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 18, 2014, at 7:00 P.M., and dissolved on Wednesday, November 19, 2014 at 10:06 P.M.

ATTEST:

Patrick Joseph Ward
Town Clerk

Town of Brookline

BOARD OF SELECTMEN

Kenneth M. Goldstein, Chairman

Nancy A. Daly

Betsy DeWitt

Neil A. Wishinsky

Benjamin J. Franco

Melvin A. Kleckner, Town Administrator

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

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 232-5626
Sumner J. Chertok, 80 Park Street, #65 734-1169
Lea Cohen, 1060 Beacon Street, #11 947-9713
John Doggett, 8 Penniman Place 566-5474
Janet Gelbart, 216 St. Paul Street 566-5616
Bernard Greene 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
Steven Kanes, 89 Carlton Street 232-2202
Bobbie M. Knable, 243 Mason Terrace 731-2096
Fred Levitan, 1731 Beacon Street 734-1986
Robert Liao, 55 Meadowbrook Road 530-988-8887
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

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 232-5626
Sumner J. Chertok, 80 Park Street, #65 734-1169
Lea Cohen, 1060 Beacon Street, #11 947-9713
John Doggett, 8 Penniman Place 566-5474
Janet Gelbart, 216 St. Paul Street 566-5616
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
Steven Kanes, 89 Carlton Street 232-2202
Bobbie M. Knable, 243 Mason Terrace 731-2096
Fred Levitan, 1731 Beacon Street 734-1986
Robert Liao, 55 Meadowbrook Road 530-988-8887
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 18, 2014
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.	FY2015 budget amendments. (Selectmen)
4.	Vote to abandon and extinguish, in place, several existing common sewer easements running through certain rear of lots on Clinton Road and a portion of the former Cleveland Circle Cinema site in order to facilitate the proposed redevelopment of the site at 375-399 Chestnut Hill Avenue. (Department of Public Works)
5.	Vote to release the Town from any of its rights, duties and responsibilities related to an old 18-inch sewer line running through the City of Boston in connection with the proposed redevelopment of the former Cleveland Circle Cinema site at 375-399 Chestnut Hill Avenue. (Department of Public Works)
6.	Authorize the Selectmen to enter into any agreements and/or amendments in order to carry out the Terms and Conditions of the PILOT and Development Agreement with the Developer in connection with the proposed redevelopment of the former Cleveland Circle Cinema site at 375-399 Chestnut Hill Avenue. (Selectmen)
7.	Amendments to the Town's By-Laws -- pertaining to gender identity and gender expression. (Selectmen and Alex Coleman)
8.	Amendment to Article 8.5 of the Town's By-Laws – Disorderly Conduct -- modifications to address Constitutionality issues and define the offense of "disturbing the peace." (Police Chief)
9.	Amendment to Article 8.15 of the Town's By-Laws – Noise Control -- clarification of definitions. (Petition of Fred Lebow)
10.	Amendment to Article 8.16 of the Town's By-Laws – Collection and Recycling of Waste Materials -- require commercial properties to recycle. (Petition of Alan Christ)
11.	Amendment to Article 8.23 of the Town's By-Laws – Tobacco Control -- modifications to current by-law. (Petition of Thomas J. Vitolo)
12.	Amendment to the Zoning By-Law – Section 4.12 (Registered Marijuana Dispensary) -- changes to prohibit the location of Registered Marijuana Dispensaries within 500 feet of a daycare center or any facility in which children commonly congregate. (Petition of Gordon Bennett)

13. Amendment to the Zoning By-Law – Section 9.08 (Notice to Town Meeting Members and Others) -- to increase notice requirements pertaining to matters before the Board of Appeals and require publication of Board of Appeals minutes and decisions/withdrawals on the Town's website. (Petition of Bobbie Knable and Ruthann Sneider)

14. To Name the Athletic Fields at the Cypress Street Playground the "Thomas P. Hennessey Fields at Cypress Street Playground". (Naming Committee)

15. Legislation to Repeal the Board of Selectmen's Authority to Sell Taxi Medallions. (Petition of John Harris)

16. Resolution Regarding the Transition to a Mixed Taxi Medallion and Hackney License System in the Town of Brookline. (Petition of David Lescohier)

17. Resolution Pertaining to Town Lighting. (Petition of Claire Stampfer and Heather Hamilton)

18. Resolution in Support of Respect and Dignity for Domestic Workers. (Petition of Stephen Vogel, for The Acting for Economic Justice Committee of the Boston Workmen's Circle)

19. Resolution Opposing the Expansion of Natural Gas through Pipelines and Hydraulic Fracturing in Massachusetts. (Petition of Carol Oldham and Ed Loechler)

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

2014 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 2014 Special Town Meeting to be held on Tuesday, November 18, 2014 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 4-0 taken on October 28, 2014.

Motion of Reduction was passed unanimously

ROLL CALL VOTE:
No Action
Daly
DeWitt
Wishinsky
Franco

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
As there are no known remaining unpaid bills from the previous fiscal year, the Advisory Committee unanimously recommends NO ACTION on Article 1

XXX

ARTICLE 2

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Warrant Article 2 would fund collective bargaining agreements between the Town and two of its bargaining units.

The first Memorandum of Agreement between the Town of Brookline and Teamsters Local 25 was a three year contract commencing July 1, 2012 and expiring on June 30, 2015 with a three year roll-out cost of $96,019.

The second two agreements are between the Town of Brookline and the Brookline Police Union, Local 1959. The first agreement covers Fiscal Years 2012 to 2014 and the second agreement covers Fiscal Years 2015 and 2016. The roll-out cost for both contracts, which covers a five year term, is $4,369,583.

DISCUSSION:
Much of the discussion involved the personnel reclassification. The Police Union agreed to the elimination of the Civil Service Captain position and the creation of a non-union, non-civil service position of Deputy-Superintendent. This change involves the reclassification of the current four Captain positions into four Deputy Superintendent positions. While there will be an increase in salary to compensate for potentially lost income (these positions will not be eligible to perform private paid details) and increased management responsibility, the change will benefit the town by giving the Police Chief additional management flexibility.

Summary of main points in the agreement with Teamsters Local 25

Process: On October 14, 2014, the Emergency Telecommunications Dispatchers, Teamsters, Local 25, (the Union) and the Town of Brookline (the Town) came to a tentative agreement for Fiscal Years 2013 to 2015. The Agreement was ratified by the Union on October 27, 2014 and adopted by the Board of Selectmen on October 28, 2014. The wage provisions of this contract are in line with the other contracts that had previously been settled for Fiscal Years 2013 to 2015, with **an overall cost of 6.9%**

FY 2013 to FY 2015 Memorandum of Agreement (MOA)
The Memorandum of Agreement with the Teamsters and the Town is a three-year contract commencing on July 1, 2012 and expiring on June 30, 2015. The parties agreed to a wage package of:

FY 13	2%
FY 14	2%
FY 15	2%

The Parties also agreed to a new Education Incentive of $750 per fiscal year for a Bachelor or Master's degree in Criminal Justice, Fire Science, Communications, Registered Nurse and any foreign language. Under this Agreement, the Town will be able to improve administrative efficiencies by moving all members to direct deposit and an electronic pay advisory system.

Further, the dispatchers, who are on a 4/2 schedule, agreed to reduce their annual sick day allocation from 15 to 14 sick days (similar to police officers) per year in exchange for the use of sick days as family sick days. They also agreed, to reduce the number of unearned personal days from 4/year to 2/year for new employees, and like the other civilian unions, new employees.

COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH TEAMSTERS

ITEM	FY13	FY14	FY15	TOTAL	
7/1/12 - 2%	13,423	13,423	13,423	40,270	
7/1/13 - 2%		13,692	13,692	27,383	
7/1/14 - 2%			13,966	13,966	
Education Incentive		9,450	9,450	18,900	> New -- $750 for a BA + $300 for those w/o BA
Reduction in Personal Days (Reduced OT)		(1,500)	(3,000)	(4,500)	> Reduction from 4 to 2 for approx. 6 FTE's
TOTAL ROLL-OUT COSTS	13,423	35,065	47,531	96,019	
Each 1% =	6,712	6,846	6,983		
New Wages - $ =	13,423	21,642	12,466		
New Wages - % =	2.0%	3.2%	1.8%	6.9%	
Wages on Base - $ =	13,423	21,642	12,466		
Wages on Base - % =	2.0%	3.2%	1.8%	6.9%	

Summary of the main points in agreements with the Brookline Police Union Local 1959

Process and Overall Incremental Cost: On July 10, 2014, the Brookline Police Union, Local 1959, and the Town of Brookline came to agreement on two memoranda of agreements (MOA). The first MOA covers Fiscal Years 2012, 2013, and 2014, and the second MOA covers Fiscal Years 2015and 2016. Both MOAs were ratified by the Police Union on or about August 9, 2014 and approved by the Board of Selectmen on August 12, 2014. The wage provisions in these MOAs are in line with the other contracts that had previously been settled with other unions for Fiscal Years 2012 to 2015. **The overall cost of the two MOAs, spanning five years, is 12.6% ($4,369,583).**

Separately, there will be an addition cost of $98,109 associated with the change from unionized Captain positions to non-union Deputy Superintendents.

ITEM	FY12	FY13	FY14	FY15	FY16	TOTAL	
7/1/11 - 1.5%	171,617	171,617	171,617	171,617	171,617	**858,084**	
7/1/12 - 2%		232,255	232,255	232,255	232,255	**929,019**	
7/1/13 - 2%			236,900	236,900	236,900	**710,700**	
7/1/14 - 2%				241,638	241,638	**483,276**	
7/1/15 - 2%					246,471	**246,471**	
Senior Steps	143,558	189,479	189,479	189,479	189,479	**901,475**	> 5% Pay increase for all with at 20+ yrs
Shift Differential - Last Half			20,477	20,477	20,477	**61,431**	> Increase from 5.5% of Max PO to 7%
Relief Lt			1,043	1,043	1,043	**3,129**	> Incr from $75/wk to $85/wk
Education Incentive					140,000	**140,000**	> $5K AS, $10K BS, $12,500 MS
EMT Stipend			12,000	12,000	12,000	**36,000**	> New $2K stipend for 6
ROLL-OUT COSTS	**315,175**	**593,351**	**863,771**	**1,105,408**	**1,491,879**	**4,369,583**	
Each 1% =	114,411	116,127	118,450	120,819	123,235		
New Wages - $ =	315,175	278,176	270,420	241,638	386,471		
New Wages - % =	2.8%	2.4%	2.3%	2.0%	3.1%	**12.6%**	
Deputy Superintendent (Non-Union)				49,054	49,054	**98,109**	> 4 new pos chosen from Cpt + Lt
TOTAL ROLL-OUT COSTS	**315,175**	**593,351**	**863,771**	**1,154,463**	**1,540,934**	**4,467,692**	

Memoranda of Agreement (MOA): Bargaining for the FY 12-14 contract concluded on July 10, 2014 creating a unique situation where the agreed upon MOA was effectively retroactive as its term expired on June 30, 2014. This situation would have forced the Parties to immediately return to the bargaining table. Instead, the Parties agreed to bargain a subsequent two-year agreement for Fiscal Years 2015 and 2016. Agreeing to the second MOA also allowed the parties to draw out the costs of certain provisions across five years, rather than three.

The most important component of the MOAs is the creation of the position of Deputy Superintendent, a non-union, non-civil service management position that will enhance the Chief's ability to structure a strong command staff. This is a long sought after objective of the Brookline Police Department and it also satisfies the recommendation of the 2014 Override Study Committee (2014 OSC) by converting public safety, management positions to non-civil service positions through collective bargaining (2014, OSC at pg 25 and 40, 86).[1] Having management of the Department appointed and serve based on the

[1] As the position of Deputy Superintendent is not a civil service position officers will be promoted based on merit, not their civil test score. The Deputies will also be non-union, management positions. Once the new Deputy Superintendent positions are implemented, the captain positions will be eliminated. The police ranks will be Police Officer, Sergeant, Lieutenant and Deputy Superintendent. All future Deputy Superintendents will be pulled from the Lieutenant rank. Although unlikely, if a current captain were not to be promoted to the rank of Deputy Superintendent or if his/her performance is not satisfactory to remain in the Deputy Superintendent position, he/she would be demoted to the rank of Lieutenant as the captain position no longer exists. That individual would become a member of the union

quality of their leadership, as determined by the Police Chief will ensure Brookline will continue to be one of the most professional, highly regarded police departments in the Commonwealth.

The MOAs contain the following provisions:

FY 2012 to FY 2014 MOA
Wages
FY12 1.5%
FY13 2%
FY14 2%

Other costs to the contract include a senior step increase for police officers with 20+ years of service in the bargaining unit, similar to a Fire provision approved by Town Meeting in May 2012. The MOA also includes a night differential increase for last half officers only (5 1/2% to 7%) and an increase in the relief Lieutenants differential from $75 to $85 per week (not increased in more than 15+ years). The parties also agreed to the creation of an EMT stipend as an incentive for police officers to get their EMT certification.

The FY 12- FY14 MOA also eliminated an outdated enhanced longevity plan ($5,000 per year per participating employee for three years), expanded union leave days from 45 to 50 days, and established the Town's ability to implement the use of Narcan and a clean slate provision eliminating two grievances.

FY 2015 to FY 2016 MOA
Wages
FY15 2%
FY16 2%

Other costs include the establishment of an educational incentive program for Non Quinn Eligible Police Officers. This will ensure that Brookline stays competitive with other municipalities who provide educational incentives for police officers. This incentive is flat dollar amount, not a percentage, and therefore will not automatically increase with wages. The provision is novel in that officers with rank must have a bachelor's or higher-level degree and will not receive an incentive otherwise for lower-

---

again. A Lieutenant would be promoted to the Deputy Superintendent position formerly held by the demoted individual.

Brookline's four civil service captains will be promoted to the rank of Deputy Superintendent. We expect two captains to retire, based on age maximums, within eighteen months. However, the captains retain their civil service status for civil service purposes even though they are promoted to the rank of Deputy Superintendent or placed in a Lieutenant position. The civil service rank of captain is important to the individual as they are treated as a captain by Civil Service, for example if the individual wanted to be transferred or was laid off, he/she would be treated as a captain throughout the Commonwealth for re-employment or transfer purposes. Likewise, Lieutenants retain their civil service rank of Lieutenant upon promotion to Deputy Superintendent (non-union, management) and if they were returned to the lieutenant position, which is a position within the union.

level degrees. Educational incentives are provided only to those degrees expressly listed in the contract. Payments will first be made in FY 2016. To be eligible for the above, the following applies:

Associate's Degree	$5,000	Only Patrol Officers are eligible
Bachelor's Degree	$10,000	Only Patrol Officers are eligible
Master's Degree/J.D.	$12,500	All ranks are eligible for this incentive

RECOMMENDATION:
The Advisory Committee unanimously recommends FAVORABLE ACTION on Article 2.

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

Sandra A. DeBow, Director
Human Resources Office

October 29, 2014

To: Board of Selectmen

From: Sandra DeBow, Director
Human Resources Office

Re: Town Meeting, Art II, Funding of Police MOAs

Process: On July 10, 2014, the Brookline Police Union, Local 1959, and the Town of Brookline came to agreement on two memoranda of agreements (MOA) for Fiscal Years 2012 to 2014 and for Fiscal Years 2015 to 2016. These Agreements were ratified by the Police Union on or about August 9, 2014 and approved by the Board of Selectmen on August 12, 2014. The wage provisions of this contract are in line with the other contracts that had previously been settled with other unions for Fiscal Years 2012 to 2015.

Memoranda of Agreement (MOA): Bargaining for the FY 12-14 contract concluded on July 10, 2014 creating a unique situation where the agreed upon MOA was effectively retroactive as its term expired on June 30, 2014. This situation would have forced the Parties to immediately return to the bargaining table. Instead, the Parties agreed to bargain a subsequent two-year agreement for Fiscal Years 2015 and 2016. Agreeing to the second MOA also allowed the parties to draw out the costs of certain provisions across five years, rather than three.

The most important component of this agreement is the elimination of the civil service Captain position, which will be accomplished through attrition and/or promotion to the new Deputy Superintendent Positions; non-union, non-civil service management positions. This is a long sought after objective of the Brookline Police Department and satisfy the recommendation of the 2014 Override Study Committee (2014 OSC) by converting public safety, management positions to non-civil service positions through collective bargaining (2014, OSC at pg 25 and 40, 86. **The overall cost of the agreements, spanning five years, is 12.6%.** The MOAs contain the following provisions:

FY 2012 to FY 2014 MOA

Wages		
	FY12	1.5%
	FY13	2%
	FY14	2%

Other costs to the contract included a senior step increase for police officers with 20+ years of service in the bargaining unit, similar to a Fire provision approved by Town Meeting in May 2012. The MOA also includes a night differential increase for last half officers only (5 1/2% to 7%) and an increase in the relief Lieutenants differential from $75 to $85 (not increased in more than 15+ years). The parties also agreed to the creation of an EMT stipend as an incentive for police officers to get their EMT certification.

The FY 12- FY14 MOA also eliminated an outdated enhanced longevity plan, expanded union leave days from 40 to 50 days, and established the Town's ability to implement the use of Narcan and a clean slate provision eliminating two grievances.

FY 2015 to FY 2016 MOA

Wages

FY15	2%
FY16	2%

Other costs include the establishment of an educational incentive program for Non Quinn Eligible Police Officers. This will insure that Brookline stays competitive with other municipalities who provide educational incentives. This incentive is flat dollar amount, not a percentage, and therefore will not automatically increase with wages. The provision is novel in that officers with rank must have a bachelor's or greater and will not

receive an incentive otherwise for lower-level degrees. Educational incentives are provided only to those degrees bargained in the contract. Payments will first be made in FY 2016. To be eligible for the above, the following applies:

Associate's Degree	$5,000	Patrol Officers - All degrees above are eligible
Bachelor's Degree	$10,000	Sergeant - Bachelor's, Master's Degree or Juris Doctor.
Master's Degree	$12,500	Lieutenant/Captain - Master's Degree or Juris Doctor

Having management of the Department appointed and serve based on the quality of their leadership, as determined by the Police Chief will ensure Brookline will continue to be one of the most professional, highly regarded police departments in the Commonwealth.

Five Year Cost-Out of Police/Town Memoranda of Agreements

ITEM	FY12	FY13	FY14	FY15	FY16	TOTAL	
7/1/11 - 1.5%	171,617	171,617	171,617	171,617	171,617	**858,084**	
7/1/12 - 2%		232,255	232,255	232,255	232,255	**929,019**	
7/1/13 - 2%			236,900	236,900	236,900	**710,700**	
7/1/14 - 2%				241,638	241,638	**483,276**	
7/1/15 - 2%					246,471	**246,471**	
Senior Steps	143,558	189,479	189,479	189,479	189,479	**901,475**	> Incr 5% for all at 20+ yrs
Shift Differential - Last Half			20,477	20,477	20,477	**61,431**	> Incr from 5.5% of Max PO to 7%
Relief Lt			1,043	1,043	1,043	**3,129**	> Incr from $75/wk to $85/wk
Education Incentive					140,000	**140,000**	> $5K AS, $10K BS, $12,500 MS
EMT Stipend			12,000	12,000	12,000	**36,000**	> New $2K stipend for 6
ROLL-OUT COSTS	**315,175**	**593,351**	**863,771**	**1,105,408**	**1,491,879**	**4,369,583**	
Each 1% =	114,411	116,127	118,450	120,819	123,235		
New Wages - $ =	315,175	278,176	270,420	241,638	386,471		
New Wages - % =	2.8%	2.4%	2.3%	2.0%	3.1%	**12.6%**	
Deputy Superintendent (Non-Union)			49,054	49,054	49,054	**147,163**	> 4 new pos chosen from Cpt /Lt
TOTAL ROLL-OUT COSTS	**315,175**	**593,351**	**912,825**	**1,154,463**	**1,540,934**	**4,516,747**	

MEMORANDUM OF AGREEMENT
BETWEEN
THE TOWN OF BROOKLINE ("Town")
AND
THE BROOKLINE POLICE UNION,
MASSACHUSETTS COALITION OF POLICE AFL-CIO ("Union")

FY 2012, FY 2013, and FY2014

July 10, 2014

The Town of Brookline ("Town") and the Brookline Police Union, Massachusetts Coalition of Police AFL-CIO ("Union"), collectively referred to as the "Parties", agree to extend their July 1, 2010-June 30, 2011 collective bargaining agreement through June 30, 2014 except as modified by this Memorandum of Agreement ("MOA").

1. **Duration**
   July 1, 2011 – June 30, 2014

2. **Compensation**
   a. Article XVI Wages
   Increase the wages in the Pay schedule in Article XVI as follows:

Effective July 1, 2011	+ 1.5%
Effective July 1, 2012	+ 2.0%
Effective July 1, 2013	+ 2.0%

   b. ELP
   Eliminate the ELP program effective upon the date of ratification June 30, 2014. All employees who participated in the ELP are not eligible for sick leave buy back pursuant to Article VI, Paragraph 9 upon separation from employment. Employees who, as of January 1, 2013, were already receiving benefits under the ELP program shall continue to receive such benefits in accordance with the ELP program until such time as each such employee has finished or been removed from the ELP program.

   c. Senior Step
   Effective July 1, 2011, add a new Senior Step to the Pay Schedule in Article XVI as follows:

P-1 Patrol Officer	+5% of Patrol Officer Max
P-2 Police Sergeant	+5% of Police Sergeant Max
P-3 Police Lieutenant	+5% of Police Lieutenant Max
P-4 Police Captain	+5% of Police Captain Max

   Employees must have 20 or more years of service in the bargaining unit to be eligible for the Senior Step. Senior Steps shall not be considered in determining rank differentials. The Senior Step shall not be used to calculate night differentials, lag time, education incentives including Quinn, or any stipend or pay that is based on the maximum base salary. Effective July 1, 2012, the Senior Step shall be used to calculate night differentials, lag time, and Quinn benefits, but not "Educational Incentive Compensation for Non-Quinn Eligible Employees".

d. Article XVI Night Differential
Effective June 30, 2014, replace "5 ½ %" with "7%" for employees regularly assigned to the Last Half shift.

e. EMT
Effective January 1, 2013, add an annual $2,000 stipend for employees who have an Emergency Medical Technician (EMT) certification issued by the Commonwealth of Massachusetts. Such stipend shall be paid on or about the end of December to each employee who has maintained his/her EMT certification for the entire calendar year in which the stipend payment is made. Such stipend shall be prorated for any employee who has not maintained his/her EMT certification for the full calendar year. Such stipend shall not be included in the base pay for calculating contractual overtime or lag time. (The first stipend under this EMT provision shall be earned in December 2013 for calendar year 2013.)

