold)**

Table 5.01 – Table of Dimensional Requirements		LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	LOT WIDTH MINIMUM (feet)	HEIGHT 9 MAXIMUM (feet)	MINIMUM YARD 3, 10 (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE					Front 1,6	Side 2	Rear	Landsc.	Usable
T-6	1-family detached dwelling	5,000	0.75	45	35	15	7.5	30	10%	30%
	2-family dwelling	6,000	0.75	55	35	15	10	30	10%	30%
	1-family attached dwelling	3,000	0.75	25	35	15	none 2	30	10%	30%
	Any other structure or principle use	6,000	0.75	55	35	25	20	40	30%	none
T-5	1-family detached dwelling	4,000	1.0	40	35	15	7.5	30	10%	30%
	2-family dwelling	5,000	1.0	45	35	15	10	30	10%	30%

	1-family attached dwelling	2,500	1.0	20	35	15	none 2	30	10%	30%
	Any other structure or principle use	5,000	1.0	50	35	25	20	40	30%	none
F-1.0	1-family dwelling	4,000	1.0	40	35	15	7.5	30	10%	30%
	2-family dwelling	5,000	1.0	45	35	15	10	30	10%	30%
	3-family dwelling	5,000	1.0	45	40	15	10	30	10%	30%
	1-family attached dwelling	**2,500**	**1.0**	**20**	**35**	**15**	**none²**	**30**	**10%**	**30%**
	Any other structure or principal use	5,000	1.0	60	40	~~15~~ **25**	~~10+L/10~~ **20**	~~30~~ **40**	~~10%~~ **30%**	~~30%~~ **none**
(Additional regulations are contained in the text of Article 5.00) Required Lot Frontage: 25' in S and SC districts and 20' in all other districts										

And amending Sec. 2.07, "G" Definitions, Gross Floor Area, by adding to the beginning of the second to the last sentence below, the following. **(new language in bold)**

§2.07 – "G" DEFINITIONS

1. GROSS FLOOR AREA—The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to the parking in Coolidge Corner, any floor space in accessory buildings or in the main building intended and designed for parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in the basement; and (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. **For one-, two- and three-family buildings** where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Planning and Community Development Department is submitting this article with the support of the Selectmen's Zoning By-Law Committee. This article seeks to "clean up" several F-1.0 District references in the Zoning By-Law and to achieve consistency between certain T-5 and F-1.0 District requirements.

The Coolidge Corner District Planning Commission, which met in 2006 and 2007, recommended the creation of a new zoning district - the three-family F zone. Prior to the adoption of the new F zone, the residential districts were divided into single-family, two-family or multi-family (three or more dwellings). Because many properties located in North Brookline were zoned multi-family, but were located in areas dominated by three-families, or a mixture of single, two, three-family and multi-family properties, it was felt that a new zone for three-family dwellings should be created. The goal of the F zone was to limit the number of units allowed on a lot to three and diminish the incentive to tear down existing homes, including three-families, in order to build larger, out-of-character multi-family buildings. The F zone has an FAR of 1.0, which is the same FAR as the T-5 and M-1.0 districts.

The process of proposing properties suitable for the new F zone and adopting the resulting zoning changes took place over a number of years between 2006-2008, culminating in a large "housekeeping" article that inserted the new F zone throughout the Brookline Zoning By-Law. However, there were still several omissions to the zoning by-law where the new F zone should have been referenced. For example, in the use table for attached single-family dwellings (townhouses), no more than two attached dwellings are allowed in a two family zone. Previously, up to six attached single families had been allowed in a T zone by special permit but this was changed by Town Meeting in Fall 2007. When the F zone was created, it was intended that it be limited to three attached single-families but this language was not added. This zoning amendment adds that restriction.

This omission came to light as a result of a development proposal to demolish a two-family Victorian dwelling and build four attached townhouses on a property zoned F-1.0. This project was approved by Special Permit under Table 4.07, Use #5, because it did not specifically state the number of attached dwellings allowed by Special Permit in an F zone. This Article proposes to fulfill the will of the Town Meeting vote establishing the F zone by inserting a statement defining the number of allowable townhouses as three in an F zone.

In addition, the article would require a special permit for the approval of attached townhouses (Use #5) in a T zone. This proposed change addresses the current anomalous situation where a special permit is required for such approval in F (three-family) and M (multi-family) zones, but not in T (two-family) zones.

Additionally, Table 5.01, the Table of Dimensional Requirements of the Brookline Zoning By-Law, currently does not include any dimensional requirements for attached

one-family dwellings for the F- 1.0 district. This Article proposes to correct that by adding dimensional requirements for attached single-families in the F-1.0 district that are the same as those currently in place for attached single-families in the T-5 district. Also in Table 5.01, the article proposes to change the current yard setback and open space dimensional requirements for "[a]ny other structure or principle use" in the F-1.0 district to make these requirements analogous to the T-5 zoning district.

Finally, this article would modify the definition of Gross Floor Area in Section 2.07.1 of the Zoning By-Law. Since 2007, that definition has made the calculation of gross floor area subject to a "multiplier" to account for additional building bulk whenever ceiling height exceeds 12 feet. This multiplier was originally included in the Zoning By-Law in response to "McMansions," rather than, for example, concern about ceiling heights in commercial or multi-family buildings. In May, 2013, Town Meeting passed a change in the definition that limited the multiplier to one- and two-family buildings, recognizing that, for example, commercial or multi-family buildings might in fact require higher than normal ceiling heights to be consistent with abutting structures. As of this writing, that change has not yet been approved by the Attorney General. This warrant article would apply the multiplier to three-family buildings, in recognition of the fact that they are more similar to one- and two-family buildings than to multi-family or commercial buildings. (Note that if the Attorney General approves the May, 2013 one- and two-family language before Town Meeting's vote on this article, the only necessary addition will be to add three-family buildings)

Please note that also as a result of the review of the four-unit development described above, a scrivener's error in Table 4.07, Use #6 (Multiple Families Or Attached Dwellings Of Four Or More Units), was discovered. Under the F column, an SP (Special Permit) was inserted, where the designation should have been "No", because the number of units allowed in an F district is three. The Brookline Planning Department has since corrected this error by changing the F zone designation under Use #6 to No. No amendment is needed because this was a printing error when the most recent zoning by-law book was produced.

Whenever zoning changes are made, it is necessary to review every section in the Zoning By-Law to ensure that there should not be a related change. This amendment corrects earlier omissions of necessary changes to related By-Law sections and seeks to ensure that similar situations are governed by consistent standards.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to modifying the regulations related to F zones (three-family) to bring them closer into compliance with the intent of the F zoning district and is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen's Zoning By-Law Committee. There is also one change proposed for the T or two –family zone.

The proposed amendment includes a number of changes related to the F-1.0 and T-5 zoning districts: modifying *Section 4.07, Table of Use Regulations, Use #5*, Attached Dwellings, by limiting the number of attached dwelling units on lots in F districts to three and requiring a special permit for attached dwellings in T districts; modifying *Table 5.01, Table of Dimensional Requirements*, by creating a new "1-family attached dwelling" use category for F-1.0 zones with the same dimensional requirements as attached dwellings in T-5 districts, and modifying the dimensional requirements for "Any other structure or principal use" in F-1.0 zones to have the same requirements as in T-5 districts; and amending the definition of "Gross Floor Area," *Section 2.07.1*, to ensure three-family dwellings are not excluded from the additional height provisions for ceilings greater than 12 feet.

The F-1.0 zoning district was created in the spring of 2007, following the recommendations of the Coolidge Corner District Planning Council, which met in 2006 and 2007. The F district is residential allowing up to three dwelling units on a lot, providing for a transition between T districts, which allow for single- and two-family dwellings, and M districts, which allow multi-family dwellings of four or more units.

Recently, it became apparent that since the Zoning By-law did not specify the maximum number of attached dwellings in Use #5 allowed in F districts, more than three units could be built on a lot in these zones, and the Board of Appeals this summer did grant a special permit for four attached dwellings in an F-1.0 zoning district. This amendment seeks to rectify this oversight and ensure that the number of dwelling units on lots in F districts are limited to three, attached or detached, in accordance with the intent of the F zone. (A second scrivener's error that allowed multiple or attached dwellings of four or more units by special permit in F zones has already been rectified on the advice of Town Counsel and now lists that use as "No.")

Separately, in an effort to be consistent with requiring a special permit for attached dwellings in F zones, the amendment also modifies the Use Table to require a special permit for attached dwellings in T zones.

As well as ensuring the number of units on lots in F districts is limited to three, the amendment clarifies what dimensional requirements should be applied to attached single-family dwellings in such districts, making them the same as those in the T-5 zone.

The Planning Board supports this amendment as it clarifies the intent of the F zoning district as being a three-family district, no more. The proposed dimensional requirements for attached dwellings in F districts are reasonable and consistent with the T-5 zone.

The Board, however, in the future would recommend a further amendment to Sec. 2.07, Gross Floor Area definition, which would be to add "and townhouses" after "one-, two- and three- family buildings", so that for all townhouses, even four or more attached single-family dwellings in a multi-family zone, the ceiling height above 12' would count toward the height requirement.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 8, as submitted.

SELECTMEN'S RECOMMENDATION

The F-1.0 zoning district was created in the spring of 2007, following the recommendations of the Coolidge Corner District Planning Council, which met in 2006 and 2007. The F zone allows up to three dwelling units on a lot and provides a transition between T districts, which allow for single- and two-family dwellings, and M districts, which allow multi-family dwellings of four or more units.

The impetus for creating this new zone was that many areas in North Brookline, zoned multi-family, were predominantly composed of three-family dwellings or a mixture of housing types – ones, twos, threes and multi-families. By limiting these areas to three families, the incentive to tear down existing dwellings and replace them with larger multi-family apartment buildings would no longer exist.

When the new F zone was created, several references should have been added in other sections of the Zoning By-Law. For example, in the use table for attached single-family dwellings (townhouses), no more than two attached dwellings are allowed in a two-family zone. When the F zone was added to the table under attached single families, the intent was to limit them to three, but this was not explicitly stated. In addition, to be consistent with the required special permit for attached single families in an F zone, the article proposes to require a special permit for the approval of attached townhouses (Use #5) in a T zone.

Additionally, this article proposes to correct Table 5.01, the Table of Dimensional Requirements of the Brookline Zoning By-Law, where a dimensional requirements row was omitted for attached single-family dwellings in the F-1.0 district. The proposed dimensional requirements for such dwellings in F zones are the same as those currently in place for attached single-families in the T-5 district. Also in Table 5.01, the article proposes to change the current yard setback and open space dimensional requirements for "[a]ny other structure or principle use" in the F-1.0 district to make these requirements analogous to the T-5 zoning district.

The last section of this article proposes to modify the definition of Gross Floor Area in Section 2.07.1 of the Zoning By-Law. In 2007, that definition was changed to include space in a room that was taller than 12 feet, such as in an atrium, in the FAR. However, in May, 2013, Town Meeting amended this by limiting it to one- and two-family residences, because commercial or multi-family buildings might appropriately have higher ceilings, such as for lobbies. This warrant article applies this restriction to three-family dwellings as well, since they are more similar to one- and two-family buildings than to multi-family or commercial buildings.

This housekeeping amendment corrects earlier omissions and seeks to ensure that requirements are consistent for similar uses. Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 22, 2013, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 8 is submitted by the Department of Planning and Community Development and is supported by both the Selectmen's Zoning By-Law Committee and the Planning Board. The purpose of this article is to "clean up" several F-1.0 District references in the Zoning By-Law and to achieve consistency between certain T-5 and F-1.0 District requirements.

The three-family F zone is a relatively recent addition to the Zoning By-Law, added in 2007 after recommendation by the Coolidge Corner District Planning Council. Prior to the adoption of the new F zone, residential districts were divided into single-family, two-family or multi-family (three or more dwellings). The Council's impetus in creating the F zone was to alleviate an ongoing problem in North Brookline, where many properties were zoned as multi-family but were located in areas dominated by three-families. Their solution was to create a new zoning district to recognize this type of building -- the F zone -- in order to limit the number of units allowed on a lot to three and to diminish the incentive to tear down existing homes, including three-families, in order to build larger multi-family buildings not in keeping with the neighborhood. The F zone was established with an FAR of 1.0, which equals that of two-family (T-5) and multi-family (M-1.0) districts.

Integrating this new F zone into the existing By-Law has not been a simple exercise. The amending language was added over the course of several Town Meetings, but there remain several instances in the By-Law where the new F zone should have been referenced. Article 8 is in effect the second "housekeeping" article relating to F zones and proposes to remedy the lingering inconsistencies with the following By-Law revisions:

- Table 4.07 Table of Use Regulations: Provide language to limit the number of attached single-family dwellings (townhouses) in an F zone to three. (This brings the requirement into alignment with T zones, where no more than two attached dwellings are allowed.)
- Table 4.07 Table of Use Regulations: Require a special permit for the approval of attached townhouses (Use #5) in a T zone. (This proposed change creates the same conditions under which a special permit is required for F, M and T zones.)

- Table 5.01 Table of Dimensional Requirements: Add dimensional requirements for attached one-family dwellings in the F-1.0 district to equal that of attached one-families in the T-5 and T-6 districts. (This information had been unintentionally omitted in the current By-Law.)
- Table 5.01 Table of Dimensional Requirements: Change the minimum yard setback and open space requirements for "any other structure or principal use" in the F-1.0 district to equal those in the T-5 and T-6 districts. (The current requirements do not follow either.)
- Section 2.07.1 Gross Floor Area definition: Modify the definition of Gross Floor Area to apply the multiplier used to account for additional building bulk whenever ceiling height exceeds 12 feet to three-family buildings, in addition to the one- and two-family dwellings listed. The reason for this adjustment is to acknowledge that three-families are more similar to one- and two-family buildings than to multi-family or commercial buildings, which are exempt from this multiplier. (The Attorney General recently approved the 12' ceiling height exemption for one- and two-families that was passed at spring 2013 Town Meeting, so the modification sought in Article 8 is now limited to three-family buildings.)

DISCUSSION:
The F zone reference omissions came to light as a result of a recent development proposal to demolish a two-family Victorian dwelling and build four attached townhouses on a property zoned F-1.0. The project was approved by Special Permit under Table 4.07, Use #5, because the current By-Law does not specifically state the number of attached dwellings allowed by Special Permit in an F zone. The proposed amendments in Article 8 would correct the lingering omissions in town's Zoning By-Law relating to F-1.0 zoning districts to provide consistent standards for similar permitting circumstances.

RECOMMENDATION:
By a vote of 18–0-2, the Advisory Committee recommends FAVORABLE ACTION on the following:

VOTED: that the Town amend the Brookline Zoning By-Law as follows:

Amending Sec. 4.07, Table of Use Regulations, Use#5, as follows: **(new language in bold)**

§4.07 – TABLE OF USE REGULATIONS

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
5. Attached dwelling occupied by			SP						

not more than one family in each unit between side walls, provided that no row of such units shall consist of more than two such units in T Districts **or more than three such units in F Districts.** *Except as permitted by Use 1A above and §5.11.	No*	No	~~Yes~~	SP	SP	SP	No	SP	No

And amending Table 5.01, Table of Dimensional Requirements, as follows: **(new language in bold)**

Table 5.01 – Table of Dimensional Requirements		LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	LOT WIDTH MINIMUM (feet)	HEIGHT 9 MAXIMUM (feet)	MINIMUM YARD 3, 10 (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE					Front 1,6	Side 2	Rear	Landsc.	Usable
T-6	1-family detached dwelling	5,000	0.75	45	35	15	7.5	30	10%	30%
	2-family dwelling	6,000	0.75	55	35	15	10	30	10%	30%
	1-family attached dwelling	3,000	0.75	25	35	15	none 2	30	10%	30%
	Any other structure or principle use	6,000	0.75	55	35	25	20	40	30%	none
T-5	1-family detached dwelling	4,000	1.0	40	35	15	7.5	30	10%	30%
	2-family dwelling	5,000	1.0	45	35	15	10	30	10%	30%
	1-family attached dwelling	2,500	1.0	20	35	15	none 2	30	10%	30%
	Any other structure or principle use	5,000	1.0	50	35	25	20	40	30%	none
F-1.0	1–family dwelling	4,000	1.0	40	35	15	7.5	30	10%	30%
	2–family dwelling	5,000	1.0	45	35	15	10	30	10%	30%
	3–family dwelling	5,000	1.0	45	40	15	10	30	10%	30%
	1-family attached dwelling	**2,500**	**1.0**	**20**	**35**	**15**	**none²**	**30**	**10%**	**30%**
	Any other structure or principal use	5,000	1.0	60	40	~~15~~ **25**	~~10+L/10~~ **20**	~~30~~ **40**	~~10%~~ **30%**	~~30%~~ **none**

(Additional regulations are contained in the text of Article 5.00) Required Lot Frontage: 25' in S and SC districts and 20' in all other districts

And amending Sec. 2.07, "G" Definitions, Gross Floor Area, by adding to the beginning of the second to the last sentence below, the following. **(new language in bold)**

§2.07 – "G" DEFINITIONS

1. GROSS FLOOR AREA—The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to

stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to the parking in Coolidge Corner, any floor space in accessory buildings or in the main building intended and designed for parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in the basement; and (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. **For one-, two- and three-family buildings** where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

Passed by a Counted Vote of 215 In Favor and Opposed

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ARTICLE 9

NINTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Sec. 4.07, Table of Use Regulations, Use #53, in the Brookline Zoning By-Law, as follows: [new language in bold]

§4.07 – TABLE OF USE REGULATIONS

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
53. ~~Residence~~ **Dwelling unit** in an accessory building for not more than four persons who are full-time domestic employees or members of the family of such employees. ***Allowed only in an S-40 district, on a lot not less than 40,000 s.f. with an accessory building not exceeding 1,200 s.f.**	~~Yes~~ **SP***	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Planning and Community Development Department is submitting this article with the support of the Selectmen's Zoning By-Law Committee.

Currently, Use #53, Accessory Domestic Residence, of the Zoning By-Law allows the construction by-right of an accessory residence on the same lot as another residential (or other) structure, as long as it is occupied by no more than four persons who are full-time employees or family members of such employees. In Section 2.01.1 and 2, "A" Definitions, the Zoning By-Law defines accessory building as " a building devoted exclusively to a use accessory to the principal use of the lot" and an accessory use as "a use incident to, and on the same lot as, a principal use". There are currently no specific restrictions in Use #53 on the size of an accessory domestic residence in relation to the principal building, although the accessory structure must meet the general yard setback and dimensional requirements and may not exceed the maximum allowed Floor Area

Ratio (FAR) for the property. Ironically, the Zoning By-Law does not allow a totally independent domestic dwelling unit in a single-family district within the main house, if that separate unit has a full kitchen (i.e. stove). Such a separate unit within a single-family residence would reclassify the structure as a two-family house and would be prohibited.

The main issue of concern with separate domestic dwellings is that if and when the property is sold and the new owner does not employ domestic help, it is not realistic to expect that the separate structure will remain vacant. A recent example of this is a domestic accessory single-family house which was built at Beech and Kent Streets in an S-10 zoning district. Although the 28,000 s.f. lot was large enough to be subdivided, it was not possible to do so by-right because the existing main house would have then exceeded the allowed FAR for the newly configured smaller lot. Therefore, the lot was kept as a single property and the floor area of both single-family dwellings together conformed to the allowed FAR.

There are many large lots in Town where it might be appropriate to allow an accessory structure for persons employed to help maintain the property. The revisions to Use #53 would allow, by special permit, a separate domestic accessory building on a lot that was at least 40,000 s.f. and in an S-40 zoning district. It would also limit the size of such separate buildings to 1,200 square feet. The special permit requirement would require notice to neighbors and allow a case-by-case review of whether such an accessory dwelling would have negative impacts.

NOTE: Under Section 9.09.1.d of the current Zoning By-Law, existing carriage houses, or garages with usable space above, may, in a single-family neighborhood, be converted to a dwelling unit by use variance, the standard for which is to preserve an architecturally or historically significant building which could not otherwise reasonably be maintained. Although the standards for a variance are high, there have been many cases in Town where permission has been granted. The proposed amendment would not change this section of the By-Law.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to modifying the use table which currently allows, by-right, a separate detached dwelling unit for domestic employees and is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen's Zoning By-Law Committee.

The proposed article would modify *Use #53* in *Section 4.07, Table of Use Regulations*, which currently allows for a residence in an accessory building for up to four people who are full-time domestic employees and their families. The proposed amendment would require a special permit from the Board of Appeals to establish such accessory residences, and restrict them to lots with at least 40,000 s.f., located in an S-40 zoning

district. Additionally, the accessory building could be no larger than1,200 s.f. in gross floor area.

One of the primary concerns regarding the by-right establishment of separate dwelling units for domestic employees is what happens to them when family circumstances change, the property is sold or otherwise transferred, and/or conditions occur that remove the need for domestic employees. The Planning Board believes it is unlikely these units would simply remain vacant, nor is it necessarily in the town's interest to have these units vacant, and they could pose a difficult enforcement situation for the Town.

In contrast, the current Zoning By-law does not allow separate dwelling units for domestic employees that are part of the main building. Such "attached accessory units" might have less visual impact on neighborhoods than separate dwellings, but they are not allowed.

Requiring a special permit does not remove the issue of what happens to such units if approved when family or ownership circumstances change, and the Planning Board would like to see a future amendment prohibiting them altogether. Until that happens, the Planning Board believes that requiring a special permit at least allows for public input to help judge appropriateness of each request and creates a written record surrounding their establishment for future interested buyers and town staff.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 9, as submitted, but with the strong recommendation that a future amendment prohibit accessory domestic residences.

SELECTMEN'S RECOMMENDATION

Use #53, Accessory Domestic Residence, of the Zoning By-Law currently allows a separate residence to be built for domestic employees and their families in any zoning district. This would mean that on a single family property, a second dwelling could be built on any size lot, with no restriction as how big the house should be in relation to the main dwelling, although yard setbacks and FAR restrictions would need to be met. This amendment would limit separate domestic dwellings building to a lot that was at least 40,000 s.f. and in an S-40 zoning district. It would also limit the size of such separate buildings to 1,200 square feet.

The Selectmen agree with the Planning Board and the Advisory Committee that allowing a second dwelling unit could result in future problems if the needs of the family change or the property is sold. What use can the structure be put to other than for domestic employees, because legally a use in a separate structure in a single-, two-, or three-family district is not allowed, except by variance relief from the Board of Appeals. Therefore, the separate residence could not to be rented or sold to a separate family and, if it were,

enforcement would be difficult. On the other hand, it would probably not be in the Town's best interest to have the structure remain vacant.

The Selectmen believe this zoning amendment acknowledges that a second dwelling on a larger property would have less impact on neighbors than one on a smaller lot. By requiring a special permit, it would allow a case-by-case review of such a proposal at a public meeting to determine if negative impacts to neighbors would result. The Selectmen did note that separate living quarters with a full kitchen (i.e. a stove) would not be permitted within a single-family home and, if it were permitted, might have less impact than a freestanding dwelling.

One Selectman, citing the recent well-attended housing forums for senior housing options, an initiative of Brookline as an "Age Friendly City," voted against the article on the basis that many senior in Town are looking for ways to have caregivers nearby and this article further restricts their options to do so.

The subject of separate living quarters, either within a separate structure or within a single family home should be revisited at a future Town Meeting. However, since this amendment provides more oversight and control over separate domestic residences, the Selectmen recommend FAVORABLE ACTION, by a vote of 4-1 taken on October 22, 2013, on the following:

VOTED: that the Town amend Sec. 4.07, Table of Use Regulations, Use #53, in the Brookline Zoning By-Law, as follows: [new language in bold]

§4.07 – TABLE OF USE REGULATIONS

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
53. ~~Residence~~ **Dwelling unit** in an accessory building for not more than four persons who are full-time domestic employees or members of the family of such employees. ***Allowed only in an S-40 district, on a lot not less than 40,000 s.f. with an accessory building not exceeding 1,200 s.f.**	~~Yes~~ **SP***	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**	~~Yes~~ **No**

ROLL CALL VOTE:

Favorable Action
DeWitt

No Action
Daly

Passed by a two-thirds Vote

Benka
Goldstein
Wishinsky

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
The current Zoning By-Law allows the construction by□right of an accessory residence on the same lot as the primary residential (or other) structure, as long as the accessory structure is occupied by no more than four persons who are full□time domestic employees or family members of such employees of the occupants of the principal dwelling. The combined floor areas of the primary and accessory structures must not exceed the Floor Area Ratio ("FAR") applicable to the property. Article 9, proposed by the Planning and Community Development Department, would prohibit such construction except in S-40 (minimum 40,000 square foot lot size) zones and set the maximum size of such accessory residences at 1,200 square feet, and even in such cases require a Special Permit in place of the existing "by right" status. The proposed zoning change is shown in the following table:

§4.07 – TABLE OF USE REGULATIONS

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
53. ~~Residence~~ **Dwelling unit** in an accessory building for not more than four persons who are full-time domestic employees or members of the family of such employees. ***Allowed only in an S-40 district, on a lot not less than 40,000 s.f. with an accessory building not exceeding 1,200 s.f.**	~~Yes~~ SP*	~~Yes~~ No	~~Yes~~ No	~~Yes~~ No	~~Yes~~ No	~~Yes~~ No	~~Yes~~ No	~~Yes~~ No	~~Yes~~ No

Use #53 expressly limits the use of such accessory residences to domestic employees (and their family members) of the resident of the primary dwelling. If the property is subsequently sold or transferred to a new owner who does not have domestic employees residing in the accessory residence, under current zoning regulations the building may not be occupied as a residence. The Planning Department's concern here is that if the subsequent owner does not use the accessory residence to house domestic employees, "it is not realistic to expect that the separate structure will remain vacant." In its explanation, the Planning Department cites as an example an accessory residence built at Beech Road and Kent Street in an S□10 zoning district. The lot size is 28,000 square

feet, but the primary dwelling is sufficiently large that subdivision of the lot to separate out the accessory residence is not feasible. Subdividing the lot would result in a condition where at least one structure exceeded the maximum FAR, and would thus not be permitted.

With regard to the Beech Road property, the FAR for the current house and the small accessory dwelling of slightly more than 1200 square feet remain slightly below the maximum for that lot. The new house could be built by-right under the current zoning as an accessory dwelling.

One citizen noted that allowing someone to live on the property as a caregiver would enable the family to reduce its expenditures for caregiving, arguing that this arrangement is exactly what the current zoning bylaw is supposed to encourage. Although the accessory residence is currently being used in a manner apparently consistent with Use #53, should that condition change its continued use as a residence would then become illegal.
It was noted that allowing such units could create enforcement difficulty later. There are areas zoned for two-families. And within single-family zones there is the ability to have a "guesthouse", but not a fully functioning stand-alone (potentially [illegal] rentable) unit.

DISCUSSION:
Zoning policy applies with respect to a property, not to specific owners or occupants. There is a concern that the ability to construct an accessory residence under the conditions applicable to the Kent/Beech situation – i.e., where there is a caregiver (although technically not a domestic employee) and his family residing in the building – could create a loophole whereby multiple dwelling units could be constructed on single-family lots and, potentially, be separately rented to unrelated non-domestic employee occupants. There have been several recent cases where a developer attempted to push the limits of FAR in subdividing a particular lot such that the preexisting house would become nonconforming. The subdivision of 81 Spooner Road, a property that has been the subject of protracted litigation for more than seven years, is such an example. Town Meeting has previously acted to close loopholes in this area, such as by eliminating the "decommissioning" of existing habitable space, and establishing a 10-year waiting period following the initial construction of a new house before "non-habitable" space could be converted to habitable use. Article 9 is consistent with those previous Town Meeting actions.

Under this by-law change, domestic employee units would still be permissible in S-40 zones. But, this is viewed as less of a neighboring imposition than in more densely zoned areas.

RECOMMENDATION:
By a vote of 16-3-1, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

ARTICLE 10

TENTH ARTICLE

Submitted by: Board of Selectmen

To see if the Town will amend Sec. 6.02, Paragraph 1,Table of Off-Street Parking Space Requirements, in the Brookline Zoning By-Law, as follows: [new language in bold]

§6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS

		RESIDENCE***	PUBLIC ASSEMBLY ***	INSTITUTION	RETAIL & OFFICE			INDUSTRIAL	WAREHOU & OTHE
		(Number of Spaces per dwelling unit)	(Number of seats requiring one space)		General		Medical & Dental		
					Ground Floor	Other			
		See ** below		(Number of square feet of gross floor area requiring one space)					
ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO	0.15 0.20 0.25 0.30 0.35 0.40	~~2~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three plus 2.0**	3	350	200*	400*	200*	800*	1200*
	0.50 0.75 1.00	~~2.0/2.3**~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three plus 2.3**	4	450	200	400	200	800	1200
	1.50 1.75 2.00 2.50	~~2.0/2.3**~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three plus 2.3**	5	550	350	600	250	800*	1200

1. For the G-(DP) Special District, parking requirements shall be the same as those districts with a maximum floor area of 1.0, except as otherwise provided for in Section 5.06.4.g.

*Applicable to nonconforming uses.

**~~The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single-family dwelling containing two or more bedrooms.~~ Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.

***For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Article 10 in the November 2010 Special Town Meeting Warrant called for certain modifications to the Town's Zoning By-Law regarding minimum off-street parking requirements for new residential construction. Article 10, which proposed reducing the minimum off-street parking requirement, was the subject of considerable debate at the November 2010 Special Town Meeting and, ultimately, did not pass. Town Meeting, however, voted to refer the subject matter of Article 10 to a Moderator's Committee on Parking (the "Committee") to study the issue and prepare a report.

In response to the charge from Town Meeting, the Committee held 26 meetings beginning on January 5, 2011 through August 16, 2013. The Committee heard from proponents and opponents of Article 10, real estate developers, real estate agents, municipal planning officials (from Brookline, Cambridge and Newton) and interested residents of the Town. In addition, the members of the Committee also conducted numerous interviews with Town officials (including from the Planning Department and the Assessor's Office) to gather additional data for its study. The input provided by the aforementioned individuals was helpful, but also demonstrated the conflicting arguments for and against a change to the Zoning By-Laws. As a result, the Committee decided early on that, to the extent possible, its deliberations needed to be informed by quantitative data – although it was mindful that getting the "perfect dataset" would be an unrealistic endeavor.

Initially, the Committee began by looking at the data submitted both by proponents and opponents in connection with Article 10. The Committee, however, concluded that the data submitted in connection with Article 10, although providing useful data points and presenting the Committee with ideas for further investigation, was insufficient. The Committee analyzed several datasets provided by the Town's Assessor's Office, including automobile excise tax information that had originated with the Massachusetts Registry of Motor Vehicles. The Committee used this historical data to try and assess whether and to what extent changes to the Town's minimum off-street parking Zoning By-Law had on construction of residential developments. Generally speaking, the data showed that a change in the minimum residential off-street parking requirements has historically not had much of an impact. Market conditions, more than anything else, influence the decision of how much parking to provide in new construction. At the end of the day, however, the Committee felt that analyzing historical data raised more questions than it answered, and that the data could be interpreted very differently to argue either for or against maintaining the current off-street parking requirements.

Given the limitations of the historical data sources, the Committee, with the assistance

of the Town Clerk and Town Assessor, developed a survey questionnaire that was mailed out to all Town residents together with the 2012 Annual Town Census. The survey identified 14 specific "parking neighborhoods" and asked respondents various questions about their off-street parking situation. The Committee analyzed the survey responses and was able to draw the following conclusions from them:

(1) Regardless of the size of the dwelling the average number of cars per household is well below the current off-street parking requirements, although there are wide variations around the averages.

(2) The differential between the average cars per household and the spaces allotted is greatest for studio and one bedroom apartments, and less so for 2- and 3+ bedroom apartments in multi- unit buildings (as opposed to 2 and 3 family houses).

(3) A large majority of the Town – including respondents in high density areas such as Coolidge Corner – believe that their off-street parking needs are adequate. The highest levels of dissatisfaction with their off-street parking situation are in the areas of Heath School/Eliot St., Brookline Hills/Brookline High School, Corey Hill, and Washington Sq./Corey Farm. Moreover, among residents of multi-family units, the larger the unit, the more the respondents were likely to believe that their parking is inadequate.

After collecting and analyzing the various qualitative and quantitative data, the Committee established the following general principles for a change to the minimum off-street parking requirements:

(1) The minimum off-street parking requirements for new buildings are higher than necessary for certain residential uses in certain residential areas. Town Meeting should consider downward adjustments for these specific uses.

(2) Any downward adjustments should be conservative, given the imperfect knowledge; it is better to be incremental and evaluate later rather than initiate a dramatic change.

(3) Town Meeting may want to consider some creative options (such as including off-street parking in FAR).

Given the above, the Committee recommends that Town Meeting should revise the minimum off-street parking as follows:

Committee Recommendations for Revisions to Minimum Off-Street Parking		
	Number of off-street parking spaces required	
Size of unit	Currently Required	Proposed (Changes are underlined)
Studio	2 spaces per unit	1.0 space per unit
1-bedroom	2 spaces per unit	1.5 space per unit
2-bedroom	2 spaces per unit/2.3 spaces per unit for attached single-family dwellings in zoning districts with a maximum FAR of .5	2.0 space per unit
More than 2 bedrooms	2 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5	2.0 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or

Consistent with the aforementioned general criteria, the Committee believes that downwardly adjusting the minimums for studios and 1-bedroom units makes sense, as the Committee's survey shows that car ownership in these units is considerably less than the current minimum requirements. In addition, the Committee believes that the minimum off-street parking requirements for 2-bedroom units can be lowered slightly. The Committee, however, does not recommend changing the minimums for 3+ bedroom units. The Committee believes that these changes address the largest discrepancies between the off-street parking requirement and actual need for off-street parking.

Finally, it is important to note the limitations on the Committee's charge and what the Committee did not consider. Because the Committee's task was to evaluate off-street parking for new residential development, its proposed modifications will not affect the off-street parking situation for existing buildings (including the large number that had been built without parking). In addition, although the Committee is mindful of efforts to encourage the use of bicycles and other "green" modes of transportation by Brookline residents, it has found no evidence that changing minimum off-street parking requirements for this purpose would be an appropriate or an effective use of zoning. That said, the Committee encourages Town Meeting to consider other changes to the Zoning By-Law, which could tie allowing developers to lower their parking requirements in exchange for offering certain specified benefits to residents, such as providing parking spaces for car sharing services such as Zipcar, bicycle racks, or other

alternative transportation (such as a shuttle bus). Other ideas for Town Meeting to consider are allowing reductions in parking requirements if developers increase green space or build underground parking. Finally, because the Committee recognized that much of the need for off-street parking is by residents of older buildings (who have no or inadequate parking), Town Meeting may want to consider mechanisms to require or encourage developers to make some of the parking spaces they build available to non-residents of their development. [See the full report of the Moderator's Committee on Parking: "The Minimum Off-Street Parking Requirements in Brookline's Zoning By-Law, Analysis and Recommendations for Modification" dated August 30, 2013.]

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to reducing the parking requirements for new residential development and is being submitted by Selectmen Goldstein, who chaired the Moderator's Committee on Parking at the recommendation of Fall 2010 Town Meeting. The Committee met 26 times from January 20, 2011 through August 16, 2013. Its task was to evaluate off-street parking for new residential development.

The proposed amendment would modify *Section 6.02, Paragraph 1, Table of Off-Street Parking Requirements*, by creating separate parking requirements for studios, one-bedroom units, two-bedroom units, and units with three or more bedrooms. Currently, all units, regardless of bedroom number, require at least two off-street parking spaces, and attached dwelling units with two or more bedrooms and other units with three or more bedrooms require 2.3 spaces. This article would change those requirements to the following: in residential districts with allowed FARs of .40 or less, a studio would require 1 parking space, a one-bedroom unit would require 1.5 spaces, and a two-bedroom or larger unit would require 2 spaces. In all other residential districts, the requirements would be similar; however, three-bedroom units or larger would require 2.3 spaces. The following table compares the existing and proposed parking requirements for residential uses.

The Committee's task was to evaluate off-street parking for new residential development. Proposed modifications will not affect the off-street parking situation for existing buildings (including many that were built without parking). The following proposed table of parking requirements could be substituted for the 'Residence' column in Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements and would more closely correlate to anticipated need.

Committee Recommendations for Revisions to Minimum Off-Street Parking Requirements For Residential Buildings in Brookline		
	Number of off-street parking spaces required	
Size of Unit	Currently Required	Proposed (changes are underlined)
Studio	2 spaces per unit	1.0 space per unit
1-bedroom	2 spaces per unit	1.5 space per unit
2-bedroom	2 spaces per unit / 2.3 spaces per unit for attached single-family dwellings in zoning districts with a maximum FAR of 0.5 or greater	2.0 space per unit
More than 2 bedrooms	2 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of 0.5 or greater	2.0 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of 0.5 or greater

The Planning Board is supportive of reducing the parking requirements for residential development. In its regular review of development cases, the Board sees on a regular basis that the Zoning By-law's parking requirements are often excessive, and realizes they don't reflect the parking needs of Brookline residents today. Additionally, the Board feels it is furthers the principles of smart growth to reduce the required parking space for a studio and one-bedroom unit. The Moderator's Committee on Parking has done extensive research and analysis on parking needs in town, and it is reflected in the measured approach of this warrant article. The Board supports the adoption of the Moderator's Committee's recommendations, with the hope that further analysis of all the parking requirements will happen at a later date.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article X, with the "Three plus" in each of the residence columns, changed to "Three or More Bdrms" to correctly state what is meant. See the revisions in italics below.

To see if the Town will amend Sec. 6.02, Paragraph 1,Table of Off-Street Parking Space Requirements, in the Brookline Zoning By-Law, as follows: [new language in bold]

§6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS

		RESIDENCE***	PUBLIC ASSEMBLY ***	INSTITUTION	RETAIL & OFFICE			INDUSTRIAL	WAREHO & OTHE
		(Number of Spaces per dwelling unit)	(Number of seats requiring one space)		General Ground Floor	General Other	Medical & Dental		
		See ** below		(Number of square feet of gross floor area requiring one space)					
ONING ISTRICT EFINED Y AXIMUM LOOR REA ATIO	0.15 0.20 0.25 0.30 0.35 0.40	~~2~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three *or More Bdrms.* 2.0**	3	350	200*	400*	200*	800*	1200*
	0.50 0.75 1.00	~~2.0/2.3**~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three *or More Bdrms.* 2.3**	4	450	200	400	200	800	1200
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1. For the G-(DP) Special District, parking requirements shall be the same as those districts with a maximum floor area of 1.0, except as otherwise provided for in Section 5.06.4.g.

*Applicable to nonconforming uses.

**~~The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single-family dwelling containing two or more bedrooms.~~ Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.

***For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

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

Or act on anything relative thereto.

SELECTMEN'S CLIMATE ACTION COMMITTEE RECOMMENDATION

The Selectmen's Climate Action Committee unanimously recommends favorable action on Article 10. This article, submitted by the Board of Selectmen, proposes a reduction in residential parking requirements, primarily for studio and one-bedroom units, to 1 and 1.5 spaces per unit respectively. The Moderator's Committee on Parking has proposed this requirement after years of research and discussion. The parking requirement for dwellings with more than two bedrooms would remain the same.

The Climate Action Committee has considered parking policy in general terms in the context of preparing Brookline's 2012 Climate Action Plan. The Committee supports reducing the off-street residential parking requirements; requiring more parking than what is needed provides an incentive to residents to drive[1], despite access to other transportation options. Reducing that incentive encourages residents to consider and make use of alternatives, including bicycling, mass transit, car sharing and walking, thus reducing the town's total greenhouse gas emissions. This amendment also recognizes that 70 percent of Brookline households either do not own a vehicle or only own one vehicle[2], and among residents of multi-family dwellings, more than 80 percent of households own one or fewer vehicles[3]. Requiring residential development to have at least two spaces for every dwelling unit, regardless of the number of bedrooms, may become a self-fulfilling prophecy[4] by encouraging residents to own and use at least two cars to make use of that extra parking space, especially since the price of building that parking space is rolled into the purchase price of the unit. Finally, the current requirement inadvertently encourages developers to build only two-bedroom or larger units. By not requiring excess parking, the town can begin to move away from favoring vehicular transportation over other transportation choices. The physical area that would have been used by developers for excess parking could be used for open space or landscaping, or to allow for more flexibility in the building's design.

The Climate Action Committee not only supports this amendment, but also encourages town staff and Town Meeting to revisit the Zoning By-law's parking requirements in the future to consider whether they could be reduced even further, particularly for development within close proximity to mass transit. Of course, the convenience, health, safety, and quality of life of all residents is as important a component of any such decision as environmental concerns, but the Committee believes that continuing study in this evolving area of public policy will support incremental reductions in parking in some locations. This amendment furthers a continuing discussion on how to encourage Brookline residents to consider transportation alternatives other than single-occupancy

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[1] Metropolitan Transportation Commission and Nelson/Nygaard Consulting Associates. *Regional Parking Strategies for Parking Protection.* January 2010. pp 1-2. http://www.mtc.ca.gov/planning/smart_growth/parking/MTC_Parking_Strategies.pdf.

[2] B08201: Household Size by Vehicles Owned. 2006-2010 American Community Survey.

[3] Moderator's Committee on Parking. *The Minimum Off-Street Parking Requirements in Brookline's Zoning By-law.* August 2013. Car Ownership Distribution by Bedroom Size for Multi-Family Units, Figure 9. pg. 45.

[4] U.S. Environmental Protection Agency. *Essential Smart Growth Fixes for Urban and Suburban Zoning Codes.* November 2009. EPA 231-K-09-003. p. 15. http://www.epa.gov/dced/pdf/2009_essential_fixes.pdf.

motor vehicles. Doing so supports the town's efforts to reduce our community's greenhouse gas emissions, limits the impact new development has on the environment, and helps mitigate climate change.

Therefore, the Selectmen's Climate Action Committee unanimously recommends favorable action on Article 10.

SELECTMEN'S RECOMMENDATION

Article 10 was submitted by the Board of Selectmen and proposes to reduce the parking requirement in the Zoning By-Law for studios and one-bedroom dwelling units from two parking spaces per unit to one and one and a half spaces per unit, respectively. Additionally, the parking requirement for attached single-family dwellings would not be treated differently from other dwelling units with the same number of bedrooms.

The article stems from the work done by the Moderator's Committee on Parking, which met for several months and considered a wide swath of evidence prior to drafting their final report. This report is very comprehensive, reviewing the history of parking requirements in Brookline and analyzing the available data on vehicle ownership and use by Brookline residents. The proposed change is a conservative reduction that recognizes that smaller units do not have the same parking demand as larger units.

Acknowledging that some Town Meeting members are uncertain about the consequences of reducing the parking requirement for smaller units, the Selectmen discussed an alternative proposal if the warrant article, as submitted, is not approved. The alternative proposal would keep the parking table as is, but provide a special permit, and thus a case by case review, for requests to reduce the parking for studios and one bedrooms. That language would be added as a footnote to the existing table in Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements after "(Number of Spaces per dwelling unit)" in the "Residence" column, as follows:

> ****The requirements for studio and one-bedroom apartments may be reduced by the Board of Appeals by special permit to no less than 1.0 and 1.5 per unit, respectively, provided the requirements of Section 9.05 are met and, in addition, the parking available for new and existing units in existing buildings is not reduced and the Board of Appeals specifically determines, with explicit supporting reasons, that such reduction is appropriate because of the proximity of public transportation, the provision of shared automobile services, and the like. This footnote shall not be severable and its terms must be applied in their entirety.

However, the Board of Selectmen supports this warrant article and believes it will be an incentive to create smaller units in new developments. Requiring excess parking for studios and one bedroom units raises the cost of constructing those units and serves to

discourage developers from including them in the unit mix in multi-family buildings. The Board does not accept the idea that this parking modification will result in a flood of new development, rather it will result in providing the correct amount of parking for smaller units; most of these units will be built in the denser areas of Brookline and within walking distance to rapid transit.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 29, 2013, on the amended version of the Planning Board's recommendation:

AMEND

VOTED: that the Town ~~will~~ Sec. 6.02, Paragraph 1,Table of Off-Street Parking Space Requirements, in the Brookline Zoning By-Law, as follows: [new language in bold]

§6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS

	RESIDENCE***	PUBLIC ASSEMBLY ***	INSTITUTION	RETAIL & OFFICE			INDUSTRIAL	WAREHOU & OTH
	(Number of Spaces per dwelling unit)	(Number of seats requiring one space)		General		Medical & Dental		
				Ground Floor	Other			
	See ** below		(Number of square feet of gross floor area requiring one space)					
0.15 0.20 0.25 0.30 0.35 0.40	~~2~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three *or More Bdrms.* 2.0**	3	350	200*	400*	200*	800*	1200*
0.50 0.75 1.00	~~2.0/2.3**~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three *or More Bdrms.* 2.3**	4	450	200	400	200	800	1200
1.50 1.75 2.00 2.50	~~2.0/2.3**~~ **Studio 1.0** **One Bdrm. 1.5** **Two Bdrm. 2.0** **Three *or More Bdrms.* 2.3**	5	550	350	600	250	800*	1200

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

*Applicable to nonconforming uses.

**~~The greater requirement shall be provided for each dwelling unit containing more than two bedrooms and for each attached single family dwelling containing two or more bedrooms.~~ Bedrooms shall include any habitable room containing at least 100 square feet of area which could be converted to a bedroom other than a bathroom, kitchen, or living room.

***For use 8A. Limited Service Hotel in the G-1.75 (LSH) Limited Service Hotel District, the minimum number of spaces for each dwelling unit shall be 0.5 and no additional spaces shall be required for floor areas used for eating, drinking, dancing, meeting halls or similar purposes.

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

Failed to achieve a Two-Thirds Vote Your Electronic Recorded Vote of 127 In Favor, 82 Opposed and 4 Abstentions.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

Article 10 is an outgrowth of the work of the Moderator's Committee on Parking (the "committee"), whose report (pages 1 through 4 are the Executive Summary) is included in the Combined Reports for the November 2013 Special Town Meeting, and incorporated by reference in this recommendation. The, committee's charge was to evaluate off-street parking for new residential development.

For additional information on Off-Street Parking and the research of Parking Study Committees, please see the Appendix at the end of this report

Its principal finding was that the minimum off-street requirements for new buildings as established by the Zoning By-Law are higher than necessary, and the committee recommended a conservative downward reduction in the existing zoning requirement for off-street parking for studio and 1 bedroom units in multifamily residential buildings.

The proposed adjustment in the article is consistent with the unanimous recommendation of the committee, and reflects consideration of the number of vehicles likely to be owned by residents of newly-constructed buildings, based on survey data obtained by the committee.

The proposed changes are:

	# of off-street parking spaces/unit		
Size of unit	Current	Proposed	% Reduction
Studio	2	1	50%
1 bedroom	2	1.5	25%
2 bedrooms	2/2.3	No change	NA
>2 bedrooms	2/2.3	No change	NA

Problematically, the article, as submitted, did not reflect a distinction between existing buildings and new residential development. Further, in the Advisory Committee's pursuit of an amendment to so limit the change, Town Counsel's office determined that its application exclusively to new construction would be illegal.

During this process, it was learned that Section 6.01.2a of the Zoning By-Law provides that when a [existing] structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, the Zoning Board of Appeals by special permit may waive not more than one-half of the number of parking spaces otherwise required.

DISCUSSION:

Throughout its initial consideration of Article 10 the Advisory Committee subcommittee's understanding was that the off-street parking requirement changes would be applicable only for new construction, and not in the instance of conversions in existing buildings. Just prior to reporting to the full Committee, it was learned that this understanding could not be effected under the proposed article. The article would apply to both **existing** and **new buildings**. Even members of the Moderator's Committee on Parking were caught by surprise. The petitioner and some members of the committee opined that the consequences of not being able to distinguish between existing buildings and new development were not a significant matter, and would not have significant unintended consequences if the article, as submitted, was adopted.