3. **Article VII Section 3- Relief Lieutenants**
Effective July 1, 2013, increase the weekly differential from $75 to $85.

4. **Article XIV, Section 9 Leave for Union Business**
Amend Section 9 of Article XIV by adding the following new sentence to the end of Section 9:

> Effective January 1, 2014, the cumulative total of days for union business by union officers or bargaining committee members shall be increased to fifty (50) days per calendar year.

5. **Narcan**
The Parties agree that the Town has satisfied all bargaining obligations associated with the administration of Narcan by employees in the bargaining unit.

6. **Captains and Deputy Superintendents**
Effective on or after June 30, 2014, all Captain positions shall be removed from the bargaining unit. The incumbent captains as of March 12, 2014, will be offered a Deputy Superintendent assignment on or about January 1, 2015, a specialist assignment in the Police Department. Subsequent assignments to Deputy Superintendent are at the discretion of the Chief of Police.

Effective on or about January 1, 2015, the Town may implement its Deputy Superintendent position and when implemented, the first and all subsequent appointments to the position of Deputy Superintendent, not to exceed four (4) Deputy Superintendent positions, will be made from the ranks of Captain and Lieutenant in the Brookline Police Department. The Deputy Superintendent position is a confidential and managerial position and is excluded from the bargaining unit. The parties agree that the Town has satisfied all of its bargaining obligations with respect to implementation of the Deputy Superintendent position

including, but not limited to, bargaining obligations regarding the transfer of bargaining unit work to the Deputy Superintendent, and the sharing of bargaining unit work with the Deputy Superintendent, and the elimination of the rank of Captain. Deputy Superintendents will not be eligible to perform private paid details.

7. Clean Slate Provision

   A. Incherica Grievance/Arbitration shall be settled on the basis of the Level 1 grievance answer by the Chief of Police. The parties' agree that the Level 2 grievance and the Level 2 response shall not be used by either party for any reason.
   B. The Union shall withdraw its grievance referred to as the "Loud Party Car" grievance and all Level one and Level two grievances and answers associated with this grievance shall be rescinded.

8. This MOA is subject to agreement on the FY 2015 Memorandum of Agreement between the Parties.

9. This MOA is subject to Union ratification, approval by the Board of Selectmen, and funding of the cost items at Town meeting.

Agreed to on this 10th day of July 2014 by the negotiating teams for:

Town of Brookline

Brookline Police Union, Massachusetts
Coalition of Police AFL-CIO

MEMORANDUM OF AGREEMENT
BETWEEN
THE TOWN OF BROOKLINE ("Town")
AND
THE BROOKLINE POLICE UNION,
MASSACHUSETTS COALITION OF POLICE AFL-CIO ("Union")

FY 2015 and FY 2016

July 10, 2014

The Town of Brookline ("Town") and the Brookline Police Union, Massachusetts Coalition of Police AFL-CIO ("Union"), collectively referred to as the "Parties", agree to extend their July 1, 2011-June 30, 2014 collective bargaining agreement through June 30, 2016 except as modified by this Memorandum of Agreement ("MOA").

1. **Duration**
   July 1, 2014 – June 30, 2016

2. **Compensation**
   Article XVI Wages
   Increase the wages in the Pay schedule in Article XVI as follows:
   Effective July 1, 2014 + 2.0%
   Effective July 1, 2015 + 2.0%

3. **Article XVI Educational Incentive and Transitional Career Incentive Pay**
   Effective July 1, 2014:

   A. Label the current "Educational Incentive Compensation" as "Educational Incentive Compensation for Quinn Eligible Employees"

   B. After the Section on "Educational Incentive Compensation for Quinn Eligible Employees" and before the section titled "Transitional Career Incentive Pay, insert the following new Section: "Educational Incentive Compensation for Non-Quinn Eligible Employees":

      (i) Employees who are receiving Educational Incentive Compensation for Quinn Eligible Employees shall not be eligible for benefits under this Section. No Employee is eligible for Transitional Career Incentive and Educational Incentive Compensation under this Section or the Section for Quinn Eligible Employees.

(ii) Except as otherwise provided herein, only one of the following degrees from a NEASC accredited university or college shall be considered for the education incentive under this Section:

Criminal Justice
Criminal Justice Administration
Criminology
Law Enforcement
Sociology
Psychology
Forensic Science
Public Administration
Business Administration
Political Science
J.D.

The Human Resources Director may, in her/his sole discretion, authorize the payment of an incentive to an eligible employee for one of the above degrees from a college or university outside of New England and therefore not accredited by NEASC. The decision of the Human Resources director shall not be subject to grievance and arbitration.

(iii) Patrol officers are eligible for one incentive for an Associates degree, Bachelors degree, Masters degree or J.D.

Sergeants are eligible for one incentive for a Bachelors degree, Masters degree or J.D. They are not eligible for an incentive for an Associates degree.

Lieutenants and Captains are eligible for one incentive for a Masters degree or J.D. They are not eligible for an incentive for an Associates Degree or a Bachelors Degree.

(iv) The incentives shall be as follows:

Associates Degree	$5,000
Bachelors Degree	$10,000
Masters Degree or J.D.	$12,500

Employees who have more than one qualifying degree are only eligible for one incentive. (There is no pyramiding of incentives.)

(v) The incentive provided by this Section shall be paid out following completion of the fiscal year on or about first pay period in July for eligible employees. The incentive provided by this Section shall not be included in base wages for contractual overtime or lag time and shall be prorated for eligibility of less than a full fiscal year.

4. Details in City of Newton
   Effective January 1, 2015 and subject to the Town having an agreement with the City of Newton that permits Brookline Police Officers to perform paid details in the City of Newton, the Town agrees to permit Brookline Police Officers to perform paid details in the City of Newton provided that such officers comply with all Brookline Police Department Rules and Regulations including but not limited to the Brookline Special Order on details as such order may be modified from time to time by the Chief to address details outside of Brookline and provided further that Brookline Police staffing, over time and details are filled before details in the City of Newton are filled by Brookline Police Officers. The Parties understand and agree that this provision is subject to the Town of Brookline and the City of Newton reaching and maintaining an agreement on Brookline Police Officers performing detail work in the City of Newton.

5. This MOA is subject to agreement on the FY 2012, FY 2013, and FY 2014 Memorandum of Agreement between the Parties.

6. This MOA is subject to union ratification, approval by the Board of Selectmen, and funding of the cost items at Town meeting.

Agreed to on this 10th day of July 2014 by the negotiating teams for:

Town of Brookline

Brookline Police Union, Massachusetts Coalition of Police AFL-CIO

TOWN of BROOKLINE
Massachusetts

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

Sandra A. DeBow, Director
Human Resources Office

October 29, 2014

To: Board of Selectmen
Melvin Kleckner, Town Administrator

From: Sandra DeBow, Director
Human Resources Office

Re: Town Meeting, Art II, Funding of Teamster MOA

Process: On October 14, 2014, Teamsters, Local 25 (the Union) and the Town of Brookline (the Town) came to a tentative agreement for Fiscal Years 2013 to 2015. The Agreement was ratified by the Teamsters on October 27, 2014 and adopted by the Board of Selectmen on October 28, 2014. The wage provisions of this contract are in line with the other contracts that had previously been settled for Fiscal Years 2013 to 2015, with **an overall cost of 6.9%**

FY 2012 to FY 2014 Memorandum of Agreement (MOA)

The Memorandum of Agreement with the Teamsters and the Town is a three-year contract commencing on July 1, 2012 and expiring on June 30, 2015. The parties agreed to a wage package of:

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

The Parties also agreed to a new Education Incentive of $750 per fiscal year for a Bachelor or Master's degree in Criminal Justice, Fire Science, Communications, Registered Nurse and any foreign language. Under this Agreement, the Town will be able to improve administrative efficiencies by moving all members to direct deposit and an electronic pay advisory system.

Further, the Teamsters agreed to reduce their annual sick day allocation from 15 to 14 sick days per year in exchange for the use of Family Sick days. They also agreed to reduce the number of unearned personal days from 4/year to 2/year, and like the other civilian unions, new employees will accrue their maximum vacation allotment of four

weeks per calendar year when they reach fifteen years of service with the Town; rather than five weeks at ten years.

COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH TEAMSTERS

ITEM	FY13	FY14	FY15	TOTAL	
7/1/12 - 2%	13,423	13,423	13,423	40,270	
7/1/13 - 2%		13,692	13,692	27,383	
7/1/14 - 2%			13,966	13,966	
Education Incentive		9,450	9,450	18,900	> New -- $750 for a BA + $300 for those w/o BA
Reduction in Personal Days (Reduced OT)		(1,500)	(3,000)	(4,500)	> Reduction from 4 to 2 for approx. 6 FTE's
TOTAL ROLL-OUT COSTS	13,423	35,065	47,531	96,019	
Each 1% =	6,712	6,846	6,983		
New Wages - $ =	13,423	21,642	12,466		
New Wages - % =	2.0%	3.2%	1.8%	6.9%	
Wages on Base - $ =	13,423	21,642	12,466		
Wages on Base - % =	2.0%	3.2%	1.8%	6.9%	

MEMORANDUM OF AGREEMENT

BETWEEN

THE TOWN OF BROOKLINE

AND

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 25

(EMERGENCY TELECOMMUNICATIONS DISPATCHERS)

October 14, 2014

This Memorandum of Agreement ("Agreement") is made between the Town of Brookline ("Town") and the International Brotherhood of Teamsters, Local 25 ("Union"), collectively referred toas the "Parties". Except as specifically modified by this Agreement, the terms and provisions of the Parties' July 1, 2011- June 20, 2012 shall continue in full force and effect.

1. Article 25: Duration
   July 1, 2012 - June 30, 2015

2. Appendix B Wages

Increase the hourly rates for ETD, including probationary employees, and FAO/ETD in accordance with the following:

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

3. Article 11 Wages

Amend Article 11 by adding the following new section 3:

Section 3. Direct Deposit and Electronic Pay Advisories

A. Direct Deposit

Each employee shall designate an account 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 designated by each employee. (The parties understand and agree that the employees will need to provide direct deposit information and authorization to the payroll office within sixty (60) calendar days of ratification of the parties' collective bargaining agreement.)

B. Electronic Pay Advisories

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

2. Article 13 Uniform Allowance:

A. Amend Section 3 (Modified Uniform Allowance) of Article 13 as follows:

(i) Replace the phrase "through June 30, 2014" in the first sentence with "through June 30, 2015";

(ii) Replace the phrase "re-instituted effective July 1, 2014" with "re-instituted effective July 1, 2015" in the second sentence.

3. Article 10B, Section 5 (Overtime)

Replace the last in the second paragraph of Section 5 with the following:

In such situations when the Chief Dispatcher takes an overtime assignment, the forced overtime list shall not be affected and the dispatcher on the top of the forced overtime list shall remain there.

4. Article 15 Vacations

Replace Section 2 of Article 15 with the following:

Section 2A. Applicable to employees hired before June 30, 2014.
Each eligible full time permanent employee hired before July 6, 2013 shall be granted an annual vacation with pay in accordance with the following schedule (except those employees listed in the Vacation Section of Appendix D attached hereto):

Length of Full-Time Service as of July 1st	Vacation
New employees hired before June 30	Five (5) work days as of anniversary date of hire
At least 1 year but less than 5 years	Ten (10) work days as of anniversary date of hire
At least 5 years, but less than 10 years	Fifteen (15) work days as of anniversary date of hire
At least 10 years, but less than 15 years	Twenty five (25) work days as of anniversary date of hire

Vacation is earned by actual service during the vacation year and is credited on June 30th of the current vacation year.

Section 2B. Applicable to employees hired on or after June 30, 2014.
Each eligible full time permanent employee hired on or after July 6, 2013 shall be granted an annual vacation with pay in accordance with the following schedule (except those employees listed in the Vacation Section of Appendix D attached hereto):

Length of Full-Time Service as of July 1st	Vacation
New employees hired before June 30	Five (5) work days as of anniversary date of hire
At least 1 year but less than 5 years	Ten (10) work days as of anniversary date of hire
At least 5 years, but less than 15 years	Fifteen (15) work days as of anniversary date of hire
15 years or more	Twenty (20) work days as of anniversary date of hire

Vacation is earned by actual service during the vacation year and is credited on June 30th of the current vacation year.

5. Article 7 Seniority and Shift Bids, Section 3 (New Employees)

A. Amend Section 3 of Article 7 by adding the following sentence between the first and second sentences in Section 3:

The six (6) month probationary period shall start upon completion of the dispatch academy.

B. Amend Section 3 by adding the following sentence before the second to last sentence in Section 3:

The Chief of Police or his designee may extend the six (6) month probationary period up to an additional six (6) months on a case-by-case basis.

6. Article 18 Annual Personal Leave

A. Effective upon ratification of this Memorandum of Agreement, replace the first sentence after the phrase "Annual Personal Leave." in the first paragraph of Article 18 with the following:

All permanent full-time employees hired on or before *<INSERT DATE OF RATIFICATION OF MOA>*, 2014, shall be entitled to four (4) annual personal leave days per year in addition to any such leave earned under the sick leave provisions of this Agreement. All permanent full-time employees hired after *<INSERT DATE OF RATIFICATION OF MOA>*, 2014, shall be entitled to two (2) annual personal leave days per year in addition to any such leave earned under the sick leave provisions of this Agreement.

B. Effective upon ratification of this Memorandum of Agreement, replace the last paragraph in Article 18 with the following:

A full time employee who was hired on or before *<INSERT DATE OF RATIFICATION OF MOA>*, 2014, may cash in up to 4 days of Annual Personal days at the end of the calendar year at 8 hours of straight time pay for each earned personal day cashed in. A full time employee who was hired after *<INSERT DATE OF RATIFICATION OF MOA>*, 2014, may cash in up to 2 days of Annual Personal days at the end of the calendar year at 8 hours of straight time pay for each earned personal day cashed in. Part-time employees regularly scheduled to work 20 or more hours per week shall receive a prorated benefit and may cash in up to 4 Annual Personal Days at a prorated number of hours per day provided such employee was hired on or before *<INSERT DATE OF RATIFICATION OF MOA>*, 2014, or up to 2 Annual Personal Days at a prorated number of hours per day if such employee was hired after *<INSERT DATE OF RATIFICATION OF MOA>*, 2014.

7. Article 11 New Section 3: Education Incentive

Section 3 Education Incentive:

A. Except as otherwise provided in this Section 3, only one of the following degrees from a NEASC accredited university or college shall be considered for the education incentive under this Section: Bachelor's degree or Master's degree in:

Criminal Justice
Fire Science
Communications

Registered Nurse
Any foreign language

The Human Resources Director and Chief of Police may, in their sole discretion, authorize the payment of an incentive to an eligible employee for one of the above degrees from a college or university outside of New England and therefore not accredited by NEASC and/or a degree not listed above. The decision of the Human Resources Director and Chief of Police shall be final and shall not be subject to grievance and arbitration.

B. The education incentive under this Section 3 shall be $750.00 per fiscal year and shall be prorated for employees who have not worked for the full prior fiscal year or who did not have the qualifying degree for the full prior fiscal year. The incentive provided by this Section 3 shall be paid out following completion of the fiscal year on or about the second pay period in July for eligible employees. The first time the incentive will paid out will be on or about the second pay period in July 2014 for the prior fiscal year (July 1, 2013-June 30, 2014). Employees who have more than one qualifying degree are only eligible for one incentive. (There is no pyramiding of incentives.) The incentive provided by this Section 3 shall not be included in base wages for contractual overtime but is included in base wages for FLSA overtime.

Notwithstanding any provisions to the contrary in paragraph A of this Section 3, employees who were in the bargaining unit as of September 19, 2013 and who have a Bachelor's degree or Master's degree as of September 19, 2013, shall be eligible for the incentive in this Section 3 without regard the college or university from which the degree was conferred or the subject area of the degree.

Employees who receive education incentive pursuant to this Section 3 are not eligible for benefits pursuant to Section 4 of Article 11.

8. Article 11 New Section 4: Limited Education Incentive
Amend Article 11 by adding the following new Section 4:
Section 4: Limited Education Incentive
Employees in the bargaining unit as of September 19, 2013 who do not have a Bachelor's degree or Master's degree shall receive an annual payment of three hundred dollars ($300) effective July 1, 2012. Such payment shall not be included in base wages for contractual overtime.

9. Article 17 Sick Leave
A. Section 1
Effective January 1, 2015, amend Article 17 by replacing the first paragraph in Section 1 with the following:

All full-time employees shall be credited with 1.166 days of sick leave on the first day of the calendar month following employment with the Town and will accumulate thereafter 1.166 days for each full calendar month work during the first calendar year of their employment. Permanent full-time employees shall be entitled to sick leave, with the exceptions noted below, at the rate of fourteen (14) working days per calendar year credited on January 1 of the year following employment.

B. Section 3
Effective January 1, 2015, amend Section 3 of Article 17 by labeling the current Section 3 as "Section 3 A" and inserting the following new section, "Section 3B":

Section 3 B. Serious Illness in Immediate Family – An employee may use up to five (5) days of his/her accrued sick leave per calendar year to care for a member of the employee's immediate family with a serious illness. Immediate family shall be defined as the employee's spouse, child, parent, or a person living in the employee's household. Any employee who is required to submit a doctor's certificate pursuant to Section 4 of this Article, shall be required to submit a doctor's certificate for all absences for serious illness in immediate family. Such certificates shall include the employee's name, the name and relationship to the employee of the immediate family member with a serious illness, a statement that the immediate family member has a serious illness with the date(s) of such serious illness and the date(s) such doctor examined and/or treated the immediate family member.

10. Housekeeping

A. Article 17 Section 9 Last paragraph
Delete the following parenthetical sentence in the last paragraph of Section 9:

"(For the 2002 calendar year, service from Jan 14th through December 31, 2002 shall constitute a full calendar year of service.)"

B. Appendix A
The Parties agree to update the Employee Seniority List

C. Replace Article 10A in its entirety with the following: "This section intentionally left blank."

11. This Memorandum of Agreement 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.

Agreed to on this 14th day of October 2014 by the bargaining teams for

The Town of Brookline

International Brotherhood of Teamsters, Local 25

SELECTMEN'S RECOMMENDATION

Article 2 asks Town Meeting to approve funding for two union contracts, one with the Police union and one with Local 25, Teamsters (Emergency Telecommunications Dispatchers).

POLICE UNION

There are two separate contracts totaling five years, one for FY12-FY14 and the other FY15-FY16. The contracts call for a base wage increase of 9.5% over the course of the contract (1.5% in FY12 and 2% in each FY13-FY16). Other monetary changes are the following:

1. establishing a "Senior Step" for those officers with at least 20 years of service that is 5% greater than the salary of their relevant rank
2. instituting an education incentive for those officers hired after the Quinn education incentive program was ended by the State
3. an increase in the Shift Differential for those officers on the "last half" from 5.5% of the salary of patrol officer at maximum step to 7%
4. an increase in the $75/week pay for the Relief Lieutenant to $85/week, and
5. the creation of a new $2,000 EMT Stipend

These items bring the total economic package to 12.6% over the five years.

A key provision in the contract is the removal of the Captain rank from the bargaining unit, something that the Override Study Committee (OSC) recommended. Four non-union / non-civil service Deputy Superintendent's will be created and take the place of the four Captains, resulting in a management team that is appointed based on the quality of their leadership as determined by the Police Chief rather than by a civil service test. This is key if the Department is to achieve and maintain the professionalism the citizens of Brookline expect.

Another provision in the contact worthy of note is the newly negotiated ability of officers to carry Naloxone. Naloxone temporarily counters the effects of an opiod overdose, such as heroin, morphine, or oxycodone until an individual can be transported to the hospital for further medical treatment. Because of the attention opiod overdoes in Massachusetts have received over the past six months, the Selectmen view officers newly negotiated ability to carry Naloxone as worthy of note for Town Meeting.

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 September 30, 2014, on the following:

VOTED: To approve and fund by an appropriation, provided for in the FY2012 (Item #21), FY2013 (Item #20), FY2014 (Item #20), and FY2015 (Item #21) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2011 and expires on June 30, 2016:

Brookline Police Association

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated October 29, 2014, which report is incorporated herein by reference.

Passed by a Unanimous Vote

EMERGENCY TELECOMMUNICATIONS DISPATCHERS

This is a three-year agreement (FY13-FY15) calling for a base wage increase of 6% over the course of the contract (2% in each year). The other monetary change is a new education incentive program, which costs approx. $9,450 per year. In order to fund this new benefit, the union agreed to reduce their annual sick day allocation for new employees from 15 days to 14 days per year. They also agreed to reduce the number of unearned personal days from four per year to two per year. This brings the total economic package to 6.9% over the three years.

In addition, new employees will accrue their maximum vacation allotment of four weeks per calendar year when they reach 15 years of service with the Town. Currently, the maximum accrual is five weeks at 10 years. This is similar to other union contracts for FY13.

Again, the Selectmen thank the Town's negotiating team and the unions for reaching a fair and equitable settlement. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 28, 2014, on the following:

VOTED: To approve and fund by an appropriation, provided for in the FY2013 (Item #20), FY2014 (Item #20), and FY2015 (Item #21) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2012 and expires on June 30, 2015:

Teamsters, Local 25 (Emergency Telecommunications Dispatchers)

Passed by a Unanimous Vote

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated October 29, 2014, which report is incorporated herein by reference.

ROLL CALL VOTE:
Favorable Action
Daly
DeWitt
Wishinsky
Franco

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

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 2015 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 2014 Fall Town Meeting proposes amendments to the FY15 budget. The budget approved by Town Meeting in May used the figures from the Local Aid Resolution that was adopted by both branches of the State Legislature. That Resolution covered Unrestricted General Government Aid (UGGA) and Chapter 70 aid, not any of the other smaller local aid accounts or the assessments. The final State budget resulted in an additional $38,850 of Net State Aid (without Offsets[1]), bringing the total FY15 Net State Aid (without Offsets) figure to $10.8 million, an increase of $969,076 (10%) over FY14. The table on the following page shows how the final State budget results in $38,850 more in Net State Aid (without Offsets):

---

[1] Offset Aid consists of School Lunch funding and Library aid. Those funds go directly to the School and Library, respectively, without appropriation. The Library will have $15K more available than in FY14.