There was some limited sentiment within the Advisory Committee that the distinction between old and new buildings might not be significant, and that the article should be supported as submitted. However, a significant number of members had concerns even if it were applied only to new buildings, and most members had strong reservations about the consequences of reduced off-street parking requirements if applicable to both old and new buildings. Possible conversions and added units in densely populated North Brookline were identified as a likely results of this change. Additionally, members were concerned that people may move in and simply look for additional parking elsewhere in the neighborhood, creating greater competition for the few neighborhood spaces available now. Some questioned whether that increase in demand for more off-street spaces might lead to people paving over parts of their yards to make more rental spots. This may be illegal, but not easily enforced.

A counter to these concerns was the observation that current studio and one-bedroom unit owners do not seem to be using all of their currently deeded spaces. This was based on a questionnaire from the Moderator's Committee on Parking, but the demographics of the

analysis was not immediately available at the time of the Advisory Committee's discussion.

No one seemed to be under the illusion that this would in fact reduce development costs enough to create affordable units. Brookline is an expensive market and developers will look for top dollar.

Throughout the discussion, many what-if scenarios were debated, none of which was persuasively shown to be more likely to occur than another. The impact on the town's demographics and socio-economics, public school age population, property values and affordability of housing, and off-street parking supply and demand were at the root of the scenarios. Outcomes ultimately will be determined largely by individual behavior, and economic and other factors which cannot be reasonably foreseen, nor would those outcomes be uniformly considered favorable or unfavorable.

However, as reflected in the Advisory Committee's final vote, the prediction of potentially increased residential development in the Coolidge Corner area springing from more units in existing buildings; skepticism as to whether the "carrot" of reduced parking would be sufficient to lead to the growth of studio and one-bedroom units (versus three-bedroom luxury apartments/condos); and the absence of a compelling reason to act now (as opposed to waiting until, for example, a final plan is developed to address the growth of student enrollment) were sufficiently persuasive reasons to reject the proposed amendment.

Underlying the individual arguments opposing support of the article was the overarching concern of the potential for unforeseen consequences. And, in response to advocates for parking reduction, it was pointed out that the ZBA already has the capacity to reduce the parking requirement by up to half even without this change.

It may be possible to pursue the limited intent of the article by an amendment (that would be considered within its scope) calling for specific special permit provisions; the Committee also encouraged this idea in its report.

RECOMMENDATION:
By a vote of 14-4-3, the Advisory Committee recommends NO ACTION on Article 10.

APPENDIX:
The Advisory Committee offers the following historical perspective on off-street parking.

The absence of overnight on-street parking provided the impetus for the first minimum requirements for off-street parking, which were incorporated into the Zoning By-Law in 1941. In 1987 the minimums were raised, at least partly as a consequence of the conversion of numerous rentals buildings to condominiums. In 2000 the minimums were raised again in the wake of substantial construction of larger, more expensive condo

units. Concern that the 2000 By-Law went too far gave rise to the referral of minimum requirements, among other tasks, to a Selectmen's Parking Committee. The Selectmen's Parking Committee recommended that requirements be reduced but it did not make a specific recommendation, partly because one member wanted greater reductions in the requirements than the majority.

There were divided opinions about where to set the minimum level for off-street parking for multi family buildings. Opinions include these:

- North Brookline is already too dense; high minimums reduce density
- The By-Law should encourage more density, because denser development is more energy efficient
- Lower minimums would reduce the cost of construction, which promotes the construction of moderately-priced living units
- More living units will tend to increase school enrollment, which adds to the overall tax burden

The lack of consensus led Town Meeting to appoint the Moderator's Committee on Parking, which heard a variety of arguments regarding smart growth and adequacy of spaces for people who need cars to get to work. Developers told the Moderator's Parking Committee that minimums are currently too high. Real estate agents said that they were about right. Residents came down on both sides of the question.

Cambridge, which allows overnight on-street parking, requires one space per living unit. Newton, which has a wintertime overnight ban on on-street parking, requires two spaces per living unit, but it grants special permits allowing fewer spaces. (Brookline requires a zoning variance.)

The Moderator's Parking Committee obtained data on - the number of cars owned, number of available spaces and the level of satisfaction with the availability of off-street parking - by sending a survey along with the town's annual census. The committee received 8,331 responses. The respondents were self-selecting rather than randomly selected, so there may be a bias in the survey results with regard to the level of satisfaction. In denser areas, the level of dissatisfaction was around 30%; in less dense areas it was as low as 10%. The number of households renting spaces at another location due to inadequate on-site parking varied depending on the unit size. For studio apartments the figure was 11.9%; for 3+ bedroom units the figure was 37.6%. [That may reflect the fact that older buildings tend to have larger units, and those buildings are the ones more likely to have been built with little or no off-street parking.]

The survey showed that there is an approximate match between the number of cars and the number of available off-street spaces, but the spaces are not necessarily in the right places. Fifty-five percent of Brookline housing was built before 1949, and older multifamily buildings typically do not have enough spaces for their residents' cars. Newer buildings conform to the Zoning By-Law in force at the time of construction and they sometimes have more spaces than the residents need. Most (but not all)

condominiums with underground garages do not allow unit owners to rent their spaces to people who do not reside in the building, and there was discussion about the merits of trying to require condos to permit the renting of excess spaces.

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ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend the Brookline Zoning By-Law related to Off-Street Loading as follows:

Amending Section 6.06, Off-Street Loading Regulations, by adding subsection 7 as follows (new language in bold):

> **7. The number of required loading bays may be reduced by special permit from the Board of Appeals where the adequacy of the reduced number of loading bays can be demonstrated based on the proposed uses, hours of operation, delivery service requirements, and allocation of loading facilities across the various uses and buildings. The Director of Engineering/Transportation and the Director of Planning and Community Development shall make recommendations to the Planning Board and Board of Appeals regarding any request for a reduced number of loading bays.**

and amending Section 6.07, Design and Layout of Off-Street Loading Facilities, by adding subsection 3 as follows (new language in bold):

> **3. By special permit, the Board of Appeals may permit, in lieu of the dimensional requirements of this section, the substitution of other dimensional requirements for the design and layout of off-street loading facilities, where it finds that such substitute dimensions would be adequate for the uses proposed for which the facilities are designed to serve. The Director of Engineering/Transportation and the Director of Planning and Community Development shall make recommendations to the Planning Board and Board of Appeals regarding any request for substituted dimensional requirements for loading facilities.**

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This zoning amendment would, by special permit and positive recommendation by the Director of Engineering/Transportation and the Director of Planning and Community

Development, permit a reduction in the number of required loading bays and the design and layout of off-street loading facilities on a case-by-case basis.

The provision of off-street loading spaces in accordance with the needs and requirements of particular property uses is a necessary public policy in the interest of maintaining traffic safety, minimizing congestion, and ensuring that new development is compatible with existing development patterns. However, operational needs of a particular use can vary significantly within the same broad use categories as defined by our Zoning By-law. For example, a 100,000 square foot limited service hotel (i.e., no dining/banquet facilities) may require an area for deliveries in box trucks or vans (e.g., linen service trucks often the size of a UPS truck or FedEx van); a 12,000 square foot pharmacy may require loading from an 18-wheeler truck due to the company's regional distribution operations; and a 13,000 square foot high-traffic grocery store may require three 18-wheeler trucks to deliver goods daily. Our current Zoning By-Law requires a single loading space accommodating an 18-wheeler truck for all of these examples, even though a provision of such a space would only match the operational needs of one of these three examples.

In recent years, reduced loading requirements have been written into special districts to begin providing some flexibility from the Zoning By-law. Although the purpose of special district regulations is to "insure that the dimensional and related requirements of the Zoning By-Law address these [Districts'] unique conditions," such regulations cannot adequately predict all potential combinations of operational requirements that may be proposed within such an area.

If passed, this Zoning By-Law amendment would allow for more design flexibility for three major redevelopment projects: Davis Path District hotel (also known as the Red Cab site at 111 Boylston Street and Kerrigan Place), 2 Brookline Place Children's Hospital redevelopment, and future redevelopment options for the Durgin and Waldo garage sites (10-18 Pleasant Street and 5 Waldo Street). All of these projects are able to accommodate the existing By-Law's loading requirements. However, such conforming loading spaces would likely be oversized in dimensional length or number while taking up more space than a more suitably designed loading facility with respect to actual building operations.

It has also been noted by a member of the Planning Board that our current load dock size requirements are premised on the use of a standard-sized on-site dumpster, and that the use of such dumpsters appears to be on the wane, with alternative systems in use. The increased use of recycling and other technologies have combined to change the type and quantity of materials flowing in and out of buildings. Just as our own Solid Waste Advisory Committee has helped move the Town to new systems, our Zoning By-Law should be able to embrace these as well. The Special Permit process would appear a promising way to do that in an orderly, regulated process.

This proposed Zoning By-law amendment would allow the adequacy of proposed off-street loading areas for new development to be reviewed on a case by case basis by the

Director of Engineering/Transportation, the Director of Planning and Community Development, the Planning Board, and the Zoning Board of Appeals, dependent on a specific building program, proposed traffic operations, and site design.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to modifying the loading dock requirements of the Zoning By-law and is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen's Zoning By-Law Committee.

The proposed article would amend *Sections 6.06* and *6.07* of the Zoning By-law by adding new subparagraphs that allow for either or both the number and dimensions of loading docks to be modified by special permit. The applicant would have to demonstrate that the reduction of number or size of loading docks is warranted for the proposed use, and recommendations from the Director of Engineering/Transportation and the Director of Planning and Community Development would be required for the special permits.

The Planning Board supports this article because it provides needed flexibility in the design and number of loading spaces for new development. The loading requirements of a building vary widely depending on the type of commercial use; hotels have different loading needs than medical buildings, which have different needs than retail uses, and one size does not necessarily fit all. Recognizing this, these amendments will allow upcoming development proposals to focus on the needs of the future uses of proposed buildings and design the loading facilities to fit those needs. Requiring the recommendations from the directors of Engineering/Transportation and Planning and Community Development ensure the Board of Appeals will have independent recommendations aside from those of the development team prior to deciding whether to modify the loading requirements.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on the Article as submitted.

SELECTMEN'S RECOMMENDATION

This article proposes to allow applicants to seek a waiver, by special permit, of the required number and/or dimensional requirements for loading bays. As part of this special permit process, the Director of Engineering/Transportation and the Director of Planning and Community Development must first give a positive recommendation for the applicant's specific application.

The current mechanism for relief is only by variance, which requires proof of undue financial hardship in addition to extreme lot conditions such as soil conditions, lot shape, or topography, and the standards are extremely difficult to meet.

The loading patterns for larger urban commercial uses have migrated from reliance on 18-wheeler type tractor-trailer trucks to smaller delivery vehicles. As described in the warrant article explanation, operational needs vary greatly among specific uses within the same use categories found in the Zoning By-Law. As a result, the current zoning may require loading spaces that are not necessary for the operator.

Recent special district zoning for the Cleveland Circle site and Davis Path District have begun to provide some flexibility by reducing the *number* of loading zones otherwise required. However, a design option preferred by the Design Advisory Team, Planning Board, and Board of Appeals for the proposed hotel at the Red Cab site (111 Boylston Street / Davis Path District) would also require relief in the dimensional requirements of the loading area. Two other major commercial redevelopment projects would benefit from this Zoning By-Law amendment, if passed: the Children's Hospital redevelopment at 2 Brookline Place, and future redevelopment options for the Durgin and Waldo garage sites (10-18 Pleasant Street and 5 Waldo Street). All of these sites could feasibly accommodate the existing By-Law's loading requirements. However, the loading spaces would likely take up more space than necessary, to no parties' benefit.

Therefore, the Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 15, 2013, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 11 is submitted by the Department of Planning and Community Development, asking the Town to amend the Zoning By-Law as it relates to Off-Street Loading docks. Specifically, it seeks to amend section 6.06, Off-Street Loading Regulations, by adding subsection 7 (the proposed changes are all in bold.)

7. The number of required loading bays may be reduced by special permit from the Board of Appeals where the adequacy of the reduced number of loading bays can be demonstrated based on the proposed uses, hours of operation, delivery service requirements, and allocation of loading facilities across the various uses and buildings. The Director of Engineering/Transportation and the Director of Planning and Community Development shall make recommendations to the Planning Board and Board of Appeals regarding any request for a reduced number of loading bays.

and amending Section 6.07, Design and Layout of Off-Street Loading Facilities, by adding subsection 3 as follows (new language in bold):

3. By special permit, the Board of Appeals may permit, in lieu of the dimensional requirements of this section, the substitution of other dimensional requirements for the design and layout of off-street loading facilities, where it finds that such substitute dimensions would be adequate for the uses proposed for which the facilities are designed to serve. The Director of Engineering/Transportation and the Director of Planning and Community Development shall make recommendations to the Planning Board and Board of Appeals regarding any request for substituted dimensional requirements for loading facilities.

Or act on anything relative thereto.

DISCUSSION:

Currently there is no relief for exceptions by special permit for either the number of required loading bays or the dimensional requirements. The proposed changes will make it easier for petitioner's to seek relief if relief is in order. At present, the only available option for those seeking relief is to seek a variance which may be difficult to obtain since conditions of the soil, shape or topography of the lot must create extreme extenuating circumstances in order to qualify.

Specifically the zoning amendment offers relief by special permit AND positive recommendation by the Director of Engineering and Transportation, and the Director of Planning and Community Development.

As a practical matter, the operational needs can vary significantly among particular property uses within the same broad use categories in the Zoning By-Law; consequently, the current by-laws may require off-street loading spaces that make little sense.

Recently, reduced loading requirements have been written into special districts regarding the number of bays in order to provide flexibility which the Zoning By-Laws currently lack. Though the language increases flexibility the number of bays, it does not address dimensional requirements (since dimensional exceptions were not a consideration at the time); however, regulation based on unique site conditions cannot properly predict or address all potential combinations of operational requirements in a special district.

The proposed Zoning By-Law amendment would allow for more design flexibility for three anticipated redevelopment projects: at the Red Cab site, 2 Brookline Place, and the Durgin and Waldo garage sites. While all of these projects are able to accommodate the existing by-law's loading requirements, the loading bays would likely be oversized or in greater number than necessary.

(NB: The Cleveland Circle site and Davis Path already have some accommodating language written into the special district requirements, but neither contains sufficient flexibility to accommodate dimensional needs (though the Cleveland Circle site may not call for dimensional relief.))

Members of the Advisory Committee generally agreed that there are no obvious downsides to this zoning change, particularly since any special permit also requires a positive recommendation by both the Director of Engineering/Transportation and the Director of Planning and Community Development. Moving forward, a more evenly regulated process regarding the number of required loading bays and the design and layout of off-street loading facilities offers practical flexibility.

RECOMMENDATION:
By a vote of 18-0-0, the Advisory Committee unanimously recommends FAVORABLE ACTION on the following motion:

VOTED: that the Town amend the Brookline Zoning By-Law related to Off-Street Loading as follows:

Amending Section 6.06, Off-Street Loading Regulations, by adding subsection 7 as follows (new language in bold):

> **7. The number of required loading bays may be reduced by special permit from the Board of Appeals where the adequacy of the reduced number of loading bays can be demonstrated based on the proposed uses, hours of operation, delivery service requirements, and allocation of loading facilities across the various uses and buildings. The Director of Engineering/Transportation and the Director of Planning and Community Development shall make recommendations to the Planning Board and Board of Appeals regarding any request for a reduced number of loading bays.**

and amending Section 6.07, Design and Layout of Off-Street Loading Facilities, by adding subsection 3 as follows (new language in bold):

> **3. By special permit, the Board of Appeals may permit, in lieu of the dimensional requirements of this section, the substitution of other dimensional requirements for the design and layout of off-street loading facilities, where it finds that such substitute dimensions would be adequate for the uses proposed for which the facilities are designed to serve. The**

Director of Engineering/Transportation and the Director of Planning and Community Development shall make recommendations to the Planning Board and Board of Appeals regarding any request for substituted dimensional requirements for loading facilities.

Carried by a Unanimous Vote

XXX

ARTICLE 12

TWELFTH ARTICLE

Submitted by: Board of Selectmen

To see if the Town will authorize and empower the Board of Selectmen to lease for a term of not more than thirty (30) years the property known as the Singletree Reservoir Site, shown as Parcel 04-01 in Block 437 on Page 127 of the Town's 2010 Assessors Atlas, for the purpose of hosting a ground-mounted solar photovoltaic installation (solar panels and appurtenant equipment), subject to any authorizations, approvals and reviews, on such terms and conditions determined by the Board of Selectmen to be in the best interest of the Town.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Town of Brookline has been exploring opportunities to install solar photovoltaic (PV) systems on municipal buildings and properties in an effort to support the generation of renewable energy and to reduce spending on energy costs. M.G.L. Ch. 25A §11i allows public agencies seeking to generate local renewable energy to issue a Request for Qualifications (RFQ) for solar developers that are qualified in Massachusetts to provide comprehensive solar energy management services (EMS). A solar EMS contract is a long-term (up to 20 years) service agreement that includes PV system design, financing, and installation; operations, maintenance and PV system removal; long-term lease of public space; electricity generated by a PV system; and a system performance guarantee. A community entering into a solar EMS contract will be responsible for hosting the PV system on a municipally-owned site, and purchasing all the electricity generated by the PV system per a price schedule agreed upon in the solar EMS contract. The developer owns the PV system and generates revenue by selling electricity to the community and monetizing the tax incentives and Solar Renewable Energy Credits (SRECs) associated with solar electricity generation. The community benefits from a long-term guarantee for solar energy production without the risks of ownership.

In November, 2010 Town Meeting created a new overlay zoning district to allow large-scale ground-based solar panels on the Town-owned Singletree Hill Reservoir, located off of Boylston Street behind the Chestnut Hill Benevolent Association. This site is appropriate for solar panels due to its heightened elevation above other properties and open exposure. The elevation allows for excellent solar exposure while naturally screening any solar facilities from neighboring properties. In addition, the water storage facilities on site need to be routinely cleared of vegetation. The installation of solar

panels would assist in keeping that area clear of obstructions. Finally, the zoning also requires a buffer of 25 feet from all lot lines, which will further alleviate any impacts on abutting properties.

Last year Brookline, along with 17 other municipalities, participated in a regional procurement led by the Metropolitan Area Planning Council (MAPC) for solar EMS services. After an extensive review process, Broadway Electrical Co. was unanimously identified as the top choice from the 14 responses received. This procurement process has satisfied the requirements of Ch. 25A, and all participating cities and towns are now eligible to enter into contracts with Broadway, if they so choose. The Town initially submitted the following sites as having the potential for solar development, based on site availability and their roof replacement schedule: Singletree Hill, Town Hall, the High School, the Evelyn Kirrane Pool, Baker School and the Main Library. The Town received proformas on these sites from Broadway in May 2013.

The current Solar Carve-Out program, which is managed by the MA Department of Energy Resources (DOER) and regulates the number and value of SRECs, is limited to 400 Megawatts (MW). SRECs are a key source of income generated from solar PV systems. On June 7, 2013, DOER announced it had received an exponential increase in applications for SREC eligibility, which necessitated changes to the 400-MW Solar Carve-Out program. The current Solar Carve-Out Program is effectively over, and DOER is now developing a new program. Projects in MAPC's regional solar procurement, including those being considered in Brookline, will likely fall into the next program, which will be capped at 1200 MW. It is anticipated to launch in early 2014 and will be associated with a different incentive structure. The economics of projects are likely to change, and there will be some lag time while Broadway confers with their financial partners and prepares new site proformas. The procurement process can continue, however, as the MAPC Regional Solar Initiative's RFQ process allows for price negotiations.

SELECTMEN'S CLIMATE ACTION COMMITTEE RECOMMENDATION

The Selectmen's Climate Action Committee unanimously recommends favorable action on Article 12. This article, submitted by the Board of Selectmen, enables the Selectmen to enter into a lease for the Singletree Hill Reservoir to allow the construction of a ground-mounted solar photovoltaic (PV) installation.

The Singletree Hill Reservoir site is a municipally-owned land-locked parcel behind the Chestnut Hill Benevolent Association on Boylston Street. On the site is a large above-ground water tank and accessory building that are both actively used by the town's Water & Sewer Division. On the rest of the site is a partially underground reservoir. A tall fence runs along the entire perimeter of the lot. Due to the site's elevation as the highest point in Brookline, and the southern solar exposure on the flat top of the underground reservoir, the town has been exploring the possibility of using the site for generating solar energy.

In order to develop solar PV, the town would lease the land to a solar developer, who would then construct, own and maintain the solar facility for at least 20 years. The town would agree to purchase 100 percent of the power generated from the solar panels. Such arrangements are called solar energy management services (solar EMS) contracts. Although the contract's specific terms and conditions still need to be developed, the town would gain price stability for the electricity generated from the PV facility, and ideally, a reduced electricity price.

The town has already identified this site as appropriate for solar. In November 2010, Special Town Meeting passed a warrant article creating a zoning overlay district on Singletree Hill Reservoir allowing for ground mounted solar facilities. Should the current warrant article pass, town staff will work to engage a consultant to help with negotiating contract terms, eventually bringing a contract to the Board of Selectmen. Additionally, plans for the solar facility will need to be approved by the Planning Board through a site plan review/design review process prior to installation.

The Singletree Hill Reservoir site is an excellent location for a ground-mounted solar PV facility. The land cannot be used for public open space – it is land-locked and access is restricted to ensure the safety of the public water supply. Additionally, the site is routinely cleared of trees and brush for maintenance. Finally, the site isn't visible from any public ways, and visibility from other neighboring properties is very limited.

Leasing the site for solar provides for a number of benefits, including a supply of solar-generated energy for the town's use, replacing a portion of non-renewably-sourced electricity. Additionally, the town will know ahead of time exactly how much that power will cost for the next 20 years. Also, the town would not need to purchase or maintain the solar PV facility, as that would be the responsibility of the solar developer.

The Climate Action Committee supports this warrant article, which is part of the town's larger efforts to develop renewable energy facilities on municipal properties. The committee is confident the Board of Selectmen will review any contract carefully prior to endorsement, and the Planning Board will review the facility's plans in detail for design considerations. This is a great opportunity to not only raise the overall productivity of a municipal parcel, but also to improve the environment and lower the town's greenhouse gas emissions.

Therefore, the CAC unanimously recommends favorable action on Article 12.

SELECTMEN'S RECOMMENDATION

Article 12 asks Town Meeting to authorize the Selectmen to lease the property known as the Singletree Reservoir Site for the purpose of hosting a ground-mounted solar photovoltaic (PV) installation. In November, 2010 Town Meeting created a new overlay

zoning district to allow large-scale ground-based solar panels on the Town-owned Singletree Hill Reservoir. Entering into a solar energy management services agreement with a solar developer for this site has been determined as the best option to achieve the goal of installing solar on the site. The Town would get the benefit of a long-term guarantee for solar energy production at no upfront costs and without the risks of ownership.

Some Selectmen raised the question as to whether neighbors to the site were informed about plans for the site. The Department of Planning and Community Development sent out notices to all neighbors within 300 feet of the property for the Planning Board public hearing held when the site was first zoned to allow solar. Once the Town has plans from the developer, the site will be subject to site plan review through the design review process conducted by the Planning Board, for which the Department of Planning and Community Development has agreed to send out another set of notices. The Selectmen could also choose to provide an additional opportunity to inform the neighbors when the contract is under consideration. Since a 25-foot setback around the edges of the solar PV facility is required, it seems quite likely that such a facility would have little impact on abutters. Due to the site's high elevation and isolated location, it is quite screened from view.

The Board of Selectmen is pleased that the Town is exploring the use of this site for renewable energy. Numerous Massachusetts municipalities are implementing solar Power Purchase Agreements (PPA) on school rooftops, closed landfills and other municipal buildings. We look forward to joining these communities as we move toward our first ground-mounted site. Therefore, by a vote of 5-0 taken on October 15, 2013, the Board recommends FAVORABLE ACTION on the following:

VOTED: that the Town authorize and empower the Board of Selectmen to lease for a term of not more than thirty (30) years the property known as the Singletree Reservoir Site, shown as Parcel 04-01 in Block 437 on Page 127 of the Town's 2010 Assessors Atlas, for the purpose of hosting a ground-mounted solar photovoltaic installation (solar panels and appurtenant equipment), subject to any authorizations, approvals and reviews, on such terms and conditions determined by the Board of Selectmen to be in the best interest of the Town.

Passed by a Unanimous Vote

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Asks Town Meeting to authorize and empower the Board of Selectmen to lease for a term of not more than thirty (30) years the property known as the Singletree Reservoir Site,

shown as Parcel 04-01 in Block 437 on Page 127 of the Town's 2010 Assessors Atlas, for the purpose of hosting a ground-mounted solar photovoltaic installation (solar panels and appurtenant equipment), subject to any authorizations, approvals and reviews, on such terms and conditions determined by the Board of Selectmen to be in the best interest of the Town.

DISCUSSION:

The Town has been working on the "greening of Brookline" for quite some time. Town citizens, committees and Town Meeting Members continue to bring environmental issues to Town Meeting, which has been extremely supportive.

Brookline, has earned the designation as one of Massachusetts' 110 Green Communities. One of the criterions for Green Community Designation is to provide as-of-right siting in designated locations for ground-based renewable/alternative energy generation. In furtherance of this goal, the November 2010 Town Meeting successfully created an overlay-zoning district to allow for a large scale ground-based solar panel installation on the Town owned Singletree Reservoir site. The energy firm of Horsley Witten Group performed a preliminary analysis of this site in 2010 prior to the Town Meeting vote of approval of the overlay district and found the site suitable for a 250 KW solar photovoltaic power plant.

Last year, Brookline worked, along with seventeen other communities, with the Massachusetts Area Planning Council Regional Solar Initiative, which after an extensive review and in accordance with Ch. 25A, procured a company to provide Solar Energy Management for the participating member Cities and Towns. The company chosen by the MAPC was Broadway Electrical Co. All participating communities are now able to eligible to enter into contracts with Broadway Electrical, if they so choose.

The Singletree Reservoir site is the highest site in the town. It is 2.77 acres in size and contains a water tower sphere that helps to pressurize the Town's water system. The portion of this site planned for use is on top of and along side of a long decommissioned, old underground/above-ground reservoir. No extensive grading will be required. This particular site should not be an eyesore or annoyance to neighbors as the site is higher in elevation from and sits above all neighboring homes.

The Advisory Committee purposely did not discuss the economics of such a lease arrangement. We are too early in the cycle to have constructive knowledge in this area. The moving factor in creating an economically viable project is through the use of Federal Tax Credits, that the Town has no ability to capture but that a lessee of this site could utilize.

A concern of the Advisory Committee was the need for proper and thorough notifications to the neighbors and abutters of this site to ensure awareness of the continuing processes and reviews to implement a ground-based solar photovoltaic system on the site. The site will be subject to site plan review through the design review process conducted by the

Town's Planning Board.

Approval of Article 12 will allow for the leasing of the Singletree Reservoir Site for the installation of a 250 KW solar photovoltaic power plant. The Town will benefit in a number of ways, from a steady twenty-year supply of lower cost renewable energy to the reduction of the Town's carbon footprint without the investment, management of and risks associated with ownership.

RECOMMENDATION:
The Advisory Committee by a Vote of (21-0) recommends FAVORABLE ACTION on the vote offered by the Board of Selectmen.

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ARTICLE 13

HUMAN RESOURCES BOARD'S RECOMMENDATION

The Human Resources Board of the Town of Brookline on October 8, 2013 has unanimously voted, by a vote of 4-0, to recommend to Town Meeting that they adopt Warrant Article 13 as set forth in the Warrant Book.

The Board, held a public hearing on Article 13 on October 1, 2013. Following the hearing, the Board discussed the testimonies of Sandra DeBow and Mel Kleckner and the comments from the one member of the public to appear. Following this, on October 8, 2013, the the Board voted unanimously to support Article 13, which would revoke the Town's 1957 acceptance of General Laws Chapter 149, Section 33B. The Board applauds the March 1957 Town Meeting for being progressive and accepting Section 33B when there were few state and federal wage protections for our Town's employees. Over the decades, however, wage and hour laws have been enacted on both the state and federal levels establishing the rights of non-exempt employees to overtime wages, making the 1957 bylaw archaic and anachronistic. The adoption of 33B also preceded the formation of the Town's various unions (Police, Fire and Engineers 1968, AFSCME 1970) and their respective collective bargaining agreements, which in certain instances provide for greater pay than either the FLSA or Section 33B. Employees now have significant and better rights and protections under various state and federal laws that didn't exist in the 1950's when Section 33B was adopted by the Town.

Importantly, not only is the law antiquated, but also it is duplicative of current law in certain instances and conflicting in others.

In the 1950's, the Town of Brookline adopted rules to assure that all of its town employees would be paid overtime for work in excess of 8 hours a day (40 hours in a week). Since the adoption of this rule, a significant number of town employees have become covered by union contracts, which clearly delineate rules of overtime for union members. Furthermore, the federal government has enacted the Fair Labor Standards Act (FLSA), which clearly spells out overtime requirements for most employees. As a result, the revocation of the Town's 1957 acceptance of General Laws Chapter 149, Section 33B will cause no one, who is currently earning overtime to lose it. The Human Resource Department and the Human Resources Board ensure strict adherence to all pay practices.

The only current impact of the law which will change is its provision of overtime benefits to a few senior level administrators (such as department heads and other upper level managers who are exempt employees under the FLSA. Those senior level employees have annual salaries based on the strictures of the Federal Labor Standards Act that exempt high-level executive and professional employees from overtime. Their salaries reflect their expected regular work beyond the typical 40-hour workweek. Thus,

continued application of Section 33B would provide duplicative additional compensation to those senior level employees.

As a result, the Town's Director of Human Resources, recommends favorable action on Warrant Article 13 which would revoke the Town's 1957 acceptance of Section 33B.

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: Sandra DeBow, Director of the Human Resources Department

To see if the Town will revoke its acceptance of General Laws Chapter 149, Section 33B, "Five day week and eight hour day for cities and towns; overtime; reduction of compensation,"

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

On March 26, 1957, the Annual Town Meeting accepted the provisions of G.L. c. 149, § 33B ("Section 33B"), a 1950 version of a local option overtime statute, which provides, in relevant part:

> "Except as otherwise provided in this section and notwithstanding any other provision of general or special law, the service of all persons employed by ... every town in which it shall be accepted by vote of the town at an annual town meeting, shall be restricted to five days and forty hours in any one week, and eight hours in any one day, and said eight hours shall be arranged to fall within a period of not exceeding nine consecutive hours; provided, that service in excess of the days and hours aforesaid may be authorized by an officer of such city or town or by any other person whose duty it is to employ, direct or control such employees, and such additional service shall be compensated for as overtime. This section shall not apply to policemen, firemen, school teachers, incumbents of offices specifically established by or under the authority of any general law or special act, or such other classes or groups of employees as from time to time may be specifically exempted therefrom in the manner provided for the acceptance of this section. ..."[1]

Accordingly, Section 33B requires the Town to pay some of its employees, including certain department heads and mid to upper-level managers, overtime compensation if they work more than a five day, forty-hour week, or more than eight hours per day.

The law specifically exempts police officers, firefighters, teachers, and other employees whose positions are "established by or under the authority of any general law or special act." In addition, the Town's adoption of Section 33B preceded the advent of public sector collective bargaining in Massachusetts, *see* 1960 Mass. Acts ch. 561 as amended,

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[1] The 1957 Town Meeting vote also excepted the positions of "Park Police, Police Matron," "Fire Alarm Operators-Fire Department," and "Golf Starter and Caddy Master."

and, under a law that was enacted in 1973, the provisions of a collective bargaining agreement govern when there is a conflict with Section 33B. *See* G.L. c. 150E, § 7(d)(i). Because the Town's collective bargaining agreements contain provisions related to work hours and overtime, employees in collective bargaining units are also, in effect, exempt from the operation of Section 33B.

The Town's adoption of Section 33B also preceded the enactment of state and federal labor laws relating to overtime compensation, which benefit Town employees. In 1960, the Massachusetts Legislature adopted the State overtime law. *See* 1960 Mass. Acts ch. 813, as amended, which requires employers to pay employees overtime compensation if they work more than 40 hours per week, except for employees who work "as a bonafide executive, or administrative or professional person." *See* G.L. c. 151, § 1A. In 1974, the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, was extended to municipal government employees. Like the State overtime law, the FLSA requires employers to pay employees overtime compensation if they work more than 40 hours per week, with the same exception carved out for executive positions.[2]

Thus, Section 33B currently applies largely to certain Town department heads and mid to upper-level managers, whose positions are not established by or under the authority of a general or special law, and to a number of part-time, hourly workers who are not in a bargaining unit but are otherwise covered by the Town's Living Wage By-Law[3] (e.g., Library Pages).

Since the Town's adoption of Section 33B in 1957, many employee wage and overtime protections have come into play. Therefore, should the Town revoke its acceptance of Section 33B, the majority of its employees would continue to enjoy the overtime protections of state and federal overtime laws, the Town's Living Wage By-law, and the wage and overtime protections contained in the Town's collective bargaining agreements, which are generally more generous than the overtime provisions of the FLSA.

Section 33B is outdated and is inconsistent with current state and federal laws pertaining to overtime compensation. It requires certain employees, who would otherwise be exempt from receiving overtime compensation, to be paid additional compensation for hours worked beyond a five day, forty-hour week or eight hour day, that neither they or the Town contemplated when their compensation levels were adjusted over the last two decades and is not received by their counterparts in other communities. These department heads and mid to upper-level managers fully understand and expect that they may be called upon to attend evening meetings and other work-related events on a regular or occasional basis, and that their current compensation levels reflect the ongoing reality

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[2] The case law suggests that because the Town adopted Section 33B, it is subject to that provision instead of the State overtime law, G.L. c. 151, § 1A. *See Lemieux v. City of Holyoke,* 740 F. Supp. 2d 246 (D. Mass. 2010); *Grenier v. Town of Hubbardston,* 7 Mass. App. Ct. 911, rescript (1979). If the Town were to revoke its acceptance of Section 33B, it would then be subject to the State overtime law.

[3] Article 4.8 of the Town's By-Laws, which became effective July 1, 2002.

that they may be required to work beyond a five day, forty-hour week, or eight-hour day, without receiving additional compensation.

For these reasons, the petitioners strongly recommend that the Town revoke its acceptance of Section 33B.

SELECTMEN'S RECOMMENDATION

Article 13 seeks the revocation by Town Meeting of an obscure statutory wage provision that was accepted at the March 26, 1957 Annual Town Meeting (M.G.L. c. 149, § 33B, herein referred to as "Section 33B"). This 1950's local option overtime statute preceded the enactment of public sector collective bargaining and state/federal wage (overtime) law in Massachusetts. It is not clear when this little-known wage provision fell out of use during the last two or three decades. In all likelihood it was deemed to have been superseded by the introduction of collective bargaining law, which resulted in the negotiation of collective bargaining agreements for most of the Town's employees that included overtime provisions that are more generous than the provisions in Section 33B. However, despite the Town's understanding that Section 33B had become obsolete, it continued in effect for many non-union employees.

Section 33B requires the Town to pay overtime compensation to department heads, division heads and other management personnel who are otherwise exempt from state and federal overtime eligibility. These employees are compensated within a salary plan that takes into consideration that they are required to work in excess of eight hours in a day or forty hours in a week. These executives and senior managers were not hired with any expectation of receiving overtime for professional and management service to the Town. Paying overtime in excess of 8 hours a day or 40 hours a week would be burdensome and significantly change the work schedules of these top managers who are called on to perform significant work for the Town outside the regular work week.

Other non-union employees are guaranteed overtime compensation after working 40 hours per week under the federal Fair Labor Standards Act. This includes a small group of full-time employees deemed "confidential employees" as well as a group of part-time employees who, by the nature of their part-time status, are not members of unions, (e.g. Library Pages and Lifeguards). Should Section 33B be revoked, we will recommend that the Human Resources Director initiate changes to the relevant Classification and Pay Plans to make these employees eligible to receive overtime when they work in excess of 8 hours in a day.

In addition to its application to otherwise exempt management employees, Section 33B results in significant inequities as it applies to certain other groups of employees. For example, the law expressly exempts police officers, firefighters, and teachers, park police, police matrons, fire alarm operators, and the golf starter and caddy master. It also

exempts those employees whose positions are "established by or under the authority of a general or special law." Hence, there is an inherent inequity in this law that is also cumbersome, as it would have to be updated on a fairly regular basis to determine to whom it applies and to whom it does not.

In summary, the revocation of this law does not harm the Town's unionized employees who are covered by collective bargaining agreements providing equal or greater overtime protection than Section 33B. For other non-union, non-management employees, the Town's personnel system is fully anticipated to be modified to grant such employees overtime eligibility consistent with unionized employees.

For the above stated reasons, the Board of Selectmen strongly and unanimously recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 1, 2013, on the following:

VOTED: that the Town revoke its acceptance of General Laws Chapter 149, Section 33B, "Five day week and eight hour day for cities and towns; overtime, reduction of compensation,".

Passed by a unanimous vote

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 13 seeks to repeal a local option statute which Brookline adopted in 1957. The statute – M.G.L. Chapter 149 Section 33B – authorizes the payment of overtime to certain municipal employees who work more than eight hours in a day (during a nine hour period) and more than forty hours in a five day period. The law was passed by the State Legislature and accepted by Town Meeting at a time before public sector collective bargain in Massachusetts and the passage of the federal Fair Labor Standards Act (FLSA) – Collective Bargaining (Ch. 151 S. 1A) was passed in 1960 and FLSA was passed in 1974. Chapter 149 Section 33B, then, was an early attempt by the Town of Brookline to ensure that Town employees were being treated fairly and that their compensation accurately reflected their dedication to the Town and its citizens. This explanation of the Town's adoption the overtime statute under discussion is supported by the absence of references to Chapter 149 Section 33B after 1960 when municipal collective bargaining became allowable and 1974 when FLSA became effective.

The Town was unaware that Chapter 149 Section 33B was in force in Brookline until several months ago when its existence was brought to the Town's attention during discussion of an employment situation. After learning of the law's existence, the Town's leadership decided to file Article 13 in order to revoke Brookline's acceptance of the statute.

It is believed that the provisions of Chapter 149 Section 33B pertain to the payment of overtime to 105 Town positions. The affected positions fall into four categories:

- Department heads and professional staff,
- So-called 'confidential employees,'
- Part-time employees (defined as employees working less than 18.5 hr/wk),
- Temporary/seasonal staff

It is important to understand that Chapter 149 Section 33B also applies to the Brookline Public Schools and some of its employees – teachers are specifically named as a group of employees not covered by this law. Because the Advisory Committee does not oversee the Schools' budget and because the School Department functions as a parallel organization to the Town, the Advisory Committee did not discuss in detail the potential impact of rescission of this statute on the School Department or its employees.

DISCUSSION:

The Advisory Committee was interested in the potential costs associated with keeping Chapter 149 Section 33B in force, and in the potential cost of future claims for previously worked uncompensated overtime. The Town is unable to supply complete answers to either of these questions. First, it is impossible to quantify the cost of work which employees may be called upon to complete in the future. There is no way to know what an eligible employee with be called upon to do next week or year and if assigned tasks would require an employee to work more than eight hours in a day or forty hours in a five day period. The question regarding the Town's potential liability is similarly impossible to answer because it assumes that weekly records of the time all employees worked exist. Many employees do not submit a weekly timesheet as the Town assumes they have worked their scheduled time and pays them accordingly. When a manual correction is made, it is only for an employee (or manager) to indicate that a vacation, sick or personal day was used. To estimate the potential outstanding overtime liability for the employees who do submit weekly timesheets, the Town would need to examine individual employees' time records for the last several years. This would be a time consuming task. And, would not reveal whether an employee worked more than eight hours in a day; only, potentially, whether they worked more than 40 hours in a week – for which hourly employees are currently paid overtime.

Members of the Advisory Committee expressed concern about the potential financial impact of rescission of the statute on Town employees. The Committee was told that the removal of Chapter 149 Section 33B from the laws governing the Town will not have a financial impact upon Town employees. This is true for several reasons:

- The Town's Collective Bargaining agreements contain more generous overtime provisions than employees are afforded under Chapter 149 Section 33B.
- Those employees who Chapter 149 Section 33B applies to and who are not covered by a collective bargaining agreement are not scheduled in a way that would allow them to work overtime.

- Temporary/seasonal staff is not scheduled to work overtime.
- If an employee outside of the 'department head/professional staff category' works overtime they are compensated in keeping with the provisions of the Collective Bargaining that covers union employees in their department doing similar work.

Some department heads and professional staff routinely work schedules that would qualify them for overtime payments under Chapter 149 Section 33B. These employees are expected to attend evening meetings to educate Brookline residents about their departments, to testify before Town Boards or Commissions, and/or to carry out their jobs. The argument was made by the Petitioner that, while Chapter 149 Section 33B applies to these employees, the Town does not currently consider them non-exempt employees or non-salaried employees. The pay and benefits package the department heads and professional staff in question receive is in line with exempt FLSA covered employees. Practically, this means they are hired with the expectation that they will attend evening meetings; their compensation reflects the expectation that they will have evening work obligations; and, they do not file weekly timesheets on which their compensation is based.

Based on the information collected, the Advisory Committee concluded that the department heads and professional staff are fairly compensated and removing their ability to collect overtime is of no concern. The remaining groups of employees, in the opinion of the Advisory Committee, will be fairly compensated for their work when the Town effects a change to its classification plan.

During the subcommittee hearing process, concern was raised about the fact that it is not the Town's practice to pay the effected employees overtime if they work more than eight hours in a day. The Subcommittee's concern prompted the Town to commit to adopting a policy of paying non-union employees overtime for any work they do beyond eight hours in a single day. The Town's plan would exclude department heads and professional staff. The policy will be written into the Town's classification plan. Some employees may begin to receive overtime for work they are currently doing because of this change in policy and without any change to their job or responsibilities. It is important to understand that these employees should be receiving overtime today if they work more than eight hours in a day because of Chapter 149 Section 33B and may not. Town staff spoke to the Superintendent of Schools about how the School Department would address this issue and where told that the schools need additional time to study the issues but are "inclined" to adopt a similar practice should Chapter 149 Section 33B be rescinded by Town Meeting.

The Advisory Committee wondered how a request from an employee to work additional hours one day and to come in late or leave early on another day would be handled under the policy the Town proposed. For example, an employee might ask to stay an hour late on Monday and come in an hour late on Tuesday. This type of request would, under the proposed policy, result in overtime being paid to the employee. The Committee heard that the Town works hard to minimize the amount of overtime it pays to its employees,

and therefore, there is no guarantee that such a request could be granted. Ms. DeBow, however, informed the Advisory Committee that under the proposed policy the request envisioned could still be honored albeit without overtime being paid. The employee would retain the ability to request compensatory time. Ms. DeBow also noted that the employee has rights to excused time away from work under the federal Family Medical Leave Act (FMLA) and the state's Small Necessities Leave Act.

RECOMMENDATION:
While the adoption by Brookline of Chapter 149 Section 33B in 1957 was progressive at the time, its provisions, particularly in light of FLSA and collective bargaining, renders the statute outdated and poses a significant potential liability to the town. As such, it should be repealed.

The Advisory Committee by a vote of 19-0-0 voted FAVORABLE ACTION on the motion offered by the Board of Selectmen.

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ARTICLE 14

FOURTH ARTICLE

Submitted by: Sundar Srinivasan

To see if Town Meeting will request the Board of Selectmen or their designee to conduct an annual review of the Town's Pension and Retiree Healthcare liabilities in the following manner, such review to be published as an appendix to the annual Town Budget: First, by using the same methods and providing the same disclosure as US public companies. Second, by using the same methods, but calculating the cost to the Town assuming the Town does not want to assume investment risk, by setting the investment return and discount rate assumptions to the rate available on US government bonds with a duration closest to that of the Town's liabilities,

or take any action related thereto.

PETITIONER'S ARTICLE DESCRIPTION

Understanding the Town's long term pension and healthcare liabilities is complex. Any forecast hinges on multiple assumptions playing out as projected over decades to come. If the actual path diverges from forecast, in some cases even just slightly, the impact to the town's finances could be enormous.

By comparison, understanding Brookline's debt obligations, their cost and maturities is fairly straight forward. The object of this resolution is to provide decision makers and citizens studying the town's finances with the requisite information to translate the town's pension and healthcare liabilities into present value amounts comparable to the town's other liabilities.

Having this information will empower decision makers and citizens with greater information as they seek to evaluate and understand current and future financial plans.

SELECTMEN'S RECOMMENDATION

Article 14 is a petitioned article that asks the Board of Selectmen to conduct an annual actuary analysis of the Town's Pension and Retiree Healthcare (OPEB) liabilities in a manner that differs from the current calculation that is prepared every two years under the Government Accounting Standards Board's (GASB) standards. The Article specifies that

the analysis be conducted in two ways: (1) by using methods and providing the same disclosure as US public companies and (2) by using the same method but calculating the cost at a minimum risk, using US Government 30-year bond rates (approximately 3.75%).

The Town has transferred control of these two funds to Boards that oversee the actuary analysis and investment strategy. The independent and autonomous Retirement Board and Retiree Health Board (OPEB) Board follow Generally Accepted Accounting Practices (GAAP) that, in the public sector, are established by GASB. In the private sector, the guidelines are established by the Financial Accounting Standards Board (FASB). The primary difference between the public and private sector accounting guidelines is that under GASB, an actuary analysis is required to be conducted at the least biennially, while the FASB guidelines require the analysis to be conducted annually. Once prepared by the actuary, the information is made public by the Retirement Board and Retiree Health Board (OPEB) Board and submitted to the State's Public Employee Retirement Administration Commission (PERAC) for approval. In addition, all required disclosures are included in the annual year-end audit and the information is included in the Official Statement (OS) that is presented when the Town is planning on floating bonds for capital projects.

Currently, the actuary analysis for both funds uses an estimated rate of return assumption of 7.75%. There are 105 local Retirement Boards in the Commonwealth and approximately 50% of them use an estimated rate of return assumption of 7.75%; another 48% use an assumption of 8.00%; and the rest use assumptions either higher or lower than those. The Brookline Retirement Board reduced its estimated rate of return in the last actuary analysis and is considering reducing it further in the next analysis, scheduled to begin after January 1, 2014 and be completed by June, 2014.

The Town's Finance Director spoke with the actuary regarding the effect upon the unfunded pension liability if the Retirement Board were to reduce the estimated rate of return from the current 7.75% to 3.75%, the rate suggested by the Petitioner. Using the most recent analysis and substituting the more conservative rate for the current rate, the unfunded liability for pensions would increase by $222.2 million, from our current unfunded liability of $176.1 million to $398.3 million. It would have changed the amount required for funding in the Town's FY14 annual operating budget from the $17.2 million appropriated to a new amount of $49.1 million. This clearly shows the significant impact the assumed rate of return has on the Town's unfunded liabilities.

While reviewing the article with the Petitioner and Finance Director, it became apparent that the primary goal of the petitioner is to provide additional information regarding unfunded pension and OPEB liabilities, thereby further educating the general public on the importance of these issues. The Selectmen share the goal of the Petitioner. The Finance Director, as a member of the Retirement Board and the chair of its actuary sub-committee, has agreed to have the actuary run the liabilities under both the GASB-required methodology and under the more conservative approach suggested by the

Petitioner. Those results will be included in the Town's annual Financial Plan where the pension appropriation is discussed.

As a result, the Petitioner recommended a No Action vote on the article. By a vote of 5-0 taken on October 8, 2013, the Selectmen recommend NO ACTION.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 14, submitted by Sundar Srinivasan, has the principal purpose of providing to Town Meeting additional financial information regarding the Town's pension and healthcare obligations. Specifically, Article 13 proposes to ask the Board of Selectmen or their designee to conduct an annual review of the Town's Pension and Retiree Healthcare liabilities in the following manner, such review to be published as an appendix to the annual Town Budget: First, by using the same methods and providing the same disclosure as US public companies. Second, by using the same methods, but calculating the cost to the Town assuming the Town does not want to assume investment risk, by setting the investment return and discount rate assumptions to the rate available on US government bonds with a duration closest to that of the Town's liabilities.

Subsequent to the filing of the warrant the Petitioner determined to request a vote of 'No Action' on the Article. The Petitioner came to this decision after discussions with finance officials of the Town who pledged to perform the requested calculations and to include the information in the annual budget.

DISCUSSION:
The Petitioner rightly states that understanding the Town's long term pension and healthcare liabilities is a complex exercise and that any forecast of future inflows and outflows hinges on multiple assumptions and a horizon of several decades. Because it is virtually axiomatic that future flows will differ from forecasts it is reasonable to suggest that Town Meeting and policymakers have additional information that might provide answers to the question of 'what if'.

The Article would accomplish this by 1.) having the Town report its projections on the same basis as public companies do (annual versus current every other year) and 2.) providing alternative projections using a rate of return on invested funds equal to the rate of return on U.S. Treasury obligations with a similar duration to the Town's obligations. Treasury securities are considered 'riskless' assets and their use in projections would provide a lower boundary for policymakers that would underscore the potential magnitude of our obligations if the assumed rate of return (currently 7.75%) were not achieved.

The Town forecasts every other year because the Town follows the accounting guidelines of the Government Accounting Standards Board (GASB) while public companies follow

the Financial Accounting Standards Board (FASB) and Generally Accepted Accounting Principles (GAAP). GASB calls for every other year projections while GAAP calls for annual projections.

With respect to the alternate scenario using a Treasury rate of return, finance professionals from the Town stated it would be easy for the requested information to be calculated and pledged to provide the results of such an analysis to the Town Administrator for inclusion in the budget in both numerical and graphical formats.
As the Article is written in the form of a request to the Selectmen and would not be binding in any event, the Petitioner has decided to ask for No Action on the Article and to instead rely on assurances that the requested information will be made available to the parties responsible for preparing the budget.

RECOMMENDATION:
By a unanimous vote of 19-0-1, the Advisory Committee recommends NO ACTION on Article 14.

A Vote of No Action was passed by a Unanimous Vote

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ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: Ruthann Sneider

To see if Town Meeting will request the Board of Selectmen to require that the Building Commissioner specify in all decisions or rulings relating to condominium common areas a date by which any action required pursuant to such a decision or ruling must be taken.

PETITIONER'S ARTICLE DESCRIPTION

In a recent decision regarding a duplex condominium in which a fire exposed an illegal apartment, the Building Commissioner ordered new construction, which was non-compliant with M.1 zoning, dismantled from the adjacent, condominium common area porch, but did not set a date certain for its removal. Instead, the Building Commissioner set conditions of use on the non-compliant owner, "As long as the attic remains unfinished and is used for storage purposes only the stairways can remain... " He further determined that the non -complaint staircase in the condominium common area, could remain in place until such time as the unit owner decided to make "any future renovations" to his unit.

Decisions by the Building Commissioner relating to condominium common areas are of equal importance to all members of an association whose enjoyment of their property and sometimes the monetary value of that property are affected by the outcome. Requiring a date certain for the enforcement of such a decision assures the equal right of all parties to a timely resolution and the justice inherent in the decision.

SELECTMEN'S RECOMMENDATION

Article 15 is a petitioned article that requests the Board of Selectmen to require that the Building Commissioner specify in all decisions or rulings relating to condominium common areas a date by which any action required pursuant to such a decision or ruling must be taken. The Petitioner has informed the Board that she does not intend upon moving any motion under the article. Therefore, the Selectmen recommend NO ACTION, by a vote of 5-0 taken on October 22, 2013, on Article 15.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 15 is a citizens' petition, asking the Board of Selectmen to request that the Building Commissioner specify a date certain by which time all required action stipulated in his decision or ruling related to condominium common areas must take place.

BACKGROUND:
To a large degree, the genesis of Article 15 is a case that came before the ZBA related to 147 Brook Street, a 3-unit building with a stairway accessing the attic from the third floor. Several years ago, two different parties occupied the third floor and the attic. A fire (in the spring of 2010) revealed the fourth attic unit. In August a request to remodel the top floor and to create a fourth living unit was denied. The case was reviewed by the Planning Board which did not recommend the necessary relief to create a fourth unit. The ZBA heard the case but upon request of the owner's attorney, agreed to continue the hearing. The case has not returned to the ZBA.

Because the attic is no longer occupied, is currently unfinished, and is used only for storage purposes, the Building Commissioner has determined that there is no violation to correct and that no action is warranted at this time.

DISCUSSION:
Any order issued by the Building Commissioner that requires corrective action already stipulates that the work be started within 30 days. The ZBA's decision to continue the case without specifying a return date, which added to the complexity of the situation, is being addressed with a proposed revision to the ZBA's policies and procedures precluding indefinite continuances of cases.

Because what is specifically being requested by Article 15 already exists (with a 30-day requirement in all orders finding violations and ordering corrective action) and because the petitioner has stated that she will not move her article at Town Meeting, the Advisory Committee finds no need for further action. The Committee strongly urges the ZBA to adopt a policy that would not allow open-ended continuances of hearings.

RECOMMENDATION:
By a vote of 23-0-1, the Advisory Committee recommends NO ACTION on Article 15.

A vote of No Action was passed by a majority vote

XXX

ARTICLE 16

RED-LINED VERSION OF THE ADVISORY COMMITTEE'S VOTE

For reference, we have provided a "redline" version of the differences between the petitioner's wording and the wording adopted by the Advisory Committee:

WHEREAS: The Human Relations – Youth Resources Commission, ~~the Town agency charged with advancing civil rights and race relations,~~ has ~~seven~~ eight vacancies on its 15 member board and eight members constitute a quorum.

~~**WHEREAS:** A racially diverse membership is critical to achieving the Commission's mission.~~

~~**WHEREAS:** Three qualified applicants have applied and are awaiting appointment to the Commission; two are Black and one is Latino.~~

~~**WHEREAS:** Many of the Town's 38 standing Boards, Commissions, and Committees would benefit from a more diverse composition, and the Human Relations Commission has the opportunity to lead by example with these applicants.~~

WHEREAS: Every Town Board, Commission, and Committee requires a quorum to lawfully and democratically make decisions and work effectively, and vacancies on the Human Relations – Youth Resources Commission have made it virtually impossible for it to achieve a quorum and meet its charge.

~~**WHEREAS:** Every Board, Commission and Committee should be encouraged to fulfill its charge, and the Bylaw charging the Human Relations Commission with advancing civil rights and race relations is valid until abrogated or amended by Town Meeting.~~

~~**WHEREAS:** The Selectmen's Committee on Diversity has yet to develop recommendations for amending the Commission's Bylaw and any such recommendations will not be voted on by Town Meeting until at least the spring of 2014.~~

~~**WHEREAS:** The Committee for Town Organization and Structure has recommended to the Board of Selectmen that the Commission "be brought up to full strength as soon as practically possible" on the grounds that "keeping the Commission with vacancies for another year is not consistent with the Town's longstanding commitment to its functions and advocacy."~~

WHEREAS: The Board of Selectmen is ~~are~~ charged by the Commission's Bylaw with making appointments to the Commission.

NOW, THEREFORE, BE IT RESOLVED THAT: Town Meeting urges the Board of Selectmen to take the necessary steps to appoint a full complement of members to the Commission, preferably including residents from diverse backgrounds and areas of expertise, so that a quorum can be gathered with reasonable certainty, while acknowledging that the Commission's mission and structure may be changed as a result of the pending report from the Selectmen's Committee on Diversity. ~~the three outstanding applicants to the Commission and subsequent qualified applicants until the Commission is at full strength.~~

(1.) Passed as the Substitute Main Motion by an Electronic Recorded Vote of 124 In Favor 63 Opposed and 7 Abstentions

(2.) Passed as the Main Motion by a Counted Vote of 183 In Favor and 15 Opposed

ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: The Diversity Committee of the Human Relations Commission (Brooks Ames, Mariela Ames, Larry Onie, Georgi Vogel Rosen)

To see if the Town will adopt the following resolution:

WHEREAS: The Human Relations Commission, the Town agency charged with advancing civil rights and race relations, has seven vacancies on its 15 member board and eight members constitute a quorum.

WHEREAS: A racially diverse membership is critical to achieving the Commission's mission.

WHEREAS: Three qualified applicants have applied and are awaiting appointment to the Commission; two are Black and one is Latino.

WHEREAS: Many of the Town's 38 standing Boards, Commissions, and Committees would benefit from a more diverse composition, and the Human Relations Commission has the opportunity to lead by example with these applicants.

WHEREAS: Every Town Board, Commission, and Committee requires a quorum to lawfully and democratically make decisions and work effectively, and vacancies on the Human Relations Commission have made it virtually impossible for it to achieve a quorum and meet its charge.

WHEREAS: Every Board, Commission and Committee should be encouraged to fulfill its charge, and the Bylaw charging the Human Relations Commission with advancing civil rights and race relations is valid until abrogated or amended by Town Meeting.

WHEREAS: The Selectmen's Committee on Diversity has yet to develop recommendations for amending the Commission's Bylaw and any such recommendations will not be voted on by Town Meeting until at least the spring of 2014.

WHEREAS: The Committee for Town Organization and Structure has recommended to the Board of Selectmen that the Commission "be brought up to full strength as soon as practically possible" on the grounds that "keeping the Commission with vacancies for another year is not consistent with the Town's longstanding commitment to its functions and advocacy."

WHEREAS: The co-chairs of Brookline PAX have called on the Board of Selectmen to promptly fill the vacancies on the Commission, noting that "for years, minorities have been under-represented on the commission that would most benefit from their experience and knowledge."

WHEREAS: The Board of Selectmen are charged by the Commission's Bylaw with making appointments to the Commission.

WHEREAS: The Board of Selectmen have not yet acted on the three outstanding applications to the Commission, which have been pending since April 2013.

NOW, THEREFORE, BE IT RESOLVED THAT: Town Meeting urges the Board of Selectmen to take the necessary steps to appoint the three outstanding applicants to the Commission and subsequent qualified applicants until the Commission is at full strength.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article seeks a resolution urging the Board of Selectmen to take the necessary steps to appoint the three outstanding applicants to the Human Relations Commission and subsequent qualified applicants until the Commission is at full strength. The basis for the article is set out in the "Whereas" clauses above.

MOTION TO BE OFFERED BY THE PETITIONERS

VOTED: That the Town adopt the following resolution:

WHEREAS: The Human Relations Commission, the Town agency charged with advancing civil rights and race relations, has seven vacancies on its 15 member board and eight members constitute a quorum.

WHEREAS: A racially diverse membership is critical to achieving the Commission's mission.

WHEREAS: Three qualified applicants have applied and are awaiting appointment to the Commission; two are Black and one is Latino.

WHEREAS: Many of the Town's 38 standing Boards, Commissions, and Committees would benefit from a more diverse composition, and the Human Relations Commission has the opportunity to lead by example with these applicants.

WHEREAS: Every Town Board, Commission, and Committee requires a quorum to lawfully and democratically make decisions and work effectively, and vacancies on the Human Relations Commission have made it virtually impossible for it to achieve a quorum and meet its charge.

WHEREAS: Every Board, Commission and Committee should be encouraged to fulfill its charge, and the Bylaw charging the Human Relations Commission with advancing civil rights and race relations is valid until abrogated or amended by Town Meeting.

WHEREAS: The Selectmen's Committee on Diversity has yet to develop recommendations for amending the Commission's Bylaw and any such recommendations will not be voted on by Town Meeting until at least the spring of 2014.

WHEREAS: The Committee for Town Organization and Structure has recommended to the Board of Selectmen that the Commission "be brought up to full strength as soon as practically possible" on the grounds that "keeping the Commission with vacancies for another year is not consistent with the Town's longstanding commitment to its functions and advocacy."

WHEREAS: The co-chairs of Brookline PAX have called on the Board of Selectmen to promptly fill the vacancies on the Commission, noting that "for years, minorities have been under-represented on the commission that would most benefit from their experience and knowledge."

WHEREAS: The Board of Selectmen are charged by the Commission's Bylaw with making appointments to the Commission.

WHEREAS: The Board of Selectmen have not yet acted on the three outstanding applications to the Commission, which have been pending since April 2013.

NOW, THEREFORE, BE IT RESOLVED THAT: Town Meeting urges the Board of Selectmen to take the necessary steps to appoint the three outstanding applicants to the Commission and subsequent qualified applicants until the Commission is at full strength.

Explanation:
This article seeks a resolution urging the Board of Selectmen to take the necessary steps to appoint the three outstanding applicants to the Human Relations Commission and subsequent qualified applicants until the Commission is at full strength. The basis for the article is set out in the "Whereas" clauses above.

SELECTMEN'S RECOMMENDATION

Article 16 is a petitioned Resolution calling for the Board of Selectmen to make appointments to the Human Relations-Youth Resources Commission (HR/YRC).

This past March, the Selectmen established a special study committee, the Committee on Diversity, Equal Employment Opportunity and Affirmative Action (the Diversity Committee), charged with reviewing the 1970 by-law that established the HR/YRC in the light of changes in federal, state and local statutes and regulations over the intervening 42

years. Some responsibilities have been shifted to other departments, such as, under Article 4.4 of the Town's By-Laws (Fair Employment Practices with regard to Contracts) to the Purchasing Division of the Finance Department. At the same time, the Commission was going through a transition when its long-time director retired. In May 2013, Town Meeting rejected petitioned Warrant Article changes in the HR/YRC By-Law as premature, recognizing the probability that the Diversity Committee is likely to recommend improvements to the HR/YRC By-Law for action at the Annual Town Meeting in May of 2014.

Due to the uncertainty of the nature of these changes, the Board of Selectmen decided to defer making appointments to fill vacancies on the Commission until the Diversity Committee's work is complete. This decision was based upon the possibility that the scope and charge to the HR/YRC might be modified, and that the type of qualifications or other appointment criteria that the Diversity Committee may recommend could be quite different compared to the qualifications required under the current Commission By-Law.

During the last few months, because of multiple resignations, additional vacancies on the Commission have occurred. The Board of Selectmen acknowledges that the increased number of vacancies has resulted in an unacceptable situation (the Commission no longer has a quorum necessary to meet) and has begun steps to recruit and consider applicants to fill these vacancies.

The Board opposes the petitioners' Resolution because it calls for specific applicants to be appointed. The Board considers the Resolution proposed by the Advisory Committee as a more reasonable approach. Since the warrant article is a petition directed to the Board of Selectmen, by a vote of 5-0 taken on October 29, 2013, the Board of Selectmen decided to abstain from any recommendation to Town Meeting under Article 16.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 16 is a non-binding resolution urging the Selectmen to fill open seats on the Human Relations/Youth Resources Commission, and to name three specific applicants to the Commission.

BACKGROUND:

The by-laws covering the role of the Human Relations/Youth Resources Commission ("HR/YR Commission") and the closely related Human Relations/Youth Resources position in Town Hall were passed in 1970. Meanwhile, times, Brookline's make-up, laws and society have changed. In that same time, however, we have neglected to thoughtfully reassess, refocus or redefine the role and mission of the Commission to reflect those changes. Much has changed since 1970 with respect to the original responsibilities of the HR/YR Commission and some of the responsibilities of the Commission have been taken over by other departments. A Selectmen's committee is now considering the charge, structure and mission of the Commission and how it relates to our community needs.

Both the 1970 by-law and the staff position were the subject of competing articles at the May 2013 Town Meeting. The staffing recommended by Article 9 was adopted, but TM asked for a report by May 2014 on whether and how the staffing arrangements and the underlying by-law should be revised. The Selectmen's Committee on Diversity was appointed to make a recommendation.

The by-law that created the HR/YR Commission calls for 15 members. In April 2012, there were 12 commissioners. In January 2013 the Selectmen decided not to fill open positions on the HR/YR Commission because the role and perhaps the size of the Commission seemed likely to change once TM received the Selectmen's Committee report. Additionally, several members of the Commission resigned, leaving only seven active members, so the Commission has been unable to function due to a lack of a quorum. Article 16 seeks to remedy this so that the Commission can resume functioning, and it also requests the appointment of three specific people who have applied for appointment – though those people are not identified in the resolution.

DISCUSSION:

The petitioners made the case that the Selectmen are mandated to appoint 15 members to the Commission, and they pointed out the difficulties inherent in not having enough members to constitute a quorum. They also pointed out that the Commission has had very few members who are people of color, a state of affairs that they believe is not appropriate on a commission whose tasks include promoting minority rights.

Selectmen DeWitt and Daley provided input to the AC's Article 16 ad hoc subcommittee. One issue noted is that if the role and number of commissioners change, anyone appointed to a three-year term could be left in limbo. However, it seems reasonable to think that the Selectmen could make temporary appointments, and they have the power to remove commissioners before their three-year appointments are up. The Selectmen emphasized that there was never any intent to leave the Commission unable to operate. They expressed concern that they might have difficulty finding enough qualified applicants to fill all of the open positions on the Commission. As of late October, there were seven or more applicants for positions on the HR/YR Commission.

The Advisory Committee endorsed the idea of asking the Selectmen to bring the HR/YR Commission membership up to full strength so that it is more likely to achieve a quorum. But the AC felt strongly that the selection of members for boards and commissions was the right and responsibility of the Selectmen and that it would be a bad precedent for TM to recommend specify the appointment of specific individuals. Especially, as this resolution does not specify the names or qualifications of the applicants. Town Meeting has not reviewed the applications or interviewed these or any other potential candidates. To ask Town Meeting to essentially grant its imprimatur blindly struck the Advisory Committee as wholly inappropriate. Therefore the Advisory Committee voted to amend the petitioner's language so as to request that the Selectmen fill the Commission's empty slots without, however, specifying that any specific people should be appointed.

The Advisory Committee also discussed reports that there was a high level of tension among Commission members resulting in some leaving, and an amendment was

discussed that would have asked the Selectmen to seek people would act in a collegial manner. However, the amendment was withdrawn because it was pointed out that the terminology could be misinterpreted or misconstued and act to restrict people who wish to speak up forcefully for a cause – an attribute one may want on a given Board, Committee or Commission. It was noted, though, that a base level of respect and collegiality among members of any committee is essential to constructive discourse.

Some members also questioned the utility in appointing new members to a commission that may well be reconstituted or restructured in the spring after the Selectmen's Committee on Diversity issues its report. Most members, however, felt it was unfair to ask the Commission to attempt meaningful work when it could not muster a quorum; and that it was incumbent upon the Board of Selectmen to strive to fill its membership.

RECOMMENDATION:
The Advisory Committee voted 24-1-0 to support favorable action on the following amended version of Article 16:

WHEREAS: The Human Relations – Youth Resources Commission has eight vacancies on its 15 member board and eight members constitute a quorum.

WHEREAS: Every Town Board, Commission, and Committee requires a quorum to lawfully and democratically make decisions and work effectively, and vacancies on the Human Relations – Youth Resources Commission have made it virtually impossible for it to achieve a quorum and meet its charge.

WHEREAS: The Board of Selectmen is charged by the Commission's Bylaw with making appointments to the Commission.

NOW, THEREFORE, BE IT RESOLVED THAT: Town Meeting urges the Board of Selectmen to take the necessary steps to appoint a full complement of members to the Commission, preferably including residents from diverse backgrounds and areas of expertise, so that a quorum can be gathered with reasonable certainty, while acknowledging that the Commission's mission and structure may be changed as a result of the pending report from the Selectmen's Committee on Diversity.

Redline Version: For reference, we have provided a "redline" version of the differences between the petitioner's wording and the wording adopted by the Advisory Committee:

WHEREAS: The Human Relations – Youth Resources Commission, ~~the Town agency charged with advancing civil rights and race relations,~~ has ~~seven~~ eight vacancies on its 15 member board and eight members constitute a quorum.

~~**WHEREAS:** A racially diverse membership is critical to achieving the Commission's mission.~~

~~**WHEREAS:** Three qualified applicants have applied and are awaiting appointment to the Commission; two are Black and one is Latino.~~

~~**WHEREAS:** Many of the Town's 38 standing Boards, Commissions, and Committees would benefit from a more diverse composition, and the Human Relations Commission has the opportunity to lead by example with these applicants.~~

WHEREAS: Every Town Board, Commission, and Committee requires a quorum to lawfully and democratically make decisions and work effectively, and vacancies on the Human Relations – Youth Resources Commission have made it virtually impossible for it to achieve a quorum and meet its charge.

~~**WHEREAS:** Every Board, Commission and Committee should be encouraged to fulfill its charge, and the Bylaw charging the Human Relations Commission with advancing civil rights and race relations is valid until abrogated or amended by Town Meeting.~~

~~**WHEREAS:** The Selectmen's Committee on Diversity has yet to develop recommendations for amending the Commission's Bylaw and any such recommendations will not be voted on by Town Meeting until at least the spring of 2014.~~

~~**WHEREAS:** The Committee for Town Organization and Structure has recommended to the Board of Selectmen that the Commission "be brought up to full strength as soon as practically possible" on the grounds that "keeping the Commission with vacancies for another year is not consistent with the Town's longstanding commitment to its functions and advocacy."~~

WHEREAS: The Board of Selectmen is ~~are~~ charged by the Commission's Bylaw with making appointments to the Commission.

NOW, THEREFORE, BE IT RESOLVED THAT: Town Meeting urges the Board of Selectmen to take the necessary steps to appoint a full complement of members to the Commission, preferably including residents from diverse backgrounds and areas of expertise, so that a quorum can be gathered with reasonable certainty, while acknowledging that the Commission's mission and structure may be changed as a result of the pending report from the Selectmen's Committee on Diversity. ~~the three outstanding applicants to the Commission and subsequent qualified applicants until the Commission is at full strength.~~

XXX

ARTICLE 17

Add!

NON-RED-LINED VERSION OF THE PETITIONERS' MOTION

~~To see if~~ That the Town ~~will~~ adopt the following resolution:

WHEREAS we as a people and a nation must honor our commitment to act as a constructive force within the community of nations;

WHEREAS human progress resides in respect for international law and for the sovereignty of nations, and as the strongest of these nations the United States has a special responsibility to uphold and abide by broadly supported principles of international law—especially those embodied in the United Nations Charter;

WHEREAS our numerous recent extra-treaty military interventions have resulted in many deaths and injuries and have wrested funding from a wide range of pressing domestic needs; and

WHEREAS the desire of people the world over is to feel safe and secure, and the surest long-term path to safety and security, both domestic and foreign, is through collaborative efforts under international law—not through unilateralism; now, therefore, be it

RESOLVED, that Town Meeting commends the Obama administration for choosing diplomacy and negotiations to resolve the Syrian conflict, and urges it to continue vigorously pursuing this course instead of carrying out a unilateral attack as originally proposed; and be it further

RESOLVED, that Town Meeting requests that this resolution be transmitted promptly to President Obama and to Brookline's congressional delegation.

~~Or act on anything relative thereto.~~

Passed by a majority vote

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 17 is a resolution opposing unilateral United States intervention in the Syrian conflict. At the time of drafting this Warrant Article, there were recent reports of the Syrian government using chemical weapons on its own citizens, with resulting deaths to many innocent people including children. When it was first discussed, in September, the British Parliament had recently defeated a proposal by the British government for

military action in Syria. In the United States, the American administration was also exploring options for military intervention, and President Obama was publicly debating whether he had the right as commander-in-chief to order a strike without congressional approval. When the President decided to seek approval from Congress, it became clear that Congress was not enthusiastic. Subsequently, diplomacy prevailed, with the Syrian government agreeing to inspections and destruction of chemical weapon production sites.

This brief summary trivializes the potential national and international crisis if the United States were to take unilateral military action. However, it describes the changing circumstances in a complex international conflict situation and the events influencing the Resolution.

Several members of the Board of Selectmen were concerned about the original language that referred to the United Nations Charter and suggested that our country could never act alone, no matter how egregious the behavior of an offending foreign ruler. In fact, it was the credible threat of action when dealing with a government that would indiscriminately annihilate its citizens in a civil war, which led to the diplomatic solution in this case. Mindful of other examples of unchecked genocide, the Board asked the Petitioners to make some language changes, which they did. All agreed that an international diplomatic solution is the best outcome, and that cooperation in enforcing the Organization for the Prohibition of Chemical Weapons inspections and the destruction of chemical weapon stockpiles in Syria is critical going forward.

The Board of Selectmen recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 5, 2013, on the motion offered by the Petitioners.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

DISCUSSION:

In its original consideration of Article 17, the Advisory Committee was torn as to the necessity or advisability of the proposed resolution. Many members postulated that the Committee should not even offer a recommendation on such a resolution of conscience.

After much debate and redaction of many of the resolution's original clauses - in particular the removal of reference to military action on the part of the United States - the Committee recommended a significantly reduced motion. While that motion prevailed, it was not without trepidation on both sides.

Many members continue to feel there is merit in the proposal in that it conveys a valuable and principled message to our elected federal officials. Others feel that it is weak,

unnecessary or unwarranted. And as stated in the Advisory Committee's earlier report, members question the relevancy of the article as the concern for unilateral military action has dissipated.

RECOMMENDATION:

After discussing many of our earlier concerns and upon reflection and reconsideration of our original motion, the Committee, by a close vote of 8 in favor and 10 opposed, recommends No Action on Article 17.

ARTICLE 17

SEVENTEENTH ARTICLE

Submitted by: John Bassett, Frank Farlow, David Klafter, M K Merelice

To see if the Town will adopt the following Resolution:

WHEREAS we as a people and a nation must honor our commitment to act as a constructive force within the community of nations;

WHEREAS human progress resides in respect for international law and for the sovereignty of nations, and as the strongest of these nations the United States has a special responsibility to uphold and abide by broadly supported principles of international law—especially those embodied in the United Nations Charter;

WHEREAS the U.N. Charter decrees that (1) no nation can use military force except in self-defense (Articles 39 and 51), (2) the Security Council is the only body that can authorize the use of force (Art. 24; Ch. VII), and (3) only the Security Council can decide what action can be taken to maintain or restore international peace and security (Art. 39);

WHEREAS there is no serious and imminent threat of an attack on the U.S. by the Syrian government, and the U.N. has not determined that collective action is necessary against Syria;

WHEREAS on August 28, when the U.N. Secretary General pleaded for more time for diplomacy,[1] the five permanent members of the Security Council failed to reach agreement on a resolution proposed by Britain allowing the use against the Syrian government of "all necessary measures under Chapter 7 of the UN Charter to protect civilians from chemical weapons;"[2]

WHEREAS two days after the British administration presented its resolution to the Security Council, the British Parliament defeated Prime Minister Cameron's motion to participate in military action against Syria;[3]

WHEREAS although the French administration said the British Parliament's vote did not change its own resolve on the need to act in Syria[4], a late-August poll revealed that most French people did not want their country to take part in military action;[5]

WHEREAS in mid-May more than 70 countries refused to approve an Arab-backed resolution against Syria in the U.N. General Assembly,[6] and as of late August more than ten NATO countries "definitely" refused any form of involvement in the U.S.-proposed military operation;[7]

WHEREAS although U.S. and British officials claimed there was little doubt that Syrian President Bashar al-Assad's forces were responsible for the August 22 chemical attacks near Damascus, the head of the U.N. said its inspectors in Syria needed time to establish the facts;[8]

WHEREAS the United States has no treaty obligation to intervene in the Syrian civil war;

WHEREAS President Obama nevertheless recommended that Congress move forward with limited military retaliation against the Syrian regime without waiting for U.N. forensic inspectors to complete their investigation, and without U.N. support;[9]

WHEREAS our numerous recent extra-treaty interventions, starting with Vietnam, have resulted in many deaths and injuries and have been expensive beyond measure—in supporting military actions, in subsequent reconstruction, and in providing medical care for those who have fought—wresting funding from an ever-increasing range of pressing domestic needs;

WHEREAS the desire of people the world over is to feel safe and secure, and the surest long-term path to safety and security, both domestic and foreign, is through collaborative efforts under international law—not through unilateralism; now, therefore, be it

RESOLVED, that the Town Meeting of Brookline, Massachusetts, assembled this 19th day of November, 2013, believes that an attack on Syria by the United States is not justified; be it further

RESOLVED, that If such an attack has not occurred at the time of the vote on this Resolution, Town Meeting commends the Obama administration for its restraint; be it further

RESOLVED, that if such a unilateral attack has occurred at the time of this vote, Town Meeting urges that any military action still in progress be stopped immediately in favor of working diplomatically with the Syrian government and opposition to convene an international conference working towards a cease fire and political process; and be it further

RESOLVED, that Town Meeting requests that this resolution be transmitted promptly to President Obama and to Brookline's congressional delegation.

[1] http://www.theglobeandmail.com/news/world/un-confirms-substance-in-syria-attack-says-military-response-requires-security-council-approval/article13994275/

[2] http://www.cbsnews.com/8301-202_162-57600384/syria-resolution-authorizing-military-force-fails-in-u.n-security-council/ and http://www.thehindu.com/news/international/world/uk-wants-all-necessary-measures-authorised-at-un/article5068022.ece

[3] http://www.npr.org/blogs/thetwo-way/2013/08/29/216933582/british-parliament-rejects-syria-intervention-in-symbolic-vote

[4] http://www.google.com/search?client=safari&rls=en&q=the+UK's+vote+does+not+change+its+resolve+on+the+need+to+act+in+Syria3&ie=UTF-8&oe=UTF-8

[5] http://www.theguardian.com/world/2013/aug/31/syria-un-weapons-inspectors-leave

[6] http://www.presstv.com/detail/2013/05/16/303755/12-states-oppose-antisyria-resolution/

[7] http://inserbia.info/news/2013/08/more-than-10-nato-countries-refused-involvement-in-operation-against-syria/

[8] http://www.bloomberg.com/news/2013-08-27/u-s-allies-move-closer-to-military-strike-against-syria.html

[9] http://www.motherjones.com/politics/2013/08/obama-syria-strike-congressional-approval

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

When this resolution was submitted, the Obama administration had just begun its campaign to persuade Congress to authorize its plan to attack Syria. The intent of the petitioners is to modify the language of the resolution as necessary before Town Meeting depending on how the situation develops.

If an attack has not yet occurred, the resolution will declare Brookline's opposition to military action, urge the administration to instead pursue a diplomatic course, and commend the administration for its restraint. If the attack has been launched, the amended resolution will declare the Town's opposition, urge immediate cessation of any military action still in progress, and again urge the administration to instead pursue a diplomatic course.

MOTION TO BE OFFERED BY THE PETITIONERS

To see if the Town will adopt the following resolution:

WHEREAS we as a people and a nation must honor our commitment to act as a constructive force within the community of nations;

WHEREAS human progress resides in respect for international law and for the sovereignty of nations, and as the strongest of these nations the United States has a special responsibility to uphold and abide by broadly supported principles of international law—especially those embodied in the United Nations Charter;

~~**WHEREAS** the U.N. Charter decrees that (1) no nation can use military force except in self-defense (Articles 39 and 51), (2) the Security Council is the only body that can authorize the use of force (Art. 24; Ch. VII), and (3) only the Security Council can decide what action can be taken to maintain or restore international peace and security (Art. 39);~~

~~**WHEREAS** there is no serious and imminent threat of an attack on the U.S. by the Syrian government, and the U.N. has not determined that collective action is necessary against Syria;~~

~~**WHEREAS** on August 28, when the U.N. Secretary General pleaded for more time for diplomacy, the five permanent members of the Security Council failed to reach agreement on a resolution proposed by Britain allowing the use against the Syrian government of "all necessary measures under Chapter 7 of the UN Charter to protect civilians from chemical weapons;"~~

~~**WHEREAS** two days after the British administration presented its resolution to the Security Council, the British Parliament defeated Prime Minister Cameron's motion to participate in military action against Syria;~~

~~**WHEREAS** although the French administration said the British Parliament's vote did not change its own resolve on the need to act in Syria, a late-August poll revealed that most French people did not want their country to take part in military action;~~

~~**WHEREAS** in mid-May more than 70 countries refused to approve an Arab-backed resolution against Syria in the U.N. General Assembly, and as of late August more than ten NATO countries "definitely" refused any form of involvement in the U.S. proposed military operation;~~

~~**WHEREAS** although U.S. and British officials claimed there was little doubt that Syrian President Bashar al-Assad's forces were responsible for the August 22 chemical attacks near Damascus, the head of the U.N. said its inspectors in Syria needed time to establish the facts;~~

~~**WHEREAS** the United States has no treaty obligation to intervene in the Syrian civil war;~~

~~**WHEREAS** President Obama nevertheless recommended that Congress move forward with limited military retaliation against the Syrian regime without waiting for U.N. forensic inspectors to complete their investigation, and without U.N. support;~~

WHEREAS our numerous recent extra-treaty military interventions~~, starting with Vietnam,~~ have resulted in many deaths and injuries and have ~~been expensive beyond measure, in supporting military actions, in subsequent reconstruction, and in providing medical care for those who have fought wresting~~ wrested funding from ~~an ever-increasing~~ a wide range of pressing domestic needs; and

WHEREAS the desire of people the world over is to feel safe and secure, and the surest long-term path to safety and security, both domestic and foreign, is through collaborative efforts under international law—not through unilateralism; now, therefore, be it

RESOLVED, that Town Meeting commends the Obama administration for choosing diplomacy and negotiations to resolve the Syrian conflict, and urges it to continue vigorously pursuing this course instead of carrying out a unilateral attack ~~to eliminate the government's chemical weapons~~ as originally proposed; and be it further

RESOLVED, that Town Meeting requests that this resolution be transmitted promptly to President Obama and to Brookline's congressional delegation.

Or act on anything relative thereto.

EXPLANATION:
When this resolution was submitted, the Obama administration had just begun a campaign to persuade Congress to authorize its plan to attack Syria. The petitioners intended to modify the language of the resolution as necessary before Town Meeting depending on how the situation developed.

Since an attack has not yet occurred and, more important, there have been unexpectedly promising diplomatic developments regarding both Syria and Iran, the petitioners have accepted the Advisory Committee's recommendation that the language of the resolution be considerably tightened by deleting most of the WHEREAS clauses. They have also accepted the recommendation of some selectmen that the WHEREAS clause containing references to specific articles of the U.N. Charter be removed.

However, the petitioners have retained most of one WHEREAS clause deleted by the AC:

> **WHEREAS** our numerous recent extra-treaty interventions~~, starting with Vietnam,~~ have resulted in many deaths and injuries and have ~~been expensive beyond measure, in supporting military actions, in subsequent reconstruction, and in providing medical care for those who have fought~~ ~~wresting~~ ~~an ever-increasing~~ wrested funding from a wide range of pressing domestic needs;

In the main RESOLVED clause, the words "to eliminate the government's chemical weapons" have also been removed.

SELECTMEN'S RECOMMENDATION

The Selectmen did not have an opportunity to review the revised motion being offered by the Petitioners prior to the publication of these Combined Reports. The Board will be taking a vote on the article and will include its recommendation in a Supplemental Report prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

(NOTE: the Advisory Committee was not presented with the revised motion of the Petitioners until after the publication of these Combined Reports. Therefore, we will provide a Supplemental Recommendation prior to Town Meeting.)

BACKGROUND:

Article 17 as submitted by the petitioners is a resolution that:

(i) opposes a unilateral United States of America military attack on Syria, and

(ii) commends the Obama administration for refraining from such an attack and instead turning to the use of diplomacy.

Also, if a unilateral attack has occurred, it calls for Town Meeting to urge that such action be immediately stopped in favor of working diplomatically with the Syrian government and opposition to convene an international conference working towards a cease fire and political process.

The Advisory Committee had considerable concerns with the article as submitted. Structurally, it offers:

(i) alternative resolutions depending on circumstances that exist on November 19, 2013 at the time Town Meeting is convened and

(ii) nine footnote references to internet links that are impractical to access

More substantively, the Committee had difficulty with many of the "whereas" clauses, questioning their relevancy to the resolutions. Finally, and most significantly, at the time of the Advisory Committee's consideration of Article 17, the concern for near-term unilateral military action had dissipated.

Reflecting these concerns, the Committee offered amendments to the proposed article; those changes are reflected in its substitute language shown under RECOMMENDATION.

DISCUSSION:
The following summarizes the general nature of the discussion on the merits of intervention through diplomatic and military efforts.

The petitioners acknowledged that the current situation in Syria is complicated and fluid because of the involvement of various nations taking different stands, but this article concerns only the United States' action, and the need to let the U.S. government know how its citizens feel about taking military action. When submitted, there was no way to predict the direction events would take, which led to the two alternatives, depending on events preceding Town Meeting.

Proponents of the article believe that:

(i) U.S. citizens are war-weary after the long and unsuccessful involvements in Iraq and Afghanistan, and the unsatisfying results of attempts at regime change and

(ii) human progress depends on respect for international law and opposes unilateralism as both expensive and illegal.

They offered that the U.S. cannot claim self-defense, since Syria will not attack the U.S., and all right or wrong is not on one side of the conflict, so there is neither a strong military nor moral basis for action. In addition, they said that in Syria's civil war perhaps one-third of the dead are due to the rebels, undermining the U.S. claim to the moral high ground. They cited similar conflicts in other countries in which there has been no U.S. intervention (e.g., the Congo, in which five million people may have been killed). They claim there is no mandate for the U.S. to be the world's peace keeper, and the growth of Al-Qaeda has resulted from past interventions. They believe military threats may sometimes have brought about change in the past, but the U.S. cannot count on the success of threats, and the article, as submitted, supports the continuation of the President's decision not to use weapons and rockets in Syria.

Opponents of the resolution said that President Obama's threat of targeted strikes was not an effort at regime change, and the war weariness of the U.S. was not an excuse for taking no action; on the contrary, there was a moral imperative to take military action, if it would save lives (as, for example, had the allied forces bombed the railroads in Nazi Germany during World War II). They believe that although the strikes threatened by the U.S. were not meant to destabilize the Syrian regime or aid the rebel opposition, it was, in fact, the threat of military intervention that influenced Russia's decision to participate in negotiations. And, it was the explicitly cited option of military intervention that gave teeth to negotiations.

They also noted that the use of poison gas has been prohibited internationally since World War I, and it is important that the prohibition of chemical weapons be maintained. They asked whether the Petitioners' stance would be different if Assad had used a nuclear weapon on his own people.

Proponents replied that had that occurred, there would have been quick agreement on international action. But in situations like the current one in Syria, a military response is less likely to be effective than diplomacy.

RECOMMENDATION:

In its recommendation, the Advisory Committee struck the WHEREAS clauses referencing the U.N. and other countries. While still promoting diplomacy and negotiations, the recommendation also eliminates a specific reference to avoiding possible military engagement.

The Advisory Committee recommends FAVORABLE ACTION on the following amended Warrant Article 17 by a vote of 12-6-3:

VOTED: that the Town adopt the following Resolution:

WHEREAS we as a people and a nation must honor our commitment to act as a constructive force within the community of nations;

WHEREAS human progress resides in respect for international law and for the sovereignty of nations, and as the strongest of these nations the United States has a special responsibility to uphold and abide by broadly supported principles of international law—especially those embodied in the United Nations Charter;

WHEREAS the U.N. Charter decrees that (1) no nation can use military force except in self-defense (Articles 39 and 51), (2) the Security Council is the only body that can authorize the use of force (Art. 24; Ch. VII), and (3) only the Security Council can decide what action can be taken to maintain or restore international peace and security (Art. 39);

WHEREAS the desire of people the world over is to feel safe and secure, and the surest long-term path to safety and security, both domestic and foreign, is through collaborative efforts under international law—not through unilateralism; now, therefore, be it

RESOLVED, that Town Meeting commends the Obama administration for choosing diplomacy and negotiations to resolve the Syrian conflict, and urges it to continue vigorously pursuing this course; and be it further

RESOLVED, that Town Meeting requests that this resolution be transmitted promptly to President Obama and to Brookline's congressional delegation.

XXX

Review of Recent CIMS Use

- This review covers Jan 1, 2010 – September 15, 2013
- Review of three areas of CIMS use:
  - On-Hours Incidents Reviewed (10pm-6am)
  - Overrides of the System
  - Incidents Missed During Off-Hours
- Policy/Procedure

Between Jan 2010-Sept YTD 2013

Footage Reviewed/ Missed	Cameras On	Cameras Off/ Activated	Cameras Off/ Missed Footage	Total:
2013 YTD	13	25	129	167
2012	29	33	94	156
2011	22	53	54	129
2010	17	30	60	107
Total	81	141	337	**559**
Total Camera Use/ Potential Use:	15%	25%	60%	

On Hours Incidents Reviewed

There have been a total of 81 on-hour incidents reviewed.

Violent Crimes: 21
Property Crimes: 10
Traffic Related: 43
General Public Safety: 5
Other: 2

CAMERAS ON	2013 YTD	2012	2011	2010	TOTAL	%
Total	13	29	22	17	81	98.8%
Assault/A & B	1	6	1	0	8	9.9%
Bomb Threat	0	1	0	0	1	1.2%
Boston Marathon Terror Attack	1	0	0	0	1	1.2%
Burglary	1	0	0	1	2	2.5%
Car Breaks	0	1	0	1	2	2.5%
Graffiti	0	1	1	0	2	2.5%
Home Invasion	0	1	0	0	1	1.2%
Internal Affairs Investigation	0	1	0	0	1	1.2%
Larceny	1	2	1	0	4	4.9%
MV Crash	2	6	3	3	14	17.3%
MV Pursuit	2	2	1	2	7	8.6%
OUIL	3	5	7	7	22	27.2%
Robbery	1	3	2	2	8	9.9%
Fire Box Pull	0	0	1	0	1	1.2%
Malicious Damage	0	0	2	0	2	2.5%
Public Records Request	0	0	1	0	1	1.2%
Receiving Stolen Property	0	0	1	0	1	1.2%
Shooting	0	0	1	0	1	1.2%
Stolen Motor Vehicle	0	0	0	1	1	1.2%
Rape	1	0	0	0	1	1.2%

Camera Overrides

There were a total of 141 incidents for which the cameras were activated during off hours.

Violent Crimes: 28
Property Crimes: 18
Sex Offenses: 1
Traffic Related: 11
General Public Safety: 68
System Maintenance: 15

CAMERA OVERRIDES	2013 YTD	2012	2011	2010	Total	%
Total	25	33	53	30	141	99.3%
Assault	1	0	0	0	1	0.7%
Bank Alarm	0	0	2	0	2	1.4%
Bank ATM Skimmers	1	0	0	0	1	0.7%
Boston Marathon bombing	2	0	0	0	2	1.4%
Burglary	1	3	3	0	7	5.0%
Car Break	0	0	2	2	4	2.8%
Erratic Operation	0	1	0	0	1	0.7%
Failure to Stop/Stolen Moped	1	0	0	0	1	0.7%
Fight in Progress	0	1	0	0	1	0.7%
Fire	0	1	0	0	1	0.7%
Gas Leak	1	0	0	0	1	0.7%
Hand Bag Snap	1	0	0	0	1	0.7%
Hazmat Package	0	0	1	0	1	0.7%
Hold Up Alarm	0	0	1	0	1	0.7%
Hit and Run MV Crashes	0	0	0	3	3	2.1%
Kidnapping	1	0	1	3	5	3.5%
Larceny	0	0	2	0	2	1.4%
Missing Person/Child	6	4	4	1	15	10.6%
MV Crash	0	0	5	0	5	3.5%
Preplanned Events	3	7	6	5	21	14.9%
Protestors	0	0	1	0	1	0.7%
Road Rage	0	0	0	1	1	0.7%
Robbery	1	5	8	4	18	12.8%
Sexually Accosting	0	1	0	0	1	0.7%
Shooting	0	0	1	0	1	0.7%
Shoplifting	2	0	0	0	2	1.4%
Stabbing	0	1	0	0	1	0.7%
Stolen Motor Vehicle	0	1	0	0	1	0.7%
Suicidal Person	0	1	2	1	4	2.8%
Surveillance/Investigation	0	0	6	0	6	4.3%
Suspicious Activity	0	2	0	1	3	2.1%
System Maintenance	2	4	4	5	15	10.6%
Traffic Monitoring	0	0	0	2	2	1.4%
Threats	1	0	1	0	2	1.4%
Weather Event	1	1	3	2	7	5.0%

Incidents Missed

There were a total of 337 incidents missed which may have contained helpful footage.

Violent Crimes: 56
Property Crimes: 78
Sex Offenses: 11
Traffic Related: 141
General Public Safety: 51

MISSED FOOTAGE	2013 YTD	2012	2011	2010	Total	%
TOTAL	129	94	54	60	337	100.0%
Assault & Battery	8	7	3	2	20	5.9%
Burglary	4	1	1	0	6	1.8%
Car Break	3	2	6	6	17	5.0%
Car Fire	2	0	0	0	2	0.6%
Car Jacking	0	1	0	0	1	0.3%
Disturbance	0	0	0	1	1	0.3%
Domestic Dispute	0	0	1	0	1	0.3%
Drug Possession	0	0	0	1	1	0.3%
Erratic Operation	8	3	1	0	12	3.6%
Fall on Town Property	2	3	2	0	7	2.1%
Firearm Found	1	0	0	0	1	0.3%
Handbag Snap	1	0	0	0	1	0.3%
Hit and Run MV Crash	12	0	0	0	12	3.6%
Indecent Exposure	1	3	1	2	7	2.1%
Investigation	2	1	0	0	3	0.9%
Kidnapping	0	0	0	2	2	0.6%
Larceny	2	4	5	1	12	3.6%
Medical Emergency	2	0	0	0	2	0.6%
Missing Person/Child	6	3	3	0	12	3.6%
MV Crash	24	40	16	26	106	31.5%
MV Pursuit	0	0	2	3	5	1.5%
Officer Foot Pursuit/Trouble	1	0	1	0	2	0.6%
Open and Gross	3	0	0	0	3	0.9%
OUIL	0	1	0	4	5	1.5%
Road Rage	3	5	4	0	12	3.6%
Robbery	1	8	2	9	20	5.9%
Run Away	0	1	0	0	1	0.3%
Screams	1	0	0	0	1	0.3%
Sexually Accosting	0	1	0	0	1	0.3%
Shoplifting	17	2	2	0	21	6.2%
Stolen Bike/Moped	9	0	0	0	9	2.7%
Stolen MV	7	2	1	3	13	3.9%
Suspicious Person/Vehicle	7	5	3	0	15	4.5%
Traffic Stop/Arrest	1	0	0	0	1	0.3%
Vandalism/Graffiti	1	1	0	0	2	0.6%

Policy/Procedure

Since the implementation of the CIMS Camera Program:

- There have been no incidents of misuse reported
- There have been no violations of policy/ procedure in the use or activation of the cameras or in the retention of footage

TOWN OF BROOKLINE
Massachusetts

POLICE DEPARTMENT

DANIEL C. O'LEARY
CHIEF OF POLICE

Special Order 2010-4

Subject: **Brookline Police Department Critical Infrastructure Monitoring System ("CIMS")**

Date: **January 25, 2010**

I. PURPOSES / OVERVIEW

The Brookline Police Department ("Department") shall deploy, operate, and maintain a fixed video camera monitoring system within the jurisdiction of the Town of Brookline to monitor major thoroughfares and evacuation routes that are deemed critical infrastructure, as part of the Critical Infrastructure Monitoring System (hereinafter, the system is referred to as "CIMS") of the Metro-Boston Homeland Security Region ("MBHSR"). The purpose of the CIMS program is to enhance the management of emergency situations, detect and deter terrorism, and otherwise protect the health, safety and welfare of those who live and work in, visit, and transact business within the Town.