	FY14	FY15 FIN. PLAN	FY15 STATE BUDGET	VERSUS FINANCIAL PLAN	
RECEIPTS					
Ch. 70	10,369,466	11,159,462	11,159,462	0	0.0%
Unrestricted General Gov't Aid	5,496,965	5,649,406	5,649,406	0	0.0%
Vets Benefits	82,258	101,513	101,513	0	0.0%
Exemptions	38,730	40,402	40,402	0	0.0%
Charter School Reimbursements	3,960	9,758	893	(8,865)	-90.8%
TOTAL RECEIPTS	**15,991,379**	**16,960,541**	**16,951,676**	(8,865)	-0.1%
CHARGES					
County	766,133	785,286	785,286	0	0.0%
Air Pollution Dist.	26,690	26,612	26,612	0	0.0%
MAPC	18,965	19,156	19,156	0	0.0%
RMV Surcharge	247,820	232,380	232,380	0	0.0%
MBTA	5,019,840	5,033,938	5,033,938	0	0.0%
SPED	66,814	60,157	60,074	(83)	-0.1%
School Choice Sending Tuition	13,250	13,250	13,400	150	1.1%
Charter School Sending Tuition	40,400	68,075	20,287	(47,788)	-70.2%
TOTAL CHARGES	**6,199,912**	**6,238,854**	**6,191,133**	(47,721)	-0.8%
OFFSETS					
School Lunch	28,666	29,385	29,385	0	0.0%
Libraries	82,360	82,674	97,058	14,384	17.4%
TOTAL OFFSETS	**111,026**	**112,059**	**126,443**	14,384	12.8%
NET LOCAL AID	**9,902,493**	**10,833,746**	**10,886,980**	**53,234**	**0.5%**
NET LOCAL AID w/o OFFSETS	**9,791,467**	**10,721,687**	**10,760,537**	**38,850**	**0.4%**

Article 10 of the 2014 Annual Town Meeting established the new Diversity, Inclusion, and Community Relations (DICR) Department. The current FY15 budget includes funding for these responsibilities within the Health and Human Services budget. Since the by-law calls for a stand-alone department, the monies need to be moved from the Health and Human Services Department into a new department. In addition, the Interim Director of the DICR Department /Diversity Officer has requested additional funding that he believes is required to carry out the mission called for in the by-law.

While the Board originally voted to support the traditional 50/50 split of additional revenue between the Town and the Schools, the Board supports the amended version approved by the Advisory Committee, which allocates $4,057 more to the Town for the DICR Department. The School Committee is also supportive of this change. The $23,482 for the new department will go toward additional staffing (Part-Time, non-benefits eligible positions, $19,717) and to support various events ($3,765).

The Selectmen recommend FAVORABLE ACTION, by a vote of 4-0 taken on October 28, 2014, on the vote offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Daly
DeWitt

Wishinsky
Franco

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
The Advisory Committee, by a vote of 23-0-0, recommends Favorable Action on the following motion:

VOTED: That the Town:

1. Amend the FY2015 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
4. Diversity, Inclusion, and Community Relations Department	$ 0	+$169,109	$ 169,109
15. Health and Human Services	$ 1,300,189	-$145,627	$ 1,154,562
22. Schools	$86,827,207	+$ 15,368	$86,842,575

Passed by a Unanimous Vote

BACKGROUND AND DISCUSSION:
When Town Meeting established the new Diversity, Inclusion and Community Relations Department last May, it was understood that additional funds would have to be budgeted in November to provide for the salary of a new director and the staffing needed for the stand-alone department. Interim DICR Director Lloyd Gellineau and Health and Human Services Department Director Alan Balsam have proposed a DICR budget of $169,109. This exceeds by $23,482 the already-budgeted $145,627 in funds set to be transferred to DICR from the HHS Department budget as personnel and functions formerly under HHS are now to be the responsibility of DICR. Hence there is a need to appropriate an additional $23, 482 to fully fund the DICR budget request.

Since then last May, Brookline has received an additional $38,850 in State Aid. The Advisory Committee recommends allocating $23,482 to DICR, fulfilling its budget request, and the balance of $19,425 to the School Department. This deviates from guideline of dividing new funds equally between Town and School, but it's been rather common that additional funds at the Fall Town Meeting are not always divided equally; in several recent years, the Schools received 100% and the Town 0% when this distribution seemed appropriate to the relative needs. This flexibility, under the guidance of the Town/Schhool Partnership Agreement, is part of its strength.

This year, our commitment to provide the resources needed by the brand new DICR Department to help it tackle its key mission of increasing workforce diversity and inclusiveness, justifies this small departure from the 50-50 guidance. These are important matters for both the Town and the Schools, so it's in everyone's interest to fully fund DICR in its first year, helping DICR to get off to a good start so it can address Brookline's pressing issues of diversity and other related concerns. This is in keeping with what Town Meeting voted for last May.

XXX

FY15 AMENDED BUDGET - TABLE 1

		FY12 ACTUAL	FY13 ACTUAL	FY14 BUDGET	FY15 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY15 AMENDED BUDGET	$$ CHANGE FROM FY14	% CHANGE FROM FY14
	REVENUES								
	Property Taxes	162,674,174	169,029,414	175,783,902	181,848,174		181,848,174	6,064,272	3.4%
	Local Receipts	23,849,795	24,480,797	22,119,366	22,770,225		22,770,225	650,859	2.9%
	State Aid	13,796,975	15,125,059	16,659,162	17,629,357	5,519	17,634,876	975,714	5.9%
	Free Cash	5,380,264	5,336,413	7,655,155	5,084,152		5,084,152	(2,571,003)	-33.6%
	Overlay Surplus	400,000	1,750,000	0	1,000,000		1,000,000	1,000,000	-
	Other Available Funds	6,218,966	10,144,344	6,846,435	6,903,508		6,903,508	57,073	0.8%
	TOTAL REVENUE	**212,320,174**	**225,866,027**	**229,064,019**	**235,235,416**	**5,519**	**235,240,935**	**6,176,915**	2.7%
	EXPENDITURES								
	DEPARTMENTAL EXPENDITURES								
	1 . Selectmen	633,913	644,074	666,294	671,197		671,197	4,904	0.7%
	2 . Human Resources	503,323	574,019	517,681	523,365		523,365	5,683	1.1%
	3 . Information Technology	1,399,122	1,472,035	1,691,246	1,751,863		1,751,863	60,618	3.6%
	4 . Diversity, Inclusion, and Community Relations	0	0	0	0	169,109	169,109	169,109	-
	5 . Finance Department	2,986,279	2,991,976	2,883,755	2,845,778		2,845,778	(37,977)	-1.3%
	6 . Legal Services	842,311	821,872	815,521	832,893		832,893	17,372	2.1%
	7 . Advisory Committee	22,121	14,974	24,156	24,372		24,372	216	0.9%
	8 . Town Clerk	577,160	775,342	545,728	627,632		627,632	81,904	15.0%
	9 . Planning and Community Development	634,153	620,599	666,449	765,310		765,310	98,861	14.8%
	10 . Police	14,947,822	14,954,651	15,211,679	15,312,691		15,312,691	101,012	0.7%
	11 . Fire	12,855,469	12,844,259	12,959,959	13,005,941		13,005,941	45,982	0.4%
	12 . Building	6,823,180	6,854,850	7,080,776	7,024,504		7,024,504	(56,272)	-0.8%
(1)	13 . Public Works	13,283,953	14,480,045	14,051,437	14,066,549		14,066,549	15,112	0.1%
	a. Administration	*799,178*	*823,184*	*826,817*	*864,369*		*864,369*	*37,552*	*4.5%*
	b. Engineering/Transportation	*1,096,910*	*1,105,748*	*1,240,771*	*1,262,215*		*1,262,215*	*21,445*	*1.7%*
	c. Highway	*4,774,773*	*4,579,656*	*4,940,010*	*5,034,219*		*5,034,219*	*94,208*	*1.9%*
	d. Sanitation	*2,873,192*	*3,003,721*	*2,976,972*	*2,990,830*		*2,990,830*	*13,859*	*0.5%*
	e. Parks and Open Space	*3,325,274*	*3,507,459*	*3,662,776*	*3,525,824*		*3,525,824*	*(136,952)*	*-3.7%*
	f. Snow and Ice	*414,627*	*1,460,278*	*404,091*	*389,091*		*389,091*	*(15,000)*	*-3.7%*
	14 . Library	3,621,074	3,742,982	3,720,993	3,754,728		3,754,728	33,735	0.9%
	15 . Health and Human Services	1,158,084	1,152,529	1,263,418	1,300,189	(145,627)	1,154,562	(108,856)	-8.6%
	16 . Veterans' Services	273,859	294,085	295,993	321,818		321,818	25,825	8.7%
	17 . Council on Aging	770,862	872,570	840,951	840,206		840,206	(745)	-0.1%
	18 . Human Relations	108,596	117,064	0	0		0	0	-
	19 . Recreation	1,003,409	1,016,673	1,050,192	1,006,120		1,006,120	(44,072)	-4.2%
(2)	20 . Personnel Services Reserve	715,000	715,000	715,000	715,000		715,000	0	0.0%
(2)	21 . Collective Bargaining - Town	1,175,000	1,775,000	1,314,514	2,321,220		2,321,220	1,006,706	76.6%
	Subtotal Town	*62,444,691*	*64,244,600*	*66,315,741*	*67,711,376*	*23,482*	*67,734,858*	*1,419,117*	*2.1%*
	22 . *Schools*	*75,387,189*	*79,079,823*	*82,780,770*	*86,827,207*	*15,368*	*86,842,575*	*4,061,805*	*4.9%*
	TOTAL DEPARTMENTAL EXPENDITURES	**137,831,880**	**143,324,423**	**149,096,511**	**154,538,583**	**38,850**	**154,577,433**	**5,480,922**	3.7%
	NON-DEPARTMENTAL EXPENDITURES								
(1)	23 . Employee Benefits	41,529,043	45,240,975	50,100,251	50,500,116		50,500,116	399,865	0.8%
(3)	*a. Pensions*	*14,556,225*	*15,801,983*	*17,385,688*	*17,882,573*		*17,882,573*	*496,885*	*2.9%*
	b. Group Health	*21,546,572*	*22,865,804*	*24,618,704*	*25,136,108*		*25,136,108*	*517,405*	*2.1%*
	c. Health Reimbursement Account (HRA)	*0*	*50,876*	*70,000*	*70,000*		*70,000*	*0*	*0.0%*
(3)	*d. Retiree Group Health Trust Fund (OPEB's)*	*1,801,527*	*2,601,927*	*3,514,360*	*3,311,860*		*3,311,860*	*(202,500)*	*-5.8%*
	e. Employee Assistance Program (EAP)	*25,180*	*27,400*	*28,000*	*28,000*		*28,000*	*0*	*0.0%*
	f. Group Life	*129,889*	*132,118*	*132,500*	*140,000*		*140,000*	*7,500*	*5.7%*
	g. Disability Insurance	*13,279*	*13,376*	*16,000*	*16,000*		*16,000*	*0*	*0.0%*
(3)	*h. Worker's Compensation*	*1,250,000*	*1,200,000*	*1,720,000*	*1,450,000*		*1,450,000*	*(270,000)*	*-15.7%*
(3)	*i. Public Safety IOD Medical Expenses*	*300,000*	*560,660*	*400,000*	*300,575*		*300,575*	*(99,425)*	*-24.9%*
(3)	*j. Unemployment Compensation*	*350,000*	*350,000*	*450,000*	*325,000*		*325,000*	*(125,000)*	*-27.8%*
	k. Medical Disabilities	*26,989*	*18,421*	*40,000*	*40,000*		*40,000*	*0*	*0.0%*
	l. Medicare Coverage	*1,529,382*	*1,618,410*	*1,725,000*	*1,800,000*		*1,800,000*	*75,000*	*4.3%*
(2)	24 . Reserve Fund	605,103	1,250,621	2,161,799	2,122,336		2,122,336	(39,463)	-1.8%
	25 Stabilization Fund	253,092	0	250,000	0		0	(250,000)	-100.0%
	26 Affordable Housing	355,264	251,363	555,106	170,390		170,390	(384,716)	-69.3%
	27 . Liability/Catastrophe Fund	141,959	253,669	154,115	234,839		234,839	80,724	52.4%

3-5

		ACTUAL	ACTUAL	BUDGET	FY15 ORIGINAL BUDGET	PROPOSED AMENDMENTS	FY15 AMENDED BUDGET	$$ CHANGE FROM FY14	% CHANGE FROM FY14
	28 . General Insurance	248,469	263,478	335,000	371,500		371,500	36,500	10.9%
	29 . Audit/Professional Services	129,335	130,000	130,000	130,000		130,000	0	0.0%
	30 . Contingency Fund	12,895	14,383	15,000	15,000		15,000	0	0.0%
	31 . Out-of-State Travel	1,403	2,374	3,000	3,000		3,000	0	0.0%
	32 . Printing of Warrants & Reports	14,219	19,837	25,000	25,000		25,000	0	0.0%
	33 . MMA Dues	11,178	11,346	11,686	11,979		11,979	293	2.5%
	Subtotal General	*1,167,814*	*946,450*	*3,640,706*	*3,084,044*		*3,084,044*	*(556,662)*	*-15.3%*
(1)	34 . Borrowing	10,112,066	9,834,605	9,583,111	9,621,757		9,621,757	38,646	0.4%
	a. Funded Debt - Principal	*7,955,436*	*7,428,882*	*7,207,338*	*7,246,544*		*7,246,544*	*39,206*	*0.5%*
	b. Funded Debt - Interest	*2,142,824*	*2,376,113*	*2,215,772*	*2,215,213*		*2,215,213*	*(560)*	*0.0%*
	c. Bond Anticipation Notes	*0*	*0*	*100,000*	*100,000*		*100,000*	*0*	*0.0%*
	d. Abatement Interest and Refunds	*13,806*	*29,610*	*60,000*	*60,000*		*60,000*	*0*	*0.0%*
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**52,808,923**	**56,022,030**	**63,324,067**	**63,205,920**	**0**	**63,205,920**	**(118,147)**	**-0.2%**
	TOTAL GENERAL APPROPRIATIONS	**190,640,803**	**199,346,453**	**212,420,578**	**217,744,503**	**38,850**	**217,783,353**	**5,362,775**	**2.5%**
	SPECIAL APPROPRIATIONS								
	35 . Technology Applications (revenue financed)				270,000		270,000		
	36 . Commercial Areas Improvements (revenue financed)				65,000		65,000		
	37 . Fire Engine #5 Replacement (revenue financed)				580,000		580,000		
	38 . Fire Station Renovations (revenue financed)				325,000		325,000		
	39 . Fire Department Fleet Maint. Facility/Training Center - Feasibility Study (revenue financed)				40,000		40,000		
	40 . Coolidge Corner Library Feasibility/Concept Study (revenue financed)				50,000		50,000		
	41 . Bicycle Access Improvements (revenue financed)				30,000		30,000		
	42 . MBTA Traffic Signalization (revenue financed)				50,000		50,000		
	43 . Street Rehabilitation (revenue financed)				1,550,000		1,550,000		
	44 . Sidewalk Repair/Reconstruction (revenue financed)				290,000		290,000		
	45 . LED Streetlight Conversion (revenue financed)				515,000		515,000		
	46 . Pierce Playground - Design (revenue financed)				90,000		90,000		
	47 . Playground Equipment, Fields, Fencing (revenue financed)				295,000		295,000		
	48 . Town/School Grounds Rehab (revenue financed)				85,000		85,000		
	49 . Tree Removal and Replacement (revenue financed)				170,000		170,000		
	50 . Walnut Hills Cemetery - roadway work (special revenue fund)				100,000		100,000		
	51 . School Furniture Upgrades (revenue financed)				60,000		60,000		
	52 . School Technology (revenue financed)				320,000		320,000		
	53 . Town/School ADA Renovations (revenue financed)				65,000		65,000		
	54 . Town/School Elevator Renovations (revenue financed)				250,000		250,000		
	55 . Town/School Energy Conservation Projects (revenue financed)				160,000		160,000		
	56 . Town/School Bldg Envelope/Fenestration Repairs (revenue financed)				730,000		730,000		
	57 . Town/School Building Roof Repair/Replacement (revenue financed)				375,000		375,000		
	58 . Town/School Building Security / Life Safety (revenue financed)				300,000		300,000		
	59 . Driscoll School Addition - Feasibility/Schematic Design (revenue financed - Overlay Reserve Surplus)				1,000,000		1,000,000		
	60 . Classroom Capacity (revenue financed)				1,750,000		1,750,000		
	61 . Ladder #2 Replacement (bond)				900,000		900,000		
	62 . Newton St. Landfill - Rear Landfill Closure (bond)				4,600,000		4,600,000		
	63 . Village Square and Riverway Park Bike/Pedestrian Improvements Projects (bond/CDBG Sec. 108)				1,200,000		1,200,000		
(4)	**TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS**	**7,379,000**	**12,933,500**	**8,581,000**	**9,415,000**	**0**	**9,415,000**	**834,000**	**9.7%**
	TOTAL APPROPRIATED EXPENDITURES	**198,019,803**	**212,279,953**	**221,001,578**	**227,159,503**	**38,850**	**227,198,353**	**6,196,775**	**2.8%**
	NON-APPROPRIATED EXPENDITURES								
	Cherry Sheet Offsets	106,839	109,160	111,026	112,059	14,384	126,443	15,417	13.9%
	State & County Charges	5,671,508	6,105,553	6,199,912	6,238,854	(47,715)	6,191,139	(8,773)	-0.1%
	Overlay	1,910,493	1,958,780	1,726,503	1,700,000		1,700,000	(26,503)	-1.5%
	Deficits-Judgments-Tax Titles	7,374	12,394	25,000	25,000		25,000	0	0.0%
	TOTAL NON-APPROPRIATED EXPEND.	**7,696,214**	**8,185,887**	**8,062,441**	**8,075,913**	**(33,331)**	**8,042,582**	**(19,859)**	**-0.2%**
	TOTAL EXPENDITURES	**205,716,017**	**220,465,841**	**229,064,019**	**235,235,416**	**5,519**	**235,240,935**	**6,176,916**	**2.7%**
	SURPLUS/(DEFICIT)	**6,604,157**	**5,400,186**	**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).

FY15 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)	643,349	14,118	4,000	7,600		2,130			671,197
Human Resources Department (Human Resources Director)	281,472	200,503	9,000	31,000		1,390			523,365
Information Technology Department (Chief Information Officer)	1,045,042	599,322	33,850	32,550		41,100			1,751,863
Diversity, Inclusion, and Community Relations (Director)	159,709		9,000	150		250			169,109
Finance Department (Director of Finance)	2,041,479	717,294	43,697	18,865	2,143	22,300			2,845,778
Legal Services (Town Counsel)	587,334	127,559	3,500	111,500		3,000			832,893
Advisory Committee (Chair, Advisory Committee)	21,232		2,275	570		295			24,372
Town Clerk (Town Clerk)	527,086	77,887	13,750	1,400		7,510			627,632
Planning and Community Department (Plan. & Com. Dev. Dir.)	731,403	16,945	9,212	4,550		3,200			765,310
Police Department (Police Chief)	13,615,205	505,169	221,750	64,000	425,423	481,144			15,312,691
Fire Department (Fire Chief)	12,217,365	160,755	146,260	27,650	233,334	220,577			13,005,941
Public Buildings Department (Building Commissioner)	2,163,287	2,118,980	23,170	5,350	2,657,117	56,600			7,024,504
Public Works Department (Commissioner of Public Works)	7,627,972	3,430,752	915,750	40,900	1,331,175	700,000	20,000		14,066,549
Public Library Department (Library Board of Trustees)	2,663,832	181,641	562,600	3,700	316,955	26,000			3,754,728
Health & Human Services Department (Health & Human Svcs Dir)	867,016	199,751	15,100	4,120	40,855	27,720			1,154,562
Veterans' Services (Veterans' Services Director)	159,864	2,609	650	158,185		510			321,818
Council on Aging (Council on Aging Director)	706,884	44,083	18,000	2,900	63,139	5,200			840,206
Recreation Department (Recreation Director)	674,976	56,882	91,480	12,400	166,362	4,020			1,006,120
School Department (School Committee)									86,842,575
Total Departmental Budgets	**46,734,507**	**8,454,249**	**2,123,044**	**527,390**	**5,236,503**	**1,602,946**	**20,000**		**151,541,214**
DEBT SERVICE									
Debt Service (Director of Finance)								9,621,757	9,621,757
Total Debt Service								**9,621,757**	**9,621,757**
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	17,772,573								17,772,573
Non-Contributory Pensions Contribution (Director of Finance)	110,000								110,000
Group Health Insurance (Human Resources Director)	25,136,108								25,136,108
Health Reimbursement Account (HRA) (Human Resources Director)	70,000								70,000
Retiree Group Health Insurance - OPEB's (Director of Finance)	3,311,860								3,311,860
Employee Assistance Program (Human Resources Director)	28,000								28,000
Group Life Insurance (Human Resources Director)	140,000								140,000
Disability Insurance	16,000								16,000
Workers' Compensation (Human Resources Director)	1,450,000								1,450,000
Public Safety IOD Medical Expenses (Human Resources Director)	300,575								300,575
Unemployment Insurance (Human Resources Director)	325,000								325,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	1,800,000								1,800,000
Total Employee Benefits	**50,500,116**								**50,500,116**
GENERAL / UNCLASSIFIED									
Reserve Fund (*) (Chair, Advisory Committee)				2,122,336					2,122,336
Liability/Catastrophe Fund (Director of Finance)				234,839					234,839
Housing Trust Fund (Planning & Community Develpoment Dir.)				170,390					170,390
General Insurance (Town Administrator)		371,500							371,500
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)				11,979					11,979
Town Salary Reserve (*) (Director of Finance)	2,321,220								2,321,220
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	**3,041,220**	**514,500**	**10,000**	**2,554,544**					**6,120,264**
TOTAL GENERAL APPROPRIATIONS	**100,275,842**	**8,968,749**	**2,133,044**	**3,081,934**	**5,236,503**	**1,602,946**	**20,000**	**9,621,757**	**217,783,353**

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

ARTICLE 4

FOURTH ARTICLE
Submitted by: Department of Public Works

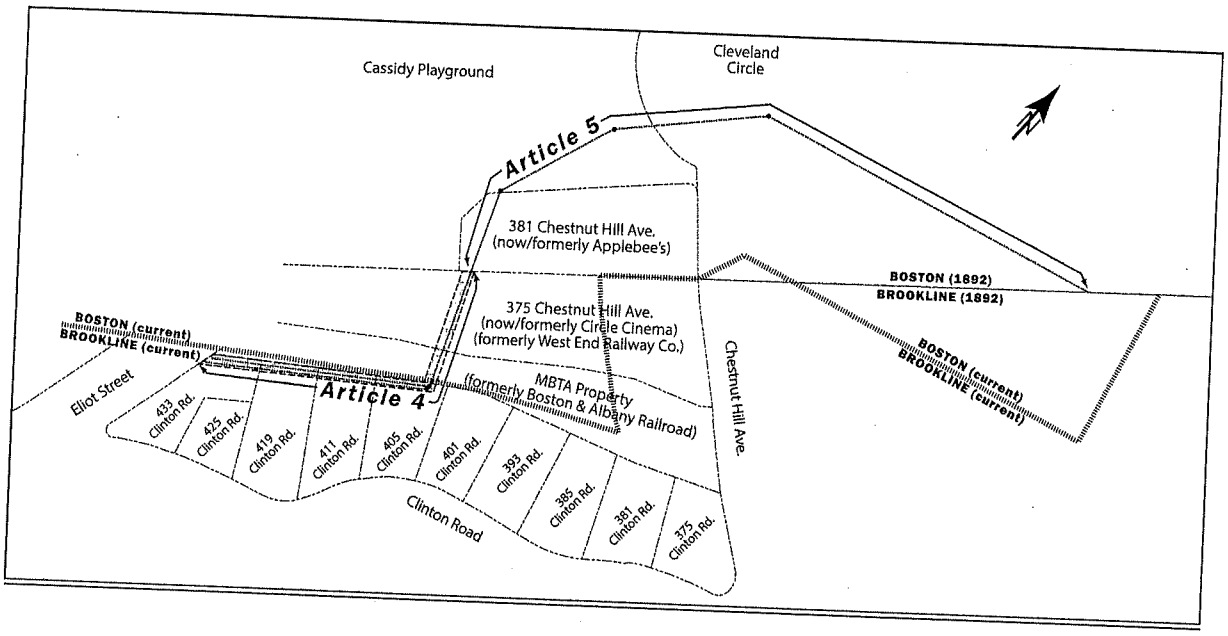
To see if the Town will vote to abandon, in place, the existing sewer(s) and extinguish the easements for the common sewer which runs across the end of Eliot Street and through the rear of the lots at 405, 411, 419 and 433 Clinton Road, across land now formerly of the Boston & Albany Railroad and land of the West End Railway Company, and only upon the satisfaction of such other terms and conditions as the Board of Selectmen deem in the best interests of the Town. Said easements are more accurately shown as several parcels having areas of approximately 5,900 square feet, 855 square feet and 1,410 square feet more or less on a plan entitled "Common Sewer Between Norfolk Road and Beacon Street" dated March 23, 1892 by Alexis H. French. Said easements are recorded in the Norfolk Registry of Deeds in Book 1014, Page 164.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In 1951 the Town extended the Village Brook Channel and sanitary sewer from Cleveland Circle to the end of Eliot Street. As part of this work, two 15 inch sewers which run in Eliot Street and behind the residences at 405, 411, 419 and 433 Clinton Road were abandoned in place. The flow that was handled by these pipes was redirected to a new existing 21 inch sewer pipe. The old pipes no longer in use connected to a City of Boston line. This connection was authorized, in part, by a special act of the legislature (Chapter 151 of the Acts of 1889). The Engineering Division researched office records and did not find any evidence that there were any connections in this section of the sewers. To confirm this conclusion, the Water and Sewer Division did a visual inspection of the two sewers and did not see any connections. It is the Engineering Division opinion that these sewers are not active and do not/would not serve any further useful purpose for the Town. Peter Ditto, Director of Engineering and Transportation will transmit a memorandum to the Board of Selectmen indicating the purpose for which the easement(s) served are no longer needed. By abandoning and extinguishing these easements in place, the Town will have no further maintenance obligations and it will facilitate the proposed development of the former Cleveland Circle Cinema site as well as any landscaping for the four lots within Brookline that abut the site. The Town Engineer has notified the City of Boston of the Town's intent to abandon, extinguish and otherwise release its rights to the sewer in question.

The following map of the location of the several easements is provided for illustrative purposes only:



SELECTMEN'S RECOMMENDATION

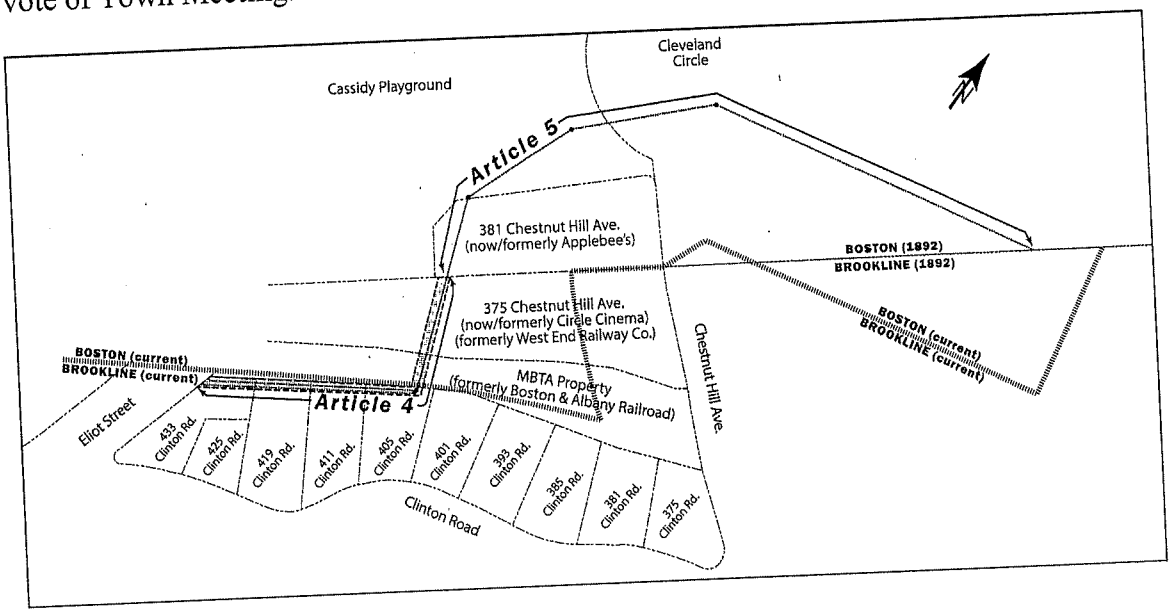
Articles 4 through 6 are associated with the redevelopment of the Cleveland Circle Cinema site. Article 4 seeks to abandon the existing sewers and extinguish the easements for the common sewer which runs across the end of Eliot Street and through the rear of the lots at 405, 411, 419 and 433 Clinton Road, and across the former Circle Cinema site. According to the Town Engineer, these sewers are not active and do not serve any further useful purpose for the Town. By abandoning and extinguishing the easements in place, the Town will have no further maintenance obligations and it will facilitate the proposed development of the former site as well as any landscape buffering needs for the four lots within Brookline that abut the site. The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on September 30, 2014, on the following:

VOTED: that the Town vote to abandon, in place, the existing sewer(s) and extinguish the easements for the common sewer which runs across the end of Eliot Street and through the rear of the lots at 405, 411, 419 and 433 Clinton Road, across land now formerly of the Boston & Albany Railroad and land of the West End Railway Company, and only upon the satisfaction of such other terms and conditions as the Board of Selectmen deem in the best interests of the Town. Said easements are more accurately shown as several parcels having areas of approximately 5,900 square feet, 855 square feet and 1,410 square feet more or less on a plan entitled "Common Sewer Between Norfolk Road and Beacon Street" dated March 23, 1892 by Alexis H. French. Said easements are recorded in the Norfolk Registry of Deeds in Book 1014, Page 164.

"including but not limited to by setting a value of $1.00 for each such abandonment."

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 4, submitted by the Department of Public Works, asks that the Town abandon the existing sewer(s) and extinguish the easements for the common sewer that runs across the end of Eliot Street and through the rear of several lots near the former Cleveland Circle Cinema site and land formerly belonging to the Boston and Albany Railroad and West End Street Railway Company (see map). The actions would take place according to terms and conditions established by the Board of Selectmen. Passage of the article requires a two-thirds vote of Town Meeting.



By a vote of 23–0, the Advisory Committee recommends **FAVORABLE ACTION** on the article, reflected in the vote offered by the Board of Selectmen.

BACKGROUND:
Two sewer pipes that run west and then south from the site of the former Cleveland Circle Cinema site are no longer in use, having been replaced by another line in 1951. Once connected to a City of Boston line, the pipes have been researched and inspected by the DPW's Engineering Division that has determined that they no longer serve any useful purpose to the Town. The pipes are approximately seven to fifteen feet underground.

The issue is being brought to Town Meeting at this time because abandoning and extinguishing the easements in place will facilitate the proposed development of the former Cinema site. In addition, such actions will enable the landscaping of the rear lots of four Clinton Road properties, providing a green buffer between 405, 411, 419, and 433 Clinton Road and the new development.

DISCUSSION:
After listening to the information presented by special counsel to the Town, Jennifer Gilbert, the Advisory Committee concluded that the actions proposed by Article 4 present no risk to the Town and fall into a "housekeeping" category.

RECOMMENDATION:
The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

ARTICLE 5

FIFTH ARTICLE
Submitted by: Department of Public Works

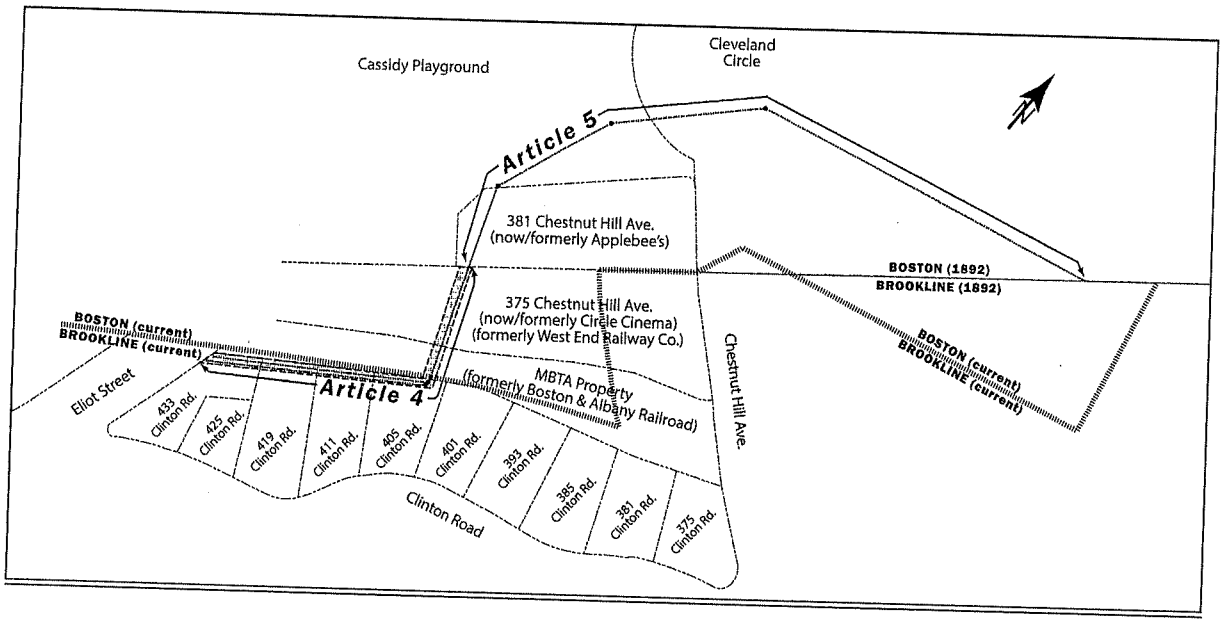
To see if the Town will vote to release any of its rights, duties and responsibilities in the 18 inch sewer running through the City of Boston and extending from the land of the West End Street Railway Company to the terminus of the present sewer at the Town Line as it existed in 1892, being a portion of the sewer as shown on a plan entitled "Common Sewer Between Norfolk Road and Beacon Street" dated March 23, 1892 by Alexis H. French. Said Plan is on file at the Brookline Engineering Division of the Department of Public Works. Said release to be effective only upon the satisfaction of any terms and conditions as the Board of Selectmen may deem to be in the best interests of the Town.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In 1951 the Town extended the Village Brook Channel and sanitary sewer from Cleveland Circle to the end of Eliot Street. As part of this work, two 15 inch sewers which run in Eliot Street and behind the residences at 405, 411, 419 and 433 Clinton Road were abandoned in place. The flow that was handled by these pipes was redirected to a new existing 21 inch sewer pipe. The old pipes no longer in use connected to a City of Boston line. This connection was authorized, in part, by a special act of the legislature (Chapter 151 of the Acts of 1889). The Engineering Division researched office records and did not find any evidence that there were any connections in this section of the sewers. To confirm this conclusion, the Water and Sewer Division did a visual inspection of the two sewers and did not see any connections. It is the Engineering Division opinion that these sewers are not active and do not/would not serve any further useful purpose for the Town. Peter Ditto, Director of Engineering and Transportation will transmit a memorandum to the Board of Selectmen indicating the purpose for which the easement(s) served are no longer needed. By abandoning and extinguishing these easements in place, the Town will have no further maintenance obligations and it will facilitate the proposed development of the former Cleveland Circle Cinema site as well as any landscaping for the four lots within Brookline that abut the site. The Town Engineer has notified the City of Boston of the Town's intent to abandon, extinguish and otherwise release its rights to the sewer in question.

The following map of the location of the several easements is provided for illustrative purposes only:



SELECTMEN'S RECOMMENDATION

Articles 4 through 6 are associated with the redevelopment of the Cleveland Circle Cinema site. Article 5 seeks to release the Town's rights, duties and responsibilities in the 18 inch sewer that connects to and runs through Boston. According to the Town Engineer, this sewer line is no longer active and does not serve any further useful purpose for the Town. By releasing its rights, duties and responsibilities to this sewer pipe and connection the Town will have no further maintenance obligations and it will facilitate the proposed development of the former Cleveland Circle Cinema site.

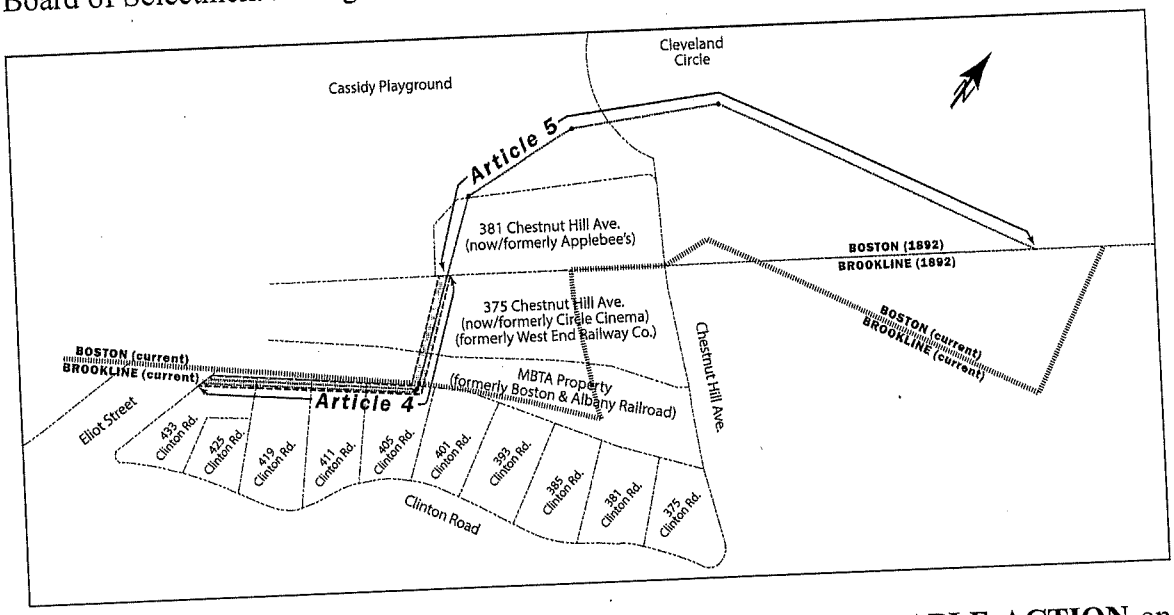
The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on September 30, 2014, on the following:

VOTED: that the Town vote to release any of its rights, duties and responsibilities in the 18 inch sewer running through the City of Boston and extending from the land of the West End Street Railway Company to the terminus of the present sewer at the Town Line as it existed in 1892, being a portion of the sewer as shown on a plan entitled "Common Sewer Between Norfolk Road and Beacon Street" dated March 23, 1892 by Alexis H. French. Said Plan is on file at the Brookline Engineering Division of the Department of Public Works. Said release to be effective only upon the satisfaction of any terms and conditions as the Board of Selectmen may deem to be in the best interests of the Town.

"including but not limited to by setting a value of $1.00 for each such release of claims."

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 5, submitted by the Department of Public Works, asks that the Town release its rights and responsibilities for the 18 inch sewer running through the City of Boston from the land of the West End Street Railroad Company to the end of the sewer at the Boston/Brookline border (see map). The action would take place upon terms and conditions established by the Board of Selectmen. Passage of the article requires a two-thirds vote of Town Meeting.



By a vote of 23–0, the Advisory Committee recommends **FAVORABLE ACTION** on the article, as reflected in the vote offered by the Board of Selectmen.

BACKGROUND:
Article 5, like Article 4, is being brought to Town Meeting at this time because its approval will facilitate the development of the former Cleveland Circle Cinema site.

DISCUSSION:
After listening to the information presented by special counsel to the Town, Jennifer Gilbert, the Advisory Committee concluded that the actions proposed by Article 5 present no risk to the Town and fall into a "housekeeping" category.

Clinton Road neighbors impacted by this agreement will benefit from anticipated landscaping improvements they agree on with site developers; and, the Town will have no further maintenance obligations for the site.

RECOMMENDATION:
The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

ARTICLE 6

SIXTH ARTICLE
Submitted by: Board of Selectmen

To see if the Town will authorize the Board of Selectmen to enter into any necessary agreement(s) and/or amendments to existing agreements, and to authorize, ratify and affirm such existing agreements in order to carry out the terms and conditions set forth in a certain Payment in Lieu of Taxes (PILOT) and Development Agreement between First General Realty Corp. and the Town of Brookline dated May 24, 2011 as amended on July 22, 2014 pertaining to the parcels of land and buildings thereon that make-up the so-called former Cleveland Circle Cinema property at 375-399 Chestnut Hill Avenue, and upon such other terms and conditions that the Board deems in the best interest of the Town with respect to the current proposed development of the site known as the former Cleveland Circle Cinema site.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article, if approved by majority vote, will allow the Selectmen to carry out the terms of the Payment in Lieu of Taxes (PILOT) and Development Agreement between First General Realty Corp. and the Town of Brookline dated May 24, 2011 as amended on July 22, 2014 pertaining to the development of the parcels of land and buildings thereon that make-up the so-called former Cleveland Circle Cinema site at 375-399 Chestnut Hill Avenue. Copies of the Agreement and First Amendment are available for review on-line on the Town's web site through the Planning Department. If approved this article will also authorize the Selectmen to enter into any further agreement(s) or amendments, such as an Escrow Agreement outlining the terms upon which a portion of the Town's Sewer Easement that runs through the property would be released or any amendment to the existing Agreement(s) which would further benefit the Town with respect to the current proposed development of the site.

SELECTMEN'S RECOMMENDATION

Articles 4 through 6 are associated with the redevelopment of the Cleveland Circle Cinema site. On behalf of the Town, the Selectmen entered into a Payment in Lieu of Taxes (PILOT) and Development Agreement with First General Realty Corp. on May 24, 2011, as amended on July 22, 2014. This agreement pertains to the development of the parcels of land and buildings thereon that make-up the so-called former Cleveland Circle Cinema site at 375-399 Chestnut Hill Avenue. Article 6 authorizes the Selectmen to carry out the terms of these agreements and to enter into other necessary agreements in connection with the proposed development. By a vote of 5-0 taken on September 30, 2014, the Board recommends FAVORABLE ACTION on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Article 6 is a companion article to Articles 4 and 5. Whereas, Articles 4 and 5 are concerned with unused sewers and sewer easements, Article 6 is related to previously signed Developer and PILOT agreements for the site.

Favorable Action on Article 6 would grant the Board of Selectmen the rights to carry out the agreements entered into on May 24, 2011 and July 22, 2014 and allow them to enter into any further agreements, such as an Escrow Agreement, or amend the existing agreements to strengthen the Town's position with respect to the current proposed development of the former Cleveland Circle Cinema site.

RECOMMENDATION:
By a unanimous (24-0-0) vote, the Advisory Committee recommends **FAVORABLE ACTION** on the following:

VOTED: that the Town authorize the Board of Selectmen to enter into any necessary agreement(s) and/or amendments to existing agreements, and to authorize, ratify and affirm such existing agreements in order to carry out the terms and conditions set forth in a certain Payment in Lieu of Taxes (PILOT) and Development Agreement between First General Realty Corp. and the Town of Brookline dated May 24, 2011 as amended on July 22, 2014 pertaining to the parcels of land and buildings thereon that make-up the so-called former Cleveland Circle Cinema property at 375-399 Chestnut Hill Avenue, and upon such other terms and conditions that the Board deems in the best interest of the Town with respect to the current proposed development of the site known as the former Cleveland Circle Cinema site.