The CIMS program may also be used to deter criminal activity and public disorder, reduce fear of crime, identify criminal activity and suspects, identify and gather possible evidence for use in criminal and civil court actions, document police actions, safeguard citizen and police officer rights, aid in Amber alerts or in the search for lost / missing children or elderly people, assist emergency services personnel when responding to incidents, assist with the monitoring of traffic conditions, otherwise assist town officials with the provision of municipal services in order to enhance overall municipal efficiency, and assist with the training of Department personnel.

The Brookline CIMS shall not be used to replace current policing techniques. It is to be used to supplement proven policing techniques and assist in the delivery of public safety and municipal services.

II. DEFINITIONS

"Archival footage" shall mean CIMS images captured in the past.

"Automatic tracking" shall mean the ability to follow a specific individual or his or her vehicle with technology operating independently of immediate or direct human control, regardless of whether his or her identity is known, so as to create a seamless record of his or her activity during a specific period.

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"Automatic identification" shall mean the ability to ascertain or confirm the identity, using biometric or other digital technologies, of an individual whose image is captured on footage, whether in real time or otherwise.

"Department personnel" shall include persons holding the position of Public Safety Dispatcher with the Town of Brookline.

"Evidence Policy" shall mean the Brookline Police Department Policy: Handling and Processing of Evidence and Property.

"Footage" shall mean any images recorded by the Brookline CIMS.

"Massachusetts Public Records Law" shall mean Mass. Gen. Laws ch. 66, § 10, Mass. Gen. Laws ch. 4, § 7, cl. 26, 950 CMR Parts 32.01 *et seq.,* and court decisions and decisions of the Massachusetts Supervisor of Public Records construing such.

"Normal operations view" shall mean the normal view of a camera as determined by the Chief of Police and described in Attachment A. These shall be the views seen between the hours of 10:00 p.m. and 6:00 a.m. and at all other hours that the cameras are on. Changes may be made in these views as permitted under this policy.

"Observation" or to "observe" shall mean real-time viewing, and simultaneous recording, of live camera images.

"Operate" shall mean using the pan, tilt, or zoom functions of a camera.

"Pan, tilt, and zoom" shall mean manipulating a camera to view areas outside the original image frame or measurably increase the resolution of the images rendered.

"Recording" shall mean images that are preserved and stored by the Brookline CIMS.

"Specific event recording" shall mean activation of the cameras in accordance with this policy as a result of a specific event which is planned for in advance, such as the Boston Marathon. This definition also includes the activation of cameras for unplanned events, such as an evacuation or a bank robbery in progress, which will assist in achieving the purposes set out in section 1 of this policy.

"Sworn Department personnel" shall mean the Department Chief, Superintendent, Captains, Lieutenants, Sergeants, Detectives and Patrol Officers.

III. OPERATION AND MANAGEMENT:

A. BROOKLINE CIMS COMPONENTS, CAPABILITIES, AND FUNCTIONS

1. **CIMS Cameras** The CIMS cameras, as part of the Metro-Boston Homeland Security Region's Critical Infrastructure Monitoring System, shall be deployed for an indefinite period of time, as provided in the vote of the Board of Selectmen on January 13, 2009, and any subsequent votes, to monitor the Town's major thoroughfares and evacuation routes. CIMS cameras are part of the MBHSR CIMS program 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

authorized to do so by a municipality, the various other municipalities within the MBHSR will have the ability to view images produced by the CIMS cameras of the municipality that has authorized and granted such access.

In Brookline, the Chief of Police shall have exclusive authority to authorize other municipalities within the MBHSR to view, on an ongoing or time-limited basis and in real time only, images produced by the Brookline CIMS cameras.

Other municipalities within the MBHSR may request a copy of archival footage produced by the Brookline CIMS cameras pursuant to the procedures set forth in Sections IV(D)(1) and (3) of this Policy.

2. **Monitoring and Response** The Brookline CIMS shall be passively monitored (*i.e.,* no personnel shall be assigned specifically to observe video monitor screens) under normal operating conditions between the hours of 10:00 p.m. and 6:00 a.m. each day. There may also be times when, in accordance with this policy, the camera/s could be activated for specific event recording. The purposes for the operation of the camera system are set forth in section 1. Monitors shall be located in the Dispatch Area, in the office of the Commanding Officer, and at the front desk of the Public Safety Building. Monitoring may also be conducted within the Detective Division, at the Brookline Emergency Operations Center, or where deemed necessary consistent with the purposes of the CIMS set forth in Section I above. Department personnel monitoring the Brookline CIMS shall dispatch resources as needed.

3. **Installation and Recording** CIMS cameras shall transmit signals when operating to a Digital Video Recorder ("DVR"), which shall be maintained in a secure environment. The cameras will be covered with a privacy-ensuring cap (once available) during all times except between the hours of 10:00 p.m. and 6:00 a.m. daily. These privacy-ensuring caps shall be opened and the cameras activated between the hours of 10 p.m. and 6 a.m. as well as other times as authorized under this policy. The opening and closing of the privacy-ensuring caps will be controlled by a computer program which will activate automatically during the 10:00 p.m. to 6:00 a.m. time frame and can be manually activated for specific event recording and in accordance with this policy. All of the images from a recording device for a particular 24-hour period, beginning at 12:00 a.m. and ending at 11:59:59 p.m., shall be referred to as the "Daily Recording." The Daily Recording shall be stored in such a manner that the particular images can be identified by camera location and by the date and time recorded.

4. **Camera Capabilities** Cameras deployed as part of the Brookline CIMS shall have pan-tilt-zoom ("PTZ") capability. The Department shall not

utilize automatic identification or automatic tracking technologies in conjunction with the Brookline CIMS.

5. **Privacy enhancement capabilities** The CIMS camera network comes with "shrouding" software technology that will allow the Administrator to block out certain areas (*e.g.,* any interiors of buildings visible through windows) from viewing and recording. This technology will be used as necessary to protect the privacy rights of individuals consistent with Section III (D)(1) below. Furthermore, all cameras shall be equipped with a privacy-ensuring cap (once available) that will cover the cameras to prevent viewing/recording at times when not authorized by this policy.

6. **System Security** The CIMS network consists of a point-to-point wireless network that uses licensed and unlicensed spectrums that are not common for public consumption. The system uses a proprietary Motorola security application that handles the wireless application. Each camera transmitter is equipped with a secure software key and security algorithm. These features, along with other proprietary security applications that are part of the system's wireless security, protect the system from access by unauthorized persons

7. **Camera Inventory / Log** The Department's Technology Division shall create and maintain a camera inventory of all cameras placed into service as part of the CIMS using the Larimore Property Tracking System ("Camera Log"). The Technology Division shall document in this System the date each camera is placed into service and, if applicable, discontinued, its location and the persons, places or activities being monitored, its specifications, the dates of inspection, the dates each is out of service for maintenance and/or repair, and the dates and nature of any service or repairs.

8. **Monthly Visual Inspection** The Department's Technology Division shall conduct a visual inspection of all cameras on a monthly basis. Such person shall document in the Department's Property System the visual condition of each camera and lighting in the area of the camera observed during each such inspection.

9. **No Sound Recordings** The Brookline CIMS shall not monitor or record sound unless appropriate court orders are obtained.

B. CAMERA OPERATION / VIEWING OF CIMS RECORDINGS

1. **CIMS Camera Locations and Normal Views** The Department Chief shall determine locations and normal operations views of CIMS cameras to maximize the degree of satisfaction of the stated goals of the Brookline CIMS set forth in Section I. CIMS camera locations and normal

   operations views may be changed as situations require by written permission of the Chief. CIMS camera locations and normal operations views are described in Attachment A to this Policy. The Town of Brookline shall post and maintain at CIMS camera locations signage that is clearly visible indicating the presence of a camera.

2. **Operation Access Code / Certification** In order to operate any CIMS camera, it shall be necessary to enter an Operation Access Code. All sworn Department personnel and Public Safety Dispatchers shall receive an Operation Access Code from the Technology Division. Operation Access Codes may be changed periodically. Operation Access Codes shall be in addition to Department-issued User Names and Passwords.

3. **Certification / Training** Sworn Department personnel and Public Safety Dispatchers shall not receive an Operation Access Code prior to:

   a. signing a certification (in the form set forth in Attachment B to this Special Order) that they have received a copy of and have read this Special Order; and

   b. receiving training regarding this Policy (with a focus on Impermissible Uses (Section III(D)) and the ethical issues involved in video camera monitoring activities, and on all facets of operating the Brookline CIMS, including, but not limited to, logging on, operating cameras, and retrieving archival footage.

4. **Authority to Operate / Return to Normal Operations Views** Sworn Department personnel of the rank of Sergeant or higher and Public Safety Dispatchers are authorized to operate a CIMS camera. Such personnel may operate a camera within their discretion, for the purposes enumerated in Section I above, and at their own instigation or at the request of Patrol Officers, a federal or state agency or another municipality, and/or emergency management personnel. Patrol Officers may operate a camera with authorization of a member of the Department of the rank of Sergeant or higher. All operators must return cameras to the normal operations view when not otherwise directed.

5. **Viewing of Archival Footage** Department personnel, with the approval of a member of the rank of Sergeant and above, are authorized to view archival footage from the Brookline CIMS.

C. MANAGEMENT

1. Department Chief

a. **Generally** The Brookline Police Department, by and through its Chief, is solely responsible for the day-to-day operation and management of the Brookline CIMS and for all tasks ancillary to its operation and management.

b. **Delegation** The Chief shall assign Department personnel to operate and manage the Brookline CIMS on a day-to-day basis, including, but not limited to, monitoring camera feeds, managing access to the system, managing the inventory control of hardware, reproducing and distributing electronic media (*e.g.*,CD/DVDs), ensuring the chain of custody of recordings and reproductions of footage for evidentiary purposes in civil and criminal court actions, and archiving recordings in accordance with this Policy, the provisions of the Department's Evidence Policy, and as provided in the vote of the Board of Selectmen on January 13, 2009, and any subsequent votes. The Chief or his / her designee may assign civilian personnel (both from within and without the Department) to perform any function or duty related to the operation and management of the Brookline CIMS, including, but not limited to, inventory, service and maintenance work on the system.

c. **Enforcement** The Chief shall ensure that the Brookline CIMS is operated in conformity with this Policy and other Department policies, procedures, rules and regulations. The Chief shall enforce this Policy and shall act as the Department Head for all disciplinary and enforcement actions for any violations of it by Department personnel.

2. Commanding Officer / Supervisor

a. **Generally** The Commanding Officer shall be directly responsible for the operation and management of the Brookline CIMS during his/her shift.

b. **Inspection** At the commencement of a patrol shift, a member of the Department, of the rank of Sergeant or higher, shall inspect the Brookline CIMS available in the Dispatch area and in the office of the Commanding Officer to ensure that the CIMS cameras are operational in accordance with this policy. If the CIMS cameras

are operating under the conditions set forth in this policy then these officers are to ensure that each camera is functioning properly and that camera sight lines afford maximum viewing to carry out the purposes of the CIMS, as enumerated in Section I.

c. **Reporting of Significant Incidents** Prior to the conclusion of a patrol shift in which a significant incident has occurred (*e.g.,* an assault, an arrest, an accident, etc.), a member of the Department of the rank of Sergeant or higher shall request reproduction of CIMS footage of the incident (as detailed further in Section IV (D)(1) below) by submitting a completed Video Request Form to the Technology Division. Such person submitting such completed Request form shall send a copy of it to the appropriate division or personnel for follow-up (Detectives, Traffic, etc).

3. **Audit** In order to maintain a high degree of integrity over the Brookline CIMS, an audit shall be completed on a semi-annual basis. This audit shall determine the Department's adherence to this Special Order and the procedures it establishes, as well as the maintenance and completeness of CIMS records. This audit shall be conducted by the Department's Office of Professional Responsibility. At the completion of this audit, a full report on the outcome shall be forwarded to the Department's Chief.

D. IMPERMISSIBLE USES

Anyone who engages in an impermissible use of the Brookline CIMS may be subject to:

a. criminal prosecution,

b. civil liability, and/or

c. administrative sanctions, including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

It is a violation of this Policy for the Brookline CIMS to be used to observe or record footage of areas or people in the following manners and for the following purposes:

1. **Invasion of Privacy** Except pursuant to a court order, it is a violation of this Policy to observe, or record footage of, locations except those that are in public view from a vantage point that is accessible to the general public and where there is no reasonable expectation of privacy. Areas in which there is a reasonable expectation of privacy include the interior of private premises such as a home.

2. **Harassment / Intimidation** It is a violation of this Policy to use the Brookline CIMS to harass and/or intimidate any individual or group.

3. **Use / Observation Based on a Protected Characteristic** It is a violation of this Policy to use the Brookline CIMS to observe individuals solely because of their race, gender, ethnicity, sexual orientation, disability or other classification protected by law.

4. **Personal Use** It is a violation of this Policy to use the CIMS for any personal purpose.

5. **First Amendment Rights** It is a violation of this Policy to use the Brookline CIMS for the purpose of infringing upon First Amendment rights.

IV. REQUESTS FOR REPRODUCTION

A. **Authority to Request / Permissible Requests** Sworn Department personnel of the rank of Sergeant and higher are authorized to make a request to the Technology Division for a reproduction of a CIMS recording. Requests for reproduction may be made only for legitimate law enforcement purposes, as part of normal procedures for investigations and the handling of evidence or in furtherance of the purposes underlying the Brookline CIMS described in Section I above.

B. **Prompt Request** All requests to reproduce a CIMS recording shall be made promptly and in any event as soon as possible to ensure that needed data is not over-written. Requests for reproduction of footage of significant incidents (*e.g.,* an assault, an arrest, an accident, etc.) shall be made prior to the conclusion of the patrol shift during which the incident occurred.

C. **Reproduction Responsibility / Evidence** The Department's Technology Division shall be responsible for making reproductions of CIMS recordings. It shall make two copies of any reproduction. One copy shall be logged into the evidence system following the Department's Evidence Policy and shall be maintained in a manner consistent with the Evidence Policy and with maintaining the chain of custody for evidentiary materials. The second copy shall be reproduced to the requesting party utilizing the procedure described in Section IV (D) below. The Technology Division shall document all requests for copies of CIMS recordings in the Camera Log.

D. **Reproduction Request Procedures**

1. **Authorized Department Requests (see Section IV (A) above):**

   By submitting a completed Video Request Form (available in the Technology Information folder on the "in-house" email system) to the Technology Division (cc to the appropriate Department Division (*e.g.,* Detective, Traffic) or personnel for follow-up). Department personnel of the rank of Captain or higher may authorize disclosure of a copy of CIMS footage to any federal, state, or municipal law enforcement agency in connection with an open investigation.

2. **Court-Related Requests (*e.g.*, Prosecutors, Defense Attorneys, Judges):**

By submitting a completed Video Request Form to the appropriate Department court liaison (for the applicable court), who shall forward a copy to the Technology Division. The Technology Division shall send a copy of the requested reproduction to the court liaison, who shall send it to the requesting party.

3. **Others (subpoena or public records requests by federal or state agencies, other municipalities, private individuals, or others):**

Except in connection with an open investigation as set forth in Section IV(D)(1) above, by submitting a completed Video Request Form to the Department's Records Division, which Division shall process it in accordance with the Massachusetts Public Records Law and the Department's public records procedures, with responsibility for the reproduction falling to the Technology Division. As part of the public records review process with regard to any request for reproduction made under this Section IV (D)(3), Department personnel shall consult, as appropriate, with the Technology Division (who shall consult the Camera Log), any other relevant Department personnel, and Town Counsel to determine whether the requested footage or any portion of it is exempt from the Massachusetts Public Records Law.

V. RETENTION

The CIMS camera network includes video DVR server with a RAID 5 configuration, and video data is striped across four (4) hard drives. It has a thirty-day cycle that automatically overwrites the oldest day and it does not include any server for backing up data. Accordingly, unless otherwise required by the Evidence Policy, by court order, or by law, Brookline CIMS recordings shall be retained for a period of fourteen (14) days and shall then be automatically over-written.

All reproductions of footage within the custody of the Department shall be maintained in a secure environment and shall be destroyed at the conclusion of the retention period specified above.

VI. COMPLAINT PROCEDURE

A. **External Complaints** Complaints other than from Department personnel relating to the Brookline CIMS shall be handled in accordance with the Brookline Police Department's Citizen's Complaint Policy and Procedure.

B. **Internal Complaints** Any complaint from Department personnel relating to the Brookline CIMS shall be forwarded to the Office of Professional Responsibility and the Chief of Police.

VI. DISSEMINATION OF INFORMATION ABOUT THE BROOKLINE CIMS AND HANDLING OF INQUIRIES

A. **Policy Dissemination** This Policy shall be posted on the website for the Town of Brookline (www.brooklinema.gov) and a copy shall be provided upon request consistent with the Department's public record request procedures.

B. **Inquiries**

1. **General inquiries** In order to alleviate any and all confusion concerning the Brookline CIMS, when the Department receives inquiries from the general public concerning the operational status of the Brookline CIMS, or generally whether the CIMS made a recording and what it may have recorded, the following procedure shall be followed: the telephone call or walk-in shall be transferred or directed to the Commanding Officer (or Patrol Supervisor, in his/her absence), who shall courteously and respectfully inform the inquiring party, in substance, of the following:

   "The Brookline Police Department's Critical Infrastructure Camera Monitoring System is fully operational at designated, strategic locations throughout the Town of Brookline. Depending upon the vantage point of the specific camera in question at a given time period, an image may have been captured and be available for dissemination."

2. **Specific Recording / Footage Requests** If the telephone caller or walk-in has a specific request (date and time) for a recording in a designated area, a Video Request Form shall be either e-mailed to the person (as an attachment) or made available for pick up by the person at the Records Bureau and/or Front Desk.

Daniel C. O'Leary

Daniel C. O'Leary
Chief of Police

Supersedes Special Order 2009-1

Special Order 2010-4 – ATTACHMENT A

CIMS CAMERA LOCATIONS AND NORMAL OPERATIONS VIEWS

Camera Location:	Normal Operations View:
Brookline Ave & Aspinwall Ave	South – Facing Brook House
Beacon St & Carlton St	Eastbound Beacon St
Beacon St & St Paul St	Eastbound Beacon St
Beacon St & Harvard St	Eastbound Beacon St
Beacon St & Washington St	Southbound Washington St
Boylston St & Hammond St	Eastbound Boylston St
Boylston St & Chestnut Hill Ave	Westbound Boylston St
Boylston St & Sumner St	Eastbound Boylston St
Boylston St & Cypress St	Westbound Boylston St
B.F.D.Station 1(140 Washington St)	Northbound Washington St
Longwood & St Paul St	South St. Paul Street

Special Order 2010- 4 – ATTACHMENT B

CERTIFICATION UNDER BROOKLINE POLICE DEPARTMENT SPECIAL ORDER 2010-4

(Re: BROOKLINE POLICE DEPARTMENT CRITICAL INFRASTRUCTURE CAMERA MONITORING SYSTEM ("CIMS"))

I, _____, certify that I have received a copy of and have read Special Order 2010-4, dated January 25, 2010, regarding the Brookline Police Department Critical Infrastructure Camera Monitoring System ("CIMS").

_____ Date:_____

(Name)

_____

(Signature)

_____

(Title)

ARTICLE 18

Amendment Offered by Stanley Spiegel, TMM Precinct 2

Amend the 'Resolve' clause of Article 18 to read:

"NOW THEREFORE BE IT RESOLVED: that Town Meeting urges the Board of Selectmen not to increase beyond current levels the hours of operation of the general police surveillance cameras funded by the Department of Homeland Security."

Explanation:
Town Meeting Members should have the option of voting affirmatively to recommend that the Selectmen maintain the current limitation on camera usage.

Passed by an Electronic Recorded Vote – 152 In Favor, 73 Opposed and 5 Abstentions.

ARTICLE 18

EIGHTEENTH ARTICLE

Submitted by: Clint Richmond, Sarah Wunsch, Frank Farlow, and Eunice White

To see if the Town will adopt the following Resolution:

Opposing Police Surveillance Cameras from the Department of Homeland Security

WHEREAS the Board of Selectmen first approved the use of a police video camera surveillance system funded by the U.S. Department of Homeland Security (DHS) in January 2009 and networked with a larger Boston Metropolitan system for a one-year trial period of round-the-clock operation; and

WHEREAS the Town Meeting of Spring 2009 voted by a strong majority in favor of Article 25 which called on the Selectmen to *remove* the cameras; and

WHEREAS the Board of Selectmen reduced the use of the camera surveillance system in Sep. 2009 to the hours of 10 PM to 6 AM with special exceptions for other times; and

WHEREAS the Police Department and members of the Camera Oversight Committee and Board of Selectmen have continued to argue for restoration of round-the-clock surveillance; and

WHEREAS the primary purpose originally asserted aiding in evacuations from Boston – raised immediate skepticism among residents, and neither was nor is cost justified; and

WHEREAS the cameras have been used in non-emergency situations variously described as crime prevention or investigation and after more than four years of usage, the benefits in these areas have been minimal to non-existent, which is consistent with the studies cited by opponents that were available prior to the time of the installation; and

WHEREAS no significant benefit has been demonstrated that would outweigh the costs in dollars or the intrusion on personal freedom and privacy; and

WHEREAS the majority of citizens during public hearings have consistently opposed the cameras as a form of government surveillance; and

WHEREAS the United States Constitution, the Massachusetts Declaration of Rights, and the UN Declaration of Human Rights provide for a right to privacy which is undermined by increasing governmental intrusion into the privacy of citizens at all levels; and

WHEREAS we desire to live in a free and open society; and

WHEREAS DHS camera are part of a national program that also created massive statewide data Fusion Centers that allow the archiving and analysis of a wide range of

citizen activities inside and outside our homes – similar to what has been done by the National Security Agency; and

WHEREAS the digital images captured by these police cameras will generally be available to anyone who requests copies under the Commonwealth's public records law, or to any government agency, and can be distributed further without any restrictions; and

~~NOW, THEREFORE BE IT RESOLVED~~:

~~that Town Meeting urges the Board of Selectmen to order the removal of the general police surveillance cameras funded by the Department of Homeland Security,~~

~~or act on anything relative thereto~~.

Carried, as amended, by an Electronic Recorded Vote of 112 In Favor, 87 Opposed and 4 Abstentions.

PETITIONER'S ARTICLE DESCRIPTION

"The privacy and dignity of our citizens [are] being whittled away by sometimes imperceptible steps. Taken individually, each step may be of little consequence. But when viewed as a whole, there begins to emerge a society quite unlike any we have seen..." - U.S. Supreme Court Justice William O. Douglas

"It's not possible to be fully human if you are being surveilled 24/7" – Pamela Jones, creator of the award-winning legal blog, Groklaw

"The natural flow of technology tends to move in the direction of making surveillance easier, and the ability of computers to track us doubles every eighteen months." – Phil Zimmerman, security researcher and computer scientist in a recent interview

History & Introduction

In January, 2009, the Board of Selectmen approved by a 3-2 vote a proposal by the Chief of Police to allow the installation and operation of general surveillance cameras, funded by the Bush Administration's U.S. Department of Homeland Security (DHS), in twelve locations in Brookline, for the stated primary purpose of aiding in "evacuations" from Boston. The majority also restricted the operation of the system to a one-year trial period and created an oversight committee to study its operation during the trial period.

This petition calls on Town Meeting to again put Brookline on record as opposing the use of general police surveillance cameras in our public spaces.

The purposes are unclear and provide little justification for the cameras – After five years of debate, Town officials have not provided a coherent or consistent justification for the surveillance system. While it was initially proposed primarily as a means of aiding emergency evacuations, when this justification was questioned as at odds with common sense, other justifications were given, e.g., deterrence to crime or assistance in criminal investigations. However, the police have acknowledged that the purpose of the surveillance cameras is not primarily to fight crime since this was outside the scope of the DHS program.

There is no evidence that the camera system will achieve valid purposes – The use of general police surveillance camera systems has been thoroughly studied and show that cameras cannot be credited with effectively preventing crime, deterring terrorism or solving crimes. While there may be anecdotes about the benefits of such cameras, the evidence does not support their effectiveness.

Indeed, any hypothetical benefit is vastly outweighed by the specter of living in a society where the government(s), local or national, are monitoring all our public actions. Meanwhile, crime in Brookline is at a record low according to the latest Police Department report. Studies have shown that measures like improved lighting can reduce all types of crime including violent crime by 20% or more. Good community policing has also been shown to be effective at preventing crime.

A free society is one in which police do not follow and track our movements in public places. America is a free country, in which no citizen should feel that he or she is being watched by its government. Permanent surveillance cameras are another step in the wrong direction toward radically changing our sense of being a free society. To those who say that what we do in public places is not protected by a right to privacy, we urge consideration of general principles that we have long held dear in the U.S.: that we are not and should not become a society in which the police privately watch our every move in public. While public places may not, in a technical legal sense, be places where we have an "expectation of privacy," the right to be let alone and not identified or tracked by the police is a fundamental aspect of a free society. A lack of privacy in public places should *not* be used as the justification for having all our activities recorded.

These are powerful cameras, which can easily become more powerful. The DHS digital cameras have the capacity to pan, tilt and zoom in; and to observe the activities of residents engaged in lawful activities, for example, whether they are home, the people with whom they are engaged in conversation, and peaceful political demonstrations. Once the precedent is set of allowing cameras it becomes harder to argue against additional capabilities (including higher resolution images, facial recognition, or integration with location tracking). Such features could even be added without our knowledge.

Continuous surveillance is much different from a criminal investigation. Continuous surveillance is an endless dragnet, an all-or-nothing proposition in which there is no way to opt out. Continuous surveillance turns citizens into suspects and enables mass warrantless searches. While the intent of these cameras is not to harass, the effect is subtly chilling as people choose to limit their activities and forms of expression because they know they are continuously surveilled and potentially permanently recorded. Furthermore, there have been numerous documented cases both here and abroad of misuses of government surveillance.

Remote surveillance is much different from a person with a camera. Most people would object if a stranger were continuously photographing them up close. Unlike a person on the street with a camera, most people are unaware they are being watched by the police cameras from above. The remotely controlled DHS cameras shrouded in dark enclosures are particularly unsettling since you don't know where they are pointing or exactly who is

watching. Also, the higher vantage of the surveillance cameras increases their ability to peer into upper floors of residences and generally reinforces the feeling of a silent, unsleeping omniscient eye that is more like a prison watchtower than a street video.

The camera system is not "free" of costs to the Town – The offer of "free equipment" is highly misleading. The initial cost ($150,000) of cameras "wholly funded" by Homeland Security in the first year, and DHS paying $15,000 per year of maintenance were funded by us taxpayers. These figures grossly underestimate the actual cost to the Town, given all the components in the system requiring setup, maintenance, repair and upgrading – not just of the cameras themselves, but the network links to Brookline headquarters, the computers and monitors that the video appears on, the software to administer, control and manage the camera system, the recording equipment, and the network link to Boston central headquarters; as well as the time in training of new staff and all staff for upgraded or replaced systems; and the electricity to run this very extensive system. The grant funding also bypasses normal Town Budget process.

The number and types of cameras in Brookline have grown since the cameras were installed. Before the DHS cameras were installed, the Town possessed the following recording cameras: 2 mobile cameras for criminal investigation; 2 cameras outside the Public Safety building; and a dozen cameras at the main branch of the Public Library. The cameras outside the Public Safety building were already being monitored live in the dispatch room in addition to being recorded.

Since 2009, the Town has purchased a state-of-the-art automatic license plate reader (ALPR), which can photograph thousands of vehicles per minute and read their license plates. Many Boston and state police vehicles that traverse Brookline also have ALPRs that were funded and promoted by Federal agencies. We learned at the last Town Meeting that the Brookline public schools have installed cameras for building access control and monitoring, which are also recording. The branch libraries have added cameras monitoring exits.

At the same time, the MBTA has substantially increased the number of cameras on its buses, trolleys and stations, some of which are now found in Brookline. The City of Boston has substantially increased the number of its cameras, many of which are on our borders. Finally, aerial surveillance is becoming more common and powerful, and some government agencies even have low-flying drones.

Permanent private video cameras play a greater role than government cameras (based on reports of criminal investigation by the Police Department related to the DHS cameras, and in media accounts of notorious cases, such as the 2013 Marathon bombing). Individual mobile cameras are ubiquitous, especially on cell phones. The public willingly cooperates in assisting in criminal cases. Independent, private cameras are much less of a civil liberties threat than widespread continuous surveillance by the government.

Cameras are militarizing our public spaces. Cameras are a highly visible component of counter-terrorism strategy. The concept originated in London with what was dubbed "The Ring of Steel" (during the Provisional IRA bombings), which continues to exist to this day and has been applied elsewhere (e.g., in New York City). The DHS camera program

was originally designed after 9/11 to defend Critical Infrastructure across the nation, which locally includes Boston Harbor, Logan Airport, and our liquid natural gas facilities, and is coordinated by a Federalized central command. Brookline, like nearly all commercial or residential areas, is *not* critical infrastructure and so does not need cameras. Our cameras have a network connection to Boston although they are not usually feeding live to the central command in Boston. Brookline was part of phase II of this DHS program, which the petitioners argue remains unneeded. People do not want to feel like they are living in a war zone, but cameras contribute to this impression.

The cameras undermine our relationship to the police. Having the police involved in permanent surveillance is a new mission that is normally associated with a spying agency. The introduction of government cameras for counter-terrorism militarizes our police force. The impersonal nature of cameras reduces trust. The implied substitution of cameras for community policing could lead to less public cooperation with the police in criminal investigations.

Limits do not work. When the limited system was proposed, the Police Department gave the 12th Brookline camera to the City of Boston, where it runs 24 hours per day, and avoids the Brookline Oversight Committee (since Boston has no equivalent body). The supervision of emergency override operations has been problematic. When the Boston Marathon bombing occurred, all the Brookline cameras were left on for weeks after the capture of the suspects. If limited cameras are deemed useful then this will lead to more surveillance as we have seen here and elsewhere.

Removal is the best way to prevent abuses and negative effects. The Selectmen recognized the risks of the camera system by establishing the Camera Oversight Committee. But this job grows as the number, hours of operation, and types of cameras increases. It has been impossible for Committee members or other citizens to independently determine the costs and benefits of the system (in particular, the extent to which the cameras when claimed to be useful have made the difference between conviction and acquittal). The mobile crime cameras have also been used for permanent monitoring (e.g., in Coolidge Corner) since there is so little crime in Brookline.

Please vote YES for privacy and a free society.

SELECTMEN'S RECOMMENDATION

Article 18 is a petitioned resolution that calls for the Selectmen to order the removal of the surveillance cameras funded by the Department of Homeland Security. The Critical Infrastructure Monitoring System (CIMS) has been in use in Brookline since 2009 and is comprised of 11 cameras posted in public intersections along major routes in Town. While these cameras were initially installed to assist with an evacuation in the greater Boston area, the uses of this public safety tool have proven to be more diverse and beneficial to the community. While the use for an evacuation has not yet been met, the

potential need still exists today and, in the meantime, there have been many additional uses of these cameras including:

- planned event management
- assistance during major storms
- traffic management
- missing persons searches
- crime prevention and
- criminal investigations.

Over the last three and a half years, there have been many examples of the effectiveness of these cameras in apprehending criminals, investigating crimes, exonerating suspects, determining fault in crashes, managing events and storms and investigating terrorism.

In 2009, after weighing privacy concerns posed by members of the community with the benefits of the cameras, the Board compromised by limiting the use of the cameras to between the hours of 10:00 pm – 6:00 am, with exceptions for special events and activations for specific scenarios. The CIMS cameras, although purchased through Federal grant funds are, and have always been, under the strict control of the Brookline Police Department. The Board has appointed an Oversight Committee to evaluate and supervise the use of the cameras and has also instituted a strict policy on the operation of the cameras. Camera footage is not streamed to any federal or state agencies and is maintained for a period of only 14 days. It is a closed system with data housed only within the Brookline Public Safety headquarters and the sharing of this data for criminal investigations by outside jurisdictions must be approved.

Four years later, after semi-annual review of the data collected on their use, the Board of Selectmen is confident that the cameras have been a helpful public safety tool and that the Brookline Police Department has not violated the policy nor the rights of its citizenry in the use of the cameras. The cameras are installed only on the most public areas of town and the Board has no intention to expand the cameras into more residential areas. The cameras have been a tool for law enforcement to better protect our community, to quickly respond to dangerous situations, to solve crimes and to take repeat offenders off our streets. The CIMS cameras were instrumental in solving a horrific rape and kidnapping in Coolidge Corner. They have been effective in identifying suspects in violent crimes. They have helped determine fault in traffic crashes resulting in injury and damage to property. They have helped public safety officials manage large scale events, like the Boston Marathon, and weather crises, like Hurricane Sandy and Blizzard Nemo. Additionally, the CIMS cameras have helped reduce the fear of crime for many people in our community, and have even helped to prove that some reported violent crimes were never committed that would have otherwise increased alarm among our residents and business community. The Board heard from many people at a public hearing and by email and the overwhelming majority supported the continued use of the cameras.

In reviewing the data, the Board of Selectmen is confident that these cameras have helped solve crime, prevent recidivism, determine fault in crashes, assist with the management

of large events and weather crises and continue to contribute to the low crime rate in Brookline. These cameras have provided extensive benefits with virtually no additional costs or manpower associated with their use. The Board does not subscribe to the "slippery slope" argument but rather embraces this technology as an additional public safety tool along a continuum of tools law enforcement uses to help keep Brookline safe and improve the quality of life for our residents. Brookline is currently seeing the lowest level of crime it has in decades. These cameras, used in conjunction with the many other tools and tactics available to our police, have contributed to this reduction in crime. Eliminating the cameras as called for under this article takes away an effective and useful tool for our police to do their job.

The Board recommends NO ACTION, by of a vote of 5-0 taken on October 15, 2013, on Article 18.

ADVISORY COMMITTEE'S RECOMMENDATION

Warrant Article 18 is a resolution urging the Board of Selectmen to order the removal of the Town operated police surveillance cameras funded by the Department of Homeland Security (DHS).

BACKGROUND:
In January 2009, the Board of Selectmen accepted a Department of Homeland Security (DHS) grant to fund the cameras and voted to allow the installation and 24-hour operation of Police Department supervised surveillance cameras for a one-year trial period for the purpose of aiding in evacuations from Boston. The Board established a Camera Oversight Committee composed of four Brookline residents. The Oversight Committee reports twice a year to the Board.

The Spring 2009 Town Meeting voted by a strong majority to pass Article 25, which opposed the use of the surveillance cameras. In September 2009, the Selectmen voted to reduce the operation of the camera system to the hours of 10pm to 6am, with special exemptions for other times.

In 2009, DHS gave Boston a "tier 1" high-risk assessment for terrorism. Brookline, surrounded on three sides by Boston, is one of the nine Boston-area communities within the Urban Areas Security Initiative (UASI) which DHS established in the wake of the terrorist events of September 11, 2001. Police Chief Daniel O'Leary is the designated representative on UASI for the Town of Brookline.

The Police Department operates and fully controls the 11-camera DHS-funded surveillance system in Brookline. Each camera is located in intersections along the evacuation route from Boston (Beacon Street and Route 9). The cameras are in a fixed

location, point in one direction and are clearly identified with signage. Monitors located near the entrance of the Public Safety Building on Washington Street display the camera images during the hours of operation and are in clear view for the public. The Police Department stores the images on site for a period of no longer than 14 days unless the footage is needed as evidence in a crime investigation, in which case a copy of the footage is stored. The Advisory Committee learned that State statute may require us to hold the footage for 30 days rather than 14 day. After this period, footage is taped over.

DISCUSSION:
Proponents of Article 18 express concern about the presence of unjustified surveillance as citizens go about their daily activities in public spaces and point to a big difference between the use of cameras by private businesses at their own locations and the creation of a government infrastructure, possibly permanent, for surveillance of the law-abiding public and for gathering enormous amounts of information to enlarge DHS databases [Brookline's images are not send to the DHS]. Those opposed to the cameras state that the cameras provide digital images available to anyone who makes a request under the State's public records law or to government agencies. The words of one of the petitioners describe the surveillance by the cameras as an "endless, warrantless dragnet".

Supporters of the article also commented how the use of the cameras has strayed from the original purpose of aiding in evacuations and maintain that the mission of the Police Department has changed from a crime-fighting role to a security role and question the efficacy of the camera surveillance in helping to solve crimes. Furthermore, they mention not only the cost incurred by the Town to run the system, train police officers, respond to public records requests from government agencies, but also the cost to residents' personal sense of freedom. Another concern is the uncertainty over the actions of those in future positions of leadership in the Town.

The article's proponents argue that the cameras affect the nature of the society in which we live with forced exposure inflicted upon citizens.

Police Chief Daniel O'Leary has stated that the original purpose of the cameras still exists, that of public safety. The cameras have been in operation during public events such as charity walks, bicycle rides, the Boston Marathon and during storms and also missing-person searches. In the discussion with the full Advisory Committee, Chief O'Leary expressed the key role surveillance camera footage played in helping to solve crimes over the past four years. For example, footage from MBTA and Brookline Housing Authority cameras, along with private cameras provided critical evidence in solving armed robberies in the area of Brookline near Boston University. Surveillance images also helped the police to apprehend suspects within days of a rape that took place in August 2009 in Coolidge Corner.

Chief O'Leary observed that during the hours of 10pm and 6am, there is more vehicular traffic along the camera routes than foot traffic, and the cameras have proved useful for automobile accident and DUI investigations. He also remarked how the camera footage is more reliable than eye-witness accounts.

With respect to concerns over privacy, members of the Advisory Committee pointed to the ubiquity of private cameras and the lack of control and oversight of private cameras compared to the strict regulation of the Town's cameras. The Town's cameras do not have facial recognition capacity and do not possess the capability to zoom into buildings, windows, or doorways. Other communities and the federal agencies need to be authorized to gain access to the footage, and images are not sent to DHS or the National Security Agency.

Arguments for keeping the camera system include: Brookline's policy is a model for other communities; there exists clear evidence that cameras have helped in arresting, convicting, and even exonerating suspects.

During the Advisory Committee discussion, members underscored the omnipresence of cameras in our lives and contended that it may indeed be a "brave new world", as technology has overtaken us. One member observed that there were probably thirty cameras in the meeting room at the time. The Town also uses surveillance cameras separate from the DHS-funded cameras in the schools, libraries and, as previously stated, the Housing Authority. With Town cameras we have oversight and can potentially acquire information quickly in an emergency – unlike relying on private cameras.

No one likes the idea of being followed or monitored or spied on. But in public, we understand that we give up a certain degree of anonymity and privacy. The use of the Town cameras does not impose any greater burden on us in the public square. The use of EZ-Pass, chips in credit cards, GPS, smart phones point to the inevitable loss of privacy and susceptibility to being tracked in ways not possible with Brookline's publically overseen cameras.

Several references were made by Advisory Committee members to a perceived "sea change" in the number of Town Meeting constituents now in support of the cameras as compared to four years ago. Speculation was that it was partly a result of several high profile incidents in which cameras lead to the apprehension of criminals. Some argued that you can never prove the existence of these cameras helping to prevent crime, but that was countered with the observation that if you can take a criminal off the street, he or she will not be there to commit the next crime – and many times criminals favor an area where they were successful. Even the petitioners conceded that cameras have been valuable in apprehensions, but that with the plethora of private cameras Town cameras are not necessary. While it is true that private cameras have been helpful, they are not under the community's control and can't provide immediate information in a crisis the way a public camera can.

The Advisory Committee was sensitive to the petitioners' concern over creeping technology, loss of privacy and the ability of governmental intrusion into our private lives. But we also understand there is a balance in a democracy between our rights to privacy as citizens and our responsibilities to the community in which we live. We

should have expectations of privacy, but when we step into the public square we shouldn't expect anonymity.

Brookline's public cameras have proven valuable and their oversight has been commendable. The fact we are able to discuss and debate this article speaks well of Brookline's openness.

RECOMMENDATION:
By a vote of 15-3-1, the Advisory Committee recommends NO ACTION on Article 18.

XXX

ARTICLE 19

NINETEENTH ARTICLE
Reports of Town Officers and Committees

SELECTMEN'S CLIMATE ACTION COMMITTEE
REPORT TO TOWN MEETING FALL 2013

The Selectmen's Climate Action Committee (CAC) 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 CAC welcomes input from Brookline residents and businesses. Please direct comments and ideas to the CAC's staff support, Lara Curtis Hayes, Senior Planner, Department of Planning & Community Development, at lcurtishayes@brooklinema.gov or 617-730-2618.

I. INTRODUCTION

The Selectmen's Climate Action Committee (CAC) was established in 2008 by the Board of Selectmen, in conjunction with a Resolution passed by Town Meeting that May (Appendix 1). The CAC has fifteen members: twelve representatives of various boards and commissions and three citizens appointed by the Selectmen (Appendix 2). The CAC 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 CAC held its first meeting on November 6, 2008, and has met monthly since then. The committee organizes itself into working subcommittees on an as-needed basis, in response to evolving goals and projects.

The charge of the CAC is as follows:
"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 Board of Selectmen, the Town Administrator, and the public; and
7. Such other responsibilities as may be determined from time to time by the Board of Selectmen."

II. ACCOMPLISHMENTS

The most recent greenhouse gas inventory for Brookline indicates that the town's **total greenhouse gas emissions in 2008 were less than in 2003 and 1995, about 8 percent below 1995 totals**. In comparison, the greenhouse gas emissions for the United States as a whole increased about 10 percent from 1995 through 2007. (See *Appendix #5,*

Town of Brookline Greenhouse Gas Inventory Overview.) The CAC sees this as a significant accomplishment, and it provides a solid basis on which to keep building. **The town's most recent Climate Action Plan establishes a reduction goal for 2020 of 25 percent below the estimated 1990 greenhouse gas emission levels.** This goal is consistent with the state's plan, *Massachusetts Clean Energy and Climate Plan for 2020*, which also mandates an 80 percent reduction by 2050.

Increasing the Generation of Renewable Energy through Solarize Mass Brookline

- The CAC partnered with the staff of the Department of Planning & Community Development, Climate Action Brookline, and other volunteers to submit an application to the Solarize Massachusetts program in February 2013, and was awarded a spot in the program in April 2013. Solarize Massachusetts is a partnership between the Massachusetts Clean Energy Center, the Department of Energy Resources Green Communities Division, local officials and community volunteers. The program encourages the adoption of small scale solar projects through an educational campaign and a group purchasing model. The Solarize Mass Brookline program lasted from May 2013 till October 31, 2013 – the program deadline was extended from September 30th to October 31st due to heavy program interest. The Solarize Mass Brookline team used a combination of email, social media, print media, event tabling, information sessions, and door-to-door canvassing to reach interested Brookline households, and as of October 8, 2013, over **436 homes** and businesses signed up for free solar assessments. As of mid-October, Brookline's Solarize program reached Tier 4 out of a total of five tiers for pricing, and **101.8 kW of solar PV** was contracted in Brookline. The new systems will be installed over the coming months.

Improving Residential Energy Efficiency through Green Homes Brookline

- *Program Transition & New Initiatives*: Green Homes Brookline is a partnership between the Town of Brookline, CAC, Climate Action Brookline and energy services company Next Step Living, marketing no-cost energy assessments, insulation and air-sealing rebates, and other energy efficiency incentives available under the Mass Save program. When Green Homes Brookline was first established, it was supported by approximately $150,000 in grant funding from the federal Energy Efficiency and Conservation Block Grant (EECBG) program. Even after federal resources have been spent, Green Homes Brookline continues to market the Mass Save opportunities, and has begun encouraging residents to consider other efficient alternatives for heating and cooling, such as air source heat pumps. From November 2012 to March 2013, Green Homes Brookline created the Weatherize Brookline challenge, partnering with Brookline Local First businesses to help with program outreach, and awarding gift cards to Brookline Local First businesses as part of an end-of-challenge raffle.

- *Outreach Success*: As of 9/23/2013, **1,503 energy assessments and 413 weatherizations of Brookline homes** have been scheduled or completed, surpassing the program's original goal of reaching at least 1,000 homes. This increase can be attributed to the significant commitment to the program by the town, Climate Action Brookline and Next Step Living. Using estimated energy and money savings for an average energy assessment and weatherization (.3638 metric tons of C02e and $94 annually from an energy assessment, and 1.5229 metric tons of C02e and $402 annually from a typical $2,500 weatherization), the Green Homes Brookline program has reduced greenhouse gas emissions by 1,176 metric tons of C02e, and **saved Brookline residents over $307,300 in energy costs** this year alone. This is **equivalent to taking 245 passenger vehicles off the road** for a year (Source: www.epa.gov/cleanenergy/energy-resources/calculator.html).

Drafted a Resolution in support of a Carbon Tax, which was adopted by the Board of Selectmen on 9/17/2013

- In response to a request by the Citizen's Climate Lobby, the CAC drafted a resolution for the Board of Selectmen's consideration supporting the adoption of a carbon tax at the federal level. The Board of Selectmen considered the resolution and voted favorably to support the recommendation on September 17, 2013.

Exploring Municipal Opportunities for Renewable Energy

- Supported the town's participation in the Metropolitan Area Planning Council's (MAPC) regional procurement for renewable energy management services, and its partnership with Broadway Electric Co. to install solar PV systems on municipal roofs and properties.

Closeout of the EECBG Program grant for the Town of Brookline

- On June 17, 2013, the town successfully closed out its Energy Efficiency and Conservation Block Grant (EECBG) program with the federal Department of Energy. The EECBG program, consisting of **$494,400 in grant funds**, was completed on time and under budget. The grant funded several different programs (Appendix 3), including Green Homes Brookline, LED streetlight replacements, and energy efficiency improvements in municipal buildings.

Finalizing a New Local Climate Action Plan

- Voted to adopt the final Climate Action Plan in September 2012. The Board of Selectmen formally adopted the plan on December 11, 2012. Despite voting on a "final" Climate Action Plan, the plan's format as a wiki allows it to be edited at will and as needs arise.

- *Transition from Plan Development to Plan Implementation*: The committee is now working on those Climate Action Plan actions that have associated liaisons to provide implementation support and perform necessary research and analysis to achieve results. The committee expects to facilitate communication between interested residents and groups on actions listed in the plan, as well as seek out new participants interested in working on climate action activities.

Engaging Residents through Third Annual Climate Week

- The third annual Climate Week was held from January 26 to February 3, 2013. Organized and led by CAB, a number of events were held jointly between different organizations, with the CAC, Brookline School Committee, Brookline Department of Public Health, and Brookline Adult and Community Education as co-sponsors. Numerous businesses and town departments collaborated in creating special events. All events helped to inform and encourage climate-friendly behavior.
- Planning for the fourth annual Climate Week, to be held in January 2014, has already begun.

Maintaining Green Community Status

- In cooperation with town staff, the Town attained "Green Community" status in 2011, which affirmed the commitment of the Town to sustainability, awarded $215,050 in initial grant funding, and qualifies Brookline to apply for additional funding opportunities for renewable energy or energy efficiency projects. This designation must be maintained by continuing to satisfy the Green Community requirements (Appendix 4), including ensuring the town's fuel efficient vehicle purchasing policy is followed and that progress is made on the adopted Municipal Energy Reduction Plan. The actions outlined in the Municipal Energy Reduction Plan are achieved either through grant funding or the annual funding committed in the town's CIP for energy conservation improvements (i.e. $150,000 in FY2014). Annual reporting on the town's Green Community status to the state is also required.

Strengthening Community Partnerships

- Continued and strengthened a close working relationship with nonprofit Climate Action Brookline (CAB, formerly known as CCAB). Joint initiatives include Solarize Mass Brookline, Green Homes Brookline and Climate Week.
- Served in an advisory capacity to the Department of Planning and Community Development and the Board of Selectmen regarding the management of Green Community funds, the Green Homes Brookline program, municipal solar initiatives, and other related projects.
- Further developed the partnership between CAB, CAC, and the Public Health Department. This coalition collaborates to plan events meant to raise awareness of

the parallels between healthy behaviors (such as walking, biking, and eating a locally produced, plant-based diet) and reducing greenhouse gas emissions.

III. WORK PLAN

The CAC has identified the following tasks for the coming year:

1. Provide support to groups and residents working on activities listed in the Climate Action Plan. As implementation of the plan proceeds, refine greenhouse gas reduction estimates. The plan identifies clear, achievable actions to reduce the town's overall greenhouse gas emissions. These actions provide a road map and policy framework for the committee as it moves forward.
2. Assist as needed in the town's efforts to install solar PV facilities on municipal buildings and properties.
3. Collaborate with CAB on community education and engagement activities to promote lifestyle changes that lead to greenhouse gas reduction.
4. Monitor and support the Green Homes Brookline Program, as well as work to expand its focus to include large condominium and apartment buildings.
5. Collaborate with CAB to organize and run Climate Week, as well as other events that are part of CAB's public education campaign when needed.
6. 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.
7. Collect and refine data on town energy use and GHG emissions, by sector and source.
8. Work with community and municipal partners to identify and implement climate change adaptation strategies.

IV. APPENDICES

1. **Town Meeting Resolution** (Article 29, May 27, 2008, Annual Town Meeting)
VOTED: That the Selectmen 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 Selectmen'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 Board of Selectmen, the Town Administrator, and the public; and
    7. Such other responsibilities as may be determined from time to time by the Board of Selectmen.

    The committee shall consist of the following members appointed by the Board of Selectmen:

    1. A member of the Board of Selectmen
    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 Selectmen and the Town Administrator. The committee shall be established by November 30, 2008, and shall be evaluated by the Board of Selectmen before December 31, 2011 to determine whether it should be made permanent or dissolved.

2. CAC Membership

Dan Bennett	Building Commission
Ben Chang	School Committee
Mary Dewart	Brookline GreenSpace Alliance
Jon Cody Haines	at-large
Alan Leviton	Climate Action Brookline
Werner Lohe	Conservation Commission
Patricia Maher	Department of Public Health
Linda Pehlke	Brookline Neighborhood Alliance
Celinda Shannon	Brookline Chamber of Commerce
Jim Solomon	at-large
Ali Tali	Transportation Board
Keske Toyofuku	at-large
Mark Zarrillo	Planning Board
Don Weitzman, Co-chair	Advisory Board
Neil Wishinsky, Co-chair	Board of Selectmen
Lara Curtis Hayes, Staff	Department of Planning and Community Development

3. EECBG Program

The Department of Energy approved the Town's proposal to use Energy Efficiency and Conservation Block Grant (EECBG) monies on the following projects:

- Install energy efficiency improvements in several municipal buildings ($143,000);
- Three LED street light pilot projects, two in residential neighborhoods and one in Brookline Village along Harvard Street ($170,800);

- Establish Green Homes Brookline, a residential energy efficiency program to provide energy assessments and improvements for Brookline homes ($160,600);
- Provide supporting funds to CAB for a public education campaign ($20,000).

This grant ended September 27, 2012, at which point all monies, except for $5,407 leftover as the last LED streetlight project came in under budget, were expended.

4. 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.

5. Town of Brookline Greenhouse Gas Inventory Overview

History and Purpose

In May 2000, the Town of Brookline elected to participate in the Cities for Climate Protection Campaign, a program of the International Council of Local Environmental Initiatives (ICLEI). The Cities for Climate Protection Campaign follows a 'Five Milestone' process:

- Milestone One: Conduct a Greenhouse Gas Emissions Inventory and Report
- Milestone Two: Set a Greenhouse Gas Emissions Reduction Target

- Milestone Three: Develop a Local Climate Action Plan
- Milestone Four: Implement the Local Climate Action Plan
- Milestone Five: Monitor Emissions Reductions

The Town completed the first three milestones in the ICLEI program, publishing a greenhouse gas inventory in August 2000 and a Greenhouse Gas Emissions Reduction Target and Climate Action Plan in February 2002.

The August 2000 Greenhouse Gas Inventory reported emissions for calendar years 1995 and 1998. The following summary updates those initial findings to include information for calendar years 2003 and 2008. The goal of the Greenhouse Gas Inventory is to guide Brookline's process of writing and implementing a plan to reduce the emissions contributing to climate change. The CAC is currently working on updating the Greenhouse Gas Inventory again, but up-to-date findings were not available in time for this report.

Brookline's Community Greenhouse Gas Emissions Totaled 520,000 Tons CO_2 for CY2008

Brookline's community greenhouse gas emissions (Table 1 and Figure 1) have been steady at roughly 520,000 tons of CO_2 per year for, at least, the five year period from 2003 through 2008. Community emissions comprise the residential, commercial, and government sectors.

Brookline's 2008 community greenhouse gas emissions were about eight percent below the annual emissions rate of 560,000 tons previously reported for 1995 (August 2000 Greenhouse Gas Inventory Report). Adjusting for possible inconsistencies in electricity and natural gas usage and vehicle emissions described below, Brookline's 1995 greenhouse gas emissions may have been as low as 515,000 tons per year. In either case, Brookline has done better than the United States, as a whole. Greenhouse gas emissions increased about ten percent nationally from 1995 through 2007.

Greenhouse gas emissions from Brookline's government operations (Figure 2) for 2008 are relatively unchanged from those previously reported for 1995 (August 2000 Greenhouse Gas Inventory Report). Government operations are responsible for about three percent of Brookline's total community emissions.

Emissions from MBTA trolleys and buses were not included in this analysis. Emissions from these sources are likely about one percent of the reported total community emissions, based on the August 2000 Greenhouse Gas Inventory Report.

Brookline's Climate Action Plan Base Year Should be Changed from 1995 to 2003

The ICLEI Local Government Protocol (September 2008) states: "It is good practice to compile an emissions inventory for the earliest year for which complete and accurate data can be gathered. The base year for the UNFCCC and subsequent Kyoto Protocol is

calendar year 1990. However, required data from 1990 is often prohibitively difficult or impossible to collect. Given that the priority for a greenhouse gas management program should be on practical results, it is more important that the base year be documented with enough detail to provide a good basis for local action planning than it is that all local governments produce an inventory with the same, stipulated base year."

Graphs of electricity usage (Figure 3) and natural gas usage (Figure 4) from 1995 through 2008 indicate anomalies in trends for both utilities. Values for 1995 and 1998 were reported in the August 2000 Greenhouse Gas Inventory report based on information provided by Boston Edison and Boston Gas. Usage information for 2002 through 2008 was obtained from NSTAR and National Grid. The significant drop in usage of gas and electricity from 1998 to 2002 is inconsistent with both population growth in Brookline and national trends in residential energy consumption during that period.

CO_2 emissions from vehicles traveling in Brookline may also have been overstated, based on a November 2009 report from the United States Environmental Protection Agency. Vehicle emission factors generated for 1995 by the ICLEI software (CACP 2009) were based on projections that predated the recent EPA report.

Due to the above inconsistencies, it is recommended that 2003 be used as the base year for Brookline's Greenhouse Gas Reduction Target and Climate Action Plan.

Brookline's Residential Carbon Footprint is Much Lower than the U.S. Average

In 2008, Brookline's average residential carbon footprint was about 31,000 pounds of CO_2 per year. The average US household had a carbon footprint of 46,000 pounds of CO_2 per year, according to data from the US Energy Information Agency's (EIA) 2005 Residential Energy Consumption Survey and a household vehicle use survey for 2009 published by the National Highway Transportation Survey (NHTS). In both cases, CO_2 emissions from personal air travel were not included.

Brookline's average commercial carbon footprint was 162,000 pounds of CO_2 per year in 2008, excluding air travel.

Table 1 **Greenhouse Gas Emissions CO_2e, Tons/Year**

	1995	2003	2008
Electricity	140,920	130,384	137,125
Natural Gas	120,369	104,223	126,643
Heating Oil	126,267	112,366	103,678
Cars and Trucks	151,315	152,194	128,992
Solid Waste	21,129	21,129	21,264
Total	559,999	520,295	517,702

Table 2 **2008 GHG Emissions By Sector**
CO_2e, Tons/Year

	Residential	Commercial	Municipal	Total
Electricity	75,688	54,106	7,331	137,125
Natural Gas	89,812	34,474	2,357	126,643
Heating Oil	81,070	19,980	2,629	103,679
Cars and Trucks				128,992
Solid Waste	14,176	6,998	90	21,264
Total				517,702

Table 3 **Greenhouse Gas Sources**

		1995	2003	2008
Electricity	kwh	311,702,637	288,397,640	293,386,860
Natural Gas	Therms	20,445,394	17,702,807	21,511,045
Heating Oil	Gallons	11,283,499	10,041,279	9,264,891
Cars and Trucks	Miles	232,094,937	242,992,126	210,333,390
Solid Waste	Tons	21,000	21,000	21,135

Table 4 **Brookline's Residential Carbon Footprint - 2008**

	CO_2e, Tons/Year
Electricity	75,688
Natural Gas	89,812
Heating Oil	81,071
Gasoline/Diesel	139,156
Solid Waste	14,176
Total	399,901
Number of Households	25,573
Pounds CO_2/Household/Year	31,275

Table 5 Brookline's Commercial Carbon Footprint - 2008

	CO_2e, Tons/Year
Electricity	52,536
Natural Gas	34,474
Heating Oil	19,980
Gasoline/Diesel	7,576
Solid Waste	6,998
	121,564
Number of Businesses	1,500
Pounds CO_2/Business/Year	162,086

Table 6 Brookline's Municipal Carbon Footprint - 2008

	CO_2e, Tons/Year
Electricity	8,901
Natural Gas	2,357
Heating Oil	2,629
Gasoline/Diesel	2,305
Solid Waste	90
	16,282

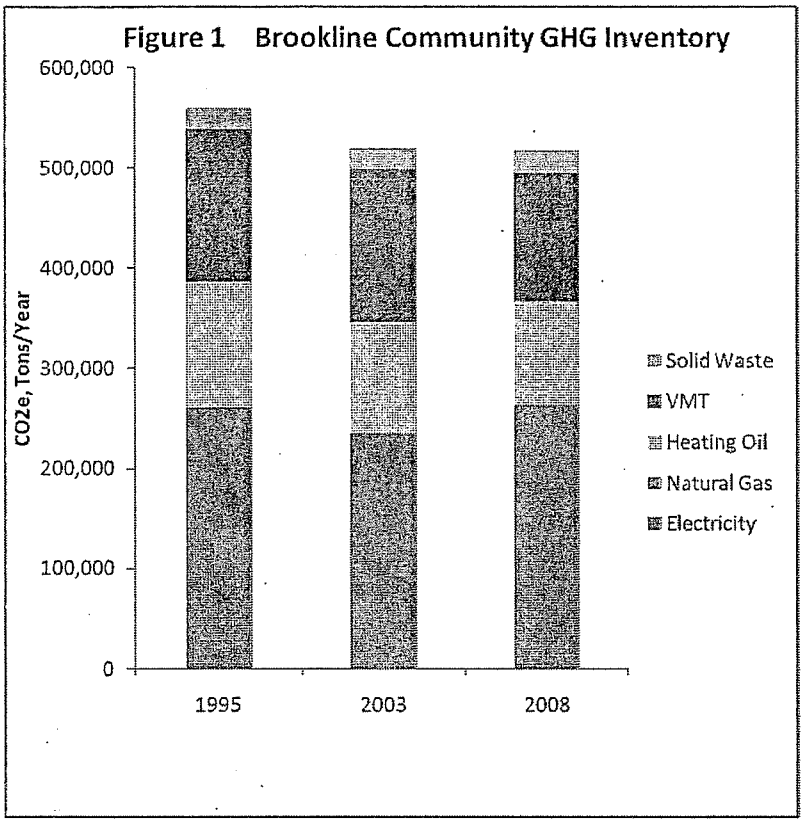
Figure 1 Brookline Community GHG Inventory
600,000
500,000
400,000
300,000
200,000
100,000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

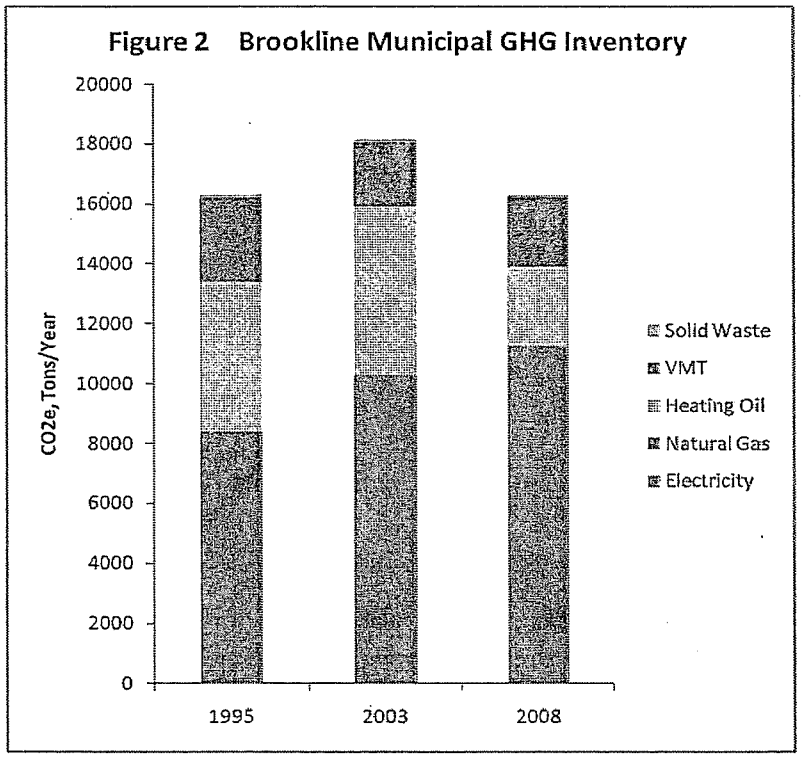
Figure 2 Brookline Municipal GHG Inventory
20000
18000
16000
14000
12000
10000
8000
6000
4000
2000
0
CO2e, Tons/Year
1995
2003
2008
Solid Waste
VMT
Heating Oil
Natural Gas
Electricity

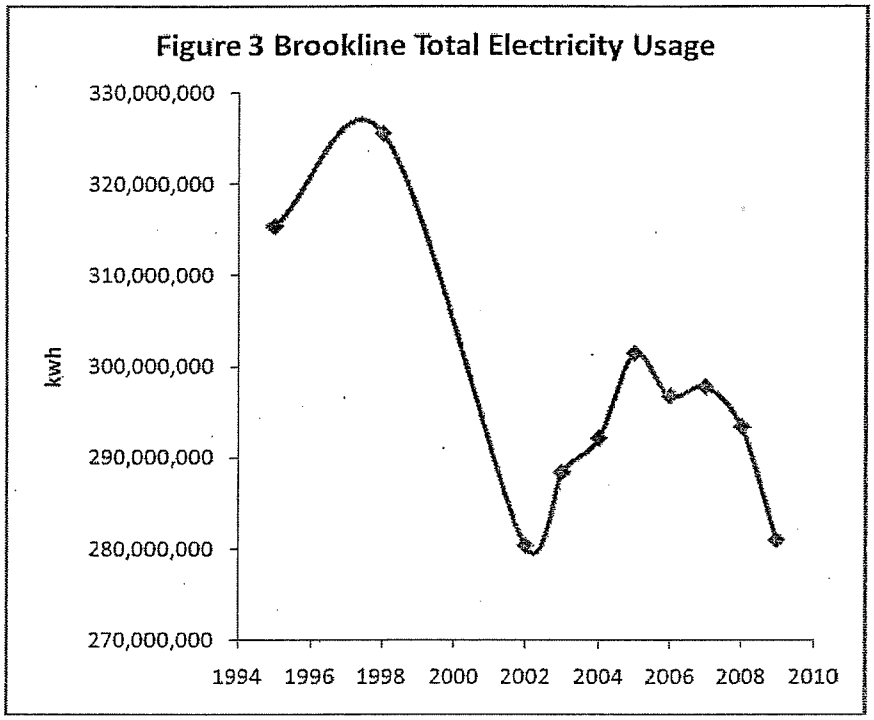
Figure 3 Brookline Total Electricity Usage
kwh
330,000,000
320,000,000
310,000,000
300,000,000
290,000,000
280,000,000
270,000,000
1994
1996
1998
2000
2002
2004
2006
2008
2010

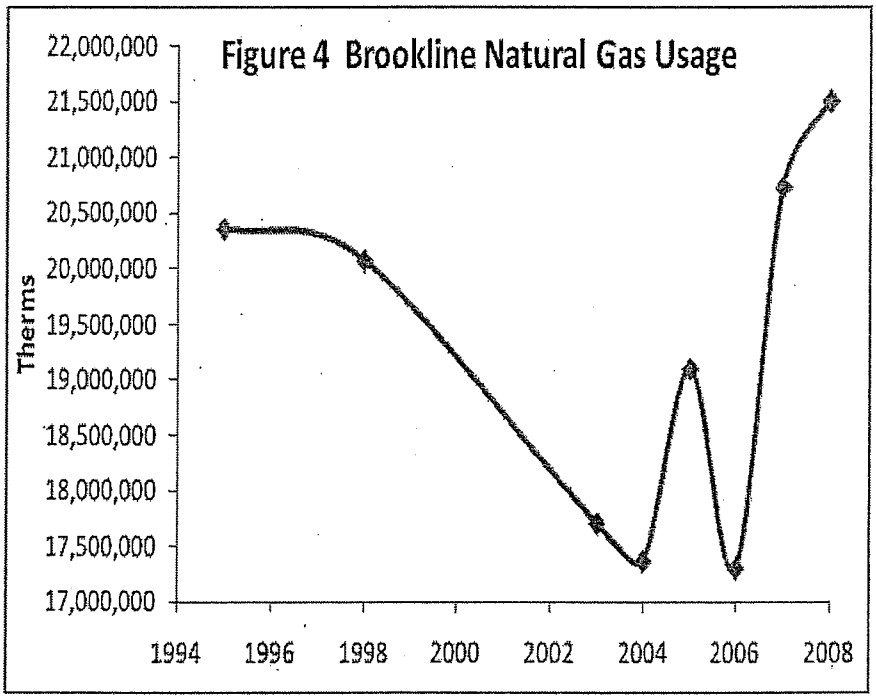
Figure 4 Brookline Natural Gas Usage
Therms
22,000,000
21,500,000
21,000,000
20,500,000
20,000,000
19,500,000
19,000,000
18,500,000
18,000,000
17,500,000
17,000,000
1994
1996
1998
2000
2002
2004
2006
2008

THE MINIMUM OFF-STREET PARKING REQUIREMENTS IN BROOKLINE'S ZONING BY-LAW

Analysis and Recommendations for Modification

REPORT OF THE MODERATOR'S COMMITTEE ON PARKING

August 30, 2013

Town of Brookline
Moderator's Committee on Parking

To: Edward (Sandy) Gadsby, Town Moderator

From: Lee L. Selwyn, Chairman, Moderator's Committee on Parking

Re: Final Report of the Committee

Date: August 30, 2013

Article 10 in the November 2010 Special Town Meeting Warrant called for certain modifications to the Town's Zoning By-Law regarding minimum off-street parking requirements for new residential construction. Town Meeting voted to refer the subject matter of Article 10 to a Moderator's Committee on Parking to study the issue and prepare a report.

The Committee has completed its examination of this issue and has prepared a Report to Town Meeting, which is provided herewith. In its Report, the Committee proposes certain modest reductions to minimum off-street parking requirements. Our conclusions and recommendations resulted from extensive research, including subjective assessments of the need and demand for off-street parking as offered by residents, developers, and realtors, as well as a quantitative assessment of the demand for off-street parking obtained from nearly 12,000 respondents to a survey of Town residents undertaken by the Committee in early 2012.

The Committee received and acknowledges with gratitude the substantial assistance we received from several Town officials. Gary McCabe, Town Assessor, and his staff provided the Committee with data and analysis relating to the number of registered vehicles and their locations, existing off-street parking spaces in multi-unit residential buildings, and classifications of dwelling units. The Assessor's office also helped with the development of the Parking Survey questionnaire, including the specification and mapping of the "parking neighborhoods" that formed the basis for the survey. Pat Ward, Town Clerk, and his staff worked with us to distribute the survey questionnaire together with the 2012 Annual Town Census and to collect the roughly 12,000 responses that were received. Sean Cronin, Deputy Town Administrator, helped us obtain funding to cover the modest cost of the processing of the survey responses into a form suitable for the Committee's analysis. The Committee also benefitted from the expertise and effort of its members in the analysis and organization of the survey data and in the development of this Report.

With the delivery of our Report, the tasks assigned to the Moderator's Committee on Parking have now been completed and the Committee's work is concluded.

THE MINIMUM OFF-STREET PARKING REQUIREMENTS IN BROOKLINE'S ZONING BY-LAW

Analysis and Recommendations for Modification

REPORT OF THE MODERATOR'S COMMITTEE ON PARKING

August 30, 2013

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THE MINIMUM OFF-STREET PARKING REQUIREMENTS IN BROOKLINE'S ZONING BY-LAW

Analysis and Recommendations for Modification

REPORT OF THE MODERATOR'S COMMITTEE ON PARKING

August 30, 2013

EXECUTIVE SUMMARY

Article 10 in the November 2010 Special Town Meeting Warrant called for certain modifications to the Town's Zoning By-Law regarding minimum off-street parking requirements for new residential construction. Article 10, which proposed reducing the minimum off-street parking requirement, was the subject of considerable debate at the November 2010 Special Town Meeting and, ultimately, did not pass. Town Meeting, however, voted to refer the subject matter of Article 10 to a Moderator's Committee on Parking (the "Committee") to study the issue and prepare a report.

In response to the charge from Town Meeting, the Committee held 26 meetings beginning on January 5, 2011 through August 16,2013. The Committee heard from proponents and opponents of Article 10, real estate developers, real estate agents, municipal planning officials (from Brookline, Cambridge and Newton) and interested residents of the Town. In addition, the members of the Committee also conducted numerous interviews with Town officials (including from the Planning Department and the Assessor's Office) to gather additional data for its study. The input provided by the aforementioned individuals was helpful, but also demonstrated the conflicting arguments for and against a change to the Zoning By-Laws. As a result, the Committee decided early on that, to the extent possible, its deliberations needed to be informed by quantative data – although it was mindful that getting the "perfect dataset" would be an unrealistic endeavor.

Initially, the Committee began by looking at the data submitted both by proponents and opponents in connection with Article 10. The Committee, however, concluded that the data submitted in connection with Article 10, although providing useful data points and presenting the Committee with ideas for further investigation, was insufficient. The Committee analyzed several datasets provided by the Town's Assessor's Office, including automobile excise tax information that had originated with the Massachusetts Registry of Motor Vehicles. The Committee used this historical data to try and assess whether and to what extent changes to the

Town's minimum off-street parking Zoning By-Law had on construction of residential developments. Generally speaking, the data showed that a change in the off-street parking requirements has historically not had much of an impact. At the end of the day, however, the Committee felt that analyzing historical data raised more questions than it answered, and that the data could be interpreted very differently to argue either for or against maintaining the current off-street parking requirements.

Given the limitations of the historical data sources, the Committee, with the assistance of the Town Clerk and Town Assessor, developed a survey questionnaire that was mailed out to all Town residents together with the 2012 Annual Town Census. The survey identified 14 specific "parking neighborhoods" and asked respondents various questions about their off-street parking situation. The Committee analyzed the survey responses and was able to draw the following conclusions from them:

(1) Regardless of the size of the dwelling the average number of cars per household is well below the current off-street parking requirements, although there are wide variations around the averages.

(2) The differential between the average cars per household and the spaces allotted is greatest for studio and one bedroom apartments, and less so for 2- and 3+ bedroom apartments in multi-unit buildings (as opposed to 2 and 3 family houses).

(3) A large majority of the Town – including respondents in high density areas such as Coolidge Corner – believe that their off-street parking needs are adequately met. The highest levels of dissatisfaction with their off-street parking situation are in the areas of Heath School/Eliot St., Brookline Hills/Brookline High School, Corey Hill, and Washington Sq./Corey Farm. Moreover, among residents of multi-family units, the larger the unit, the more the respondents were likely to believe that their parking is inadequate.

After collecting and analyzing the various qualitative and quantitative data, the Committee established the following general principles for a change to the minimum off-street parking requirements:

(1) The minimum off-street parking requirements for new buildings are higher than necessary for certain residential uses in certain residential areas. Town Meeting should consider downward adjustments.

(2) Any downward adjustments should be conservative, given the imperfect knowledge; it is better to be incremental and evaluate later rather than initiate a dramatic change.

(3) Town Meeting may want to consider some creative options (such as including off-street parking in FAR).

Given the above, the Committee recommends that Town Meeting should revise the minimum off-street parking as follows:

Committee Recommendations for Revisions to Minimum Off-Street Parking Requirements For Residential Buildings in Brookline		
	Number of off-street parking spaces required	
Size of unit	Currently Required	Proposed (Changes are underlined)
Studio	2 spaces per unit	1.0 space per unit
1-bedroom	2 spaces per unit	1.5 space per unit
2-bedroom	2 spaces per unit/2.3 spaces per unit for attached single-family dwellings in zoning districts with a maximum FAR of .5 or greater	2.0 space per unit
More than 2 bedrooms	2 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or greater	2.0 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or greater

Consistent with the aforementioned general criteria, the Committee believes that downwardly adjusting the minimums for studios and 1-bedroom units makes sense, as the Committee's survey shows that car ownership in these units is considerably less than the current minimum requirements. In addition, the Committee believes that the minimum off-street parking requirements for 2-bedroom units can be lowered slightly. The Committee, however, does not recommend changing the minimums for 3+ bedroom units. The Committee believes that these changes address the largest discrepancies between the off-street parking requirement and actual need for off-street parking.

Finally, it is important to note the limitations on the Committee's charge and what the Committee did not consider. Because the Committee's task was to evaluate off-street parking for new residential development, its proposed modifications will not affect the off-street parking situation for existing buildings (including the large number that had been built without parking). In addition, although the Committee is mindful of efforts to encourage the use of bicycles and other "green" modes of transportation by Brookline residents, it has found no evidence that changing minimum off-street parking requirements for this purpose would be an appropriate or an effective use of zoning. That said, the Committee encourages Town Meeting to consider other changes to the Zoning By-Law, which could tie allowing developers to lower their parking

requirements in exchange for offering certain specified benefits to residents, such as providing parking spaces for car sharing services such as Zipcar, bicycle racks, or other alternative transportation (such as a shuttle bus). Other ideas for Town Meeting to consider are allowing reductions in parking requirements if developers increase green space or build underground parking. Finally, because the Committee recognized that much of the need for off-street parking is by residents of older buildings (who have no or inadequate parking), Town Meeting may want to consider mechanisms to require or encourage developers to make some of the parking spaces they build available to non-residents of their development.

MEMBERS OF THE MODERATOR'S COMMITTEE ON PARKING

Lee L. Selwyn, Chairman
Jonathan Simpson, Vice Chairman
Guus Driessen, Secretary
Kenneth M. Goldstein
Jane Gould
Alisa Jonas
A. Joseph Ross
Benjamin Stern

I. INTRODUCTION AND OVERVIEW

A. Committee's Charge from Town Meeting

Article 10 in the November 2010 Special Town Meeting Warrant called for certain modifications to the Town's Zoning By-Law regarding minimum off-street parking requirements applicable to new residential construction. In general, those modifications would have had the effect of reducing the number of off-street parking spaces required for such development. The Article was not adopted by Town Meeting. Instead, Town Meeting voted "to refer the subject matter of Article 10 to a Moderator's Committee with a charge to include:

- Seeking additional data on cars and parking in Brookline, including, but not limited to, a possible question on the Town Census asking for residents to report the number of cars and how they are housed in Brookline, a survey of owners and managers of multi-unit buildings to identify the number of spaces owned, rented, and vacant; and

- Reviewing and analyzing all available data to select the most consistently reliable, accurate and complete information on ownership of cars and utilization of parking, including the April, 2010, Report of the Selectmen's Committee on Parking; and

- Investigating the relationship of parking and zoning requirements to density, open space and the cost of housing with reference to different zoning classifications, both residential and commercial, in order to understand all the zoning implications and impacts as much as possible; and

- Making recommendations for changes in the zoning bylaw with regard to reduction in off-street parking requirements taking into account utilization patterns, proximity to transit and car-sharing, and the different residential patterns and densities of Brookline neighborhoods; and

- Exploring alternative regulatory choices, including but not limited to downzoning, design review, and allowing reduced parking requirements by special permit to deal with parking and development issues raised by Article 10."

Importantly, the Committee's charge was limited to evaluating and making recommendations for off-street parking requirements applicable to new construction only; the Committee did not consider, nor was it asked to consider, changes that would require pre-existing buildings in the Town to modify the amount of off-street parking available.

The Moderator's Committee was organized and held its initial meeting on January 5, 2011, and has generally met once per month thereafter.

B. Summary of Existing Off-Street Parking & Zoning Requirements

Current Zoning Requirements

Article 12 of the 2000 Annual Town Meeting was offered by petitioners as a way to increase the parking requirements in response to a perceived residential parking shortage, the removal from service of several large parking lots that had been available to residents of nearby buildings and, in particular, the perceived need to accommodate tradespeople and visitors. The Article was approved by Town Meeting, and put into place the current off-street parking requirements. These requirements for residential construction are found in a single column in the Brookline Zoning By-Law Section 6.02, Paragraph 1, *Table of Off-Street Parking Space Requirements*. The parking requirements are specified with respect to the maximum Floor Area Ratio ("FAR") allowed in a particular zoning district. For districts with a maximum FAR of 0.40, a minimum of two (2) spaces are required per dwelling unit. For districts with a maximum FAR greater than 0.40, a minimum of two (2) parking spaces are required for each dwelling unit with two or fewer bedrooms, and a minimum of 2.3 parking spaces are required for units with more than two bedrooms or for each attached single-family dwelling containing two or more bedrooms.[1] Expressed in terms of unit size, the current requirements can be summarized as follows:

Size of unit	Number of off-street parking spaces required
Studio	2 spaces per unit
1-bedroom	2 spaces per unit
2-bedroom	2 spaces per unit/2.3 spaces per unit for attached single-family dwellings in zoning districts with a maximum FAR of .5 or greater
More than 2 bedrooms	2 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or greater

1. Brookline Zoning By-Law, May 24, 2012, at Sec. 6.02.

II. HISTORY OF OFF-STREET PARKING REQUIREMENTS IN BROOKLINE

A. The Overnight On-Street Parking Ban

Brookline has a long tradition – dating back at least to 1896[2] – of prohibiting overnight on-street parking except in certain specifically designated parking areas and lots. "No driver may park on any street in Brookline, or in any Town-owned off-street parking facility, for a period longer than one (1) hour between the hours of 2:00 am and 6:00 am on any day of the week unless allowed by the Transportation Board."[3] Although the prohibition nominally applies only between these hours, its effects can be observed 24/7.

Brookline's overnight parking ban requires that some type of off-street parking be available to Brookline residents with motor vehicles, although it was not until 1941 that minimum off-street parking requirements were incorporated into the Brookline Zoning By-Law.[4] The widespream availability of off-street parking alleviates the potential demand for on-street parking proximate to the residents' homes. This, in turn, results in less on-street parking overall, even when on-street parking is not prohibited, such as during the day – an effect that can be readily observed along streets that cross the Town line between Brookline and Brighton. These second-order effects of the overnight parking ban have a material benefit for the quality of life in Brookline:

- ✓ Streets are less congested
- ✓ Visitor parking is more widely available, which is also beneficial to Brookline's business community.
- ✓ Street cleaning and maintenance, including snow removal, is facilitated.

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2. Craig Bolon, *Vehicle Parking in Brookline*, August 2000, at 1. "A Special Town Meeting of January 30, 1896, appointed a Special Committee to Revise Town By-Laws, which submitted its proposals to a June 25, 1896, Special Town Meeting under Article 2. The revised bylaws were adopted as submitted and became effective on October 14, 1896. ... One of the new bylaws, not affected by the amendments, was Section 64 under Article XHI, Public Ways, reading as follows: 'No person shall occupy any part of any public street as storage room for carriages or other vehicles.' This bylaw was interpreted by the Brookline Police Department to mean that vehicles are not to be left on the street overnight or for more than a reasonable time during the day."

3. See, http://www.brooklinema.gov/index.php?option=com_content&view=category&id=121%3A parking&Itemid=617 (visited 10/24/11)

4. *Vehicle Parking in Brookline*, *supra*, fn. 2, at 1.

✓ It may create a reduction in the number of "cruising" vehicles, i.e., vehicles in search of cheaper on-street parking spaces, as compared to the more expensive off-street spaces.

✓ It may create a reduction in parking spillover, i.e., limiting the need for motorists to park in adjacent residential neighborhoods,

B. Pre-2000 Minimum Off-Street Parking Requirements

From 1987-2000, the Town's minimum off-street parking space requirements were as follows:

- For Zoning Districts with a maximum FAR of .15 - .40: 2 spaces per unit
- For Zoning Districts with a maximum FAR of .50 – 1.00 (described as zoning for two-family or three-family homes): 1.6 spaces per unit, 1.8 spaces per unit if the unit has more than two bedrooms
- For Zoning Districts with a maximum FAR of 1.5 and up (described as zoning for Multi-Family Buildings): 1.5 spaces per unit, 1.7 spaces per unit if the unit has more than two bedrooms

C. 2000 Zoning Revisions

These requirements for residential new construction as modified by the 2000 Zoning revision are found in a single column in Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements. The parking requirements are broken down by maximum FAR allowed in a particular zoning district, which results in current requirements as follows:

Table 1: Current Minimum Off-Street Parking Requirements

Size of unit	Minimum number of off-street parking spaces required
Studio	2 spaces per unit
1-bedroom	2 spaces per unit
2-bedroom	2 spaces per unit/2.3 spaces per unit for attached single-family dwellings in zoning districts with a maximum FAR of .5 or greater
More than 2 bedrooms	2 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or greater

D. November 2010 Warrant Article

In 2008, the Selectmen established the Selectmen's Parking Committee to evaluate parking issues in the Town and to make recommendations based on its findings. That Committee concluded that the current minimum parking requirements for residential multi-family buildings should be reduced, at least for areas of town that are in proximity to public transportation, but that Committee did not come to a consensus as to the extent of the reductions. Warrant Article 10 of the November 2010 Town Meeting proposed changes in the minimum requirements that reflected the assessment of those Committee members who determined that greater reductions were appropriate. The Article produced considerable debate in Town Meeting, which voted to refer the subject of Article 10 to a Moderator's Committee on Parking, to reevaluate the issues and present its findings to a later Town Meeting.

III. DATA COLLECTION AND ANALYSIS

A. Previous examinations of and opinions on this issue

Previous attempts to examine and to address this issue have been driven by a variety of sometimes conflicting objectives. Views on the issue have been strongly held both by those who support higher parking minimums and those who support lower parking minimums. Finding a resolution has been difficult, partly because there are strong arguments for either approach, and because data sources used to make objective needs analyses have been imperfect. It also is not clear how each strategy might affect such issues as the impact on the amount of development in the Town, the types of units to be developed, the erosion of green space, traffic, affordability, and improvements in public transportation.

Arguments that have been made in support of lower minimum parking requirements include:

- ✓ Greater parking space requirements lead to unnecessarily large and bulky buildings, which are unattractive and reduce open space.
- ✓ Higher minimum parking requirements result in increased cost per unit, encouraging the development of larger, more higher-end units and fewer moderate and affordable units.
- ✓ Higher minimum parking requirements result in increased cost per unit, which discourages development.
- ✓ The additional requirements for parking space lead to a loss of green space.
- ✓ A reduction in available parking discourages the use of automobiles in Brookline and encourages the increased use of alternative means of transportation, including bicycles and mass transit, which is better for the environment.
- ✓ The market should be the primary force to determine the amount of parking.
- ✓ The need/demand for parking is lower than is reflected by the current minimum parking requirements.
- ✓ Brookline's requirements for parking in new construction are high in comparison to other comparable communities.

Arguments that have been made in support of maintaining the minimum parking requirements at their current levels include:

- ✓ Many Brookline residents currently have inadequate parking options at their residence, and this will be exacerbated if new construction is not required to include an adequate amount of parking.

- ✓ Reducing the minimum parking requirements will drive up the prices of the limited number of rental spaces (currently averaging between $200 and $300 per month), making Brookline less affordable.

- ✓ Reducing the minimum parking requirements will put pressure on the overnight parking ban.

- ✓ Lowering parking minimums will enable developers to provide inadequate parking in new units as a cost-cutting measure.

- ✓ The harm from reducing the minimum parking requirements is magnified because many residents, particularly in the southern parts of Town, have limited access to public transportation from their homes. Even if a resident lives close to public transportation, such proximity does not eliminate the need for cars, because many parts of greater Boston are difficult to access by MBTA.

- ✓ Lowering parking requirements in new construction would not result in more green space, but rather encourage a higher density of new construction, and enable property owners to subdivide units already built, further increasing density in already dense parts of town. It would also potentially facilitate a larger expansion of Hancock Village.

- ✓ Higher cost per unit associated with higher parking minimums could encourage less residential and more commercial development, which is financially more advantageous to the Town.

- ✓ Zoning for minimum parking requirements is not a suitable or effective means to accomplish objectives such as encouraging reduced car usage.

- ✓ Many of the benefits proposed as benefits from lowering the parking minimums, such as increased green space, could be achieved if the Town took other approaches, such as offering developers the option of reduced parking requirements in exchange for the provision of a Town benefit.

To better understand all the issues, the Committee collected and analyzed a variety of data, including input from residents, developers, realtors and officials from other towns; existing quantitative data and data collected from a survey of residents that was developed by the Committee.

B. Subjective Assessments by Residents, Developers, and Realtors of the Need/Demand for Off-Street Parking in the Town

The Committee's initial two presenters (2/9/2011) were Linda Pehlke (proponent of the 2010 Warrant Article) and Sean Lynn-Jones. Both Ms. Pehlke and Mr. Lynn-Jones had been on the Selectmen's 2008 Parking Committee, which had concluded that some reductions in residential parking minimums would be appropriate, although there was disagreement as to the extent of the reductions. Ms. Pehlke provided data analyses that she had developed as a member of the Selectmen's Parking Committee supporting her Warrant Article that had proposed more substantial reductions. Mr. Lynn-Jones provided his analysis of the data sources and concerns about flaws in the data, which could lead to reductions in parking minimums that were too great.

Two additional presenters, Stanley Spiegel and Jonathan Davis (3/9/2011) expressed their concerns about reducing minimum parking requirements. Mr. Spiegel questioned the validity of the studies behind Warrant Article 10 and, in particular, the parking space vacancy study prepared by the Selectmen's Parking Committee. He expressed a concern that lower parking minimums might encourage undesired new development and future tear-downs. In addition, he pointed to the importance of the longstanding overnight parking ban relative to the character of the Town as well as to the issue of possibly changing the parking rates. Mr. Davis suggested consulting a 1973 study that reportedly contained information on the number of housing units that did not have parking granted to them by a deed. Furthermore, he suggested reducing the parking requirements for commercial real estate, as that would have the benefit of increasing the Town's tax base rather than reducing residential parking requirements.

Two real estate developers were invited to offer their views of the Town's parking minimums, Michael Durand (4/20/11) spoke about his experience in developing projects at 74 Green Street (yr. 2009) and 70 Sewall Avenue (yr. 2012). He focused on the price points wherein potential buyers expected to have possession of a specific number of parking spaces as part of the purchase of a condominium unit. He mentioned that the number of parking spaces at Green Street met the Town's parking codes. However, he thought that too many spaces were required for that development, as five parking spaces are currently vacant. With a lowered parking rate, the building's footprint could have been smaller and less expensive to build. For 70 Sewall Avenue, a parking variance was granted and, when completed, 10 spaces will be provided for 7 housing units.

William McQuillan, a Brookline resident who is the developer of the Trilogy Development in the Boston Fenway area, told the meeting attendees (2/15/2012) about the philosophy that he had applied in developing the composition of the number of apartment units in his development. He provided a lot of information regarding the percentage and number of bedrooms per unit in the building, and also the number of parking spaces that are available for each type of unit. He attributed a large part of the success of the development to its proximity to the hospitals as well as the availability of mass transit. He felt that compared to Boston, Brookline's parking requirements are high. From his experience with development in the Fenway area, he has found that there is increasing demand for smaller one-bedroom units (ranging from 625 to 750 square

feet) and two-bedroom units (800 to 975 square feet). The market he is dealing with has a strong focus on 25- to 40-year-olds who desire to live near mass transit and their work location.

Four Brookline real estate professionals, Julie Bell, Lisa Berger, Barbara Faverman, and Sheila White (1/11/2012), presented their views of the Brookline residential market. They also provided anecdotal cost data and demand perspectives of anticipated amenities such as parking by prospective buyers in the Town's real estate market. The brokers all thought that in some market segments buyers were demanding two spaces per unit, and that a lack of parking would diminish many units' value and marketability. They felt that prospective buyers of units priced over $1M anticipate at least two deeded spaces. They stated that, in general, off-street parking was considered a scarce resource. and that legal and security issues prevented any excess spaces to be made available to non-residents of the building or the development.

C. Minimum Off-Street Parking Requirements in Nearby Communities

Newton

All dwelling units in Newton require two parking spaces per unit, regardless whether the residence is a single family house, a studio, a 6-bedroom apartment, or anything in between. Because all multi-unit buildings must go through the special permit process, builders who want to lower the parking requirement will include that in their request for a special permit, and it often will be granted if they demonstrate reduced need, e.g., close to public transit or parking available elsewhere (for example, in a mixed-use building, if offices use spaces during the day and dwellings use the spaces at night, or a nearby church has parking available for residents.)

Newton is different from Brookline in that it has far fewer multi-family developments, it does not have a large stock of older, multi-family buildings that lack parking, it does not have a year-round overnight parking ban (the ban is in effect during only portions of the year), and there is more space for parking. Partly for these reasons, parking issues are not as contentious. There are no concerns about the minimum two parking spaces per dwelling requirement. When two-family units are built, most developers want to provide a total of four spaces for the two units, regardless of the zoning. If a multi-family building is being built, the developer might seek a special permit to, e.g., reduce parking from 8 to 7 spaces for four units.

According to Newton's Chief Zoning Code Officer Seth Zeren, the two-spaces-per-unit requirement is not a serious factor in the cost of housing in the City. The primary driver is the high cost of land overall and a market that is capable of absorbing expensive units.

Cambridge

Cambridge generally imposes a requirement of 1 parking space per new dwelling unit, although the particulars can vary and additional visitor spaces can be required in certain cases. The City also imposes maximum parking requirements for many commercial and retail uses.

Stephanie Groll, the Transportation Demand Management (TDM) System Manager of the City of Cambridge, met with the Committee (8/17/ 2011) and provided an overview of her experience with the implementation and daily operations of Cambridge's Transportation Demand Management program for both residential and commercial parking development. She also provided samples of parking requirements for residential development, and elaborated on a few unintended consequences of the TDM program. The fact that Cambridge issues on-street resident parking permits in combination with lower parking requirements in the zoning regulations makes it difficult to draw comparisons with Brookline, especially given that Brookline, unlike Cambridge, has an overnight parking ban.

D. Quantitative Assessment of the Demand for Off-Street Parking in Brookline

1. Evaluation of Existing Data

Vehicle Ownership in Relationship to Varying Housing Attributes.

Various datasets and data sources were made available to or otherwise compiled by the Committee in support of its efforts to understand the nature of the demand for off-street parking. Principal among these were data relating the number of vehicles owned by individual households with certain other attributes, including:

- Household size (number of persons)
- Unit size (number of bedrooms)
- Proximity to mass transit (specifically, to the B, C or D lines).
- Rented vs. owned

Following are descriptions of specific datasets and data sources examined by the Committee:

Assessor's Office RMV Excise Tax data

The petitioner of Article 10 had compiled a considerable amount of data regarding various aspects of automobile ownership in the Town. From a preliminary review of this data, it appears that automobile ownership – and hence demand for off-street parking spaces – was heavily influenced by three key factors:

(1) Size of the dwelling unit – i.e., number of bedrooms;

(2) Owned vs. rented; and

(3) Proximity to the Green Line (B, C or D branches).

Using Census Block Group (CBG) data compiled by proponents of Article 10 at the November 2010 Special Town Meeting, the Committee developed a statistical regression model of the demand for off-street parking based upon three potential explanatory variables – (1) the average unit size, (2) the percent owner-occupied units, and (3) a location designator indicating proximity to one of the three Green Line branches. Individual CBGs were classified with respect to their proximity to the Green Line as illustrated in Figure 1 (page 31). Generally, CBGs that were located within roughly 1/2 mile of one of the three Green Line branches were coded as "1" (i.e., near mass transit), whereas all others were coded "0".

The results of the analysis are summarized on Figure 1 (page 28). The Unit Size and Ownership variables were found to be statistically significant at the 95% confidence level; proximity to the Green Line was not observed to be statistically significant at the 95% confidence level. This result would appear to be counter-intuitive. However, because of the fairly coarse (i.e., CBG-level) data and the "rough justice" approach to assessing proximity to the MBTA, the Committee did not see much to be gained by further pursuit of this approach, opting instead for the neighborhood-level analysis embodied in the Committee's Parking Survey, which is discussed below.

The Committee understood the limitations of this very preliminary analysis, but found it useful in suggesting areas for additional investigation. For one thing, the mutual independence of the three explanatory variables was uncertain. For example, larger units were also more likely to be owner-occupied and/or more distant from mass transit. The Committee did not believe that research based upon averages at the CBG level would be likely to yield meaningful indications of parking demand at a level sufficiently granular to assist in the development of zoning policy recommendations.

Number of Residential Units and Parking Spaces, and Historical Construction Patterns.

With valuable assistance from Brookline Town Assessor Gary McCabe, the Committee examined several datasets relating to the number of residential units and available parking, both Town-wide and by neighborhood, currently and historically.

According to the Assessor's "Parking Study Committee Unit Data Summary by Neighborhood, dated 8/20/2012 (see Table 4), the Town currently has 24,542 residential units,[5] of which only 4,634 are single-family homes, 3,231 are two and three family units and 16,677 are multi-family units, comprising 19%, 13% and 68% of all dwelling units, respectively. Of the multi-family units, 59% are condominiums and 41% are rentals.

The Assessor's "Summary of Data Compiled by the Assessor's Office" (the "Historical Summary") provides historical and current data on multi-family housing and parking availability

5. Excluded from this count are the approximately 4,000 units in dormitories and lodging houses.

by neighborhood. as we defined neighborhoods in our town-wide survey of households (see the map in Figure 3).[6] We requested an analysis focused on multi-family housing since parking concerns are greatest for those residents, and such dwelling units comprise a majority of the Town's housing stock.