Passed by a Unanimous Vote

DISCUSSION:
In the spring of 2011, Town Meeting voted to create special zoning district, the Cleveland Circle Hotel Overlay District. The zoning change was designed to allow a significant portion of the development of the site of the former Cleveland Circle Cinema to be located in Brookline and guarantees revenue in the form of property and occupancy excise (hotel room) taxes. Subsequent to the zoning change, the Town entered into a PILOT and Development agreement with Boston Development Group that would guarantee property tax revenues should the property be sold or transferred to a nonprofit entity.

In July 2014, that agreement was modified to increase the number of hotel rooms on the Brookline side of the hotel from 40 to 60, limit the length of the side of the building along Clinton Road to 285 feet, and limit the number of parking spaces that can exit directly to Beacon Street. The amendment to the PILOT agreement also stipulates that the Project Plans must include details for the placement and specifications for all rooftop equipment, exterior lighting and the timing of delivery operations to the site.

While the modified Development Agreement, specifies that all fencing and landscaping arrangements for residents north of Clinton Road from Chestnut Hill Ave to Willow

Crescent/Taylor Crossway be laid out in the Project Plan, it does not address issues of liability for the abandoned sewer pipes. The sewer pipes are clay pipes buried at a depth of 7 to 13 feet and likely be left in place due to the difficulty in removing them. Favorable action on Article 6 would empower the Board of Selectmen to negotiate the transfer and/or apportionment of liability to the appropriate parties or any other agreement.

XXX

ARTICLE 7

SEVENTH ARTICLE

Submitted by: Board of Selectmen and Alex Coleman

To see if the Town will amend Articles 3.9, 3.15., 4.4, 4.5 and 5.5 of the Town's General By-laws, by adding the following new language (new language is underlined):

Article 3.9 (Brookline Commission for Women)

Section 3.9.2

(b) Take such action as the Commission considers appropriate to advance the aims of the State Equal Rights Amendment to ensure the equal status of women of every race, creed, color, national origin, age, gender identity or gender expression, and sexual orientation.

(c) The term "women" in this Article 3.9 shall include all women, whether by assignment at birth, or gender identity as defined in G.L. c. 4, s. 7, cl. Fifty-ninth.[1]

Article 3.15 (Human Resources Program, Board and Office)

Section 3.15.2 (Function and Purpose)

(e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, gender, gender identity or gender expression, sexual orientation, marital status, handicap or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and;

Article 4.4 (Fair Employment Practices with Regard to Contracts)

(b) In the performance of work under this Contract, the Contractor shall not discriminate in employment practices or in the selection or retention of subcontractors or in the procurement of materials or rental of equipment on the grounds of race, color, religion, gender identity or gender expression, or national origin, or on the grounds of age or sex except when age or sex is a bona fide occupational qualification.

The Contractor will send workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or

[1] G.L. c. 4, s. 7, cl. Fifty-ninth provides, in relevant part, as follows: "Gender identity" shall mean a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

workers' representative of the Contractor's commitments under this section, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

(c) In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract and for the procurement of materials and equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination on grounds of race, color, religion, gender identity or gender expression, national origin, age or sex, and his obligations to pursue an affirmative course of action as required by paragraph (d).

(d) The Contractor will pursue an affirmative course of action as required by affirmative action guidelines adopted by the Human Relations Commission in effect on the effective date of the contract, or when calls for proposals are made, whichever is sooner, which are herein incorporated by reference, attached hereto, and made a part of this contract and to the nature and size of his work force, to insure that applicants are sought and employed, and that employees are treated, during their employment, without regard to their race, color, gender identity or gender expression, national origin or ancestry, or religion. No changes in affirmative action guidelines hereinafter adopted by the Commission shall be effective with respect to contracts already in effect, without the express written consent of the contractor.

Article 4.5 (Discrimination Prohibition with Regard to Contracts)

Section 4.5.1 (Unlawful Practice)

It shall be an unlawful practice for a person proposing to enter into a contract with the Town, under General laws, Chapter 30b, that exceeds $10,000.00, to discriminate against any individual because of the race, color, religious creed, national origin, sex, gender identity or gender expression, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age or ancestry of any individual.

Article 5.5 (Fair Housing By-law)

Section 5.5.1 (Policy of the Town of Brookline)

It is hereby declared to be the policy of the Town of Brookline that each individual regardless of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, source of income, military status, age, ancestry, gender identity or gender expression, and/or national origin shall have equal access to housing accommodations within the Town. Further it is the policy of the Town to encourage and bring about mutual understanding and respect among all individuals in the Town by the elimination of prejudice and discrimination in the area of housing.

Section 5.5.3 (Definition of Terms)

To "discriminate" includes to design, promote, implement or carryout any policy, practice or act which by design or effect segregates, separates, distinguishes or has as disproportionate impact according to race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin.

Section 5.5.4 (Unlawful Housing Practices)

(a) 1. to discriminate directly or indirectly make or cause to be made any written or oral inquiry concerning the race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, military status, age, ancestry, gender identity or gender expression, and/or national origin of any prospective purchaser, occupant, or tenant of such housing accommodations;

2. to discriminate or directly or indirectly to refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual, such housing accommodation because of race, color, creed, religion, sex, handicap, marital status, children, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin;

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

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

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

2. to discriminate directly or indirectly in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance because of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of

rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin;

3. to discriminate or to directly or indirectly deny or limit such application for financial assistance on the basis of an appraiser's evaluation, independent or not of the property or neighborhood under consideration, when such evaluation is based on race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin.

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

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

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

(d) 1. for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential, to directly or indirectly make or keep a record of any applicant's prospective tenant's or existing tenant's race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin;

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

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

Section 5.5.7 (Functions, Powers and Duties of the (Human Relations-Youth Resources Commission)

(c) 1. To make studies and survey and to issue such publications and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing because of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, source of income including rental housing assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

At the May, 2014 Annual Town Meeting, Town Meeting approved Article 31 by unanimous vote. Article 31, a citizen-petitioned article filed by Brookline resident Alex Coleman, called for the Town "to affirm its support for the prohibition of discrimination or harassment on the basis of gender identity and gender expression in employment, housing, public accommodations, credit and lending, and public education," and requested "the Legal Services Department [to] propose appropriate changes that are consistent with [the purpose of Article 31] to all relevant Town By-Laws and that such changes be included in the Warrant for the November 2014 Town Meeting, or as soon thereafter as is reasonably feasible."

Town Meeting also approved Article 10 at the May 2014 Annual Town Meeting, which sought to revoke Article 3.14 of the Town's General by-laws and replace it with a new Article 3.14. The proposed new By-law identifies "gender identity or expression" as a "Brookline Protected Class." In anticipation of the Attorney General's approval of Article 10, this warrant article does not address Article 3.14. Should the Attorney General not approve Article 3.14, appropriate action will be taken at the Special Town Meeting to be held in May, 2015.

This warrant article seeks to effectuate the purpose and intent of Article 31.

SELECTMEN'S RECOMMENDATION

Article 7, a jointly sponsored article by the Board of Selectmen and Dr. Alex Coleman, is an outcome of the resolution adopted by Town Meeting in May, 2014 under Article 31, which was a resolution affirming the Town's support for the prohibition of discrimination or harassment on the basis of gender identity and gender expression in employment, housing, public accommodations, credit and lending, and public education. Part of the resolution asked Town Counsel to propose appropriate changes that are consistent with the purpose of Article 31 to all relevant Town By-Laws and that such changes be included in the Warrant for the November 2014 Town Meeting, or as soon thereafter as is reasonably feasible. The

Board applauds Town Counsel's efforts to have this work done in time for the Fall Town Meeting.

Town Counsel identified five sections of the Town's By-Laws that needed to be updated:

- Article 3.9 - Brookline Commission for Women
- Article 3.15 - Human Resources Program, Board and Office
- Article 4.4 - Fair Employment Practices with Regard to Contracts
- Article 4.5 - Discrimination Prohibition with Regard to Contracts
- Article 5.5 - Fair Housing By-Law

By a vote of 4-0 taken on October 28, 2014, recommends FAVORABLE ACTION on the following:

VOTED: that the Town amend Articles 3.9, 3.15., 4.4, 4.5 and 5.5 of the Town's General By-laws, by adding the following new language (new language is underlined):

Article 3.9 (Brookline Commission for Women)

Section 3.9.2

(b) Take such action as the Commission considers appropriate to advance the aims of the State Equal Rights Amendment to ensure the equal status of women of every race, creed, color, national origin, age, <u>gender identity or gender expression,</u> and sexual orientation.

<u>(c) The term "women" in this Article 3.9 shall include all women, whether by assignment at birth, or gender identity as defined in G.L. c. 4, s. 7, cl. Fifty-ninth.</u>[2]

Article 3.15 (Human Resources Program, Board and Office)

Section 3.15.2 (Function and Purpose)

(e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, gender, <u>gender identity or gender expression</u>, sexual orientation, marital status, handicap or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and;

Article 4.4 (Fair Employment Practices with Regard to Contracts)

---

[2] G.L. c. 4, s. 7, cl. Fifty-ninth provides, in relevant part, as follows: "Gender identity" shall mean a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

(b) In the performance of work under this Contract, the Contractor shall not discriminate in employment practices or in the selection or retention of subcontractors or in the procurement of materials or rental of equipment on the grounds of race, color, religion, gender identity or gender expression, or national origin, or on the grounds of age or sex except when age or sex is a bona fide occupational qualification.

The Contractor will send workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

(c) In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract and for the procurement of materials and equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination on grounds of race, color, religion, gender identity or gender expression, national origin, age or sex, and his obligations to pursue an affirmative course of action as required by paragraph (d).

(d) The Contractor will pursue an affirmative course of action as required by affirmative action guidelines adopted by the Human Relations Commission in effect on the effective date of the contract, or when calls for proposals are made, whichever is sooner, which are herein incorporated by reference, attached hereto, and made a part of this contract and to the nature and size of his work force, to insure that applicants are sought and employed, and that employees are treated, during their employment, without regard to their race, color, gender identity or gender expression, national origin or ancestry, or religion. No changes in affirmative action guidelines hereinafter adopted by the Commission shall be effective with respect to contracts already in effect, without the express written consent of the contractor.

Article 4.5 (Discrimination Prohibition with Regard to Contracts)

Section 4.5.1 (Unlawful Practice)

It shall be an unlawful practice for a person proposing to enter into a contract with the Town, under General laws, Chapter 30b, that exceeds $10,000.00, to discriminate against any individual because of the race, color, religious creed, national origin, sex, gender identity or gender expression, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age or ancestry of any individual.

Article 5.5 (Fair Housing By-law)

Section 5.5.1 (Policy of the Town of Brookline)

It is hereby declared to be the policy of the Town of Brookline that each individual regardless of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, source of income, military status, age, ancestry, gender identity or gender expression, and/or national origin shall have equal access to housing accommodations within the Town. Further it is the policy of the Town to encourage and bring about mutual understanding and respect among all individuals in the Town by the elimination of prejudice and discrimination in the area of housing.

Section 5.5.3 (Definition of Terms)

To "discriminate" includes to design, promote, implement or carryout any policy, practice or act which by design or effect segregates, separates, distinguishes or has as disproportionate impact according to race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin.

Section 5.5.4 (Unlawful Housing Practices)

(e) 1. to discriminate directly or indirectly make or cause to be made any written or oral inquiry concerning the race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, military status, age, ancestry, gender identity or gender expression, and/or national origin of any prospective purchaser, occupant, or tenant of such housing accommodations;

2. to discriminate or directly or indirectly to refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual, such housing accommodation because of race, color, creed, religion, sex, handicap, marital status, children, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin;

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

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

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

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

3. to discriminate or to directly or indirectly deny or limit such application for financial assistance on the basis of an appraiser's evaluation, independent or not of the property or neighborhood under consideration, when such evaluation is based on race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin.

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

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

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

(h) 1. for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential, to directly or indirectly make or keep a record of any applicant's prospective tenant's or existing tenant's race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin;

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

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

Section 5.5.7 (Functions, Powers and Duties of the (Human Relations-Youth Resources Commission)

(c) 1. To make studies and survey and to issue such publications and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing because of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, source of income including rental housing assistance, military status, age, ancestry, gender identity or gender expression, and/or national origin.

Passed by a Unanimous Vote

ROLL CALL VOTE:
Favorable Action
Daly
DeWitt
Wishinsky
Franco

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
The Advisory Committee by a vote of 22-0-1 recommends FAVORABLE ACTION on Article 7, as moved by the Board of Selectmen.

WA 7 seeks to amend Articles 3.9 (Brookline Commission for Women), 3.15 (Human Resources Program, Board and Office), 4.4 (Fair Employment Practices with Regard to Contracts), 4.5 (Discrimination Prohibition with Regard to Contracts) and 5.5 (Fair Housing By-law) of the Town's General By-laws, by adding the following new language: **gender identity or gender expression**. "Gender identity or gender expression" is a newly-approved "Brookline Protected Class" in Article 3.14 (Division of Human Relations – Youth Resources), and the proposed amendments will add that protected class to other relevant sections of the Town's By-laws. The Advisory Committee was, with one abstention, in full agreement with the intent of this warrant article.

BACKGROUND:
WA7 was filed as a follow-up to a warrant article passed unanimously at the May 2014 Annual Town Meeting (WA31). That resolution asked that the Town affirm its commitment to diversity and inclusion by "explicitly" adopting a prohibition against discrimination based on gender identity and expression. TM passed an amended version recommended by the Advisory Committee and supported by the Board of Selectmen, which included an action plan – that Town Counsel's Office "review the Town's By-Laws and propose appropriate changes that are consistent with the purpose" of that resolution.

In its review, Town Counsel Office noticed that Article 3.14 of the General By-Laws, which created a Division within the Town to advocate for protecting individuals in Brookline from discrimination, needed to be amended to include the gender-related language that was the intent of the resolution. That amended Article 3.14 was submitted to the Attorney General's Office (AGO) for approval. The AGO recently approved the new Article 3.14, which now includes "gender or gender identity" as a "Brookline Protected Class". This current warrant article adds that language to other relevant sections of the Town's By-laws.

DISCUSSION:
On July 1st of 2012, the Transgender Equal Rights Act went into effect in the Commonwealth of Massachusetts, with Massachusetts becoming the sixteenth state along with the District of Columbia, to provide legal protection against discrimination based on gender identity or gender expression in the areas of employment, housing, education, credit and hate crimes. The work on this issue for the Commonwealth is incomplete since it did not give transgender equal rights in the area of public accommodations.

Alex Coleman, the petitioner, is an attorney and clinical psychologist, who is also transgender. The petitioner noted that "gender identity or gender expression" as a class, has fewer protections than other protected classes. The resolution passed in May 2014 added actionable language, and the current warrant article is step 2 in the process.

The discussion focused on understanding the terms "gender identity" and "gender expression". "Gender identity", as defined by the petitioner, relates to one's internal experience of gender (who you know yourself to be). "Gender expression," on the other hand, is how one shows to the world one's gender identity. With the proposed changes to the by-laws, both gender identity and expression will be protected under municipal statute, which aligns with the State's Transgender Equal Rights Act.

It should be noted that "gender identity or expression" is in the State's public school anti-bullying law (Ch. 71, s. 370, d.3). In M.G.L. c.4, s.7, cl. Fifty-ninth, the definition of "gender identity" has within it the qualities of gender expression: "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." This State definition is referenced only under Article 3.9 (Brookline Commission for Women), in the new Section 3.9.2 (c), where the term "women" is further clarified to include "all women, whether by assignment at birth, or gender identity as defined in M.G.L. c.4…" In all other appropriate Articles (3.15, 4.4, 4.5, 5.5) of the Town's General

By-Laws only the language "gender identity or gender expression" is added to the antidiscrimination protected classes.

A closer look at the sections of the Town's By-laws amended by this warrant article revealed some inconsistencies in terms of the number of protected classes specifically named. For example, Article 4.4 (fair employment regarding contracts) doesn't reference sexual orientation as a protected class, whereas Article 4.5 (discrimination prohibition regarding contracts) does along with some clarifying language. As the Advisory Committee observed and discussed these inconsistencies, it was determined that the Articles were a product of society at a particular time – which could be said of this current article as well.

It is beyond the scope to make changes beyond adding the language stated Article 7. It was, however, suggested that in the future it might be simpler to have a definition of "Brookline Protected classes" which includes a list of all protected classes. In that way only the definition would need to be revised as changes were needed, and not each sub-section of the Town's By-laws.

XXX

ARTICLE 8

EIGHTH ARTICLE
Submitted by: Police Chief

To see if the Town will amend the General By-laws, Article 8.5, Disorderly Behavior, as follows (additions appear in underlined bold text, and deletions appear in stricken bold text):

ARTICLE 8.5
DISORDERLY BEHAVIOR **and DISTURBING THE PEACE**

SECTION 8.5.1 DEFINITION

A person is "disorderly," as used in Article 8.5, if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, that person: A. engages in fighting or threatening, or in violent or tumultuous behavior; or B. makes unreasonable noise, or disturbs the peace ~~**and quiet enjoyment**~~ of any residential premises~~**,**~~ ~~**or makes offensively coarse utterance, gesture or display, or addresses abusive language to any person present**~~; or C. creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor. **A person "disturbs the peace," as used in Section B of the foregoing, if the person engages in conduct that (a) most people would find to be unreasonably disruptive, such as making loud and disturbing noise, and (b) did in fact annoy or disturb at least one person or interfered with at least one person's right to be undisturbed. This definition of "disorderly" shall only relate to activities that involve no lawful exercise of a First Amendment right.**

SECTION 8.5.2 DISORDERLY ACTION

No person shall behave in a disorderly manner in any street, public place or place which the public has a right of access.

~~**SECTION 8.5.3 LANGUAGE**~~

~~**No person shall use offensive or disorderly language to threaten or annoy persons of the opposite sex or make any threats, or use of other language to create a breach of the peace in any street, public place or place to which the public has a right of access.**~~

SECTION 8.5.**3**~~**4**~~ PRESENT TO DISTURB

No person shall be, or remain, upon any street, sidewalk, or upon any doorstep, portico, or other projection of any house or building not owned by such person, to annoy or disturb any person as defined above in §5.2.b.

SECTION 8.5.**4**~~**5**~~ SPECIFIC PENALTY FOR VIOLATION OF SECTIONS 8.5.1 THROUGH 8.5.**3**~~**4**~~

A violation of the provisions of 8.5.1 through 8.5.~~3~~4 may be dealt with as a non-criminal disposition under Article 10.3 of these by-laws and each violation shall be subject to a specific penalty of $100.00.

SECTION 8.5.~~5~~6 SOLICITING RIDES

No person, whether for the purpose of soliciting a ride from the operator of any vehicle, or otherwise, shall stand on any sidewalk or street in such a manner as to obstruct a free passage for pedestrians or vehicles.

SECTION 8.5.~~6~~7 ACTIVITIES IN STREETS

No person shall engage in any game, sport, or amusement, in any street, whereby the free, safe, and convenient use thereof by travelers thereon shall in any way be interrupted.

SECTION 8.5.~~7~~8 PEEPING

No person, except an officer of the law in the performance of his duties, shall enter upon the premises of another with the intention of peeping into the windows of a house or spying upon in any manner any person or persons therein.

SECTION 8.5.~~8~~9 SLIPPERY SURFACE

No person shall throw or place upon any sidewalk or crosswalk, any banana skin, orange peel, or any slippery or greasy substance.

SECTION 8.5.~~9~~10 VANDALISM AND THE DEFACEMENT OF PUBLIC AND PRIVATE PROPERTY

SECTION 8.5.~~9~~10.1 Purpose and Intent

Vandalism and the existence of graffiti within the Town are considered a public and private nuisance. The purpose of this by-law is to protect public and private property from acts of vandalism and defacement by prohibiting the application of graffiti on such property and by requiring property owners to remove publicly visible graffiti from their property within a reasonable period of time.

SECTION 8.5.~~9~~10.2 Definitions

For the purposes of this by-law, "graffiti" is intended to mean the intentional painting, marking, scratching, etching, coloring, tagging, or other defacement of any public or private property without the prior written consent of the owner of such property.

SECTION 8.5.~~9~~10.3 Prohibited Conduct

The application of graffiti to the real or personal property of another is prohibited.

SECTION 8.5.9~~10~~.4 Removal of Graffiti

Upon determining that graffiti exists on any private or other non-Town owned property and that such graffiti can be viewed from a public place within the Town, the Chief of Police or his designee may mail or deliver a notice to the owner of the property on which the graffiti exists advising the owner that the graffiti must be removed within fourteen days.

In the case of graffiti on private residential property consisting of thirty dwelling units or less, the property owner shall, within fourteen days of delivery of the notice, either remove the graffiti or submit a written request to the Commissioner of Public Works along with a release, requesting the Town to enter the property and assist in removing the graffiti. Upon receipt of the property owner's written request and release, the Commissioner of Public Works or his designee shall determine whether the graffiti can be safely removed, and, if so, whether it is appropriate to remove it. If the Town assists in the removal of such graffiti, the Town shall charge the property owner a fee in the amount of the actual cost of removal or one hundred dollars, whichever is less, provided that the property owner shall reimburse the Town for the Town's actual costs of removing such graffiti from any funds forfeited by the offender to the property owner under any related criminal or non-criminal enforcement action. Absent any forfeiture of funds to the property owner, as stated above, the Town shall not assess more than a total of two hundred dollars in fees per property per owner in any 12 month period. If the Commissioner of Public Works or his designee determines that the graffiti cannot be safely removed or that it is not appropriate for the Town to remove it, he shall notify the property owner of his determination in writing and the property owner shall remove the graffiti within fourteen days of delivery of such notice.

In the case of graffiti on commercial property or private residential property consisting of more than thirty dwelling units, the property owner shall, within fourteen days of delivery of the notice, remove the graffiti at his own expense.

Notwithstanding any other provisions contained herein, if such graffiti is within an Historic District established under Section 5.6 of the Town's By-laws, then any guidelines or Rules or Regulations adopted by the Preservation Commission pertaining to the removal of graffiti shall apply if and to the extent not inconsistent with this by-law.

SECTION 8.5.9~~10~~.5 Enforcement

Failure to remove the graffiti or make a written request to the Commissioner of Public Works in accordance with the requirements of Section 8.5.9~~10~~.4 within fourteen days of delivery of the notice may be deemed a violation of this section and shall be dealt with as a non-criminal offense
in accordance with the provisions of G.L. c. 40, s. 21D and Article 10.3 of these By-laws.

Owners who repeatedly violate the provisions of Section 8.5.9~~10~~.4 may be prosecuted under the provisions of Article 10.1 of these By-laws.

Any fee charged by the Town for the cost of graffiti removal under section 8.5.9~~10~~.4 remaining unpaid after sixty days of notice of such charge shall be subject to the provisions of G.L. c. 40, s. 58.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The 2013 Annual Town Meeting (ATM) considered and acted favorably on Warrant Article 14, which proposed certain changes to Article 8.5 of the Town's By-Laws to make it explicit that it encompasses conduct that disturbs the peace and quiet enjoyment of a residential premises, and to increase the penalty for violation of the bylaw to $100 from $50. As reflected in the combined reports to Warrant Article 14 to the 2013 ATM, questions arose about the constitutionality of certain other language in Article 8.5 in light of court decisions since the bylaw's passage that limited the reach and enforceability of identical language in the State statute addressing "disorderly conduct," G.L. c. 272, Section 53. *See, e.g., Commonwealth v. Chou,* 433 Mass. 229 (2001); *Commonwealth v. Sholley,* 432 Mass. 721 (2000); *Commonwealth v. Feigenbaum,* 404 Mass. 471 (1989); *Commonwealth v. A Juvenile,* 368 Mass. 580 (1975); *Alegata v. Commonwealth,* 353 Mass. 287 (1967). The Moderator ruled that changes that would address these concerns would be outside of the scope of Warrant Article 14. Therefore, this warrant article is filed to now remedy the language of the by-law to make it constitutional under applicable case law. In addition, the By-Law amendments made by the 2013 ATM added "disturbing the peace" to the definition of "disorderly conduct," and cases define the meaning of "disturbing the peace." *See, e.g., Commonwealth v. Orlando,* 371 Mass. 732 (1977). This warrant article proposes to make a further amendment to Section 8.5.1 to place the public on notice of the case law definition of "disturbing the peace."

SELECTMEN'S RECOMMENDATION

Article 8 proposed amendments to the Town's Disorderly Conduct By-Law, following the changes made at the 2013 Annual Town Meeting. The primary change was making it explicit that disturbing the peace and quiet of any residential premises was included within the definition of disorderly behavior. In addition, the amendment allowed the Police Department to treat such behavior as a non-criminal violation with a penalty of $100 (it was a $50 fine and a misdemeanor infraction that left the offender with a criminal record). At the time, there was concern that the Attorney General would have concerns regarding the constitutionality of other portions of the by-law resulting from court decisions over the years narrowing and holding invalid certain language of the state statute. This Article is being filed to address those concerns.

The first proposed amendment to the by-law addresses the issue of disturbing the peace. The title of Article 8.5 is modified by adding the words "and DISTURBING THE PEACE" and a definition of disturbing the police is added to Section 8.5.1. The chosen definition comes directly from case law: "A person 'disturbs the peace' … if the person engages in conduct

that (a) most people would find to be unreasonably disruptive, such as making loud and disturbing noise, and (b) did in fact annoy or disturb at least one person or interfered with at least one person's right to be undisturbed." (Commonwealth v. Orlando, 371 Mass. 732 (1977). The sentence "[T]his definition of 'disorderly' shall only relate to activities that involve no lawful exercise of a First Amendment right" was added for purposes of clarifying the limits of Article 8.5.1 and incorporates virtually verbatim the language of the SJC's further narrowing and clarification of the state statute in Commonwealth v. A Juvenile, 368 Mass. 580, 597 (1975).

The second proposed amendment deletes the definition of "quiet enjoyment" in Section 8.5.1. The language "disturbing the peace and quiet enjoyment of any residential premises" was added to Article 8.5.1 by the 2013 ATM. While "disturbing the peace" appears in the state statute and is a related concept to "disorderly conduct," "quiet enjoyment" is generally a term of art in landlord/tenant and real estate law (as in "breach of the covenant of quiet enjoyment"). It can now be deleted since the definition of "disturbing the peace" is added.

The third proposed amendment deletes the words "makes offensively course utterance, gesture or display, or addresses abusive language to any person present" in Section 8.5.1. In Commonwealth v. A Juvenile, 368 Mass. 580 (1975), the SJC held this type of language to be unconstitutionally overbroad and invalid. Therefore, it is removed from the by-law.

The final proposed amendment deletes Section 8.5.3. The Supreme Judicial Court's decision in Commonwealth v. Chou, 433 Mass. 229 (2001), suggested in dictum that the state statute's language making it an offense to "annoy and accost" only members of the opposite sex would violate the Massachusetts Equal Rights Amendment. Therefore, the Chou decision calls into question the validity of the "opposite sex" language in Article 8.5.3. In addition, Article 8.5.3's prohibition against "annoying" and "offensive" language was ruled to be unconstitutionally overbroad in Commonwealth v. A Juvenile, 368 Mass. 580 (1975). Read together, these decisions seemed to render invalid much of Article 8.5.3.

The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 14, 2014, on the article, which is reflected in the language offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
Warrant Article 8, amending Town Bylaw Section 8.5, was submitted by Brookline Police Chief Daniel C. O'Leary. The Advisory Committee unanimously recommends FAVORABLE ACTION, with one minor correction of a scrivener's error.[1] The recommended vote is as follows:

[1] Warrant Article 8 is amended to correct a scrivener's error in renumbered §8.5.3 to change the reference to "Section 8.5.1" instead of "§5.2.b."

VOTED: that the Town amend the General By-laws, Article 8.5, Disorderly Behavior, as follows (additions appear in underlined bold text, and deletions appear in stricken bold text):

ARTICLE 8.5
DISORDERLY BEHAVIOR **and DISTURBING THE PEACE**

SECTION 8.5.1 DEFINITION

A person is "disorderly," as used in Article 8.5, if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, that person: A. engages in fighting or threatening, or in violent or tumultuous behavior; or B. makes unreasonable noise, or disturbs the peace ~~**and quiet enjoyment**~~ of any residential premises~~**, or makes offensively coarse utterance, gesture or display, or addresses abusive language to any person present**~~; or C. creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor. **A person "disturbs the peace," as used in Section B of the foregoing, if the person engages in conduct that (a) most people would find to be unreasonably disruptive, such as making loud and disturbing noise, and (b) did in fact annoy or disturb at least one person or interfered with at least one person's right to be undisturbed. This definition of "disorderly" shall only relate to activities that involve no lawful exercise of a First Amendment right.**

SECTION 8.5.2 DISORDERLY ACTION

No person shall behave in a disorderly manner in any street, public place or place which the public has a right of access.

~~**SECTION 8.5.3 LANGUAGE**~~

~~**No person shall use offensive or disorderly language to threaten or annoy persons of the opposite sex or make any threats, or use of other language to create a breach of the peace in any street, public place or place to which the public has a right of access.**~~

SECTION 8.5.**34** PRESENT TO DISTURB

No person shall be, or remain, upon any street, sidewalk, or upon any doorstep, portico, or other projection of any house or building not owned by such person, to annoy or disturb any person as defined above in §~~**5.2.b**~~. 8.5.1

SECTION 8.5.**45** SPECIFIC PENALTY FOR VIOLATION OF SECTIONS 8.5.1 THROUGH 8.5.**34**

A violation of the provisions of 8.5.1 through 8.5.**34** may be dealt with as a non-criminal disposition under Article 10.3 of these by-laws and each violation shall be subject to a specific penalty of $100.00.

SECTION 8.5.5~~6~~ SOLICITING RIDES

No person, whether for the purpose of soliciting a ride from the operator of any vehicle, or otherwise, shall stand on any sidewalk or street in such a manner as to obstruct a free passage for pedestrians or vehicles.

SECTION 8.5.6~~7~~ ACTIVITIES IN STREETS

No person shall engage in any game, sport, or amusement, in any street, whereby the free, safe, and convenient use thereof by travelers thereon shall in any way be interrupted.

SECTION 8.5.7~~8~~ PEEPING

No person, except an officer of the law in the performance of his duties, shall enter upon the premises of another with the intention of peeping into the windows of a house or spying upon in any manner any person or persons therein.

SECTION 8.5.8~~9~~ SLIPPERY SURFACE

No person shall throw or place upon any sidewalk or crosswalk, any banana skin, orange peel, or any slippery or greasy substance.

SECTION 8.5.9~~10~~ VANDALISM AND THE DEFACEMENT OF PUBLIC AND PRIVATE PROPERTY

SECTION 8.5.9~~10~~.1 Purpose and Intent

Vandalism and the existence of graffiti within the Town are considered a public and private nuisance. The purpose of this by-law is to protect public and private property from acts of vandalism and defacement by prohibiting the application of graffiti on such property and by requiring property owners to remove publicly visible graffiti from their property within a reasonable period of time.

SECTION 8.5.9~~10~~.2 Definitions

For the purposes of this by-law, "graffiti" is intended to mean the intentional painting, marking, scratching, etching, coloring, tagging, or other defacement of any public or private property without the prior written consent of the owner of such property.

SECTION 8.5.9~~10~~.3 Prohibited Conduct

The application of graffiti to the real or personal property of another is prohibited.

SECTION 8.5.9~~10~~.4 Removal of Graffiti

Upon determining that graffiti exists on any private or other non-Town owned property and that such graffiti can be viewed from a public place within the Town, the Chief of Police or his designee may mail or deliver a notice to the owner of the property on which the graffiti exists advising the owner that the graffiti must be removed within fourteen days.

In the case of graffiti on private residential property consisting of thirty dwelling units or less, the property owner shall, within fourteen days of delivery of the notice, either remove the graffiti or submit a written request to the Commissioner of Public Works along with a release, requesting the Town to enter the property and assist in removing the graffiti. Upon receipt of the property owner's written request and release, the Commissioner of Public Works or his designee shall determine whether the graffiti can be safely removed, and, if so, whether it is appropriate to remove it. If the Town assists in the removal of such graffiti, the Town shall charge the property owner a fee in the amount of the actual cost of removal or one hundred dollars, whichever is less, provided that the property owner shall reimburse the Town for the Town's actual costs of removing such graffiti from any funds forfeited by the offender to the property owner under any related criminal or non-criminal enforcement action. Absent any forfeiture of funds to the property owner, as stated above, the Town shall not assess more than a total of two hundred dollars in fees per property per owner in any 12 month period. If the Commissioner of Public Works or his designee determines that the graffiti cannot be safely removed or that it is not appropriate for the Town to remove it, he shall notify the property owner of his determination in writing and the property owner shall remove the graffiti within fourteen days of delivery of such notice.

In the case of graffiti on commercial property or private residential property consisting of more than thirty dwelling units, the property owner shall, within fourteen days of delivery of the notice, remove the graffiti at his own expense.

Notwithstanding any other provisions contained herein, if such graffiti is within an Historic District established under Section 5.6 of the Town's By-laws, then any guidelines or Rules or Regulations adopted by the Preservation Commission pertaining to the removal of graffiti shall apply if and to the extent not inconsistent with this by-law.

SECTION 8.5.9~~10~~.5 Enforcement

Failure to remove the graffiti or make a written request to the Commissioner of Public Works in accordance with the requirements of Section 8.5.9~~10~~.4 within fourteen days of delivery of the notice may be deemed a violation of this section and shall be dealt with as a non-criminal offense in accordance with the provisions of G.L. c. 40, s. 21D and Article 10.3 of these By-laws.

Owners who repeatedly violate the provisions of Section 8.5.9~~10~~.4 may be prosecuted under the provisions of Article 10.1 of these By-laws.

Any fee charged by the Town for the cost of graffiti removal under section 8.5.9~~10~~.4 remaining unpaid after sixty days of notice of such charge shall be subject to the provisions of G.L. c. 40, s. 58.

Passed by a Counted Vote of 205 in favor, 4 Opposed and 2 abstentions.

SUMMARY:
Warrant Article 8 deletes language in Bylaw Article 8.5 that Town Counsel has determined to be unconstitutional or constitutionally suspect in light of court decisions that have limited the reach and enforceability of identical language in a State Criminal Statute addressing disorderly conduct.[2] Warrant Article 8 also makes additional improving changes to Bylaw Article 8.5.

BACKGROUND:
Bylaw Article 8.5 was amended by Warrant Article 14 of the May, 2013 Town Meeting. During the deliberations on Warrant Article 14, the petitioners realized that some of the provisions of Bylaw Article 8.5 were likely unconstitutional or constitutionally suspect. Those problems could not be corrected then because any changes would be outside the scope of the article as submitted. Warrant Article 14, however, was acted upon favorably, including an increase in the penalty for violating the Bylaw to $100 from $50 (not an issue here). The petitioners of the 2013 Warrant Article expected that the identified problems would be corrected in a subsequent Town Meeting; thus, Warrant Article 8.
Warrant Article 8 was drafted by Town Counsel's Office to address the problems identified in 2013. Police Chief O'Leary agreed to serve as the petitioner. In support of the draft prepared by Town Counsel's Office, Patty Correa, Associate Town Counsel, prepared a memorandum of law explaining the proposed amendments to Bylaw Article 8.5. The Advisory Committee's recommendation relies on Counsel Correa's memorandum for the analysis of the legal issues presented.

DISCUSSION:

1. CONSTITUTIONAL RELATED CHANGES

The constitutional problems are as follows:
(a) the phrase "makes offensively course *(sic)* utterance, gesture or display, or addresses abusive language to any person present" in Bylaw Article §8.5.1 has been held to be unconstitutionally overbroad and vague,[3] and is deleted by Warrant Article 8;

(b) Bylaw Article §8.5.3 has been deleted in its entirety because the words "offensive" and "annoy" have been found to be unconstitutionally overbroad[4] and language proscribing threats or annoying language directed to "persons of the opposite sex" may violate the Massachusetts Equal Rights Amendment,[5] based on *dicta* in a Supreme Judicial Court case.[6]

---

[2] Mass. Gen. Laws, c.273, §53.

[3] Commonwealth v. A Juvenile, 368 Mass. 580 (1975).

[4] Commonwealth v. A Juvenile, 368 Mass. 580 (1975).

[5] Mass. Const., Art. 1, as amended by Article CVI of the Articles of Amendment: "All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine,

By deleting the Bylaw Article §8.5.3 in its entirety, Warrant Article 8 is also deleting language proscribing the use of "disorderly language to threaten." But the Advisory Committee was convinced that this concern is adequately addressed in Bylaw Article §8.5.1.

Issues and Answers:

(i) Elimination of the phrase "makes offensively course *(sic)* utterance, gesture or display, or addresses abusive language to any person present." Counsel Correa explained that the Massachusetts Supreme Judicial Court has ruled that similar language in the state criminal code was overly-broad because it covers speech that, while offensive and coarse, is nonetheless protected by the First Amendment to the U.S. Constitution. Mere swearing cannot be cause for a criminal arrest.[7] But Counsel Correa noted that if the swearing is accompanied by aggressive actions or threats, what some courts have called "fighting words,"[8] there would be a basis for charging a person under Bylaw Article §8.5.1.

(ii) Town enforcement of the disorderly conduct provisions. Counsel Correa responded that Bylaw Article 10 provides civil and criminal penalties for violation of the various Bylaw Articles, including Bylaw Article 8.5. Police Chief O'Leary reported that the police can charge a person, whose words rise to the level of threats, under the criminal laws of the state. He also stated that anyone can make a complaint to the police and it will be investigated, noting that the incident in question was reported to Town Counsel, not the police.

(iii) If a person uses abusive language in a school setting it would be called bullying; women are especially affected by threatening abusive language or behavior. What is abusive is a subjective judgment; courts have carefully distinguished mere abusive conduct from conduct that constitutes threats.

(iv) Example of subjective judgments, situations where what appears to be abusive language and behavior is really the "normal" manner in which children on the autism spectrum or the "typical teenager" communicates; such communications can be incorrectly construed as threatening, especially if the person is African American. Police Chief O'Leary stated that Brookline police are trained to properly respond in such situations. With respect to children on the autism spectrum, he said that police officers are trained to assess the child's intent and the surrounding circumstances before taking any action. With respect to

---

that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."

[6] Commonwealth v. Chou, 433 Mass. 229, 237-239 (2001) (*obiter dicta:* the language questioning the constitutionality of the use of the phrase "person of the opposite sex" in the statute is not necessary to the holding of the case and is not, therefore, the court's final answer on this point)

[7] See, e.g., Commonwealth v. A Juvenile, 368 Mass. at 590 (quoting Cohen v. California, 403 U.S. 15, 23 (1971), " 'One man's vulgarity is another's lyric ... and the State may not, consistent with the First Amendment, make an single 'four–letter expletive' a criminal offense.")

[8] See, e.g., Commonwealth v. A Juvenile, 368 Mass. at 590 ("Thus, 'so long as the means are peaceful, the communication need not meet standards or acceptability.' ... And the means are presumed peaceful unless the words used constitute fighting words."

African American teenagers, he said that police officers are trained to be sensitive to patterns of behavior not just abusive language and to not make racial judgments.

(v) Deletion of Bylaw Article §8.5.3, specifically the language proscribing threats or annoying language directed to "persons of the opposite sex;" concern that women are frequently the targets of threatening language; even if it may be unconstitutional under the Massachusetts Equal Rights Amendment, the language proscribing offensive behavior directed at persons of the opposite sex should be retained because it shows that Brookline is serious about domestic violence and threats directed at women. Counsel Correa explained that under Massachusetts Constitutional law, classifications based on sex are subject to stricter scrutiny than other classifications and stricter than is required under the federal Constitution. A law that is directed only at one gender has a high risk of being overturned if challenged in court. She noted that some of the concerns being expressed are addressed in the disorderly conduct and disturbing the peace provisions that still remain in Bylaw Article 8.5.

(vi) Deletion from Bylaw Article §8.5.1 the words "addresses abusive language to any person present." Counsel Correa responded that the language in Bylaw Article §8.5.1 is what the Supreme Judicial Court has affirmed as being constitutional and that Warrant Article 8 is a careful attempt to keep within the clearly stated constitutional boundaries.

2. IMPROVING CHANGES

The improving changes to Bylaw Article 8.5 are as follows:
(a) The addition of "DISTURBING THE PEACE" to the title of Bylaw Article 8.5 and the addition of a definition of "disturbing the peace" to Bylaw Article §8.5.1;
(b) The deletion of the phrase "quiet enjoyment" from Bylaw Article §8.5.1; and
(c) The addition of the following limitation language to Bylaw Article §8.5.1: "This definition of 'disorderly' shall only relate to activities that involve no lawful exercise of a First Amendment right."

Issues and Answers:

(i) Addition of the term "disturbing the peace" to the definition of "disorderly conduct." Important and helpful because of the many court cases that have helped define the meaning of that term.[9]

(ii) How many times Bylaw Article §8.5.1 has been enforced. Police Chief O'Leary did not believe that it has ever been enforced because in serious disturbing the peace situations the police will use criminal enforcement. He advised anyone who feels threatened by abusive language to notify the police department and an investigation will be undertaken. Such an incident will become a criminal matter.

(iii) Elimination of the phrase "quiet enjoyment" from Bylaw Article §8.5.1. Counsel Correa explained that "quiet enjoyment" is a concept of landlord-tenant law protecting a tenant from wrongfully being evicted from leased premises and is out of place and confusing in a disorderly conduct Bylaw. The additional language in Bylaw Article

[9] See, e.g., Commonwealth v. Orlando, 371 Mass. 732, 734-736 (1977).

§8.5.1 addresses the concerns this term is attempting to get at, which is protecting people from disorderly conduct in their residences. Also, "quiet enjoyment" has not been scrutinized by the Supreme Judicial Court in the disorderly conduct context in the manner that "disturbing the Peace" has.

(iv) Addition to Bylaw Article §8.5.1 of the caveat that "[t]his definition of 'disorderly' shall only relate to activities that involve no lawful exercise of a First Amendment right." Counsel Correa noted that this language is virtually verbatim from a Supreme Judicial Court case[10] that recognizes that the state cannot proscribe speech that is coarse but within a person's rights under the First Amendment to the US Constitution.

CONCLUSION:

The spirited discussion of the issues raised by Warrant Article 8 in the public hearing of the Public Safety subcommittee, together with Associate Town Counsel Patty Correa's very helpful legal memorandum and the useful explanations of Police Chief Daniel O'Leary enabled the Advisory Committee and the Public Safety subcommittee to develop a good understanding of the issues raised by Warrant Article 8. Based on the foregoing, the Advisory Committee unanimously recommends favorable action on Warrant Article 8.

XXX

[10] See, e.g., Commonwealth v. A Juvenile, 368 Mass at 597 ("In this regard the intent to cause, or reckless disregard of, public inconvenience, annoyance, or alarm must be assessed in terms of whether the conduct was engaged in with intent to exercise a First Amendment right and whether the interest to be advanced is insignificant in comparison to the inconvenience, annoyance, or alarm caused.")

ARTICLE 9

NINTH ARTICLE
Submitted by: Fred Lebow

To see if the Town will amend the General By-laws, Article 8.15, Noise Control, as follows (language to be deleted appears as a strike-out and new language is underlined):

ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.1 SHORT TITLE

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

SECTION 8.15.2 DECLARATION OF FINDINGS, POLICY AND SCOPE

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

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

1. Provisions in this By-law shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work or in training exercises related to emergency activities, and in the performance of public safety activities.

2. Emergency generators used for power outages, ~~or~~ testing or required by the latest edition of the State Building Code are exempt from this By-law. However, generator testing must be done during daylight hours.

3. Noncommercial public speaking and public assembly activities as guaranteed by state and federal constitutions shall be exempt from the operation of this By-law.

SECTION 8.15.3 DEFINITIONS

(a) Ambient or Background Noise Level: Is the term used to describe the Noise measured in the absence of the Noise under investigation. It shall be calculated using the average lowest sound pressure level measured over a period of not less than five minutes using a sound

pressure level meter set for slow response on the "A" weighting filter in a specific area of the town under investigation. Background Noise Level at Night for the purpose of enforcement of this By-Law shall be 10 dBA lower than Background Noise Level measured during the Day.