The Historical Summary provides historical data on the construction of units prior to 1949 and by decade through the year 2010. Several statistics are noteworthy. First, 66% of the units were built prior to 1961, and only 10% were built in the most recent thirty year period. Moreover, the rate of growth of the multi-family housing stock has slowed considerably since 1980. During the three decade period from 1950 to 1980, the number of multi-family units constructed each decade was well over 1500 (i.e., 1,583 units, 2,466 units, and 1,753 units, respectively). By comparison, the three decade period from 1980 to 2010 experienced growth of only 858, 139, and 725 units per decade, respectively. Therefore, with a total multi-family housing stock approaching 17,000, any change in minimum parking requirements for new construction, whether up or down, will have only a minimal impact on parking for the overall housing stock – unless parking in new buildings could be accessed by residents of older buildings that lack sufficient – or any – parking.

Also of note is that the largest increase in the number of units in the past 20 years was concentrated in two neighborhoods: Brookline Village and Hammond-Heath Streets. While the former has traditionally seen much development, growth of the Hammond-Heath Streets neighborhood is new. This trend, combined with the trend of slowed growth overall, suggests that much of the Town has become saturated, and that the new focus for development will be in the western and southern parts of the Town. Since these areas have more limited access to the MBTA, this may result in different parking patterns for newly constructed residences.

The Historical Summary also provides historical trends on parking ratios for multi-family units constructed by decade as well as overall parking ratios as they exist currently. According to the Historical Summary, the Town has 13,803 parking spaces for 16,455 multi-family units, providing, on average, only 0.83 parking spaces/unit.[7] The ratio exceeds 1 parking space per unit in the six neighborhoods of Fisher Hill (9), Heath School/Elliot Street (10), Hammond St-Woodland (11), Chestnut Hill (12), Country Club/Sargent Estates/Larz Anderson (13), and Putterham Circle/Hancock Village (14), followed closely by the Brookline Hills/High School neighborhood (4), which has a ratio of 1.1 parking spaces per unit. These seven neighborhoods with the most parking per unit also have the smallest numbers of multi-family units, and three of the seven (Hammond-Woodland, Country Club/Sargent Estates/Larz Anderson, and Putterham Circle/Hancock Village) are the only neighborhoods located more than ½ mile from the MBTA.

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6. The analysis of our survey findings is contained in Section III of this report.

7. This Historical Summary has slightly lower multi-family unit counts (222 fewer units) than that of the Unit Data Summary.

An analysis of historical trends shows that the ratio of parking to dwelling units was 0.7 for buildings constructed prior to 1949. The ratio increased somewhat during the 1950s to 0.9, and remained relatively stable – actually decreasing slightly – over the next two decades, and then increased to 1.4 in the 1980's, with the highest ratio achieved in the 1990's at 2.1.

Of particular note here is the comparison of the overall parking ratio for new construction during the decade prior to the increased minimum parking requirements (1991-2000) with that of the decade following the increase (2001-2010). The data shows that the increased minimums did not have much of an effect. The overall ratio for construction in the earlier decade is 2.1 parking spaces per unit, compared with 1.8 parking spaces per unit in the later decade. A closer examination of unit types constructed during each of these two decades shows that the average size of units built in the earlier decade was higher, with 34% of the units having three or more bedrooms, compared with only 21% in the later decade. Since it would be expected that larger units would have more parking provided, we attempted to neutralize that difference by calculating new weighted ratios for which the larger units were given twice the weight of the smaller units. With this adjustment, the ratio for the earlier decade is 1.56 compared with 1.53 for the later decade. The ratios thus are almost identical, which is noteworthy given that the parking minimums were lower in the earlier decade.

This finding suggests that the current higher minimums are not out of line with the assessment of parking needs by developers of the type of residential housing currently being built in Brookline and thus may not have resulted in more parking than would otherwise have been provided. The data also corroborates the supposition that developers will provide sufficient parking for residents, regardless of the minimum zoning requirements, since the parking provided in the 1991-2000 period appears to have been greater than required by the zoning minimums extant at that time. On the other hand, this data point may simply reflect the tendency of developers during the more recent periods to focus on developing higher-end units.

In either case, however, given that the data is very limited, neither of the inferences should be given too much weight. Furthermore, the inferences can be used to argue for either maintaining the current minimums or for allowing a reduction.

2. The Committee's Survey of Demand for Off-Street Parking in Brookline

Development of the Survey.

In January 2012, with the assistance of Brookline Town Clerk Patrick Ward and Brookline Assessor Gary McCabe, the Committee developed a survey questionnaire that was mailed to all Brookline households together with the annual Town Census. The Town Clerk's office advises that approximately 24,000 Census Forms were returned. A total of 12,015 Parking Survey forms

were also returned – i.e., representing a response rate of approximately 50% relative to the (mandatory) Census Forms.[8] A copy of the Survey questionnaire is provided as Figure 2.

With the assistance of the Assessor's Office, 14 specific "parking neighborhoods" were defined, and respondents were asked to identify their neighborhood by referring to the map on the reverse side of the survey form (see Figure 3).

Survey responses were optically scanned by an outside contractor that specializes in such activities; the tabulated results were then provided to the Committee in an Excel spreadsheet. Although not specifically requested, roughly 3% of the responses included handwritten comments, which were individually reviewed as well.

The Assessor informed us that there are approximately 28,000 households in Brookline to whom the Assessor's Office sends the Census. Of the total, about 4,000 live in dormitories and lodging houses. Relatively few Census forms are returned from those unit types since a majority of these units experience turnover from year to year, so that the person to whom the Census is mailed no longer lives at the address. Excluding those units, the Town has 24,542 units, * including those in single family, two and three family, and multi-family dwellings. Of the 12,018 survey forms returned, 11,438 identified themselves as living in one of those housing types. This represents a 47% response rate for all of these households.

The survey was sent to all Town residents, and thus was not a sample. Because responses were voluntary and were sent in by less than all of those receiving the survey, the set of responses cannot be described as a random sample in the statistical sense. Overall, while 47% of all of the Town's households residing in single family, two and three family, and multi-family units returned the survey, single family units had a response rate of 70%, two and three family households had a 65% response rate, and multi-family units had a much lower response rate, at only 36%. It is likely that this lower response rate is due to higher turnover rates in those units, especially for rentals. Response rates also varied considerably by neighborhood. Multi-family response rates for the Brookline Village and Brookline Hills/BHS neighborhoods were 48% and 52%, respectively. In contrast, response rates for multi-families in the Heath School/Elliot and Putterham Circle/Hancock Village neighborhoods were 12% and 11%, respectively. While the response rate varied considerably with respect to both neighborhood and unit size, there does not appear to have been any systematic bias in the pattern of responses within these groups. For example, respondents were asked whether their availability of off-street parking was adequate, inadequate or excessive. One might expect a potential bias in that those with inadequate parking availability would have a higher propensity to respond to the survey. However, the

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8. We express the response rate for the parking survey relative to the number of census forms returned rather than to the number of census forms sent, because we have been advised by the Town Clerk that it deliberately sends out more forms than there are current households. For example, it might send a form to a family that has since moved away from Brookline, and send another to the current resident at that same address. SInce the goal of the Census is to get as close to a universal response as possible, this strategy produces the maximum number of returned forms. However, since it represents more than the total number of households, it is incorrect to cite a response rate for the parking survey relative to the number mailed out rather than relative to the total number of census forms returned.

broad range of responses to this question suggests otherwise. For all of these reasons, the Committee believes that overall the responses are reasonably representative of the Town as a whole.

Another factor that has affected response rates by neighborhood is coding errors by respondents. Many respondents appear not to have referred to the map to determine in which neighborhood they lived and so coded themselves as living in the wrong neighborhood for purposes of the survey. For instance, many people who have the Chestnut Hill zip code (i.e., 02467) and mailing address but for purposes of the survey live in other neighborhoods (e.g., Heath School/Eliot St., Hammond St./Woodland, Country Club/Sargent Estates/Larz Anderson, and Putterham Circle/Hancock Village) coded themselves as living in the Chestnut Hill neighborhood. This has resulted in artificially high response rates for Chestnut Hill (e.g., 301 single family households responses in Chestnut Hill, where the total number of single family houses is 230, resulting in a 131% response rate) and artificially low response rates for the other neighborhoods. (See Figure 4, Response Rates). Other respondents likely also coded their neighborhoods incorrectly: Note the 450% response rate for two and three family units in the Fisher Hill neighborhood and the 101% response rate for that unit type in the Brookline Hills/BHS neighborhood.

Another problem with analysis at the neighborhood level is the small number of units for a particular housing type for some neighborhoods (for example, the small numbers of multi-family units in the Heath School/Eliot St. and two and three family units in the six more southwesterly parts of the Town). Given such small sample sizes for these neighborhoods and the problem with neighborhood coding, townwide results will be more reliable.

Survey Findings

The survey results were analyzed and, based on that analysis, several key findings can be identified:

(1) Car Ownership

For dwelling units in each size category, the average number of automobiles per household is well below the current per-unit minimum off-street parking space requirements of 2.0 to 2.3, as shown in the table below. There are wide variations around these averages, however. These averages also do not distinguish between residents of newer units, which provide parking, and residents of older units, which often provide less parking, or none at all.

The principal source of variation in household car ownership is the size of the dwelling unit – i.e., number of bedrooms.

All else equal – i.e., holding unit size and neighborhood constant – households in owner-occupied units tend to have more automobiles than those residing in rental units.

The average car ownership rates by unit size are very similar across different unit types. The remarkably close alignment of overall rates with those for two and three bedroom and multifamily units presumably is due to the small number of single family homes that have fewer than three bedrooms and so are minimally represented in the overall counts for those unit sizes. For three or more bedroom units, average car ownership increases from multi-family (1.4) to two and three family (1.6), to all units, which include single families (1.8). (See Figures 6-9)

Car ownership rates by neighborhood show a distinct division between neighborhoods in the more urban northern parts of Town and those in the south, which is more suburban. (See Figure 5) While all neighborhoods have car ownership rates greater than one per household, all but one of the eight more northern neighborhoods have rates closer to one per unit, with the BHS/Brookline Hills neighborhood as the exception, with a car ownership rate of 1.6. The six more southerly neighborhoods all have car ownership rates that approximate two cars per unit, with a range of 1.8 to 2.1. Most of these neighborhoods also have higher percentages of single family homes and less access to public transportation.

Car ownership rates by neighborhood for multi-family units show far less variation between north and south Brookline, although units in the six more southern neighborhoods overall still have more cars per unit. The rates for these neighborhoods range from 1.1 to 1.7 cars per unit. In contrast, the range for the more northern neighborhoods is 0.9 to 1.1.

(2) Parking Availability

As the chart below demonstrates, the average number of parking spots provided for residents of multi-family units is 1.34. A comparison of average allowable parking with average car ownership by unit size suggests that the amount of parking is sufficient, though barely so for the larger multi-family units. In fact, the differential between number of cars allowed and number of cars owned show large increases by each increment of unit size, with studio apartments having a ratio of 3:1 for cars allowed per cars owned, compared to a 1:1 ratio for 3+ bedroom units.

These differentials would explain why the percent of households renting off-site parking, as shown in the chart, increases with unit size, with more than a third of all households in 3+ bedroom units renting parking off-site. At the same time, it is instructive to note that a sizable percentage of households in all unit sizes (12%-36%) rent off-site parking, despite availability to ownership ratios indicating sufficiency across all unit sizes. This demonstrates the considerable variability in parking availability. Variability appears to most substantial for studio apartments: Twelve percent of these households rent parking off-site despite the overall 3:1 average number of parking spaces available per cars owned.

Table 2: Cars Owned vs. Available Parking Multi-Family Buildings

Type of unit	No. of responses in category	Avg. no. of cars owned per household	Avg no. of cars allowed to park on-site per household	% households renting parking at another location due to insufficient on-site parking
Studio	277	0.43	1.31	11.9%
1-bedroom	2,050	0.71	1.25	17.8%
2-bedroom	2,697	1.08	1.38	24.8%
3+ bedroom	1,156	1.38	1.41	37.6%
All	6,180	0.98	1.34	24.3%

Presented below is the equivalent chart for dwellings in two and three families,, showing car ownership, parking availability, and percentage of households renting parking off-site by unit size. While the chart provides statistics for studio apartments, the number of respondents for that unit size is extremely small, so that reliability is limited. Keeping that in mind, a comparison of the data for multi-families and two/three families shows that while car ownership rates are remarkably similar, the differential between car ownership rates and the availability of parking for two/three families do not show the large increases as unit size increases. Likewise, and not surprisingly, the percent of households renting off-site parking also does not increase with unit size. With average parking availability in excess of car ownership for all unit sizes and a considerably smaller proportion of households renting off-site parking, it appears that the imbalance between need and availability of parking occurs less frequently for households in such units than in multi-families. Nonetheless, 15% of households living in those unit types do rent parking at another location to meet their parking needs.

Table 3: Cars Owned vs. Available Parking Two- and Three-Family Buildings

Type of unit	No. of responses in category	Avg. no. of cars owned per household	Avg no. of cars allowed to park on-site per household	% households renting parking at another location due to insufficient on-site parking
Studio	7	0.43*	1.80*	0.0%*
1-bedroom	115	0.84	1.81	18.3%
2-bedroom	665	1.15	1.86	19.4%
3+ bedroom	1,264	1.58	2.25	15.9%
All	2,151	1.40	2.11	17.1%

* Very small sample size

(3) Residents' Assessments of Adequacy

As summarized in Figure 10, a majority of respondents in all neighborhoods (76%) consider that their parking needs are adequately satisfied, while 24% consider their parking needs inadequately provided for, with "inadequate" parking somewhat higher among renters than among owners. When one analyses the data for multi-family units, the proportion of respondents who think parking is adequate is lower, though still in the majority. Sixty-nine percent find parking adequate, while thirty-one percent, find available parking inadequate for their needs.

A review of findings by neighborhood (Figure 11), keeping in mind the limits to reliability for neighborhood-based statistics, shows the highest levels of dissatisfaction in the neighborhoods of Heath School/Elliot St. (43% find parking inadequate), Brookline Hills/Brookline High School (39%), Corey Hill (37%), and Washington Square-Corey Farm (36%). The lowest rates of dissatisfaction are in the neighborhoods of the Country Club/Sargent Estate/Larz Anderson (11%), Putterham Circle/Hancock Village (13%), and Pill Hill/Whiskey Point (15%). Even in the highest-density neighborhood in Brookline – Coolidge Corner – 71% of respondents consider their parking needs to have been adequately met, while 29% find parking inadequate.

Among residents of multi-family units, adequacy decreases with unit size. While 29% of residents of studios and one-bedroom units and 30% of residents in two-bedroom units find parking inadequate, 41% of residents in three-bedroom units find that parking is inadequate for their needs (Figure 16). The incidence of inadequate parking appears to increase with successively larger size dwelling units (in terms of number of bedrooms).

The proportion of households finding parking to be inadequate corresponds with the proportion of households renting a parking space elsewhere than in their own building, with rates of satisfaction for multi-families decreasing with unit size corresponding with decreasing parking availability and higher off-site parking rates for such units.

3. Parking Survey Data and Results

The following charts and accompanying data tables provide details of the Parking Survey data and principal findings. The material is grouped as follows:

Table 4: Assessor's Parking Committee Summary Data

Table 5: Town of Brookline Multi-Family Permitting and Construction Activity Report 2000-2011 (as of October 2011)

Figure 1: Sources of Demand for Off-Street Parking – Preliminary Regression Results

Figure 2: Residential Parking Survey Questionnaire

Figure 3: Parking Survey Neighborhood Designations

Figure 4: Distribution of Survey Responses by Neighborhood

Figures 5-9: Car Ownership

Figures 10-16: Adequacy of Available Parking

Figures 17-20: Number of Cars Allowed in Existing Buildings

SUMMARY OF DATA COMPILED BY THE ASSESSOR'S OFFICE

Parking NBHD's>	1 - BU/Comm Ave./St. Mary's/Cottage Farms			2 - Brookline Village			3 - Pill Hill/ Whiskey Point			4 - Brookline Hills/ High School			5 - Coolidge Corner/ JFK Crossing			6 - Washington Sq./ Corey Farm			7 - Corey Hill		
Year Built	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp
< 1949	978	230	828	881	528	918	224	141	346	56	114	165	1,858	793	1,605	1,152	292	820	572	183	419
1949-1961	2	3	10	257	-	281	-	2	2	-	-	-	235	47	256	106	13	130	284	-	207
1962-1970	173	36	136	98	-	98	846	33	839	-	-	-	672	3	590	83	-	83	112	-	98
1971-1980	338	71	364	13	-	13	-	-	-	-	-	-	934	20	717	120	6	182	179	-	56
1981-1990	-	2	4	10	4	15	25	8	41	1	-	2	219	46	361	20	-	20	78	14	120
1991-2000	20	9	58	13	6	38	28	3	44	-	-	-	13	8	37	-	-	-	-	2	6
2001-2010	40	10	55	161	37	347	17	2	34	-	2	4	54	29	163	59	-	129	-	-	-
Totals	1,551	361	1,455	1,433	575	1,710	1,140	189	1,306	57	116	171	3,985	946	3,729	1,540	311	1,364	1,225	199	906

Parking NBHD's>	8 - Aspinwall Hill			9 - Fisher Hill			10 - Heath School/ Eliot Street			11 - Hammond & Heath St's			12 - Chestnut Hill			13 - Country Club/ Sargent Estates/ Larz			14 - Putterham Circle/ Hancock Village		
Year Built	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp	0-2 Bdrms	3+ Bdrms	PSp
< 1949	690	330	811	5	19	49	30	27	64	13	22	45	-	6	12	6	12	30	-	-	-
1949-1961	128	-	123	-	-	-	-	-	-	1	1	4	-	-	-	45	2	50	501	29	557
1962-1970	70	4	55	-	-	-	-	-	-	-	-	-	-	-	-	112	9	145	39	11	62
1971-1980	-	-	-	-	-	-	-	-	-	29	5	53	-	-	-	7	9	24	8	-	15
1981-1990	288	24	364	4	21	51	-	-	-	30	18	77	-	-	-	8	25	67	-	-	-
1991-2000	-	-	-	11	4	37	7	-	15	-	2	4	-	-	-	-	8	31	-	5	20
2001-2010	-	4	16	12	11	48	-	-	-	141	14	274	-	-	-	1	8	17	2	9	42
Totals	1,176	362	1,369	32	55	185	37	27	79	214	62	457	-	6	12	179	73	364	550	54	696

Table 4: Assessor's Historical Summary Data

Table 5

Town of Brookline

Massachusetts

Department of Planning and Community Development

Multi-Family Permitting and Construction Activity Report (2000-2011)

(as of October 2011)

Address (Zone)	Developer	Status (Yr)	Units	Parking
120 Seaver St. - Longyear Bldg. A & B (S-0.5) Bldg. C Bldg. D & E	Cortland Prop.	Approved (96) Constructed Bldg. A (00) Bldg. B (00) Constructed Bldg. C (04) Under Construction (05) Completed (08?)	15 18 14	35 35 28
30 Cameron (I-1.0)	Danron	Approved (98) Constructed (00)	7	14
20 Cameron (I-1.0)	Ronex	Approved (99) Constructed (01)	14	25
30 Longwood Avenue (M-2.0)	Bradford	Approved (99) Constructed (01)	15	23
1160 Beacon Street (M-2.0)	Beacon Amory	Approved (98) Constructed (01)	15	25
615 Heath Street (G-2.0)	Durban Trust	Approved (97) Constructed (01)	51 135 beds	89
Kendall Crescent (237 Cypress) (L-1.0)	Parencorp	Approved (99) Constructed (02)	34	106
77 Marion St. (M-2.0)	Nordblom	Approved (00) Constructed (02)	44	120 (extras for area residents)
74 Kent St. (G-2.0)	A. Steinbergh	Approved (00) Constructed (02)	21 Loft	41
11 Longwood Ave (G-1.75)	Leffelle	Approved (99) Constructed (02)	9	15
648 Hammond St. (M-1.0)	Bodwell Pines	Approved (01) Constructed (03)	9	14
520 Heath St. (east side) (M-1.0, G-1.0)	Woodland Prop.	Approved (01) Constructed (03)	23	52
1146 Beacon St. (M-1.5)	Beacon Amory (Bradford)	Approved (01) Constructed (03)	14	24
1601 Beacon St. (G-1.75WS)	Tise Diamond Assoc.	Approved (01) Constructed (03)	9	18
1-3 Harvard Square (G-2.0)	Alan Kaplan	Approved (01) Constructed (03)	2	2 off-site
64 Sewall Ave (M-1.5)	H. Yett (Bradford)	Approved (99) Constructed (03)	8	15
187 High St. (M-1.0)	T.H. Niles R.E. Group	Approved (01) Constructed (03)	14	24

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Address (Zone)	Developer	Status (Yr)	Units	Parking
164 Harvard St. (L-1.0)	R. Dhanda	Approved (00) Constructed (05)*	12	38 (extras for retail/rental)
550 Heath St. (west side) (G-1.0)	Woodland Prop.	Approved (01) Completed (08)	49	108
110 Cypress St. (G-2.0)	A. Steinbergh	Approved (01) Completed (05)	45 2,000 s.f. comm.	124
Aspinwall/St. Paul St. (M-1.0)	Raymond Co.	Approved (02) Constructed (04)	34	66
121 Centre Street (M-1.0)	Brian Farlow	Approved (02) Completed (05)	9	18
75-81Boylston Street (G-1.0)	Maury Ariel	Approved (03) Completed (05)	5	6
51-53 Park St. (M-1.5)	Douglas Freeman	Approved (02) Constructed	9	18
St. Aidan's (M-2.0) 40B – Comp Permit	Planning Office for Urban Affairs	Approved (03) Constructed	59	68
323 Boylston Street (G-2.0)	A. Steinbergh	Approved (03) Completed (06)	29	65
45 Marion Street (M-2.0)	Paragon Properties	Application (03) Denied/Appealed to HAC	88	94
918 West Roxbury Pkwy (S-7)	Robert Basile	Approved (04) Completed (05)	11	20
75 Winchester Street	Ron Simons	Approved (04) Completed (05)	11	22
100 St. Paul Street	St. Paul 100 LLC	Approved (05) Completed (07)	5	12
63-71 Harvard Avenue	Jon Wadleigh	Withdrawn	19	44
St. Paul Arms	Ron Simons	Approved (06) Completed (09)	38	80
99 Winchester Street	Harold Simansky	Approved (06) Completed (08)	5	10
311-327 Hammond Pond Parkway	Zuker Companies/ Ron Simons	Approved (06) Under Construction (06) Modified (09) NOT BUILT	27	65
306-314 Hammond Pond Parkway	Ron Simons	Approved (07) Under Construction (07) Modified (08) (see 310 Hammond Pond Pkwy below)	16	35

* (date) indicates projected year of completion and occupancy

Address (Zone)	Developer	Status (Yr)	Units	Parking
74-76 Green Street	DL Development	Approved (07) Completed (09)	10	22
63-71 Harvard Avenue	Jeffrey Feuerman	Approved (07) Constructed	5	12
51 St. Paul Street	Jeffrey Feuerman	Approved (07) Completed (09)	4	8
310 Hammond Pond Parkway & 771 Heath Street	Ron Simons	Approved/Modified (08) Completed (09/10)	21	46
109-115 Sewall Avenue	Jeffrey Feuerman	Approved (08) Constructed	16 (7 existing)	32
70 Sewall Avenue	DL Development	Approved (10) Completed (11)	7 (2 existing)	10
1842 Beacon Street	BDG	Approved (10) NOT BUILT YET	20	85
86 Dummer Street	BHA	Approved (11) NOT BUILT YET	118 (86 existing)	75 (72 existing)

Figure 1
SOURCES OF DEMAND FOR OFF-STREET PARKING
PRELIMINARY REGRESSION RESULTS

SUMMARY REGRESSION OUTPUT

Regression Statistics	
Multiple R	0.948782482
R Square	0.900188199
Adjusted R Squ	0.891381275
Standard Error	0.108900165
Observations	38

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	3	3.636532009	1.212177336	102.2136944	4.38194E-17
Residual	34	0.403214361	0.011859246		
Total	37	4.03974637			

Variable		*Coefficients*	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
	Intercept	0.331157495	0.09127243	3.628231389	0.000926349	0.145669722	0.516645267	0.145669722	0.516645267
#BRs	X Variable 1	0.271460823	0.048417924	5.606618412	2.79537E-06	0.173063828	0.369857819	0.173063828	0.369857819
Pct Owned	X Variable 2	0.610220986	0.167434201	3.644542052	0.000885196	0.269953974	0.950487998	0.269953974	0.950487998
Nr MBTA	X Variable 3	-0.075988384	0.04953584	-1.534008194	0.134281465	-0.176657257	0.024680488	-0.176657257	0.024680488

SAMPLE EVALUATION OF REGRESSION MODEL

		#BRs	Own/Rent	Nr MBTA
Estimated	Intercept	Coefficient	Coefficient	Coefficient
# Vehicles	0.331157495	0.271460823	0.610220986	-0.075988384
0.9		0	1	1
1.2		1	1	1
1.5		2	1	1
1.7		3	1	1
2.0		4	1	1
2.3		5	1	1
1.0		0	1	0
1.3		1	1	0
1.5		2	1	0
1.8		3	1	0
2.1		4	1	0
2.3		5	1	0
0.3		0	0	1
0.6		1	0	1
0.8		2	0	1
1.1		3	0	1
1.4		4	0	1
1.7		5	0	1
0.4		0	0	0
0.7		1	0	0
0.9		2	0	0
1.2		3	0	0
1.5		4	0	0
1.7		5	0	0

NOTE: Own = 1; Rent = 0

NOTE: The information presented here is preliminary and entirely experimental in nature whose purpose is to present a possible analysis methodology. The specific results provided here are for illustrative purposes only and should not be interpreted as definitive.

	H041001	H041002		H041003		H041004		H041005		H041006		H041007		
Tract/Block Group	Housing units: Total	Housing units: No bedroom	%0	Housing units: 1 bedroom	%1	Housing units: 2 bedrooms	%2	Housing units: 3 bedrooms	%3	Housing units: 4 bedrooms	%4	Housing units: 5+ bedrooms	%5	
4001,1	274	0	0%	85	1%	55	20%	18	7%	42	15%	74	27%	
4001,2	550	151	27%	134	24%	106	19%	82	15%	40	7%	37	7%	
4001,3	1076	85	8%	445	41%	316	29%	148	14%	73	7%	9	1%	
4001,4	719	18	3%	236	33%	204	28%	184	26%	61	8%	16	2%	
4002,1	744	28	4%	168	23%	343	46%	159	21%	17	2%	29	4%	
4002,2	1449	108	7%	603	42%	446	31%	238	16%	54	4%	0	0%	
4002,3	692	63	9%	112	16%	210	30%	111	16%	117	17%	79	11%	
4003,1	444	20	5%	38	9%	166	37%	85	19%	84	19%	51	11%	
4003,2	785	31	4%	232	30%	194	25%	184	23%	91	12%	53	7%	
4003,3	633	0	0%	152	24%	200	32%	136	21%	69	11%	76	12%	
4004,1	1176	82	7%	478	41%	371	32%	125	11%	65	6%	55	5%	
4004,2	1256	110	9%	479	38%	324	26%	259	21%	59	5%	25	2%	
4004,3	539	48	9%	171	32%	81	15%	59	11%	80	15%	100	19%	
4005,1	1306	50	4%	593	45%	429	33%	129	10%	39	3%	66	5%	
4005,2	560	34	6%	144	26%	206	37%	80	14%	41	7%	55	10%	
4005,3	759	22	3%	179	24%	234	31%	147	19%	126	17%	51	7%	
4006,1	687	22	3%	131	19%	299	44%	110	16%	44	6%	81	12%	
4006,2	1347	16	1%	342	25%	365	27%	328	24%	150	11%	146	11%	
4006,3	220	0	0%	0	0%	9	4%	32	15%	56	25%	123	56%	
4007,1	604	11	2%	168	28%	227	38%	129	21%	54	9%	15	2%	
4007,2	473	13	3%	55	12%	159	34%	108	23%	114	24%	24	5%	
4007,3	358	10	3%	22	6%	92	26%	140	39%	76	21%	18	5%	
4008,1	501	9	2%	109	22%	170	34%	125	25%	56	11%	32	6%	
4008,2	819	10	1%	155	19%	311	38%	131	16%	158	19%	54	7%	
4008,3	1347	151	11%	547	41%	457	34%	118	9%	21	2%	53	4%	
4009,1	1142	125	11%	704	62%	238	21%	30	3%	45	4%	0	0%	
4009,2	457	18	4%	258	56%	99	22%	82	18%	0	0%	0	0%	
4009,3	687	0	0%	76	11%	226	33%	257	37%	80	12%	48	7%	
4010,1	426	5	1%	23	5%	136	32%	161	38%	70	16%	31	7%	
4010,2	309	4	1%	40	13%	67	22%	80	26%	31	10%	87	28%	
4010,3	707	12	2%	127	18%	343	49%	163	23%	19	3%	43	6%	
4011,1	730	8	1%	155	21%	125	17%	134	18%	128	18%	180	25%	
4011,2	279	0	0%	25	9%	0	0%	57	20%	75	27%	122	44%	
4011,3	377	0	0%	19	5%	73	19%	59	16%	84	22%	142	38%	
4012,1	407	0	0%	15	4%	124	30%	130	32%	96	24%	42	10%	
4012,2	354	0	0%	0	0%	56	16%	209	59%	62	18%	27	8%	
4012,3	683	8	1%	150	22%	155	23%	190	28%	136	20%	44	6%	
4012,4	512	0	0%	17	3%	68	13%	168	33%	212	41%	47	9%	
	26388	1272	5%	7387	28%	7684	29%	5085	19%	2825	11%	2135	8%	

REGRESSION DATA

Tract/Block Group	Y-value Veh/H/H	X1 Average #BRs	X2 Pct Owner-Occupied	X3 Near MBTA		Veh/Bdr.
4001,1	1.40	2.87	38.0%	1		0.49
4001,2	0.79	1.70	21.4%	1		0.47
4001,3	0.88	1.73	28.0%	1		0.51
4001,4	1.13	2.11	50.5%	1		0.54
4002,1	0.88	2.08	12.7%	1		0.42
4002,2	0.91	1.67	45.2%	1		0.54
4002,3	1.33	2.50	38.6%	1		0.53
4003,1	1.41	2.74	44.9%	1		0.52
4003,2	1.20	2.29	38.1%	1		0.52
4003,3	1.13	2.55	45.8%	1		0.44
4004,1	0.73	1.81	33.6%	1		0.40
4004,2	1.00	1.80	33.6%	1		0.55
4004,3	1.20	2.47	40.6%	1		0.49
4005,1	0.85	1.78	24.8%	1		0.48
4005,2	1.09	2.21	44.2%	1		0.49
4005,3	1.34	2.43	46.3%	1		0.55
4006,1	1.22	2.39	48.6%	1		0.51
4006,2	1.28	2.51	68.5%	1		0.51
4006,3	1.82	4.33	91.0%	1		0.42
4007,1	1.14	2.15	54.3%	1		0.53
4007,2	1.36	2.69	48.4%	1		0.50
4007,3	1.39	2.85	63.6%	1		0.49
4008,1	1.16	2.41	38.1%	1		0.48
4008,2	1.31	2.53	46.9%	1		0.52
4008,3	0.89	1.61	34.4%	1		0.55
4009,1	0.98	1.27	37.7%	1		0.77
4009,2	0.72	1.54	3.2%	1		0.47
4009,3	1.10	2.71	47.1%	1		0.41
4010,1	1.31	2.85	59.7%	0		0.46
4010,2	1.75	3.15	66.4%	0		0.56
4010,3	0.94	2.25	40.2%	0		0.42
4011,1	1.64	3.04	73.8%	0		0.54
4011,2	1.79	3.96	83.6%	1		0.45
4011,3	1.69	3.68	75.6%	1		0.46
4012,1	1.70	3.06	78.2%	0		0.55
4012,2	1.81	3.17	88.8%	0		0.57
4012,3	1.32	2.63	48.7%	0		0.50
4012,4	1.90	3.40	90.6%	0		0.56
	1.25	2.50				0.50

Geography	Total housing units	Veh/H.H.	Owner-Occupied housing units	Veh/H.H.	Owner-Occupied H.H. size	Renter-Occupied housing units	Veh/H.H.	Renter-Occupied H.H. size	Total pop	Avg HH Size	Pct of total HHs	Weighted HH size	Pct of total Owner-Occupied	Weighted HH size Owner-occupied	Pct of total Renter-Occupied	Weighted HH size Renter-occupied
4001,1	250	1.40	95	2.20	2.6	155	0.91	2.03	562	2.25	1.01%	0.0226	0.82%	0.0213	1.11%	0.0225
4001,2	533	0.79	114	1.54	2.31	419	0.59	1.36	833	1.56	1.50%	0.0234	0.98%	0.0227	2.99%	0.0407
4001,3	1016	0.88	284	1.18	2.08	732	0.76	1.85	1,945	1.91	3.49%	0.0668	2.45%	0.0510	5.22%	0.0967
4001,4	699	1.13	353	1.23	2.13	346	1.03	2.22	1,520	2.17	2.73%	0.0593	3.05%	0.0649	2.47%	0.0548
4002,1	707	0.88	90	1.49	2.66	617	0.79	2.31	1,665	2.35	2.99%	0.0703	0.78%	0.0207	4.40%	0.1017
4002,2	1419	0.91	641	1.15	1.74	778	0.72	1.82	2,531	1.78	4.54%	0.0810	5.53%	0.0963	5.55%	0.1011
4002,3	666	1.33	257	1.29	2.54	409	1.36	2.34	1,610	2.42	2.89%	0.0698	2.22%	0.0564	2.92%	0.0683
4003,1	425	1.41	191	1.49	2.38	234	1.35	2.28	988	2.32	1.77%	0.0412	1.65%	0.0392	1.67%	0.0381
4003,2	754	1.20	287	1.19	2.64	467	1.21	2.04	1,710	2.27	3.07%	0.0696	2.48%	0.0654	3.33%	0.0680
4003,3	646	1.13	296	1.29	2.78	350	0.99	2.51	1,701	2.63	3.05%	0.0804	2.56%	0.0710	2.50%	0.0627
4004,1	1175	0.73	395	1.06	2.13	780	0.56	1.66	2,136	1.82	3.83%	0.0697	3.41%	0.0726	5.57%	0.0924
4004,2	1200	1.00	403	1.56	2.29	797	0.71	1.69	2,270	1.89	4.07%	0.0770	3.48%	0.0797	5.69%	0.0961
4004,3	520	1.20	211	1.75	2.78	309	0.83	1.97	1,195	2.30	2.14%	0.0493	1.82%	0.0506	2.21%	0.0434
4005,1	1257	0.85	312	0.99	1.97	945	0.81	1.82	2,335	1.86	4.19%	0.0778	2.69%	0.0531	6.74%	0.1228
4005,2	566	1.09	250	1.56	2.54	316	0.71	2.19	1,327	2.34	2.38%	0.0558	2.16%	0.0548	2.26%	0.0494
4005,3	710	1.34	329	1.62	2.51	381	1.10	2.04	1,603	2.26	2.88%	0.0649	2.84%	0.0713	2.72%	0.0555
4006,1	663	1.22	322	1.40	2.23	341	1.06	2.2	1,468	2.21	2.63%	0.0583	2.78%	0.0620	2.43%	0.0535
4006,2	1296	1.28	888	1.30	2.14	408	1.24	2.34	2,855	2.20	5.12%	0.1129	7.67%	0.1641	2.91%	0.0681
4006,3	222	1.82	202	1.97	2.82	20	0.35	2.15	613	2.76	1.10%	0.0303	1.74%	0.0492	0.14%	0.0031
4007,1	565	1.14	307	1.34	2.43	258	0.89	1.95	1,249	2.21	2.24%	0.0496	2.65%	0.0644	1.84%	0.0359
4007,2	459	1.36	222	1.54	2.72	237	1.18	2.41	1,175	2.56	2.11%	0.0540	1.92%	0.0521	1.69%	0.0408
4007,3	379	1.39	241	1.40	2.84	138	1.37	2.39	1,014	2.68	1.82%	0.0487	2.08%	0.0591	0.98%	0.0235
4008,1	486	1.16	185	1.46	2.51	301	0.98	2.11	1,099	2.26	1.97%	0.0446	1.60%	0.0401	2.15%	0.0453
4008,2	789	1.31	370	1.52	2.39	419	1.12	2.17	1,794	2.27	3.22%	0.0732	3.19%	0.0763	2.99%	0.0649
4008,3	1317	0.89	453	1.15	1.97	864	0.75	1.71	2,370	1.80	4.25%	0.0765	3.91%	0.0770	6.17%	0.1054
4009,1	1119	0.98	422	1.15	1.5	697	0.87	1.67	1,797	1.61	3.22%	0.0518	3.64%	0.0546	4.97%	0.0831
4009,2	405	0.72	13	1.77	2	392	0.69	1.67	681	1.68	1.22%	0.0205	0.11%	0.0022	2.80%	0.0467
4009,3	698	1.10	329	1.11	2.53	369	1.10	2.23	1,655	2.37	2.97%	0.0704	2.84%	0.0719	2.63%	0.0587
4010,1	412	1.31	246	1.36	2.46	166	1.24	2.64	1,043	2.53	1.87%	0.0474	2.12%	0.0522	1.18%	0.0313
4010,2	298	1.75	198	1.98	2.76	100	1.28	1.98	744	2.50	1.34%	0.0334	1.71%	0.0472	0.71%	0.0141
4010,3	687	0.94	276	1.12	2.2	411	0.82	2.54	1,651	2.40	2.96%	0.0712	2.38%	0.0524	2.93%	0.0745
4011,1	702	1.64	518	1.87	2.6	184	1.00	1.68	1,656	2.36	2.97%	0.0701	4.47%	0.1163	1.31%	0.0221
4011,2	269	1.79	225	1.89	2.89	44	1.25	2.34	753	2.80	1.35%	0.0378	1.94%	0.0561	0.31%	0.0073
4011,3	394	1.69	298	1.68	3.04	96	1.72	2.61	1,156	2.94	2.08%	0.0609	2.57%	0.0782	0.69%	0.0179
4012,1	357	1.70	279	1.55	2.33	78	2.24	2.03	808	2.26	1.45%	0.0328	2.41%	0.0561	0.56%	0.0113
4012,2	356	1.81	316	1.76	2.83	40	2.18	1.78	965	2.71	1.73%	0.0470	2.73%	0.0772	0.29%	0.0051
4012,3	721	1.32	351	1.57	2.93	370	1.08	2.74	2,042	2.83	3.66%	0.1038	3.03%	0.0888	2.64%	0.0724
4012,4	457	1.90	414	2.00	2.71	43	1.00	1.98	1,207	2.64	2.17%	0.0572	3.57%	0.0969	0.31%	0.0061
Brookline CDP, Massachusetts	25594	1.15	11583	1.44	2.39	14011	0.92	2.01	55729.14		100.00%	2.2317	100.00%	2.3857	100.00%	2.0053

"Rough Justice" assignments of
Census Block Groups (CBGs)
relative to proximity to Green Line
Green = Near MBTA = 1
Pink = not near MBTA = 0

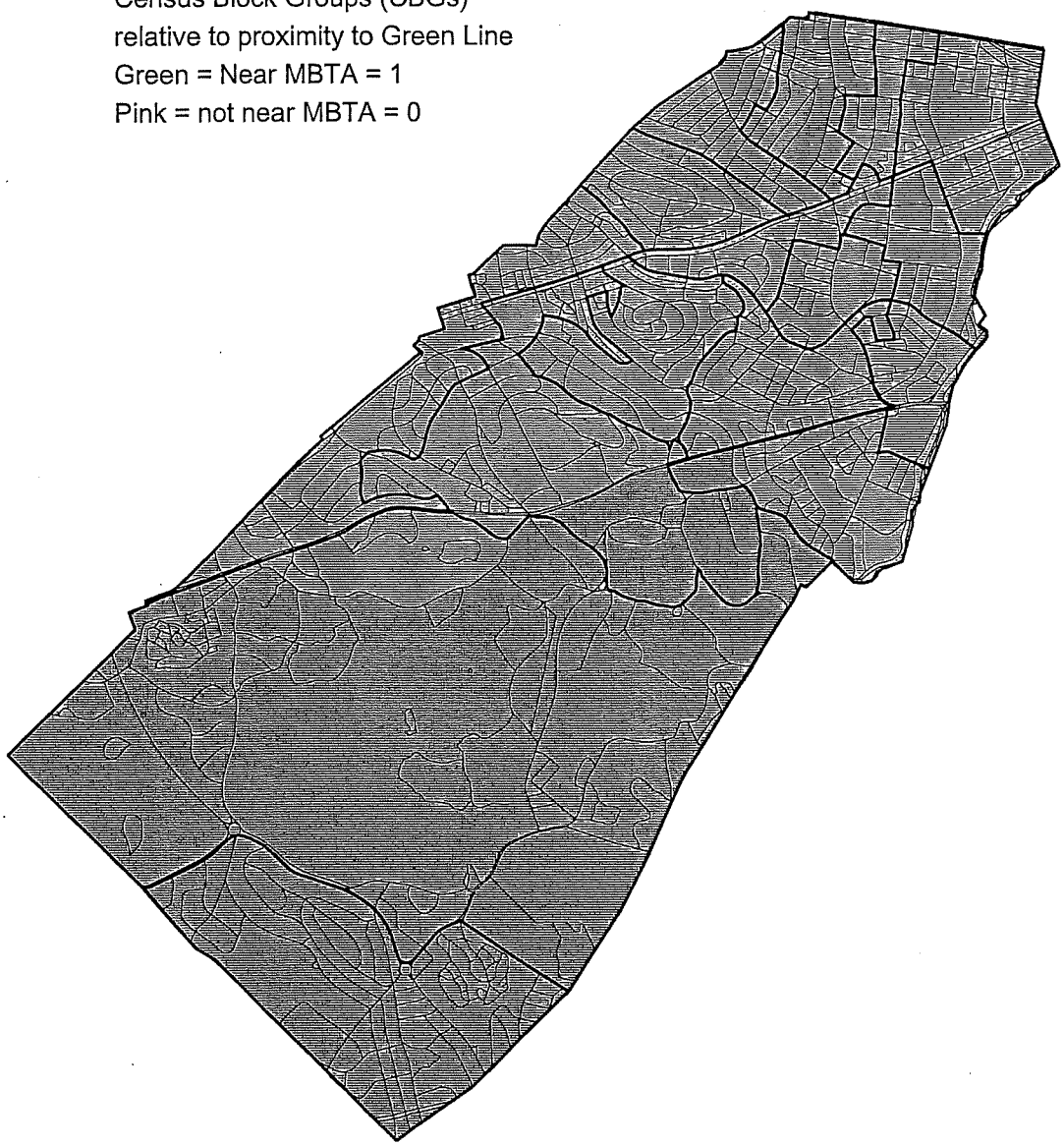


Figure 2

JANUARY 2012 BROOKLINE RESIDENTIAL PARKING REQUIREMENTS SURVEY

PLEASE RETURN IN THE ENVELOPE WITH YOUR ANNUAL TOWN CENSUS FORM

The Brookline Town Meeting Moderator's Committee on Parking is studying the adequacy of off-street parking for Town residents. We would appreciate your response to the following brief questionnaire. Responses will be tabulated and used to develop recommendations for the Town's residential parking requirements. All responses are anonymous. *Thank you!*

Please place an "X" at the most applicable answer to each of the following questions:

1. Do you reside in:
☐ A single family house ☐ A two/three family house ☐ A multi-family building

2. Do you own or rent your residence?
☐ Own ☐ Rent

3. How many bedrooms in your residence?
☐ Studio ☐ One bedroom ☐ Two bedrooms ☐ Three or more bedrooms

4. How many members of your household drive?
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

5. How many cars are owned by members of your household?
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

6. How adequate is the availability of parking at your residence for your household's needs?
☐ Inadequate ☐ Adequate ☐ More than needed

7. If you live in a two/three family house or multi-family building, how many cars is your household allowed to park on the property?
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

8. How many parking spaces do you rent at another location because your residence lacks sufficient parking?
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

9. How many parking spaces do you personally rent out to others who do not live in your residence?
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

10. Are you a member of Zipcar or similar car-share service?
☐ Yes ☐ No

11. Using the map on the reverse side of this sheet, please place an "X" in the box to the left of the neighborhood that best describes the location of your residence:

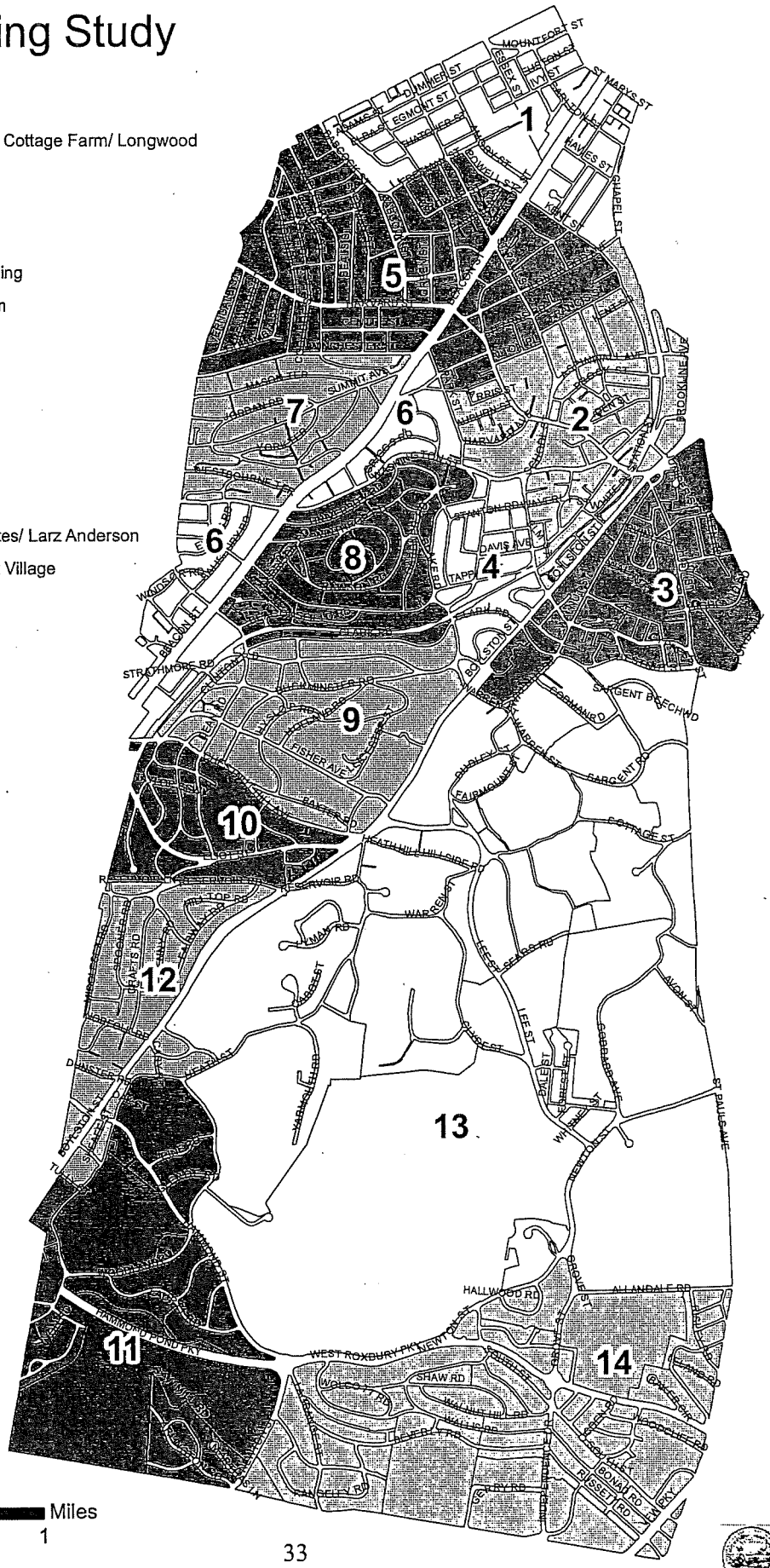
☐	**1** BU/Comm. Ave. / St. Mary's / Cottage Farm / Longwood	☐	**2** Brookline Village	☐	**3** Pill Hill / Whiskey Point	☐	**4** Brookline Hills / High School
☐	**5** Coolidge Corner / JFK Crossing	☐	**6** Washington Sq. / Corey Farm	☐	**7** Corey Hill	☐	**8** Aspinwall Hill
☐	**9** Fisher Hill	☐	**10** Heath School / Eliot St.	☐	**11** Hammond St. / Woodland Rd.	☐	**12** Chestnut Hill
☐	**13** Country Club / Sargent Estates / Larz Anderson			☐	**14** Putterham Circle / Hancock Village		

Figure 3

Brookline Parking Study

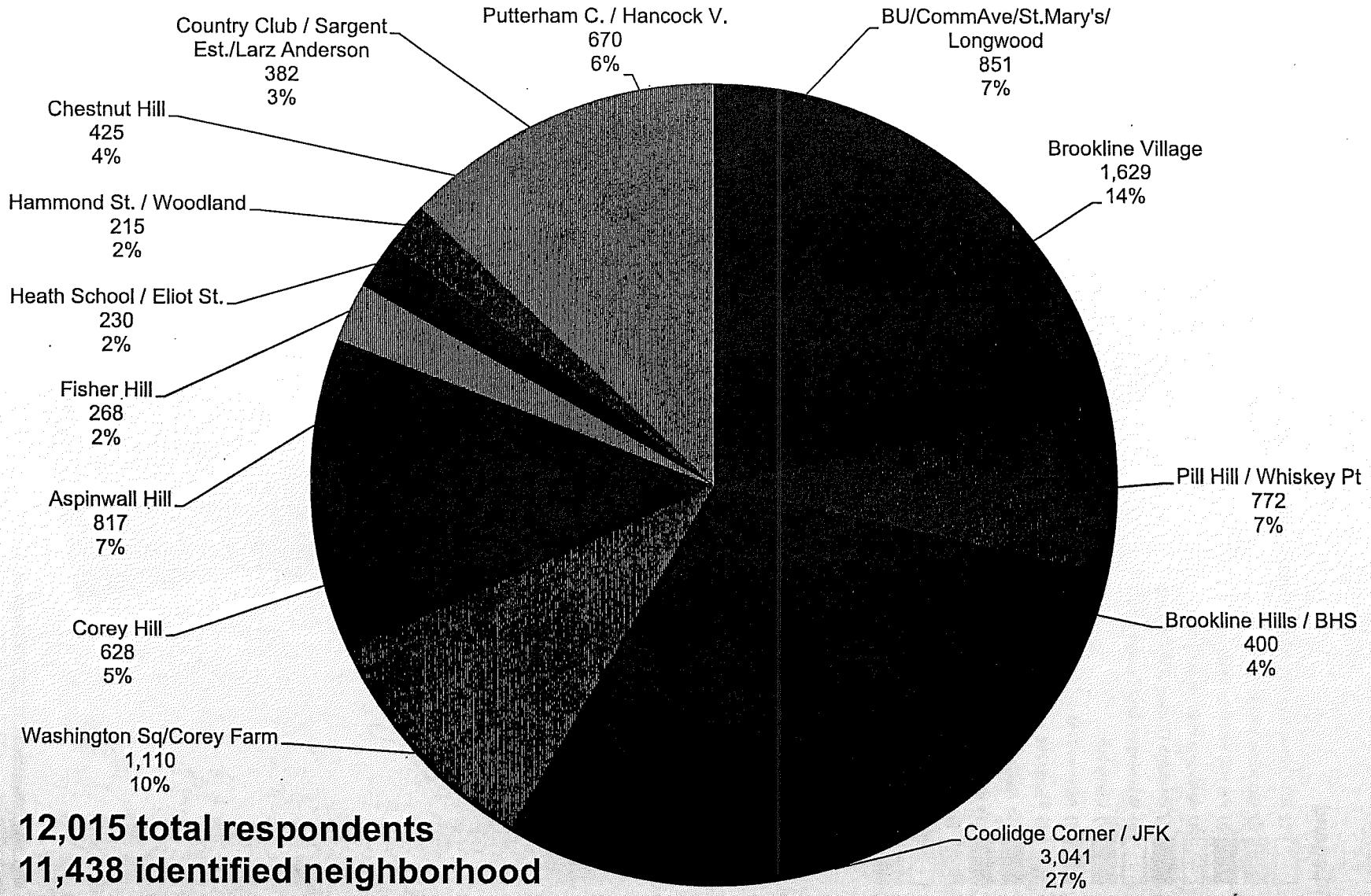
Legend

1) BU-Comm. Ave./ St. Mary's/ Cottage Farm/ Longwood
2) Brookline Village
3) Pill Hill/ Whiskey Point
4) Brookline Hills/ High School
5) Coolidge Corner/ JFK Crossing
6) Washington Sq./ Corey Farm
7) Corey Hill
8) Aspinwall Hill
9) Fisher Hill
10) Heath School/ Eliot St.
11) Hammond St./ Woodland
12) Chestnut Hill
13) Country Club-SargentEstates/ Larz Anderson
14) Putterham Circle/ Hancock Village



BROOKLINE GIS

Figure 4: Distribution of Survey Respondents by Neighborhood*



12,015 total respondents
11,438 identified neighborhood

*** Note to Figure 4: While we show our findings by neighborhood, these findings have limited reliability. Apparently, many respondents did not use the map on the survey form to determine their neighborhood and so incorrectly identified their neighborhood on the survey. This is evident by the statistics in this chart, which shows (1) 9 households in two-three family units in the Fisher Hill neighborhood responded to the survey when the Assessor's data show that Fisher Hill has only 2 two-three family households, and (2) 101% (!!) of two-three family households in the Brookline Hills/BHS neighborhood responded to the survey.**

We are also aware that numerous residents within the 02467 (Chestnut Hill) zip code mistakenly coded themselves as being in the Chestnut Hill *neighborhood* for the purposes of this survey (which was actually restricted to a smaller section than the zip code area). Thus, the counts registered for Chestnut Hill in these charts likely are too high, and those for other 02467 neighborhoods are too low. Those other neighborhoods are: Putterham Circle/Hancock Village, Country Club / Sargent Estates /Larz Andersen, Hammond St / Woodland Rd / and Heath School / Eliot Street.

Figure 4 data: Parking Survey Response Rates

Neighborhood*	All Units			Multi-Family Units			Two/Three Family Units			Single Family Units		
	# Units	# Responding	Response Rate	# Units	# Responding	Response Rate	# Units	# Responding	Response Rate	# Units	# Responding	Response Rate
BU/CommAve/St.Mary's/Lngwd	2,218	851	38%	1,912	600	31%	59	48	81%	247	191	77%
Brookline Village	2,889	1,629	56%	2,043	986	48%	570	392	69%	276	222	80%
Pill Hill / Whiskey Pt	2,055	772	38%	1,337	308	23%	428	248	58%	290	212	73%
Brookline Hills / BHS	495	400	81%	197	102	52%	144	146	101%	154	148	96%
Coolidge Corner / JFK	6,153	3,041	49%	4,896	2,114	43%	976	594	61%	281	266	95%
Washington Sq/Corey Farm	2,240	1,110	50%	1,857	797	43%	212	145	68%	171	147	86%
Corey Hill	1,932	628	33%	1,432	321	22%	250	129	52%	250	175	70%
Aspinwall Hill	2,149	817	38%	1,550	427	28%	321	215	67%	278	172	62%
Fisher Hill	445	268	60%	112	39	35%	2	9	450%	331	215	65%
Heath School / Eliot St.	443	230	52%	66	8	12%	116	72	62%	261	150	57%
Hammond St. / Woodland	568	215	38%	229	37	16%	44	22	50%	295	153	52%
Chestnut Hill	474	425	90%	188	71	38%	56	48	86%	230	301	131%
Country Clb/Sargent Est/Larz And	808	382	47%	254	46	18%	36	34	94%	518	298	58%
Putterham Cir / Hancock Village	1,673	670	40%	604	67	11%	17	4	24%	1,052	593	56%
Townwide Totals	24,542	11,438	47%	16,677	5,923	36%	3,231	2,106	65%	4,634	3,243	70%

Figure 5. Car Ownership By Neighborhood

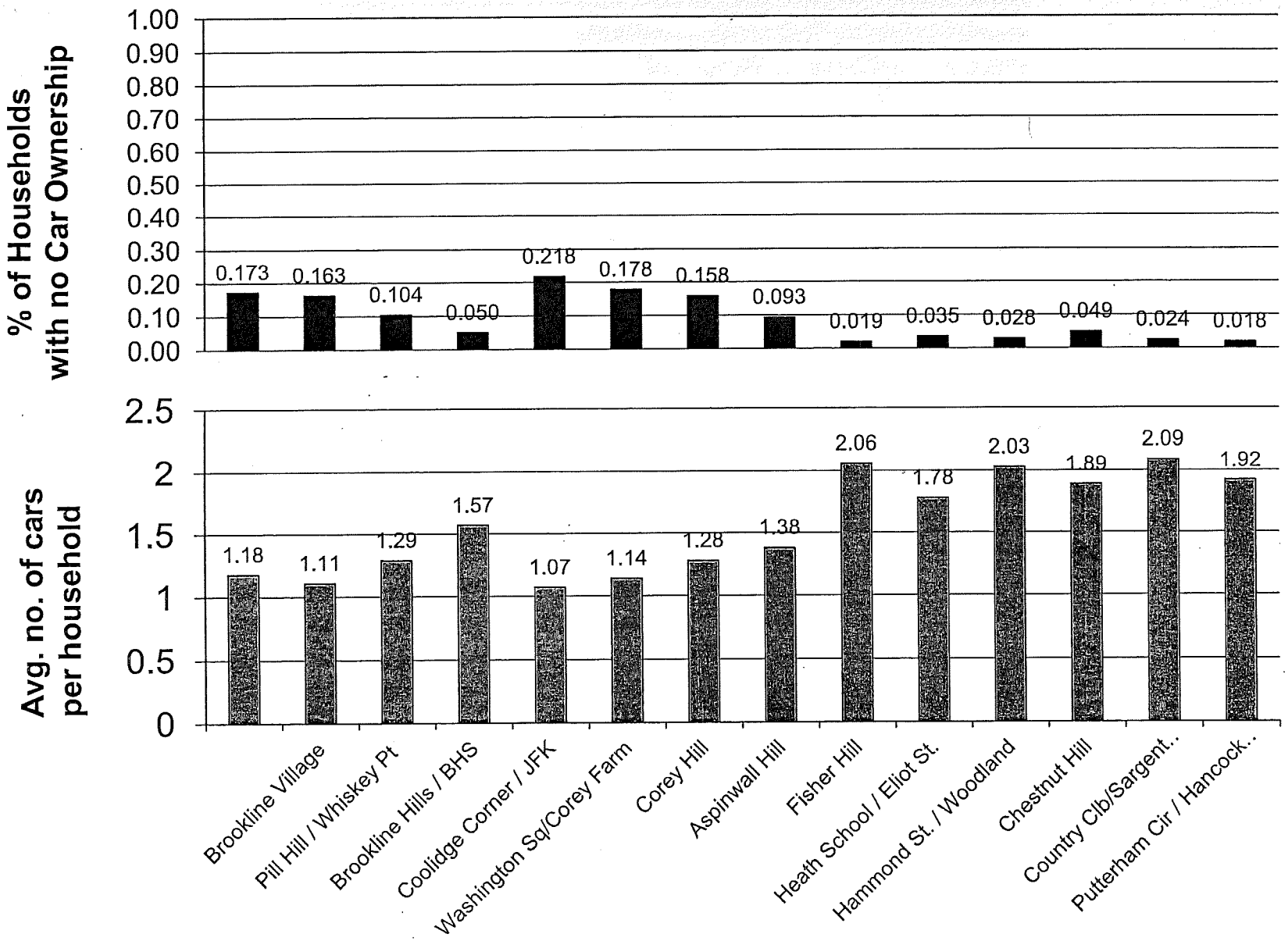


Figure 5 data: Car Ownership by Neighbornood

Neighborhood*	Households				Average no. of cars per household
	No car owned	Percent	At least one car owned	Percent	
BU/CommAve/St.Mary's/Lngwd	147	17.3	702	82.7	1.18
Brookline Village	264	16.3	1355	83.7	1.11
Pill Hill / Whiskey Pt	80	10.4	692	89.6	1.29
Brookline Hills / BHS	20	5.0	380	95.0	1.57
Coolidge Corner / JFK	560	21.8	2375	78.2	1.07
Washington Sq/Corey Farm	195	17.8	908	82.2	1.14
Corey Hill	96	15.8	527	84.2	1.28
Aspinwall Hill	76	9.3	740	90.7	1.38
Fisher Hill	5	1.9	262	98.1	2.06
Heath School / Eliot St.	8	3.5	221	96.5	1.78
Hammond St. / Woodland	8	2.8	296	97.2	2.03
Chestnut Hill	21	4.9	404	95.1	1.89
Country Clb/Sargent Est/Larz And	9	2.4	371	97.4	2.09
Putterham Cir / Hancock Village	12	1.8	656	98.2	1.92
Townwide Totals	1,725	14.5	10,186	85.5	1.33

Figure 6. Car Ownership by Bedroom Size For 2-3 Family Units (# of Households)

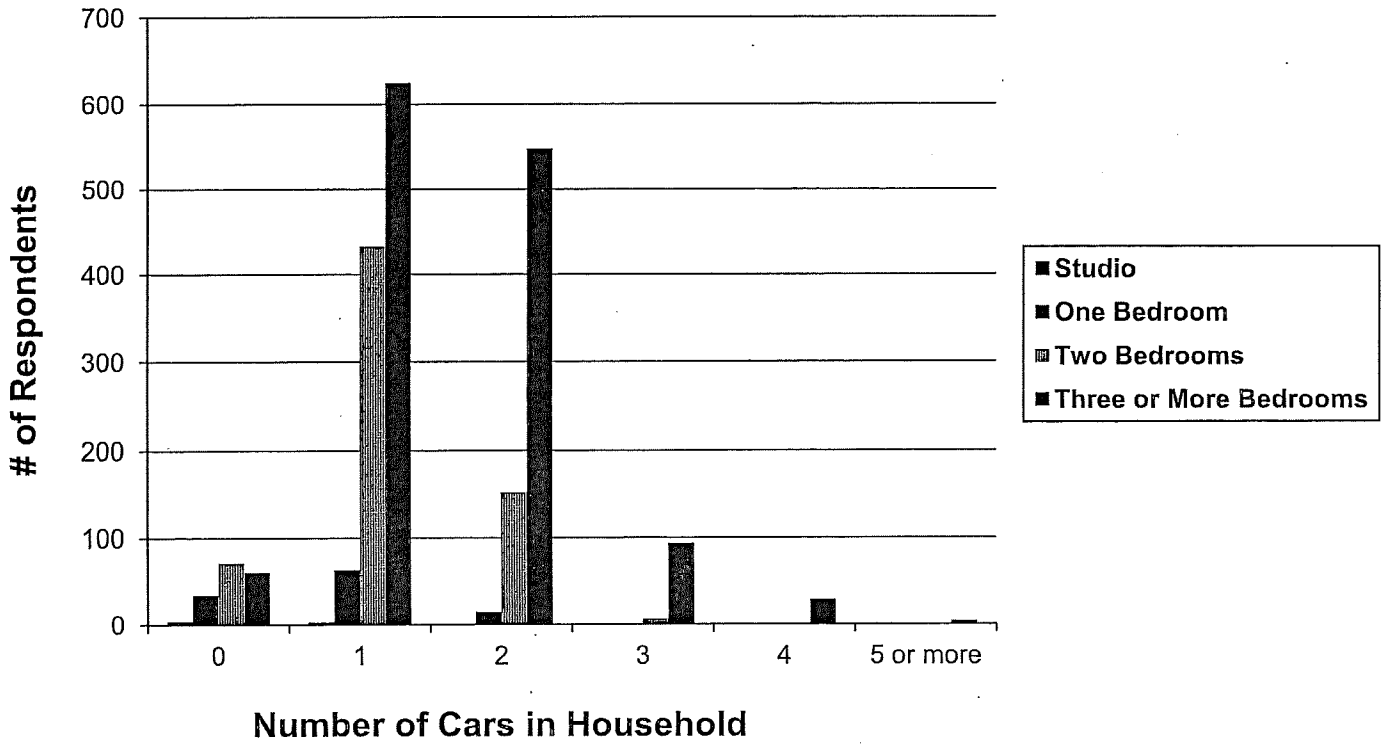


Figure 6 data: Car Ownership by Bedroom Size for 2-3 Family Units (# of Households)

	Number of Cars in Household					
Number of Bedrooms	0	1	2	3	4	5 or more
Studio	4	3	0	0	0	0
One Bedroom	35	64	15	1	0	0
Two Bedrooms	72	432	152	7	0	1
Three or More Bedrooms	61	625	547	94	29	4
All	172	1124	714	102	29	5

Figure 7. Car Ownership Distribution by Bedroom Size for 2-3 Family Units (% of Households)

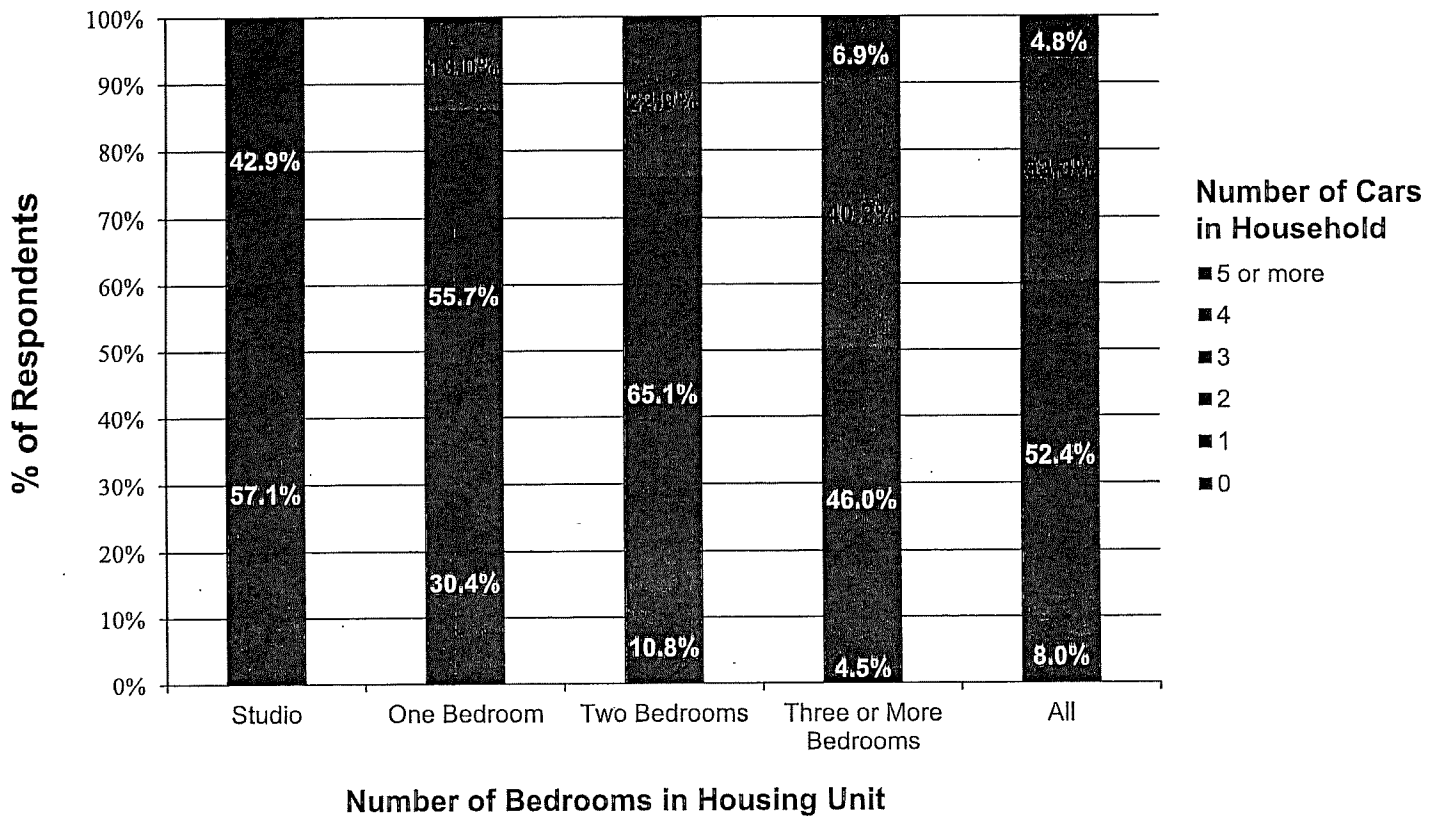


Figure 7 data: Car Ownership Distribution by Bedroom Size for 2-3 Family Units (% of households)

Number of Bedrooms	Studio	One Bedroom	Two Bedrooms	Three or More Bedrooms	All
0	57.1%	30.4%	10.8%	4.5%	8.0%
1	42.9%	55.7%	65.1%	46.0%	52.4%
2	0.0%	13.0%	22.9%	40.2%	33.3%
3	0.0%	0.9%	1.1%	6.9%	4.8%
4	0.0%	0.0%	0.0%	2.1%	1.4%
5 or more	0.0%	0.0%	0.2%	0.3%	0.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Figure 8. Car Ownership by Bedroom Size for Multi-Family Units (# of Households)

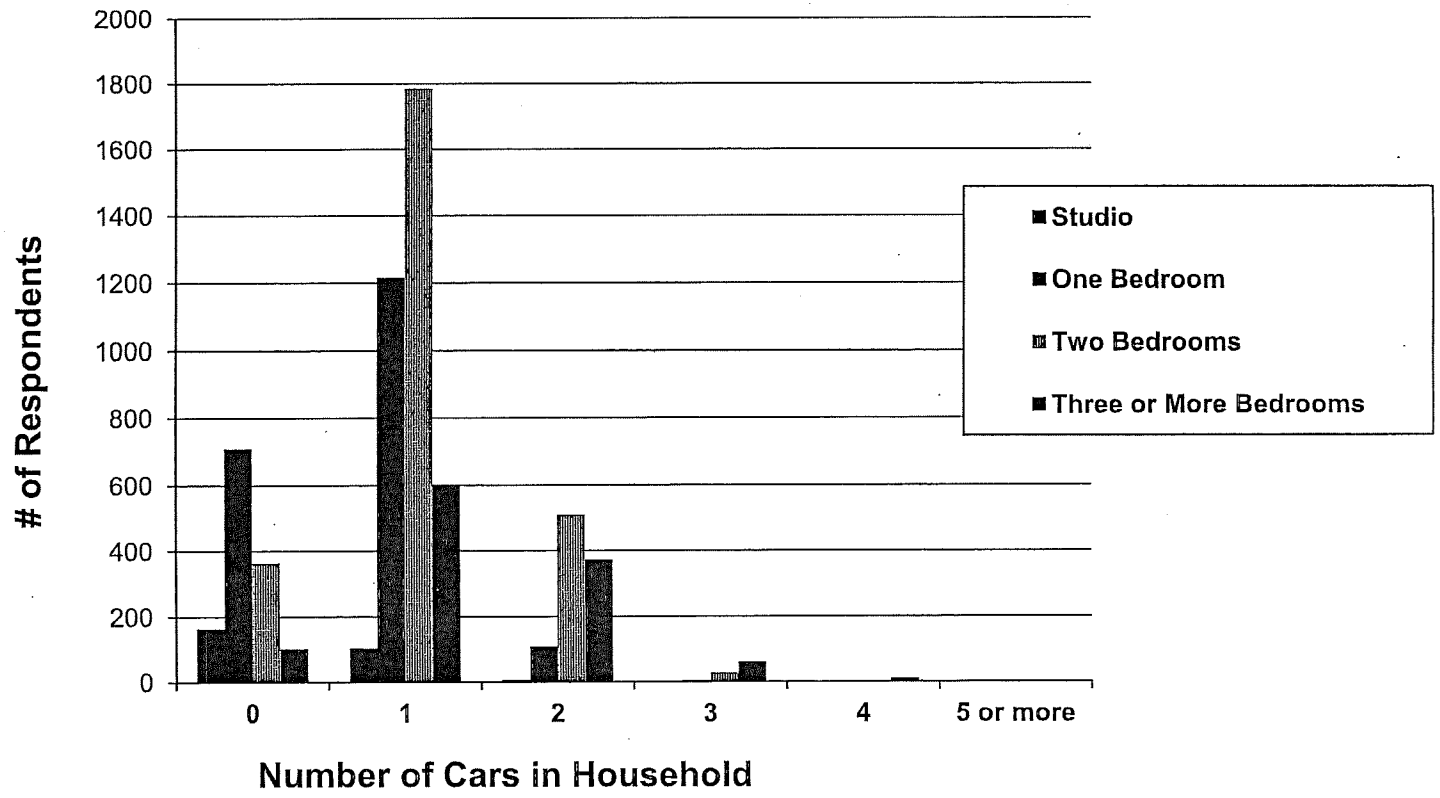


Figure 8 data: Car Ownership by Bedroom Size for Multi-Family Units (# of Households)

	Number of Cars in Household					
Number of Bedrooms	0	1	2	3	4	5 or more
Studio	165	105	7	0	0	0
One Bedroom	709	1216	110	5	1	0
Two Bedrooms	364	1786	510	28	3	1
Three or More Bedrooms	103	601	373	61	11	2
All	1341	3708	1000	94	15	3

Figure 9. Car Ownership Distribution by Bedroom Size for Multi-Family Units (% of Households)

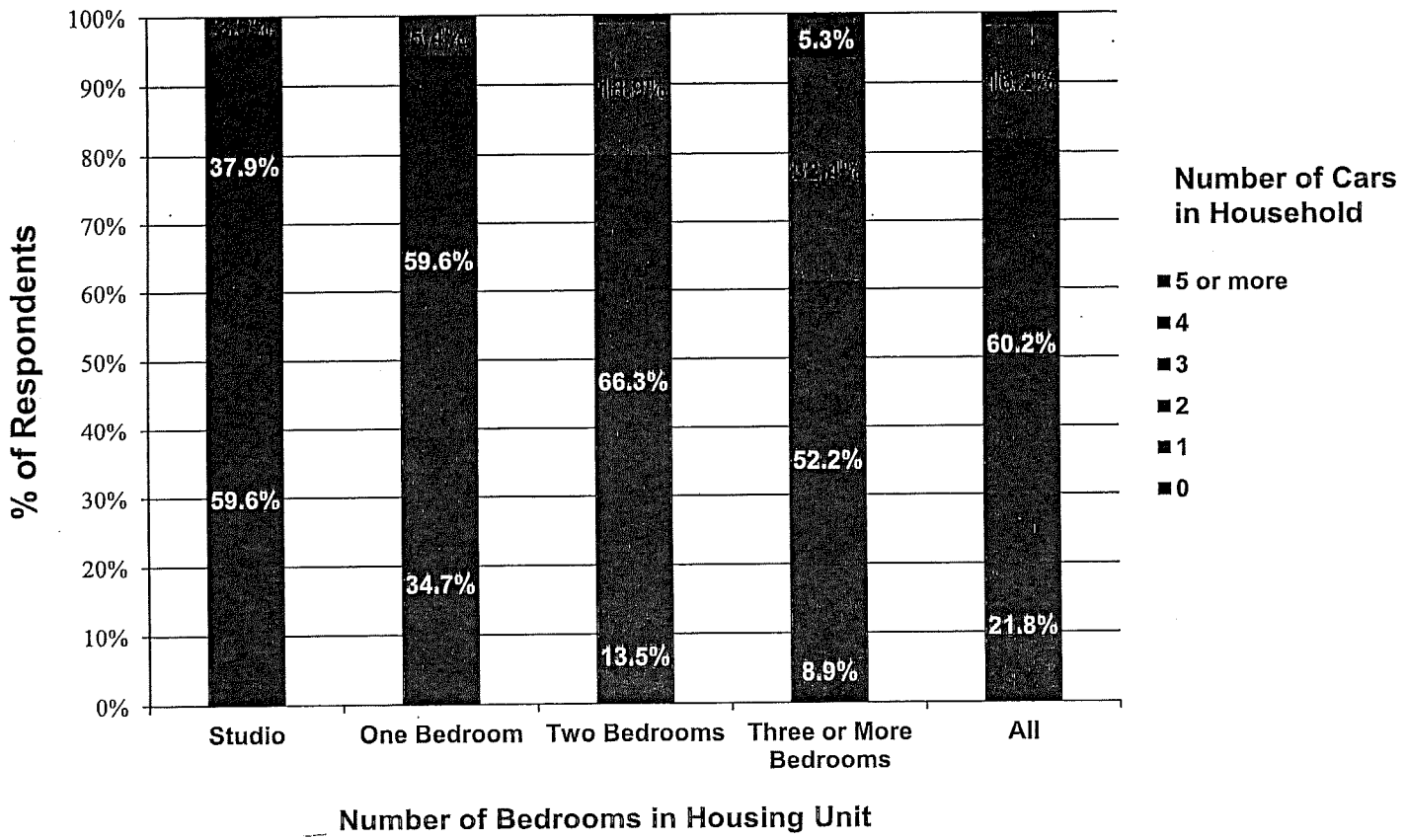
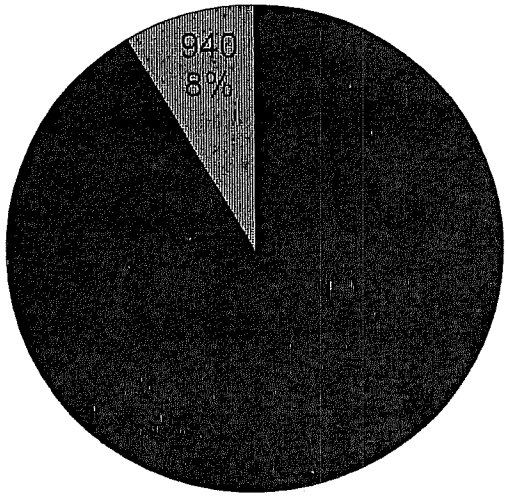


Figure 9 data: Car Ownership Distribution by Bedroom Size For Multi-Family Units (% of Households)

Number of Bedrooms	Studio	One Bedroom	Two Bedrooms	Three or More Bedrooms	All
0	59.6%	34.7%	13.5%	8.9%	21.8%
1	37.9%	59.6%	66.3%	52.2%	60.2%
2	2.5%	5.4%	18.9%	32.4%	16.2%
3	0.0%	0.2%	1.0%	5.3%	1.5%
4	0.0%	0.0%	0.1%	1.0%	0.2%
5 or more	0.0%	0.0%	0.0%	0.2%	0.0%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

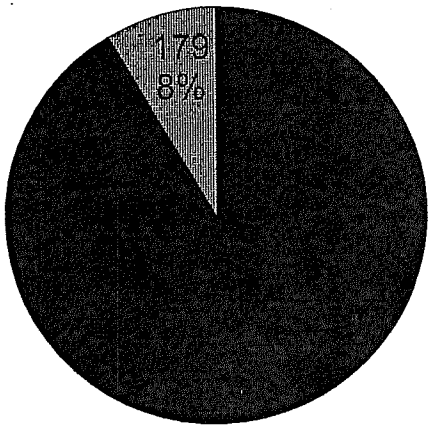
Figure 10. Survey Respondents' Assessment of the Adequacy of Availability of Parking

All Units



- Inadequate
- Adequate
- More than adequate

Two/Three Family



Multi-Family

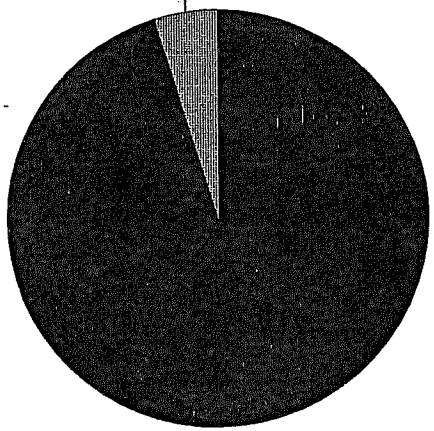
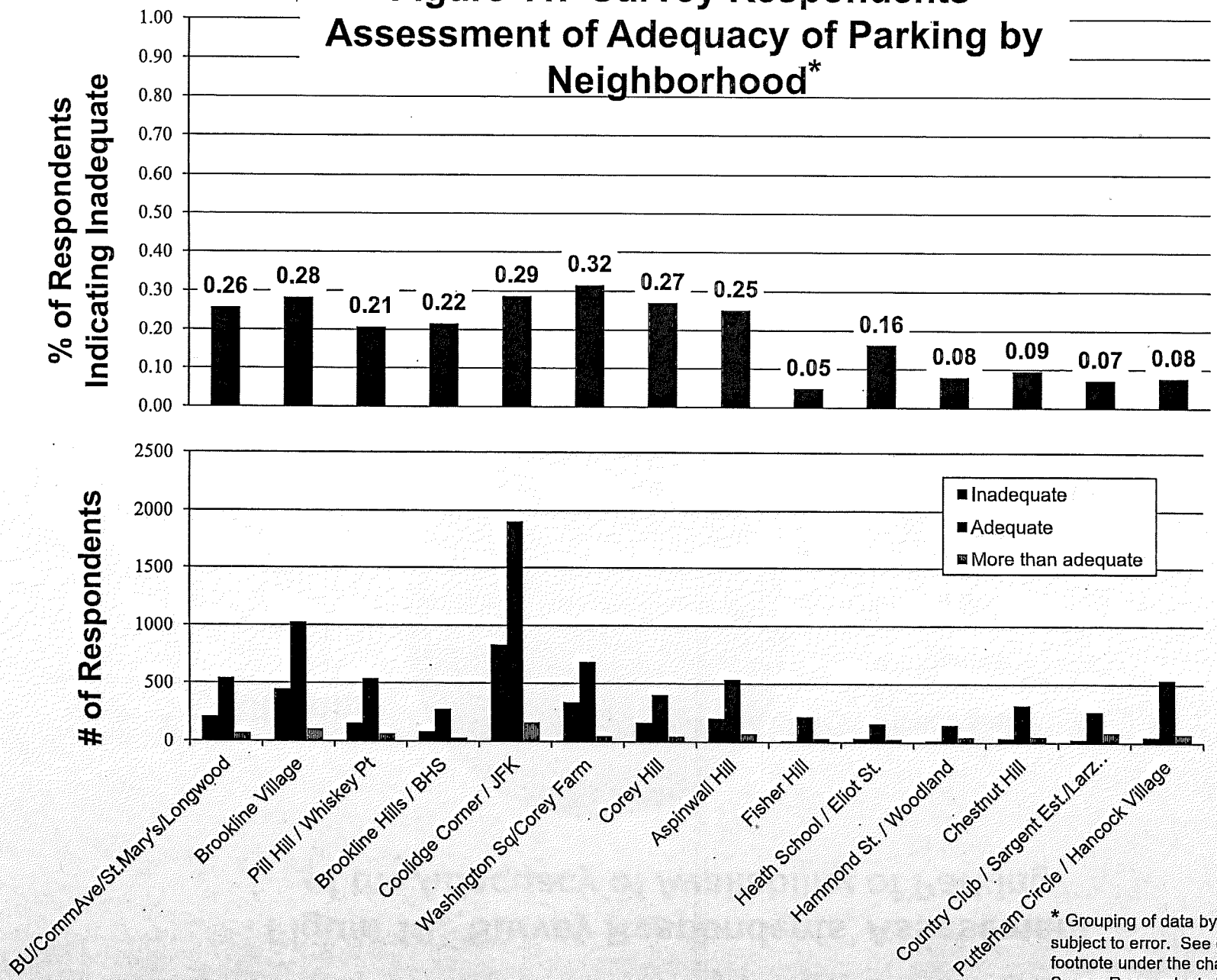


Figure 11. Survey Respondents' Assessment of Adequacy of Parking by Neighborhood*

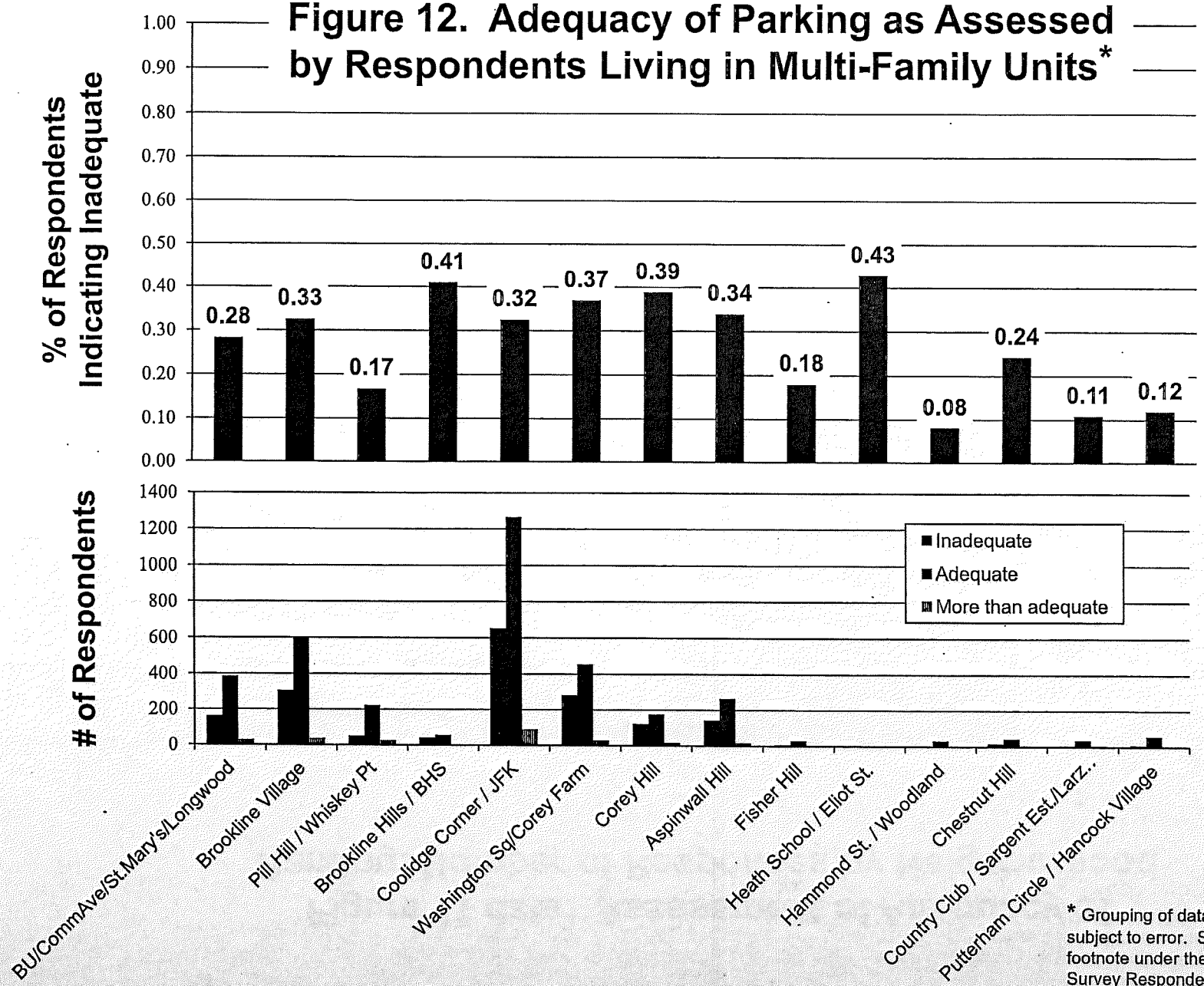


* Grouping of data by neighborhood subject to error. See discussion in footnote under the chart "Distribution of Survey Respondents by Neighborhood."

Figure 11 data: Assessment of Adequacy of Parking: Number of Responses by Neighborhood

Neighborhood*	Inadequate	Adequate	More than adequate
BU/CommAve/St.Mary's/Longwood	211	540	71
Brookline Village	445	1025	106
Pill Hill / Whiskey Pt	157	535	66
Brookline Hills / BHS	85	277	32
Coolidge Corner / JFK	833	1905	166
Washington Sq/Corey Farm	338	685	49
Corey Hill	166	404	46
Aspinwall Hill	205	536	74
Fisher Hill	13	218	35
Heath School / Eliot St.	37	162	29
Hammond St. / Woodland	17	151	46
Chestnut Hill	39	319	54
Country Club / Sargent Est./Larz Anderson	27	264	88
Putterham Circle / Hancock Village	51	535	78
Total	2,624	7,556	940

Figure 12. Adequacy of Parking as Assessed by Respondents Living in Multi-Family Units*

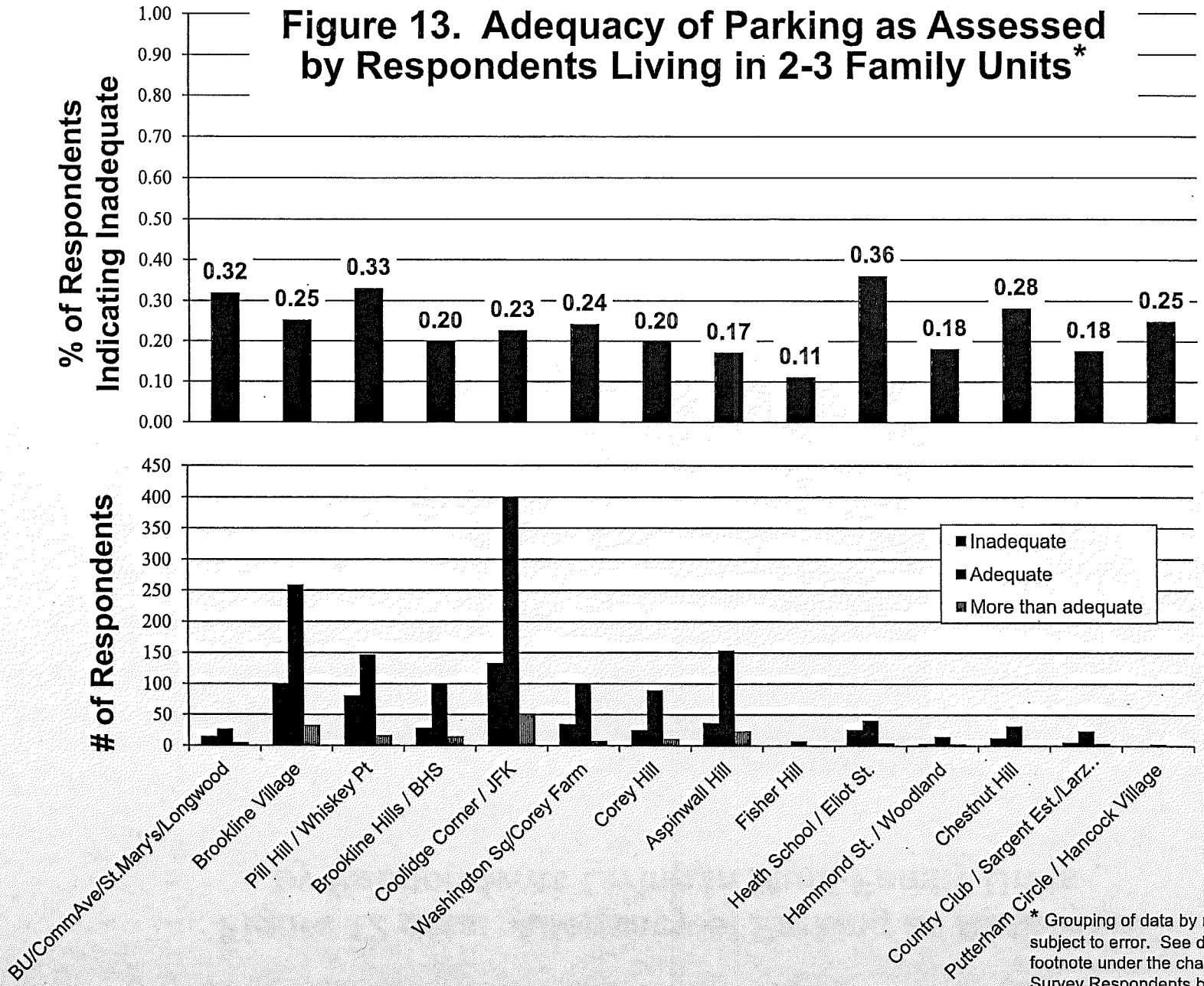


* Grouping of data by neighborhood subject to error. See discussion in footnote under the chart "Distribution of Survey Respondents by Neighborhood."

Figure 12 data: Adequacy of Parking as Assessed by Respondents Living in Multi-Family Units

Neighborhood*	Inadequate	Adequate	More than adequate
BU/CommAve/St.Mary's/Longwood	163	385	29
Brookline Village	306	598	37
Pill Hill / Whiskey Pt	50	223	26
Brookline Hills / BHS	41	55	4
Coolidge Corner / JFK	652	1266	89
Washington Sq/Corey Farm	282	455	27
Corey Hill	122	176	16
Aspinwall Hill	144	264	17
Fisher Hill	7	29	3
Heath School / Eliot St.	3	2	2
Hammond St. / Woodland	3	31	3
Chestnut Hill	16	44	6
Country Club / Sargent Est./Larz Anderson	5	35	6
Putterham Circle / Hancock Village	8	57	2
Total	1,802	3,620	267

Figure 13. Adequacy of Parking as Assessed by Respondents Living in 2-3 Family Units*



* Grouping of data by neighborhood subject to error. See discussion in footnote under the chart "Distribution of Survey Respondents by Neighborhood."