(b) Construction and Demolition: Any site preparation, assembly erection, substantial repair, alteration, destruction or similar action for public or private rights-of-way, structures, utilities, or similar property.

(c) Day: 7:01 AM - 10:59 PM and Night: 11:00 PM – 7:00 AM

(d) Electronic Devices: Any radio, tape recorder, television, CD, stereo, public address system, loud speaker, amplified musical instrument including a hand held device, and any other electronic noise producing equipment.

Exemption: two-way communication radios used for emergency, safety and public works requirements.

(e) Emergencies: Any occurrence or set of circumstances necessary to restore, preserve, protect or save lives or property from imminent danger of loss or harm.

(f) Decibels (dB): The decibel is used to measure sound pressure level. The dB is a logarithmic unit used to describe a ratio of sound pressure, loudness, power, voltage and several other things.

(g) Decibels "A" weighted scale (dBA): The most widely used sound level filter is the "A" weighted scale. This filter simulates the average human hearing profile. Using the "A" weighted scale, the meter is less sensitive to very low and high frequencies.

(h) Decibels "C" weighted scale (dBC): The "C" filter uses little filtering and has nearly a flat frequency response (equal magnitude of frequencies) throughout the audio range.

(i) Fixed Plant Equipment: Any equipment such as generators, air conditioners, compressors, engines, pumps, refrigeration units, fans, boilers, heat pumps and similar equipment.

(j) Frequency response: Is the measure of any system's response at the output to a signal of varying frequency but constant amplitude at its input. The theoretical frequency range for humans is 20 - 20,000 cycles/second (Hz).

(k) Hertz (Hz): Cycles per Second (cps).

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

(m) Leaf blowers: Any portable machine carried by hand or configured as a backpack used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

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

(o) Noise Injury: Any sound that:

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

(p) Noise Level: The Sound Pressure Level measurements shall be made with a Type I or II sound level meter as specified under American National Standard Institute (ANSI) or IEC 61672-1 standards.

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

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

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

(u) Sound Level Meter: An instrument meeting Type I or Type II American National Standard Institute (ANSI) standards or the European IEC 61672-1 standards, consisting of a microphone, amplifier, filters, and indicating device, and designed to measure sound pressure levels accurately according to acceptable engineering practices.
(v) Sound Pressure Level: The level of Noise, normally expressed in decibels, as measured by a sound level meter.

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

SECTION 8.15.3A MOTOR VEHICLE DEFINITIONS

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

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

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

SECTION 8.15.4 SOUND LEVEL EXAMPLES

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

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

SECTION 8.15.5 DUTIES AND RESPONSIBILITIES OF TOWN DEPARTMENTS

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

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

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

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

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

SECTION 8.15.6 PROHIBITIONS AND MEASUREMENT OF NOISE EMISSIONS

(a) Use Restrictions

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

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

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

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

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

	MAXIMUM NOISE LEVEL dBA	
Vehicle Class	Stationary Run-up or Speed Limit 35 mph or less	Speed Limit 35-45 mph
All vehicles over 10,000 lbs. GVWR or GCWR	83	87
All motorcycles	79	79
Automobiles and light trucks	75	75

(c) Construction and Maintenance Equipment:

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

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

(d) Fixed Plant Equipment

Any person shall operate such equipment in a manner not to exceed 10 dBA over the Background Noise and not greater than 5 dBA of Tonal sound over the Background Noise. However, if the fixed equipment is operated during night time hours, the night time Sound Pressure Level of the Fixed Plant Equipment must not exceed the average daytime Background Noise to compensate for night time operations, which is assumed to be 10dBA below daytime Background Noise. See Definitions Section 8.15.3(c).

Noise measurements shall be made at the boundary of the property in which the offending source is located, or at the boundary line of the complainant if the complainant is not a direct abutter.

(e) Electronic Devices and Musical Instruments

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

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

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

(f) Leaf Blowers

No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer's label or a label from the town indicating the model number of the Leaf Blower(s) and designating a Noise Level not in excess of sixty-seven(67)dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) or IEC 61672-1 methodology. Any Leaf Blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved ANSI Noise Level limit or IEC Noise Limit under this By-law. However, any Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any portable Leaf Blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the town as provided for in this section, even if the unit has an affixed manufacturer's ANSI, IEC or town label. Any portable Leaf Blower(s) must comply with the labeling provisions of this By-law by January 1, 2010. However, the owners of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI or IEC label on the equipment, may obtain a label from the town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level.

Whether the equipment passes or not, the testing fee is non- refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By-law.

(g) Animals

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

(h) Additional Noise Sources

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

(i) Alternative Measurement Procedures

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

(j) Noise Level Exclusions

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

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

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

(k) Motor Vehicle Alarms

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

(l) Tonal Sound Corrections

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

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Board of Selectmen, or designee, may give a special permit

(i) for any activity otherwise forbidden by the provisions of this By-law,

(ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it, and

(iii) when it can be demonstrated that bringing a source of Noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A person seeking such a permit should make a written application to the Board of Selectmen, or designee. The Town will make all reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.

(b) The applications required by (a) shall be on appropriate forms available at the office of the Selectman. The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria and conditions shall be considered:

(1) the cost of compliance will not cause the applicant excessive financial hardship;

(2) additional Noise will not have an excessive impact on neighboring citizens.

(3) the permit may require portable acoustic barriers during Night.

(4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.

(5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.

(c) If the Board of Selectmen, or designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

SECTION 8.15.8 HEARINGS ON APPLICATION FOR PERMITS FOR EXEMPTIONS

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

SECTION 8.15.9 PENALTIES

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

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

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

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

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

SECTION 8.15.10 SEVERABILITY

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

1. Emergency generators for the home are not considered as emergency generators unless they are used as emergency generators defined under the state building code. Home generators are considered standby generators or convenience generators and as such they are regulated under the noise bylaw. The definition currently does not define what an emergency generator is. It has to deliver power for life safety and installed under a higher standard than home generators.

2. Today the ANSI standard for Sound Pressure Level (SPL) meters is used less and less because none are produced in the USA anymore. They are mostly manufactured in Israel and Germany. Most acoustical engineers today use the IEC standard for SPL meters. By restricting their use in town would eliminate proper representation to its citizens by an acoustician. The standard today is heavily in favor of the IEC standard. Standards change all the time. However this allows the town or an engineer to use either. Both are acceptable in standard engineering practices.

3. Background Noise Levels at night is consistent with Section 8.15.6(d). Which states: "However, if fixed equipment is operated during nigh t time hours, the night time Sound Pressure Level of the Fixed Plant Equipment must not exceed the average daytime Background Noise to Compenstae for night time operations, which is assumed to be 10dBA below daytime Background Noise. See Definitions Section 8.15.3(c.)" Again this clarifies the definitions of the Noise bylaw. Also, it takes away the burden of not requiring the staff to take noise measurements at night.

4. The definition of portable means to some people that a machine able to move under its own power or auxiliary power is portable. This would include planes, ships, tanks, ect.ect. The only leaf blowers that are regulated under the current bylaw are leaf blowers that are carried on their back or hand with a sticker on it from the manufacture or the town. Leaf blowers that one would push by hand or that you would sit in do not have stickers on them as the manufactures do not provide dB ratings. They are louder than the ones that are carried and they would be considered as construction equipment. The town has no means of measuring this type of equipment for noise. They are used on large properties and not generally for single homes. The definition of portability does not change in any way the current implementation of the noise bylaw.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that would make amendments to the Town's Noise Control By-Law. It is identical to Article 12 of the May, 2014 Annual Town Meeting. That article was rejected by Town Meeting because of a number of issues. The Board recommends following the lead of the Advisory Committee and having a Selectmen's Committee review the Noise Control By-Law. At its October 28, 2014 meeting, the Board established a seven person committee, to be chaired by Selectman Franco, to review the by-law. A charge is

currently being prepared and will be available by the time Town Meeting commences. Therefore, by a vote of 4-0 also taken on the October 28, the Board recommends FAVORABLE ACTION on the motion to refer, as offered by the Advisory Committee.

ROLL CALL VOTE:
Favorable Action
Daly
DeWitt
Wishinsky
Franco

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 9 seeks to amend Article 8.15 (Noise Control) of the Town By-Laws by proposing the following:

1. Define Emergency Generator
2. Permit the use of both ANSI (American National Standards Institute) and IEC (international standards) Sound Pressure Level Meters
3. Define Background Noise Levels at night - consistent with existing definition appearing elswhere in the By-Laws.
4. Define Portable as it relates to leaf blowers.

RECOMMENDATION:
The Advisory Committee unanimously recommends referral of WA9 to a **Selectmen's Committee** to develop clarity and consistency in the two sections of the Town By-Laws that address Noise Control (Article 8.15) and Leaf Blowers (Article 8.31), in the words of the following motion:

VOTED: to refer Article 9 to a Selectmen's Committee to review Article 8.15 (Noise Control) for consistency, continuity, and clarification with other sections of the Town's By-laws, including but not limited to Section 8.31 (Leaf Blowers), such Committee to report back to the Board of Selectmen no later than fall 2015.

DISCUSSION:
While the Committee felt there was merit to some of the proposed changes offered in this article, others presented difficulty. The Advisory Committee discussed the proposed amendments, however no votes were taken on WA9 when it became clear that the definition of Portable leaf blower is problematic and prompts frequent discussions between landscapers and Town Counsel. The Town By-Laws address Leaf Blowers in two different sections: in

the Noise By-Law and in the Leaf Blower By-Law. Definitions are unclear and inconsistent, causing confusion among some property owners and landscape maintenance firms.

The Town By-Laws regulate excessive noise that may jeopardize health and degrade quality of life through measuring sound with sound pressure meters. Article 8.15 provides definitions for a variety of devices and actions that produce noise, including Leaf blowers.

Noise Control Section **8.15.3 (m)** defines Leaf Blowers as "Any portable machine used to blow leaves, dirt and other debris off lawns, sidewalks and other horizontal surfaces." **Leaf Blowers** Section **8.31** reads: "Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter"]

Concerns among Town Departments about leaf blower and noise definitions showing up in two different sections in the Town's By-Laws has been longstanding. Inconsistencies between the two sections make it more difficult to enforce the Town's expectations. Annually Town Counsel and other departments receive phone calls from landscapers seeking to understand their obligations.

A Selectmen's Committee, with ready access to the relevant Town staff, may be able to address all of the amendments proposed in WA9 and recommend ways to develop clarity and consistency in our Town Bylaws.

XXX

ARTICLE 10

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

On November 13, the Advisory Committee voted to reconsider its initial recommendation to refer Article 10, and then it voted unanimously to recommend FAVORABLE ACTION on the amended version.

The vote followed a review of the amendment proposed by the Selectmen and accepted by the petitioner. The amendment allows the DPW to grant a waiver to individual commercial establishments if there is cause to do so. As a result of the amendment, the Advisory Committee was informed that DPW Commissioner Andy Pappastergion was supportive of the requirement that commercial establishments recycle at the point of origin.

In its initial review, the Advisory Committee fully supported the objective of the article, which is to increase the amount of recycling and thereby decrease the town's carbon footprint, though had some concerns around implementation. The amended language, combined with DPW's support of the proposed bylaw change answered the key concerns the AC had.

BACKGROUND:
Article 8.16 of the Bylaw requires residential properties to separate recyclable materials from the household solid waste stream. Commercial establishments are required to limit the amount of recyclables in their waste stream, but there is no specific requirement to separate recyclables at the point of origin. The petitioners estimate as many as 50% of Brookline's commercial establishments do not recycle at the point of origin. All but 63 of the 1200+ commercial establishments in Brookline that are not home-based use licensed commercial haulers to take their trash, and those haulers bring it to a transfer station where it is subject to occasional spot checks on the amount of recyclables in the waste stream. In multi-occupant commercial buildings, the landlord typically contracts with the hauler. If recyclables have not been separated by at the originator's site, some of them (notably paper and cardboard) become contaminated by liquids or food in transit and would become unusable even if there was a mechanism of separating them at the transfer station.

Since Mass. DEP estimates that more than 60% of the solid waste generated in Massachusetts comes from commercial establishments, it would appear that there's an opportunity to significantly increase the amount of recycling by requiring commercial establishments to separate recyclables at the point of origin, thereby preventing their contamination in transit. Brookline does not have many large commercial establishments, but Brookline's Climate Action Plan still estimates that businesses generate about one third of the total CO2 created by the town's solid waste stream. Supermarkets, drug stores and food service establishments are the largest generators.

DISCUSSION:

The Article as amended gives the DPW flexibility in drafting regulations to implement the requirement for commercial establishment recycling. Flexibility is important because it remains unclear what costs the business community will incur. Cost changes should be modest because the total volume of trash being collected will not change, but there may be cases where space constraints for a second dumpster cause problems. We expect that the DPW and the Selectmen will seek comments from the organizations representing business and from landlords who own commercial property in Brookline before the regulations are finalized.

ARTICLE 10

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 10 is a petitioned article that would expand the Town's current Recycling by-law by requiring commercial properties to recycle. The Town has taken many steps over the years to increase its recycling rate, most recently moving to "single stream" recycling. That action has increased the Town's recycling rate by more than 20%. The Selectmen are proud of the Town's efforts over the years to reduce the amount of solid waste that must be disposed of and the related increase in the amount of materials being recycled. Extending required recycling to commercial properties is the logical next step, as it will increase the amount of material taken out of the waste stream, directly reduce greenhouse gas emissions, reduce methane emissions in landfills, and further reduce the town's carbon footprint.

While the Advisory Committee has noted a number of legitimate concerns and has recommended that a Selectmen's Committee be established to further study this issue, this Board believes that moving forward now is the prudent course to take. Other nearby communities have adopted mandatory commercial recycling and businesses there have adjusted. In order to address the concerns of the business community, we have recommended amending the proposal by adding "[R]egulations may also include temporary waiver provisions for cause." in Section 8.16.3. This will allow the Board of adopt a regulation that allows for temporary waivers, just as was done for the recently enacted plastic bag ban.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 10, 2014, on the following (note that the Selectmen's amended language is indicated by the double-underlined sentence in Section 8.16.3):

VOTED: that the Town amend Article 8.16 of the Town's General By-laws, by adding the following language (new language is underlined), such amendment to be effective November, 2015:

SECTION 8.16.1 PURPOSE

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

SECTION 8.16.2 SCOPE

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

SECTION 8.16.3 RULES AND REGULATIONS

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

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

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

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

All owners, landlords and property managers of residential and commercial buildings shall set up systems for the collection, storage, and removal of recyclables generated by

the occupants and residents in their buildings, in accordance with the regulations adopted hereunder.

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

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

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

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

Formally a unanimous Vote

ARTICLE 10

TENTH ARTICLE

Submitted by: Alan Christ

To see if the Town will amend Article 8.16 of the Town's General By-laws, by adding the following language (new language is underlined), such amendment to be effective November, 2015:

SECTION 8.16.1 PURPOSE

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

SECTION 8.16.2 SCOPE

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

SECTION 8.16.3 RULES AND REGULATIONS

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

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

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

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

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

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

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

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Article 8.16 of the Brookline Town By-Law, which outlines the town's residential recycling requirements, requires residential properties to set aside the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations. However, sections 8.16.5 and 8.16.6 of the by-law are currently limited to only residential properties. The proposed revisions to the language of Article 8.16 would explicitly include commercial properties throughout. This could substantially increase the amount of material taken out of the waste stream, and further reduce the town's carbon footprint. Extending Article 8.16 to include commercial properties is a logical proposal for several reasons:

1. *Commercial Recycling is Already Mandated as a Part of Massachusetts State Law:* Massachusetts State Law already requires businesses to recycle per 310 CMR Section 19.017 "Waste Bans", which regulates the disposal of restricted materials which includes but is not limited to aluminum, metal & glass containers, as well as recyclable paper and many other materials. Recent surveys in the town indicate that many businesses are not recycling. Modification of Article 8.16 to include commercial properties simply brings the town in line with state law and underscores the town's commitment to enforcement of the state law at a local level by requiring private haulers to include provisions for commercial recycling.

2. *The Revisions to Article 8.16 Are Very Simple:* The proposed warrant article would only make two changes. It would add "and commercial" to the requirements for residential properties as outlined in Sections 8.16.5 and 8.16.6. In addition, in section 8.16.2, it would underscore that this requirement applies to both public and private haulers, to ensure that everyone complies.

3. *Other Communities Have Successfully Implemented Commercial Recycling:* Communities such as Cambridge, Somerville, Hingham, and Northampton have already implemented some form of commercial recycling into their by-laws. Cambridge and Hingham in particular have extensive commercial recycling by-laws with requirements for recycling collection and storage, education of local businesses, and the preparation of business recycling plans. Penalties are also defined for non-compliance with the guidelines.

4. *Commercial Recycling Benefits*: Commercial recycling can substantially increase the town's recycling rate, particularly given the Massachusetts DEP's documentation that 61.8% of the state's municipal solid waste in 2006 was estimated to be commercial, while only 38.2% was estimated to be residential (Per Mass DEP's "Overview: Solid Waste Management in Massachusetts"). Increasing the recovery of recyclable materials from the commercial sector will directly reduce greenhouse gas emissions, while also reducing methane emissions in landfills. Additionally, the use of recycled materials can reduce greenhouse gas emissions and other pollution from multiple phases of product production. At its April 2013 meeting, the Selectmen's Climate Action Committee added mandatory business recycling to the current Climate Action Plan.

To summarize, adopting commercial recycling in Brookline will underscore the town's compliance with state law with a minimal number of changes to town by-laws. The practice has successful precedents in other communities, and it will keep the town on a path towards reducing its carbon emissions.

MOTION TO BE OFFERED BY THE PETITIONER

MOVED: that the Town amend Article 8.16 of the Town's General By-laws, by adding the following language (new language is underlined), such amendment to be effective November, 2015:

SECTION 8.16.1 PURPOSE

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

SECTION 8.16.2 SCOPE

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

SECTION 8.16.3 RULES AND REGULATIONS

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

such notice on the town's bulletin board in the Town Hall not less than fourteen days prior to the date set for such hearing.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

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

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

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

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

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

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

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

Passed, as amended, by a unanimous vote

RECOMMENDATION OF THE SELECTMEN'S CLIMATE ACTION COMMITTEE

The Selectmen's Climate Action Committee recommends favorable action on Article 10. This article, submitted by Alan Christ, would modify Article 8.16 of the Town's General By-laws to require commercial properties to recycle.

The warrant article's proposed language changes are relatively simple; where residential buildings or properties are mentioned in General By-law Article 8.16, the words "and commercial" are inserted as well, essentially holding residential and commercial properties to the same recycling standards.

The Massachusetts Department of Environmental Protection (Mass DEP) has set specific "waste bans" (310 CMR 19), which are meant to keep certain recyclable or compostable materials, such as aluminum cans, metal and glass containers, leaves, etc., out of the waste stream. Most of Mass DEP's waste bans came into effect in 2000, including those for commonly recycled materials such as aluminum, metal and glass containers, single polymer plastics, and paper. While these waste bans do not allow for recyclable or compostable materials to be landfilled, they do not require on-site separation of recyclables from general waste. Without this requirement, it is very difficult to enforce waste bans, particularly at the disposal end point. The town's by-law currently requires residential properties to separate recyclables from general waste on site; this warrant article would implement the same on-site separation requirement for commercial properties, beginning November 2015.

The Climate Action Committee (CAC) understands that many businesses are already recycling, while for some, the barriers to recycling are largely related to logistics. Businesses will need to resolve questions such as where to store recycling containers and how often to schedule pickups, but these are solvable problems. The proposed warrant article's implementation date isn't until November 2015, leaving ample time for the town's Departments of Public Works and Health to modify their regulations and work with businesses on these issues.

Recycling materials rather than landfilling them can significantly reduce greenhouse gases, not only due to avoiding the gases generated from the landfilling process, but by reducing the need to generate new material to create new products. Commercial businesses generate recyclable waste (i.e. office paper), and in 2013, the CAC voted to add commercial recycling to the list of action items in the town's Climate Action Plan.

Holding businesses to a lower recycling standard than residents is contrary to the state's waste regulations and contrary to the town's efforts to reduce greenhouse gas emissions. While there will certainly be obstacles for some businesses to effectively separate recyclables prior to pickup, the proposed warrant article allows for a full year before the new by-law wording would become effective. Additionally, the Town's Department of Public Works has indicated a willingness to work with businesses to come up with workable recycling plans. Within this supportive atmosphere, the Climate Action Committee is convinced that those

Brookline businesses that are not yet recycling will be able to find solutions and join the rest of the town in reducing the amount of waste that is landfilled.

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

SELECTMEN'S RECOMMENDATION

The Selectmen will provide a Recommendation in the Supplemental mailing planned for the weekend prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
By a vote of 19 - 0 - 0, the Advisory Committee recommends that Article 10 be **referred to a Selectmen's Committee.** Ideally, that committee should include the petitioner, representatives of the business community, and the DPW, to identify how to improve the quality of recycled output from commercial establishments and comply with the objectives of state law.

VOTED: to refer Article 10 to a Selectmen's committee that includes the petitioner and representatives from DPW and the business community for further consideration; the Committee shall report back to BOS no later than the 2015 Fall Town Meeting.

Although it has proposed referral rather than favorable action, the Advisory Committee fully supports the objective of the article, which is to increase the amount of recycling and thereby decrease the town's carbon footprint. The AC makes this recommendation because we believe there are several unanswered questions that should be dealt with in order to ensure that the article will achieve its objective.

BACKGROUND:
Article 8.16 of the Bylaw requires residential properties to separate recyclable materials from the household solid waste stream. Commercial establishments are required to limit the amount of recyclables in their waste stream, but there is no specific requirement to separate recyclables at the point of origin. The petitioners estimate as many as 50% of Brookline's commercial establishments do not recycle at the point of origin. All but 63 of the 1200+ commercial establishments in Brookline that are not home-based use licensed commercial haulers to take their trash, and those haulers bring it to a transfer station where it is subject to occasional spot checks on the amount of recyclables in the waste stream. In multi-occupant commercial buildings, the landlord typically contracts with the hauler. If recyclables have

not been separated at the originator's site, some of them (notably paper and cardboard) become contaminated by liquids or food in transit and become unusable even if there were a mechanism of separating them at the transfer station.