Figure 13 data: Adequacy of Parking as Assessed by Respondents Living in 2-3 Family Units

Neighborhood*	Inadequate	Adequate	More than adequate
BU/CommAve/St.Mary's/Longwood	15	27	5
Brookline Village	99	259	33
Pill Hill / Whiskey Pt	81	147	17
Brookline Hills / BHS	29	101	15
Coolidge Corner / JFK	133	400	52
Washington Sq/Corey Farm	35	101	8
Corey Hill	25	90	11
Aspinwall Hill	37	154	24
Fisher Hill	1	8	0
Heath School / Eliot St.	26	41	5
Hammond St. / Woodland	4	15	3
Chestnut Hill	13	32	1
Country Club / Sargent Est./Larz Anderson	6	24	4
Putterham Circle / Hancock Village	1	3	0
Total	505	1,402	178

Figure 14. Adequacy of Parking as Assessed by Respondents Living in 2-3 Family and Multi-Family Units by Number of Bedrooms

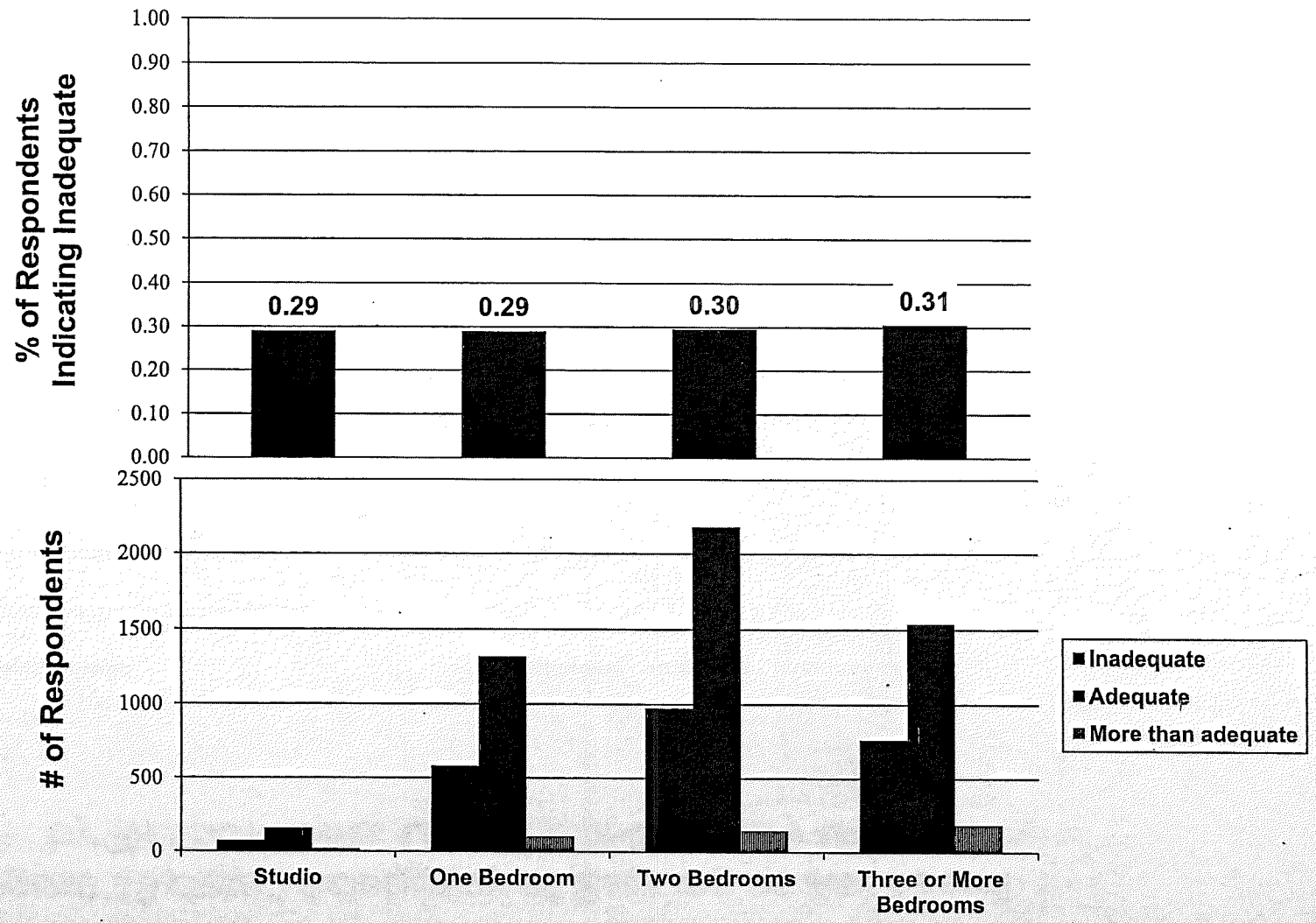


Figure 14 data: Adequacy of Parking as Assessed by Respondents Living in 2-3 Family and Multi-Family Units by Number of Bedrooms

Number of Bedrooms	Inadequate	Adequate	More than adequate
Studio	72	157	19
One Bedroom	580	1318	104
Two Bedrooms	974	2177	148
Three or More Bedrooms	761	1540	190
All	2387	5192	461

Figure 15. Adequacy of Parking as Assessed by Respondents Living in 2-3 Family Units by Number of Bedrooms

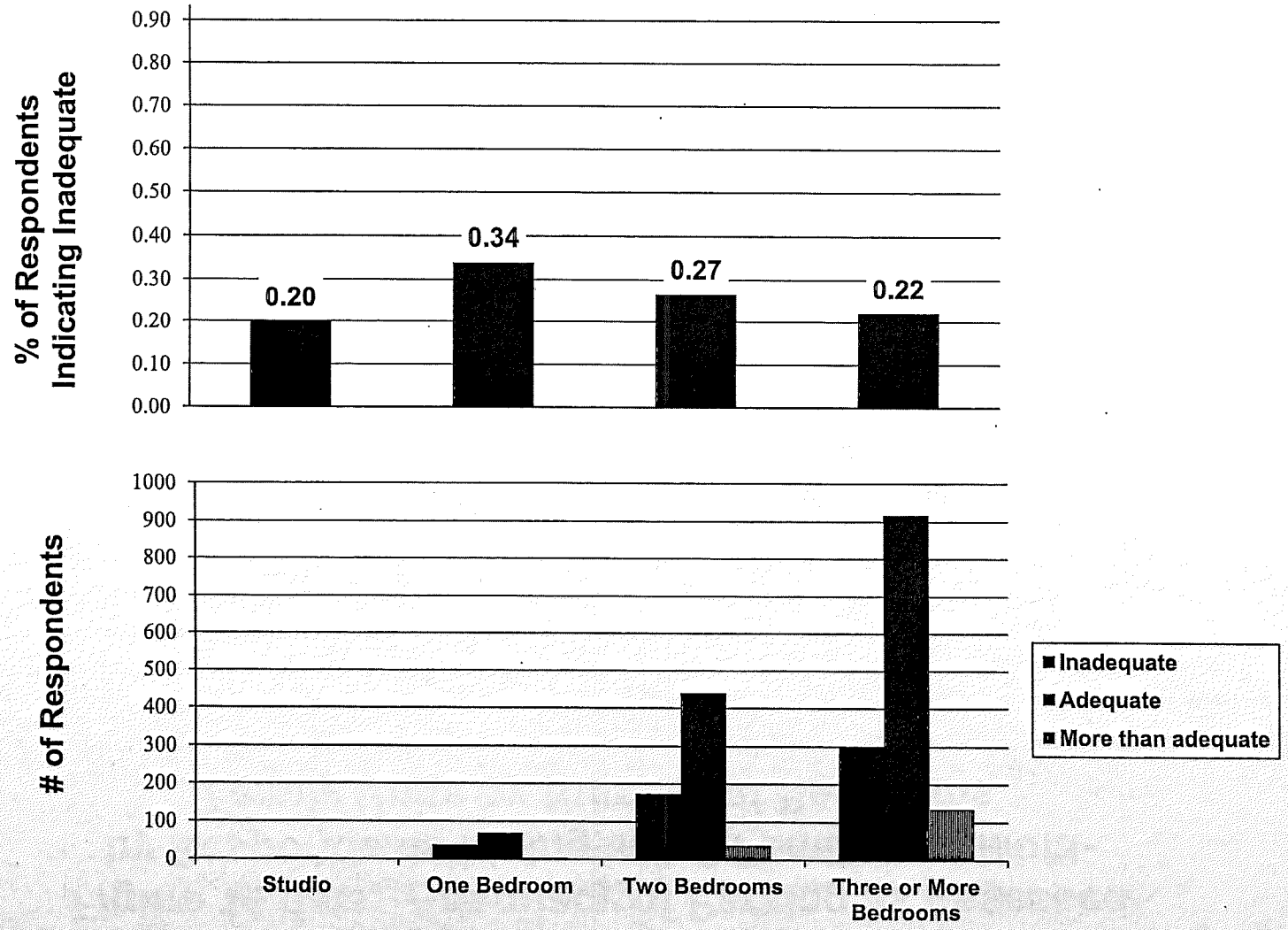


Figure 15 data: Adequacy of Parking as Assessed by Respondents Living in 2-3 Family Units by Number of Bedrooms

Number of Bedrooms	Inadequate	Adequate	More than adequate
Studio	1	4	0
One Bedroom	38	70	4
Two Bedrooms	174	441	39
Three or More Bedrooms	300	918	136
All	513	1433	179

Figure 16. Adequacy of Parking as Assessed by Respondents Living in Multi-Family Units by Number of Bedrooms

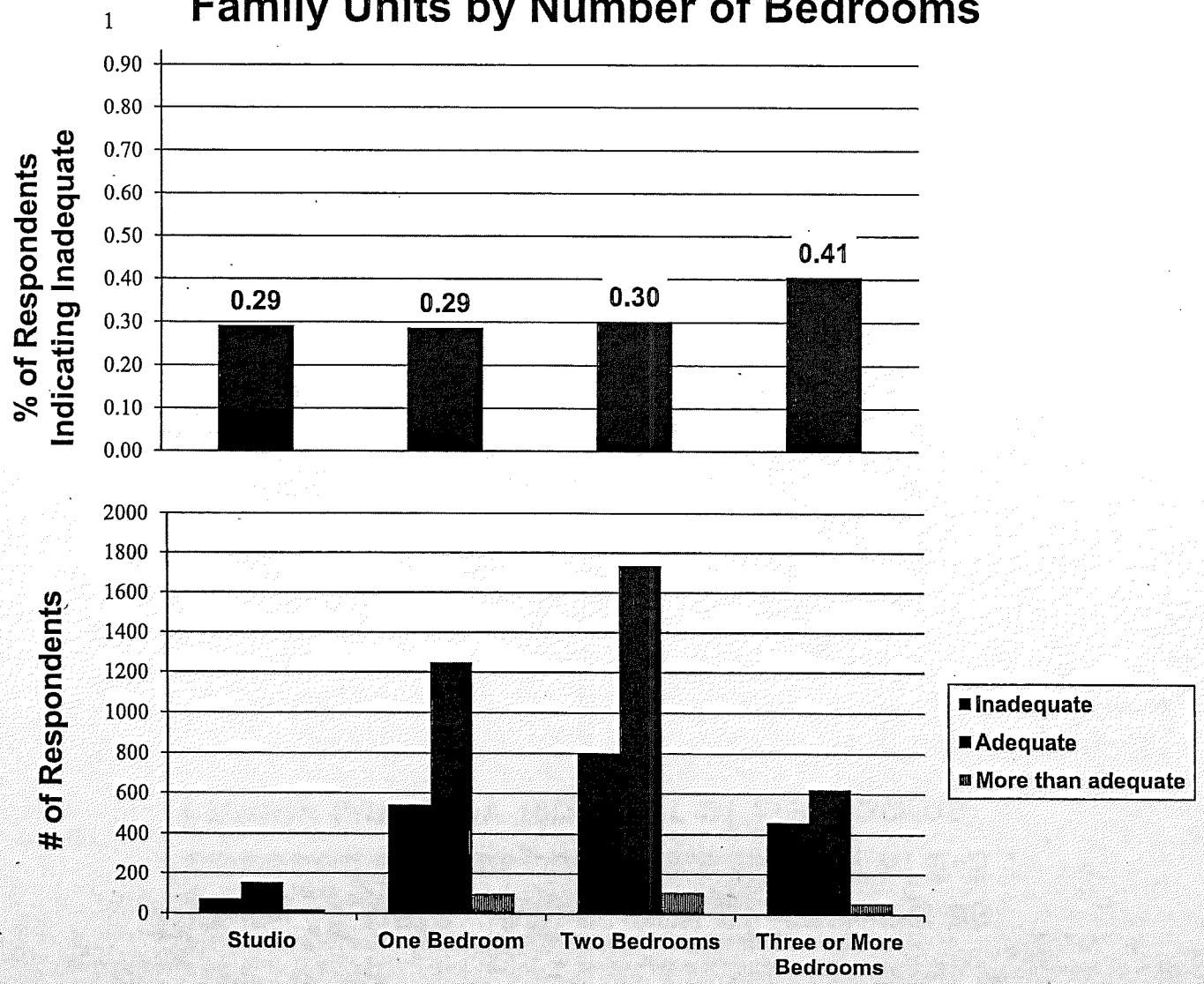


Figure 16 data: Adequacy of Parking as Assessed by Respondents Living in Multi-Family Units by Number of Bedrooms

Number of Bedrooms	Inadequate	Adequate	More than adequate
Studio	71	153	19
One Bedroom	542	1248	100
Two Bedrooms	800	1736	109
Three or More Bedrooms	461	622	54
All	1874	3759	282

Figure 17. Number of Cars Allowed by Bedroom Size for 2-3 Family Units (# of Households)

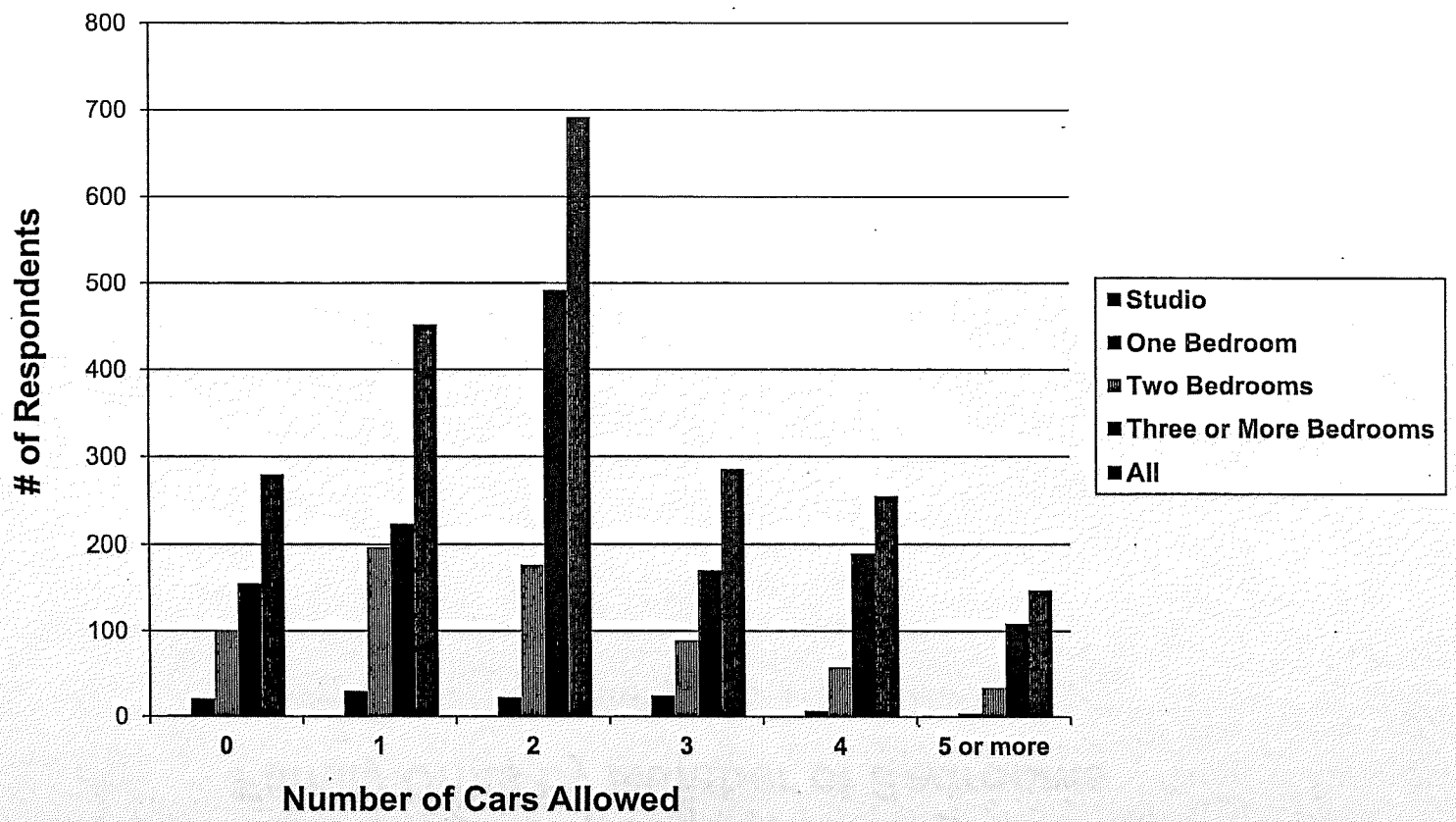


Figure 17 data: Number of Cars Allowed by Bedroom Size for 2-3 Family Units (# of Households)

	Number of Cars Allowed					
Number of Bedrooms	0	1	2	3	4	5 or more
Studio	2	1	0	1	0	1
One Bedroom	21	30	23	25	7	4
Two Bedrooms	101	197	177	89	58	34
Three or More Bedrooms	156	224	492	171	190	109
All	280	452	692	286	255	148

Figure 18. Distribution of Number of Cars Allowed by Bedroom Size for 2-3 Family Units (% of Households)

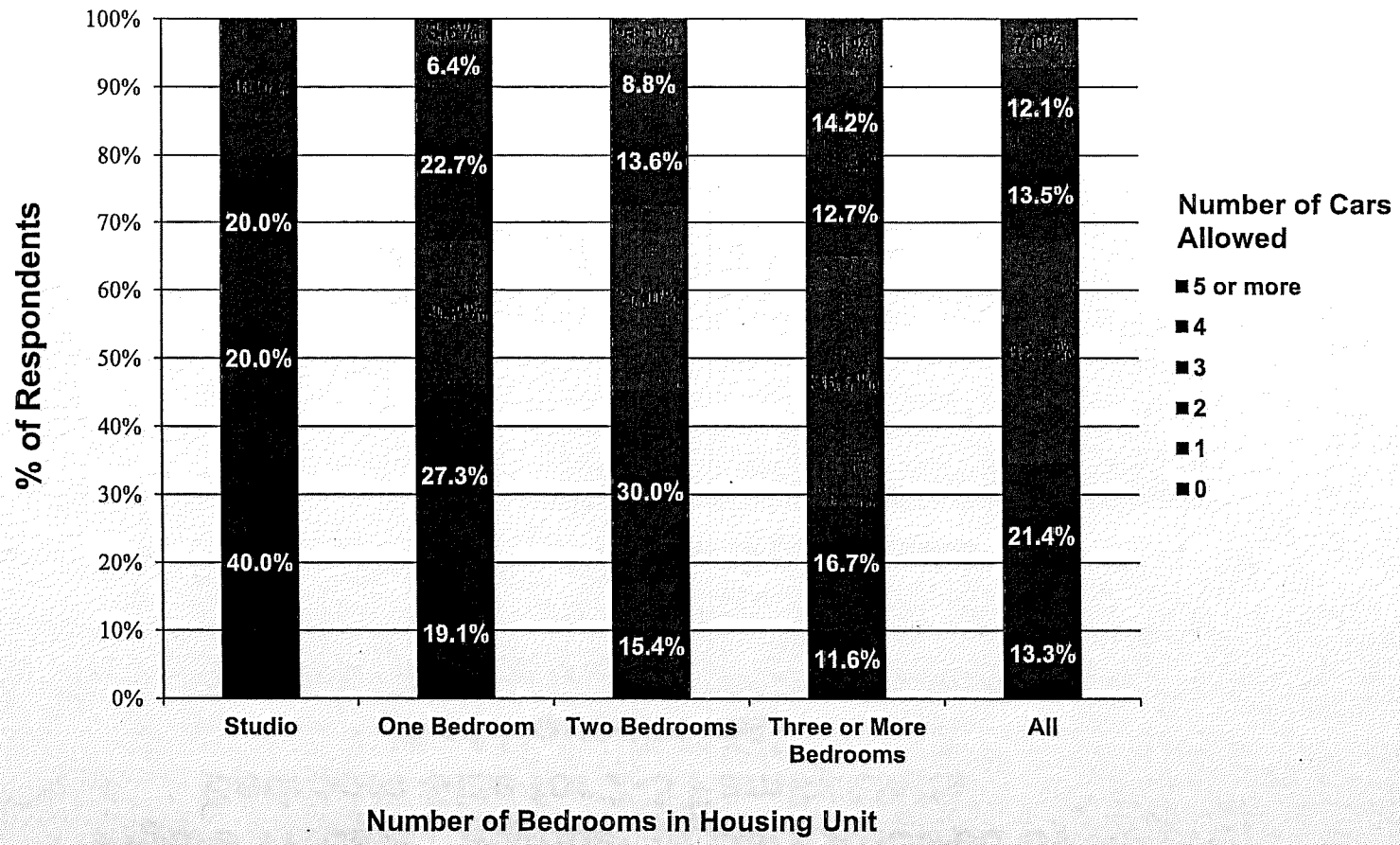


Figure 18 data: Number of Cars Allowed by Bedroom Size for 2-3 Family Units (% of Households)

Number of Cars Allowed	Studio	One Bedroom	Two Bedrooms	Three or More Bedrooms	All
0	40.0%	19.1%	15.4%	11.6%	13.3%
1	20.0%	27.3%	30.0%	16.7%	21.4%
2	0.0%	20.9%	27.0%	36.7%	32.7%
3	20.0%	22.7%	13.6%	12.7%	13.5%
4	0.0%	6.4%	8.8%	14.2%	12.1%
5 or more	20.0%	3.6%	5.2%	8.1%	7.0%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Figure 19. Number of Cars Allowed by Bedroom Size for Multi-Family Units (# of Households)

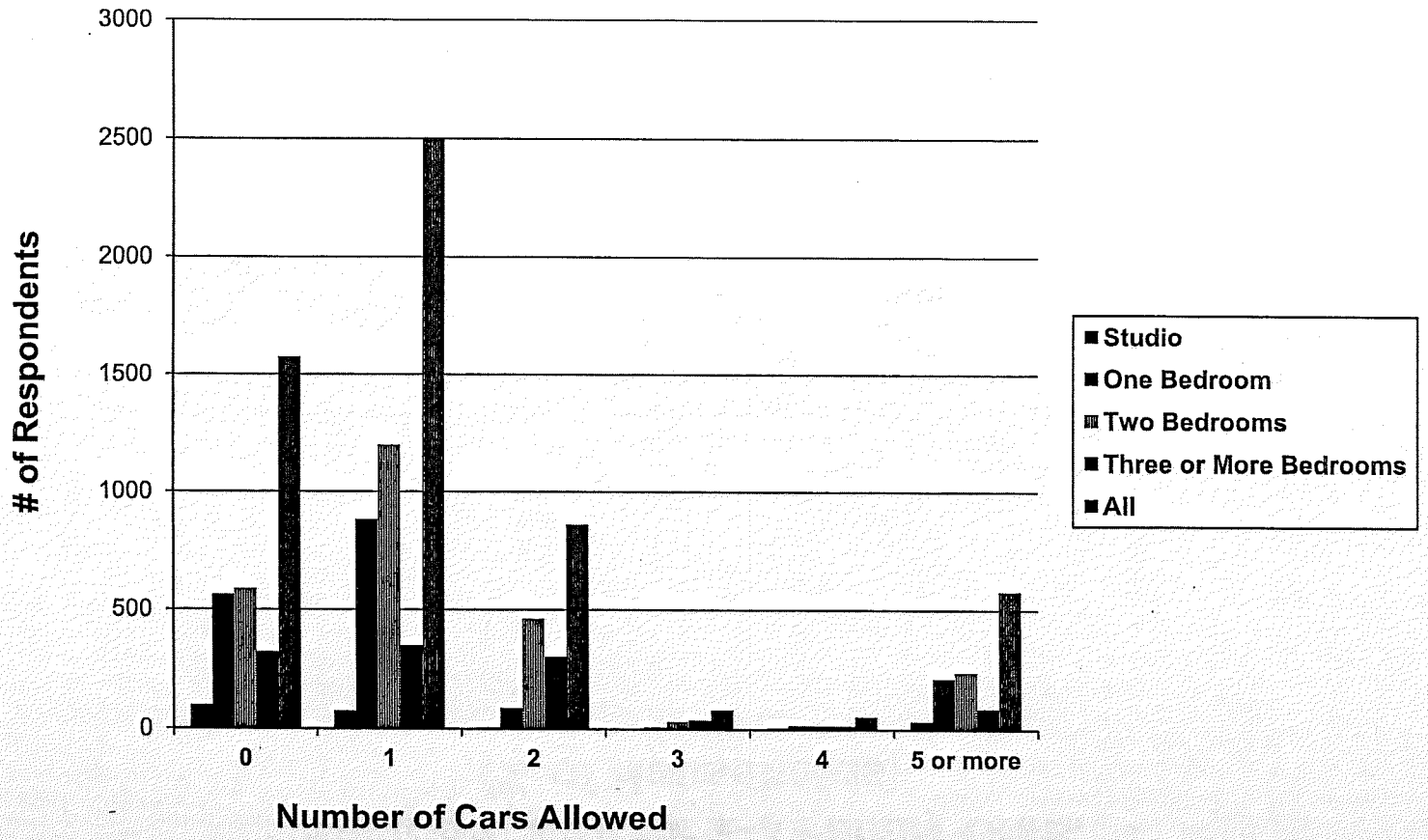


Figure 19 data: Number of Cars Allowed by Bedroom Size for Multi-Family Units (# of Households)

	Number of Cars Allowed					
Number of Bedrooms	0	1	2	3	4	5 or more
Studio	100	75	6	3	6	35
One Bedroom	564	881	88	9	16	215
Two Bedrooms	589	1199	461	32	18	241
Three or More Bedrooms	323	349	305	38	15	88
All	1576	2504	860	82	55	579

Figure 20. Distribution of Number of Cars Allowed by Bedroom Size for Multi-Family Units (% of Households)

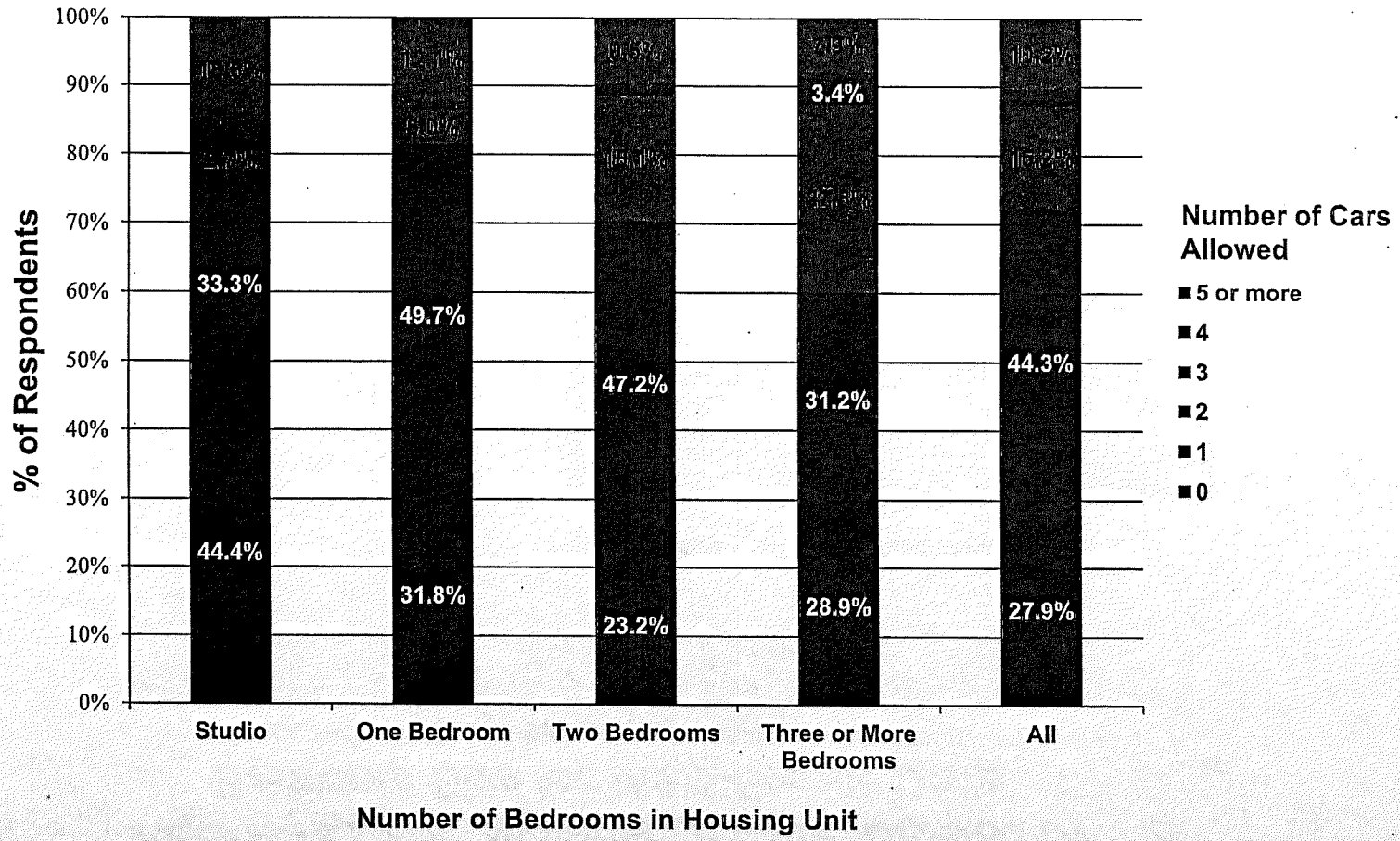


Figure 20 data: Distribution of Number of Cars Allowed by Bedroom Size for Multi-Family Units (% of Households)

Number of Cars Allowed	Studio	One Bedroom	Two Bedrooms	Three or More Bedrooms	All
0	44.4%	31.8%	23.2%	28.9%	27.9%
1	33.3%	49.7%	47.2%	31.2%	44.3%
2	2.7%	5.0%	18.1%	27.3%	15.2%
3	1.3%	0.5%	1.3%	3.4%	1.4%
4	2.7%	0.9%	0.7%	1.3%	1.0%
5 or more	15.6%	12.1%	9.5%	7.9%	10.2%
All	100.0%	100.0%	100.0%	100.0%	100.0%

IV. COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

A. General Conclusions

The determination of optimal zoning for minimum parking requirements has been a matter of debate by Town Meeting for many years. There are multiple reasons for this: limitations on data and their interpretation, the myriad and at times conflicting planning goals influencing decision-making, and the difficulty in predicting the impact of differing proposals on a wide range of issues important to residents, including green space, overbuilding, aesthetics, traffic, composition of the Town's population, livability, accessibility, and public transportation. The Committee has been studying the issue since 2011, collecting input from a wide range of sources and so has seen directly the difficulties in reaching consensus on the issue. Thus, for instance, while the input we received from real estate developers would suggest lowering the minimums, input from real estate brokers would suggest the opposite. Similarly, residents speaking to the Committee also expressed divergent views. Nonetheless, after reviewing all the data available to us, including our Town-wide survey that produced over 12,000 responses; our interviews with interested parties, such as local real estate developers, brokers and residents, independent demographic data; comparisons of Brookline's requirements with those of other communities; as well as anecdotal information and following extensive discussion, the Committee was able to unanimously reach the conclusions and adopt the recommendations that we discuss below. Most relevant to our charge, are the following conclusions:

(1) Our minimum off-street parking requirements, as provided in Section 6.02, Paragraph 1 of the Zoning By-Law for new residential structures are higher than they need to be for particular residential uses in particular geographical areas, and some downward adjustments should be considered by Town Meeting.

(2) The adjustments should be conservative, given the imperfect knowledge, with the option of readjusting the minimums, either upward or downward, upon later reevaluation.

(3) Given the potential impact of parking minimums on many facets of Brookline's quality of life, Town Meeting should consider implementing some creative options that encourage beneficial changes.

B. Opinions About the Supply of Off-Street Parking in the Town Are Mixed

As our survey findings indicate, a majority of respondents find their parking situation at least adequate. Question No. 6 of the survey asked respondents, "How adequate is the availability of

parking at your residence for your household's needs?" The response choices were "Inadequate," "Adequate," and "More than needed." Out of 11,5709 valid responses,[9] 2,733 (23.6%) responded "Inadequate" and 8,837 (76.4%) were "Adequate? or "More Than Adequate." Given our finding of an overall townwide equilibrium between the number of cars and number of existing off-street parking spaces, the Committee concluded that the level of negative response was largely attributable to multi-family (and two/three family) buildings having minimal or no parking that were constructed prior to the widespread use of cars and certainly prior to the current 2000 minimum off-street parking requirements. Thus, then any modification in the By-law would be unlikely to substantially shift the percentages in any future survey of perceived parking adequacy. Since the new minimum off-street parking requirements would apply only to *new* construction, the number of dwelling units affected by the proposed modification would be relatively small when compared to the preexisting housing stock. Nonetheless, the Committee recognizes that any situation where a quarter of Brookline residents believe their parking to be inadequate means that the need for parking should be factored into any long-term planning by the Town, and that a conservative approach should be taken in making downward adjustments to parking minimums.

C. It Is Important to Properly Estimate the Impact and Scope of the Parking Requirements

The Committee's view is that the central goal of a Brookline minimum off-street parking space requirement should be to bring supply and demand into some rough equilibrium but, in any event to "do no harm" to the current situation that Section 6.02, Paragraph 1 of the Zoning By-Law has wrought – i.e., provide sufficient supply to meet the demand (given the absolute ban on most overnight on-street parking), while at the same time avoiding the construction of unnecessarily large structures that, because of minimum requirements, would provide parking spaces in excess of the relevant demand.[10]

The zoning requirements that the Committee is charged with addressing involve setting the minimum parking requirements for new residential construction. The policy goals should thus reflect the situation that the Town is actually dealing with – i.e., to assure that anyone building new residences in Brookline is incorporating a sufficient number of parking spaces to serve the needs of those who will be living there but is not being required to provide more spaces than is

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9. Approximately 445 returned surveys have been invalidated due to irregularities in the response such as multiple boxes checked.

10. In addition to establishing the minimum number of parking spaces, the zoning requirement could be used to specify the relative sizes and dimensions of the spaces that are to be provided. This distribution could be based upon the relative market shares represented by compact cars, mid-size cars, full-size and SUVs. Provision for handicapped parking spaces could also be addressed in this same context. The Committee has not, however, undertaken to examine this issue in detail.

reasonably required by those residents.[11] In addition to meeting the needs of a building's residents, the available supply of parking spaces should also provide a reasonable amount of off-street parking for guests, vendors, and tradespersons working at residents' homes. Other cities and towns provide additional parking ranging between 0.1 and 0.5 additional spaces per unit for guest parking.[12] Adding 0.2 to the parking ratios of actual car ownership that we found in the survey for studio to 3+ bedroom units would result in the following ratios:

Table 6
Cars Owned plus Additional Guest Parking per Household

	Avg # of cars owned plus assumed 0.2 guest spaces per household	
Type of unit	Multi-Family Buildings	2-3 Family Buildings
Studio	0.63	0.63*
1-bedroom	0.91	1.04
2-bedroom	1.28	1.35
3+ bedroom	1.58	1.78
All	1.18	1.60

* Very small sample size

This will, in turn, assure that the impact of those residences on the overnight parking ban is neutral, while also resulting in buildings that are no bigger than they need to be.

D. The Overnight On-Street Parking Ban Should Be Maintained

At least one (if not the primary) reason for the necessity of having sufficient off-street parking is the Town's ban on overnight on-street parking. There is a direct and inextricable linkage between minimum requirements for off-street parking and the continued ability of the Town to maintain the overnight parking ban. Conversely, the existence of the overnight parking ban drives, at least in part, any pressure (real or imagined) on off-street parking. As is discussed below, the Committee uniformly believes that changes to the overnight parking ban are not in the Town's best interests and would, in any event, not be an acceptable solution to fixing the off-street parking requirements.

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11. Because the primary problem is inadequate parking in older buildings, some have suggested that parking in newly-constructed buildings provide some off-street parking opportunities for those Brookline residents who live in buildings or houses that do not have sufficient off-street parking. Currently, however, individual buildings' policies with respect to making parking spaces available to nonresidents vary from outright prohibitions to a willingness to accommodate a limited number of nonresident vehicles, which may require Town approval. While a change in such practices is possible, it would likely require Town action and/or incentives to building owners to facilitate.

12. See, for example, Yonkers, New York and Bay Area communities, Elk Grove and Inglewood, California.

There is some tension between the concept of setting minimum parking requirements and the goal of maintaining a neutral impact upon the overnight parking ban. To be sure, the Town does not wish to encourage developers to provide insufficient parking for residents. Alternatively, however, some Committee members believe that to some extent the market can be relied upon to dictate off-street parking supply – i.e., developers will build what is most advantageous to their projects, and meeting or even exceeding the required minimums will likely be neutral, if not beneficial, to them. As an additional complication, there is the current policy of excluding parking areas from FAR, which may distort this trade-off and encourage developers to adhere strictly to the minimum or to build a disproportionate number of larger units since the current off-street parking requirement is the same for all sizes of dwellings.[13]

E. Altering minimum parking requirements in order to influence change in vehicle use patterns is not a practical goal at this time

Proponents of November 2010 Article 10 were accused of attempting to engage in "social engineering." Certain urban planning advocacy groups have theorized that by reducing the availability of parking and other motor vehicle resources, residents will seek alternate means of transportation, resulting in various environmental benefits.[14] This assumes, of course, that the response to an imposed scarcity of parking spaces will conform to this theory – i.e., that people will make do with fewer cars. But another equally plausible theory is that by creating such a scarcity those with a need for cars in excess of available parking spaces will avoid settling in Brookline. The limits to Greater Boston's public transit system make it difficult, and sometimes impossible, to use public transportation to travel to destinations beyond the city limits. In fact, the dearth of public transportation requires the use of cars (or bikes) to get from Coolidge Corner to some other parts of Brookline. And while the current state administration has been devoted to expanding public transportation, funding limitations makes the effort challenging, so that improvements are incremental. While the Committee agrees that Town land use policy should strive to achieve social and environmental ideals, members also feel that the disruption that

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13. Some members of the Committee are dubious as to this claim. Developers will size the units in their buildings in response to the market. If there is strong demand for smaller units – i.e., studios, 1/2 bedrooms – it is difficult to imagine that a developer would build putatively less marketable units merely to avoid the need to provide additional parking spaces.

14. Some members of the Committee have expressed the concern that this is perhaps the inverse of the *Field of Dreams* mantra, "if we build it, they will come," that under this notion, "if we take it away, they will leave." But this translates into "if we take it away, they (i.e., those who need or want an automobile) will move someplace else" or "if we take it away, they won't move to Brookline in the first place." These Committee members do not believe that it should be the policy of the Town of Brookline to affirmatively discourage people who want or need an automobile from living here, and are thus not persuaded that this undocumented theory should have any bearing upon off-street parking requirements in Brookline, even if it actually had any factual basis. The ban on overnight on-street parking has a long tradition in Brookline and contributes to the overall quality of life that we have come to expect. Any reduction in the minimum off-street parking requirement should not be so draconian as to create pressure to eliminate the overnight parking ban. The modest reductions being recommended here should not produce that result.

would be caused by providing insufficient motor vehicle parking far outweighs the likelihood that any meaningful change is achievable, given the limitations of our current mass transit system.[15]

F. Changes to FAR

One possible modification that the Committee has discussed is the inclusion of indoor parking areas within a building's total Floor Area Ratio ("FAR"). At present, most space devoted to parking is excluded from FAR, which means that other than the cost involved, a developer is not penalized for devoting a portion of the total building area to parking.

The City of Newton, in fact, includes parking areas in the calculation of FAR. However, according to Seth Zeren, Newton's Chief Zoning Code Officer, FAR is only specified for single and two-family residences. For those types of residences, all structured above-ground parking structures are included in FAR. Open air parking, carports and underground parking is not included. Changes were recently made to the zoning regulations to specify that detached garages are included in FAR. Adjustments were made to FAR to incorporate those changes, with more flexibility given to smaller lots. The process used to adjust FAR to accommodate the changes took a long time and "is a long story." Outdoor parking is generally not allowed in the designated setback areas.

In Newton, multi-family residences, which include three-family residences, that are located in residential districts have no specific FAR requirements since these housing types must always go through a Special Permit process, even in multi-family zoned areas. Only multi-families in business/mixed-use districts have FARs, but they may differ from those for the non-residential uses. FAR can generally fall between 1.0 and 3.0 depending upon the height/size of the lot, but mostly is between 1.0 and 2.0. An FAR of 3.0 is possible for buildings up to 8 stories.

Newton's policy, i.e., including indoor parking areas but not open-air spaces in FAR, begged the question as to whether the policy has resulted in more outdoor parking. Apparently this has not happened – developers prefer outdoor parking because it is less expensive to construct, not because it falls outside of the FAR calculation.

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15. The Committee was made aware of a recent *New York Times* article noting that due to the availability of multiple subway lines in downtown Brooklyn, New York, there was a large surplus of parking spaces in lots and parking structures. It was suggested to the Committee that the proximity of large parts of Brookline to MBTA transit routes should have a similar result. But the MBTA is not the New York MTA. In New York City, the subway will usually be faster than an automobile to reach one's destination, especially for travel between Brooklyn and Manhattan – what might take 20 minutes on the subway can take up to an hour by car. In Boston, the reverse applies. The MBTA – and especially the Green Line – is slow and often subject to significant overcrowding (requiring passengers to wait for a second or third train), and frequent delays. Additionally, the limited route network of the MBTA makes many areas in Greater Boston effectively inaccessible by public transportation. When, as and if the term "rapid transit" can be applied to MBTA service, the condition extant in Brooklyn might arise. However, no such transit improvement appears in the offing at this point in time.

The Committee determined not to pursue modifications to FAR in Brookline to include parking areas at this time. Among other things, it would require a top-to-bottom reset of all ratios in all residential districts, something that the Committee is not equipped to address on the basis of the information available to it. However, if the Town's minimum off-street parking regulations move toward a greater reliance upon marketplace forces, the potential inclusion of parking areas in FAR should be given some attention.

G. Recommended Changes

1. Some Downward Adjustment in Parking Minimums

Parking requirements need to ensure adequate parking for the uses associated with a property. In multi-unit residential buildings, the principal drivers of parking demand are the number of individual units and their relative size. In commercial buildings, by contrast, parking requirements are driven less by total floor space than by other attributes of the building – e.g., in the case of a hotel, hotel rooms; in the case of a theater, number of seats; for office space that is used primarily for back-office functions or other activities that involve minimal amounts of on-site customer visits, parking requirements will tend to be driven by number of employees in the building (which is generally functionally related to total area of the building) and its proximity to mass transit. For medical office buildings, where patient visits are involved, the parking requirement per square foot would tend to be greater. Similarly, retail developments require spaces for customers as well as for employees.

However, the parking requirements of commercial developments are beyond the scope of this Report, as the Committee's principal focus is on residential development. Here, parking requirements are or may be driven by the number of units, the number of residents per unit (which is in turn a function of the size(s) of the units in the building), and by exogenous conditions such as proximity to mass transit. The Committee has undertaken to assemble statistical data addressing these specific factors, which we discuss below. Parking requirements should not be a "one-size-fits all" policy, and should allow flexibility to allow for individual and unique circumstances to be taken into account, consistent with the other goals.

It is the view of some Committee members that, where possible, and consistent with overall goals, the market should be relied upon to set parking space availability for each new development – i.e., the minimums should be "bare minimums" that are, nevertheless, informed by existing utilization and demand. Other committee members are less sanguine that market forces will address the needs, goals and interests of Town residents, and it is for this very reason that municipalities have zoning regulations and design review. Nonetheless the Committee unanimously believes that some downward adjustment to the minimum requirements should be made, but that these adjustments should be restrained to the more obvious cases and that the decreases should be moderate. This would allow for a reassessment at a later point in time to determine whether other changes should be made – either downward or upward – as the circumstances indicate.

Our recommendations are based largely on the results of the Committee's survey of residents. The data demonstrate strongly that the current parking minimum of two off-street parking spaces for studio and one-bedroom units is excessive compared to the amount of parking that is likely needed. The data also indicate that the parking minimum of 2.3 parking spaces per two-bedroom unit could be lowered slightly to 2 spaces per unit. This significantly smaller shift is appropriate given that most of the survey respondents who indicated their parking was inadequate resided in two or three-bedroom units.

As Figures 5-8 demonstrate, average car ownership rates for studios and one-bedroom units are considerably less than 2 per unit. This is true regardless of whether one looks at the data for multi-family units, two and three family units, or all units.

The following proposed table of parking requirements could be substituted for the "Residence" column in Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements and would more closely correlate to anticipated need:

Table 7
Committee Recommendations for Revisions to Minimum Off-Street Parking Requirements For Residential Buildings in Brookline

	Number of off-street parking spaces required	
Size of unit	Currently Required	Proposed (Changes are underlined)
Studio	2 spaces per unit	<u>1.0 space per unit</u>
1-bedroom	2 spaces per unit	<u>1.5 space per unit</u>
2-bedroom	2 spaces per unit/2.3 spaces per unit for attached single-family dwellings in zoning districts with a maximum FAR of .5 or greater	<u>2.0 space per unit</u>
More than 2 bedrooms	2 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or greater	2.0 spaces per unit/2.3 spaces per unit in zoning districts with a maximum FAR of .5 or greater

2. Creative Zoning Changes to Foster Town Goals

The objective of perfecting minimum parking requirements is a vexing one, given the difficulty of properly assessing need and of achieving a town-wide consensus on the purpose of establishing minimums (e.g., to encourage/discourage certain behaviors? to ensure adequate

parking for all? to minimize interference with the market?), the inability to determine with certainty the impact of changes (e.g., will open space be increased or decreased with higher or lower minimums; will affordability be negatively affected more by higher minimums – and thus higher-cost units, or by the increased cost of renting parking spaces due to increased demand as lower minimums result in reduced parking) the many implications that result from raising or lowering such requirements, with some viewed as positive goals for some and negative outcomes for others (e.g., increasing density and encouraging residential development), and so forth. Following are some proposals that provide some flexibility to developers in a manner that could also benefit residents and the Town:

- Enable developers to lower their parking requirements under one or more of the following circumstances:

    - if they provide compensatory benefits to residents, for example, providing spaces for Zipcars or other alternative transportation, or agreeing to provide additional underground parking spaces that do not increase the overall bulk of the completed building.

    - if they can document alternative parking availability in the vicinity, such as by making arrangements with nearby commercial properties to use their parking facilities during otherwise underutilized hours.

- There is concern both that increasing minimums will result in less green space as more land is needed for parking, and that decreasing minimums will result in less green space as developers will construct larger buildings. Thus, allow reductions in parking requirements for a developer if it is accompanied by a commensurate increase in green space.

- An important element in achieving adequacy of parking for all residents is to better manage available parking and residents in need of parking. Table 5 provides a listing of multi-family buildings that were completed between 2000 and 2011. As the data indicate, over this roughly 12-year time frame, a total of only 962 new units in multi-family buildings were completed. There are 1,885 off-street parking spaces associated with these buildings, i.e., an average of approximately two spaces per unit as required in the 2000 zoning amendment. Thus, the vast majority of multi-family units in Brookline were built long before 2000, and it is those older buildings that provide the least parking. Thus, no matter how high one makes the parking minimums for new construction, these will not alleviate the insufficiency of parking for residents living in older buildings. One option is for the Town to either explicitly provide for the rental of residential parking spaces to non-residents in its bylaws or to provide some incentives to encourage owners of new units to do so. While developers and owners of new construction units in Brookline currently do not offer this option, it is being done elsewhere. In fact, the Trilogy development built by Bill McQuillen, the developer who met with the Committee, allows non-residents to park in its garage. In San Francisco, where parking shortages have resulted in costly rentals of parking spaces, the City's laws explicitly allow the rental of spaces to non-residents to increase parking availability.

H. Conclusion

The Committee believes that the modest reductions in minimum off-street parking requirements that it recommends be adopted for new dwelling units is supported by the data, will help to reduce the bulk of new residential buildings, and will contribute toward a reduction in the average cost of construction of such units. The Committee also suggests that the various other changes in the approach to minimum off-street parking zoning as outlined in this section of our Report be studied for potential adoption in the future.

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