Since Mass. DEP estimates that more than 60% of the solid waste generated in Massachusetts comes from commercial establishments, it would appear that there's an opportunity to significantly increase the amount of recycling by requiring commercial establishments to separate recyclables at the point of origin, thereby preventing their contamination in transit. Brookline does not have many large commercial establishments, but Brookline's Climate Action Plan still estimates that businesses generate about one third of the total CO2 created by the town's solid waste stream.

DISCUSSION:

Despite the potential reduction in the waste stream that could result if the Bylaw were changed in accordance with Article 19, the Advisory Committee believes that the following open issues need to be resolved by the recommended Selectmen's Committee.

1. The Article as written does not require separation at the point of origin. Rather, it refers to bringing Brookline into conformance with state law. However, it is not the Town that needs to conform to state law but rather the commercial establishments, and they are currently in compliance if they use a licensed trash hauler and if their recyclables are less than 30% of the waste stream. Therefore it is not clear that changing the bylaw would change the way recyclables from commercial establishments are handled.

2. It's also not clear what the cost would be if commercial establishments were required to separate recyclables at the point of collection. A phone survey of haulers suggests that the cost might be anywhere from zero to $20 per pickup, because although a second dumpster or trash container would be required, the total amount of trash would not change. Some commercial establishments and small commercial buildings would have difficulty fitting the separate dumpster into the space they have available, and the cost for those establishments might be higher.

3. There are 629 commercial storefronts in Brookline. Twenty-four percent are restaurants; 55% are service providers ranging from preschools to health clubs; and 20% are retail establishments that do not serve food. The vast majority of the remaining commercial establishments are business offices of one sort or another, such as law firms and healthcare professionals. A member of the Green Caucus estimated that up to 50% of commercial establishments are not currently recycling at the point of origin, but that was acknowledged as being a somewhat uncertain data point. For example, it's not known whether and to what extent the largest generators of cardboard such as supermarkets already recycle. It may be that the relatively small number of establishments generate the vast majority of recyclables, in which case it might be sensible to require only those establishments that generate more than X cubic yards per week or X tons per year to separate recyclables at the point of origin. At least one supermarket, Whole Foods, already recycles at the point of origin and other large generators of cardboard may also do so, but some do not. For example,

the petitioners report that CVS stores do not recycle.

4. DPW's representative has stated that DPW does not have adequate staff to enforce commercial establishment recycling rules. Current enforcement of residential recycling rules is based on complaints. DPW acts on three or four complaints a day. Rather than a blanket requirement to recycle at the point of origin, DPW would prefer to have a requirement that each business provide a recycling plan, since businesses of different sorts and sizes generate widely different solid waste streams.

5. Recycling at some types of food service establishments may be difficult to do. For example, a representative of a company that operates five Starbucks franchises across the metropolitan area stated that it was difficult to train food service workers to comply with recycling rules, and almost impossible to get customers to consistently separate recyclable paper from used cups and napkins.

6. The business community has not provided much feedback on the proposed rule. The Brookline Chamber of Commerce could seek more input to determine what the economic impact would be if point of origin recycling rules were put in place for all commercial establishments. Brookline Economic Development Director Kara Brewton surveyed commercial establishments and of the 112 respondents, 85% said that they recycle at the point of origin. But there is no basis for knowing what percentage of the total commercial waste stream is already being separated at curbside. There was general agreement that if Article 10 is referred to a Selectmen's committee, the first step should be to do a survey of the business community.

The Advisory Committee believes that referral of Article 10 to a Selectmen's Committee will result in gathering the information necessary to craft a by-law or by-law amendment that will fulfill the objectives of the petitioner and state law. A unanimous Advisory Committee recommends referral.

XXX

ARTICLE 11

ELEVENTH ARTICLE
Submitted by: Thomas J. 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 tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to ~~Tobacco Products~~ tobacco and e-cigarette products within the Town of Brookline.

SECTION 8.23.2 DEFINITIONS

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

b. E-Cigarette – Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, or under any other product name.

~~b~~c. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product~~.~~ or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.

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

e. Self-Service Display – Any display from which customers may select a tobacco or e-cigarette product without assistance from an employee or store personnel.

~~d~~f. Minor - A person under twenty-one years of age.

~~e~~g. Employee - ~~A person who performs work or services for wages or other consideration.~~An individual who performs services for an employer.

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

~~g~~i. Workplace - ~~Any enclosed area of a structure in the Town of Brookline, at which one or more employees perform services for an employer.~~ An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.

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

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

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

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

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

SECTION 8.23.3 REGULATED CONDUCT

a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall,

museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles.

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

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate ~~at least 90%~~100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by ~~No~~ minors or school personnel ~~shall smoke~~ is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds.

The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in ~~the following places and circumstances:~~
~~a. P~~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~~3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(~~5~~4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(~~6~~5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(~~7~~6) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

~~(8) Each establishment in which smoking is permitted pursuant to 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 (8.23.3(b)).~~

c. E-cigarette Usage – Locations Prohibited

(1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

SECTION 8.23.4 POSTING REQUIREMENTS

Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary

entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

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

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

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

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

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

~~e. 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.~~

e. Self-Service Displays – All self-service displays of tobacco products as defined herein are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked.

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

g. Prohibition of the Sale of Tobacco and e-cigarette Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. This includes all

educational institutions as well as any retail establishments that operate on the property of an educational institution.

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~~$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of ~~not more than~~ $100 for ~~each offense.~~a first offense, $200 for a second offense, and $300 for a third or subsequent offense.

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

d. Employees who violate any provision of Section 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 by-laws.

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

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

SECTION 8.23.7 SEVERABILITY

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Tobacco use is the leading preventable cause of death in the United States.[1] Including deaths from secondhand smoke, tobacco use is responsible for more than 480,000 deaths annually.[2] Prolonged use of tobacco products is commonly associated with negative health outcomes such as cancer, respiratory and cardiac disease, negative birth outcomes, and increased susceptibility to infectious disease. The life expectancy for a smoker is typically 10 years shorter when compared to average lifespan of a nonsmoker.[3] Tobacco use is a serious health problem that targets youth, as Centers for Disease Control surveys indicate that 16.0% of Massachusetts high school students under 18 years old currently smoke cigarettes.[4]

This warrant article proposes five changes to the existing tobacco control by-law. The five proposed changes are:

1. to define e-cigarettes as smokable tobacco products, and therefore subject e-cigarette purchasing and use to the same restrictions and regulations as other smoked tobacco,
2. to increase the percent of hotel rooms that are smoke-free from 90% to 100% smoke-free,
3. to expand the recently-passed prohibition of smoking tobacco products within 400 feet of Brookline High School by minors or school personnel to include smokeless tobacco products,
4. to completely prohibit self-service displays of tobacco products, and
5. to align with state law a number of definitions and fine schedules currently less stringent than the Massachusetts General Laws.

A more detailed explanation of each of these changes appears below.

---

[1] U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

[2] *Ibid.*

[3] Jha P, Ramasundarahettige C, Landsman V, Rostrom B, Thun M, Anderson RN, McAfee T, Peto R. 21st Century Hazards of Smoking and Benefits of Cessation in the United States. New England Journal of Medicine, 2013;368(4):341–50.

[4] CDC (2009), Youth Risk Behavior, Surveillance Summaries (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) .

Electronic Cigarettes

A growing concern for youth is the emergence of electronic nicotine delivery systems (ENDS). These devices are part of the fast-growing e-cigarette market and are shrewdly marketed as a safer alternative to cigarettes to conventional tobacco products.[5] However, nicotine is the primary ingredient in ENDS and it is know to have negative impacts to the cardiovascular system.[6] ENDS include other ingredients like lead, acetaldehyde and toluene, which are also harmful.[7]

ENDS can be found for sale in most retail locations that also sell traditional cigarettes and come in a wide variety of flavors that appeal to young people, such as grape, chocolate, piña colada, and cookies & cream. An additional concern raised about ENDS is that they may contain varying amounts of nicotine. The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General has determined that nicotine exposure during adolescence may have lasting adverse consequences for brain development unless the initiation of tobacco use can prevented or delayed.[8] According to the U.S. Centers for Disease Control and Prevention, electronic cigarette use among middle and high school students doubled from 2011 to 2012.[9] The Town of Brookline must continue to make it difficult for minors to purchase tobacco and nicotine delivery products in order to prevent negative health outcomes commonly associated with addiction to nicotine.

E-cigarette devices are not regulated or approved by the US Food and Drug Administration (FDA) as an aid in smoking cessation.[10,11] The concentration of nicotine in each e-cigarette varies from none to 4 to 24 mg; (light: 4-8 mg; medium: 12-16 mg; full strength: 16-24 mg) in each cartridge.[12] In a conventional cigarette, the nicotine content is about 1.89mg per

---

[5] Richtel, Matt. "E-Cigarettes, by Other Names, Lure Young and Worry Experts." *The New York Times*. The New York Times, 4 Mar. 2014. Web. 5 Aug. 2014.

[6] Holly Feiock Heiberg, "E-cigarette Primer," Oregon Health Authority. September 20, 2013. https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Documents/E-cigFactSheet.pdf

[7] Grana R., Benowitz N., Glantz S., "Contemporary Review in Cardiovascular Medicine: E-Cigarettes: A Scientific Review," Circulation. 2014; 129: 1972 – 1986.

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

[9] Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," Morbidity and Mortality Weekly Report (MMWR) 62(35): 729–730.
Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." Tobacco Control. [Electronic publication ahead of print],

[10] World Health Organization Study Group on Tobacco Regulation. Tobreg scientific recommendation: devices designed for the purpose of nicotine to the respiratory system in which tobacco is not necessary for their operation. In: Report on the Scientific Basis of Tobacco Regulation: Third Report of a WHO Study Group. Geneva, Switzerland: World Health Organization; 2009.

[11] Zuccotti, G., & Pflomn, J. (2012). Electronic Cigarettes for Smoking Cessation. The Medical Letter on Drugs and Therapeutics, 54(1404), 93-94.

[12] Trtchounian A., Talbot P. "Electronic nicotine delivery systems: is there a need for regulation?" Tobacco Control. 2011;20:47-52

cigarette.[13] It takes about is seven to twelve puffs to complete a conventional cigarette compared to an e-cigarette, which is about 300 puffs.[14] Depending on brand, each END cartridge is designed to produce about 250-400 puffs, which is equivalent to about 1-2 packs of cigarettes.[15] The use of e-cigarettes can lead to mouth and throat irritation, dry cough, and cardiovascular toxicity[16]. Repeated exposure to second hand vapor from ENDS may result in addiction and may increase the risk of ischemic vascular events like Lipoid pneumonia- lung inflammation.[17]

At the same time, and although ENDS are not yet clinically endorsed by the FDA as a smoking cessation tool, nascent research suggests that these products may serve a beneficial role as an additional treatment for smoking cessation. ENDS may serve as safer alternative to conventional cigarettes and expose a user to fewer toxic chemicals.[18] These advantages suggest that e-cigarettes have the potential to increase rates of smoking cessation and reduce costs to quitters and to health services.[19,20] A recent study on electronic cigarettes and smoking cessation found that e-cigarette users were more likely to report abstinence from tobacco use than either those who used nicotine replacement therapy (NRT) bought over the counter or used no smoking cessation aid.[21] Even though the use of electronic cigarettes could assist with smoking cessation treatments; the user continues to inhale nicotine as well as a number of other potentially harmful compounds.

Evidence suggests that ENDS is likely to be a gateway device for nicotine addiction among youth.[22] The percentage of student in grades 6 through 12 who had ever used ENDS increased from 3.3% to 6.8% from 2011 to 2012.[23] E-cigarettes may prove to be less deadly than smoked tobacco; however, use of e-cigarettes still damages the health of both the user and others nearby. Furthermore, in as much as the public decline in smoking is due to the denormalization of smoking due to prohibitions in a wide variety of public places, allowing

---

[13] Kotz, Deborah . "Have cigarettes become more addictive? - The Boston Globe." *BostonGlobe.com*. Globe , 15 Jan. 2014. Web. 5 Aug. 2014.
[14] Nicotine &Tobacco Research. Jan2013, Vol.15 Issue 1, p158-166. 9p. 2Charts, 1 graph
[15] Electronic Cigarettes. JAMA. 2014;311(2):195. doi:10.1001/jama.2013.283624.
[16] Electronic Cigarettes. JAMA. 2014;311(2):195. doi:10.1001/jama.2013.283624
[17] Electronic Cigarettes. JAMA. 2014;311(2):195. doi:10.1001/jama.2013.283624
[18] Tavernise, Sabrina . "Debate emerges on whether e-cigarettes spur use of tobacco - The Boston Globe." *BostonGlobe.com*. NEW YORK TIMES, 14 Feb. 2014. Web. 5 Aug. 2014.
[19] Hajek, P. (2013). Electronic cigarettes for smoking cessation. The Lancet, 382(9905), 1614. doi:http://dx.doi.org/10.1016/S0140-6736(13)61534-2
[20] Tavernise, Sabrina . "Debate emerges on whether e-cigarettes spur use of tobacco - The Boston Globe." BostonGlobe.com. NEW YORK TIMES, 14 Feb. 2014. Web. 5 Aug. 2014.
[21] Jamie Brown et. al. "Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study," Addition. Volume 109, issue 9, pp. 1531-1540. September 2014.
[22] Fernandez, Elizabeth . "E-Cigarettes: Gateway to Nicotine Addiction for U.S. Teens, Says UCSF Study." University of California, San Francisco. N.p., 6 Feb. 2014. Web. 6 Aug. 2014.
[23] Stein, Rob. "Kids' Use of Electronic Cigarettes Doubles." NPR. NPR, 5 Sept. 2013. Web. 6 Aug. 2014.

the use of devices that look just like cigarettes in places where cigarette use is prohibited would represent a step backward in public health.

Hotels Smoke Free

Brookline began the transition to smoke-free hotel rooms in 1994, most recently increasing the number of rooms that must be smoke free to 90% in 1996. Brookline currently has two hotels that are permitted to have some smoking rooms under the existing by-law – the Holiday Inn at 1200 Beacon Street and the Courtyard Marriott at 40 Webster Street. Despite being permitted to allow smoking in some rooms, both hotels are 100% smoke-free. There are two other hotels currently under development – one at the former Red Cab site on Route 9 and the other at the former cinema at Cleveland Circle. Should this warrant article pass, both of these hotels would be required to be 100% smoke-free as well.

Tobacco products near Brookline High School

Town meeting recently prohibited the use of smoking products by minors and school personnel within 400 feet of Brookline High School. Unlike indoor smoking prohibitions, this wasn't driven solely by a concern for employees and other patrons breathing in second hand smoke. Rather, in addition to concerns about second hand smoking, the smoking prohibition near the high school was focused on "reduc[ing] the number of new student smokers"[24] and making "present smokers … less likely to smoke." Town Meeting readily agreed, passing Mr. Bermel's citizen petition overwhelmingly.

Currently, the prohibition applies only to smoking tobacco. It does not apply to the use of smokeless tobacco such as chewing tobacco, dipping tobacco, snuff, or snus. While the use of smokeless tobacco by students in front of BHS doesn't result in problems related to second hand smoke, it is unquestionably harmful to the students engaging in its use.

By including smokeless tobacco in the prohibition, current smokeless tobacco users will have fewer opportunities to use, and potential new users are less likely to be enticed. With the passage of this warrant article, the use of any tobacco products by minors or school personnel will be prohibited, not just smoking tobacco, further denormalizing the use of tobacco by young people.

Self-service displays

The town by-laws already prohibit tobacco vending machines. This by-law proposes extending the prohibition to all self-service displays. By moving all tobacco products behind the counter or into locked humidors, the opportunity for minors to shoplift tobacco products will be reduced.

---

[24] Nathan Bermel, "Petitioner's Article Description," Brookline Annual Town Meeting Warrant Article 13, May 27, 2014.

Harmonization with state law

Brookline has been a leader in tobacco control for decades. One result of Brookline enacting tobacco control by-laws before similar state law was enacted is that when the state finally followed Brookline's footsteps, it oftentimes enacted state law that was more restrictive than Brookline's earlier local by-law. In cases where state law is more restrictive, the Town must enforce state law. This warrant article proposes to tighten up the definition of *employee, employer,* and *workplace* to match state definitions. Furthermore, it would increase the fine schedule to match state law. Finally, it removes the word "knowingly" from the by-law as it relates to violations – all violations will become enforceable, not merely ones deemed "knowingly."

Conclusion

There have been a number of tobacco related warrant articles in the past few years. Brookline has prohibited the sale of tobacco at educational and medical institutions, including university convenience stores and pharmacies. We've raised the age to purchase from 18 to 19, and then to 21. Town Meeting performed "housekeeping" on the by-law, removing antiquated language and aligning much of the by-law with state law. We've prohibited the smoking of tobacco by minors and school staff within 400 feet of our high school. This warrant article seeks to continue the dual trends of denormalizing the use of tobacco particularly but not exclusively for young people, and the gradual refinement of the tobacco control by-laws to ensure they align with state law and recent trends in tobacco use and policy. Passage of this warrant article will result in the treatment of e-cigarettes as smokable tobacco, finalize the transition to smoke-free hotel rooms, include smokeless tobacco in the high school buffer zone prohibition, reduce the opportunity for teenage shoplifting of tobacco products, and align Brookline's by-law with state law where appropriate. Unlike Brookline's groundbreaking tobacco legislation of the 1990s, none of these changes are remarkable or broad-reaching; rather, these changes are a gradual implementation of the best practices other communities and states have already implemented.

ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

This article seeks to regulate e-cigarettes in the same manner as tobacco products, including compliance with the no-smoking buffer zone around the High School; prohibits self-service displays of e-cigarettes and tobacco products in stores; brings to 100% the ban on smoking in hotel/motel/inn rooms, and aligns Brookline's fines and definitions with Mass. General Laws.

Members heard presentations from the petitioner, Dr. Vitolo and supporting testimony from High School Peer Leaders Maeve Kelly, Camilla Bellamarich, Omar Ghafour, and Alejandro Martin. The proposal and the reasons behind it were explained in detail.

There were no speakers against the Warrant Article. Members spoke in support.

The Advisory Council on Public Health voted 6 – 0 in favor of Article 11.

SELECTMEN'S RECOMMENDATION

Article 11 is a petitioned article that updates and improves the Town's Tobacco Control By-Law, furthering the Town's efforts to reduce the use of tobacco. The article addresses the following five issues:

1. **E-Cigarettes** – these are a rapidly growing segment of the tobacco industry and are marketed as a safer alternative to traditional cigarettes. However, the primary ingredient is nicotine. As pointed out in the Petitioner's article description, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General has determined that nicotine exposure during adolescence may have lasting adverse consequences for brain development unless the initiation of tobacco use can prevented or delayed. Since they are not currently regulated under the Tobacco Control By-Law, anyone, regardless of age, can buy them.

   E-Cigarettes come in a wide variety of flavors that appeal to young people, including chocolate and cookies and cream. It is no surprise that this type of flagrant targeting to youth has resulted in a doubling of use among middle and high school students from 2011 to 2012. Products such as these should be regulated as other tobacco products are and will be if the proposed amendment in Article 11 is approved.

2. **Smokefree Hotels** – the current by-law calls for 90% of hotel rooms to be smokefree. Currently, neither hotel in Brookline allows smoking in any rooms, so moving to 100% smokeless rooms will not be an issue for them. By mandating 100% smokefree rooms, Brookline will join Boston and many other communities.

3. **Smokeless Tobacco and the 400 foot buffer zone around the High School** – this past May, Town Meeting adopted a proposal championed by BHS students to prohibit the use of smoking products by minors and school personnel within 400 feet of BHS. However, the prohibition applies only to smoking tobacco, not to the use of smokeless tobacco. While the use of smokeless tobacco by students in front of BHS does not have second hand smoke issues, those products have been proven to be harmful to users.

   The amendment proposed in Article 11 adds smokeless tobacco to the prohibition, meaning the use of any tobacco products by minors or school personnel will be

prohibited. This will serve to further denormalize the use of tobacco by Brookline youth.

4. **Storage and Display of Tobacco Products** – the current by-law prohibits tobacco vending machines. However, stores are allowed to use self-service displays. The proposed amendment would require all tobacco products to be stored behind the counter or be locked up.

5. **Definitions and Fines** – the definitions and fine schedule included in the current by-law are outdated. In cases where state law is more restrictive, the Town must enforce state law, so it makes sense to update our by-law. The amendments proposed in Article 11 improve the definition of employee, employer, and workplace by making them match state definitions and also increase the fine schedule to match state law.

The Board fully supports Article 11 and recommends FAVORABLE ACTION, by a vote of 4-0 taken on October 28, 2014, on the following motion. There is one difference from the article as originally filed: Section 8.23.5 (e) is changed to read "e. Self-Service Displays – All self-service displays as defined by 8.23.2 (e) are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked." The amendment was made with the support of the petitioner to address a drafting error. This change was made to clarify that the self-serve display prohibition includes e-cigarettes.

VOTED: That the Town 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 tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to ~~Tobacco Products~~ tobacco and e-cigarette products within the Town of Brookline.

SECTION 8.23.2 DEFINITIONS

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

b. E-Cigarette – Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, or under any other product name.

~~b~~c. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product~~.~~ or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.

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

e. Self-Service Display – Any display from which customers may select a tobacco or e-cigarette product without assistance from an employee or store personnel.

~~d~~f. Minor - A person under twenty-one years of age.

~~e~~g. Employee - ~~A person who performs work or services for wages or other consideration.~~An individual who performs services for an employer.

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

~~g~~i. Workplace - ~~Any enclosed area of a structure in the Town of Brookline, at which one or more employees perform services for an employer.~~ An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.

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

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

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

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

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

SECTION 8.23.3 REGULATED CONDUCT

a. Public Places

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

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles.

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

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate ~~at least 90%~~100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by ~~No~~ minors or school personnel ~~shall smoke~~ is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds.

The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph

(4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in ~~the following places and circumstances:~~
~~a. P~~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~~3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(~~5~~4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(~~6~~5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(~~7~~6) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

~~(8) Each establishment in which smoking is permitted pursuant to 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 (8.23.3(b)).~~

c. E-cigarette Usage – Locations Prohibited

(1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

SECTION 8.23.4 POSTING REQUIREMENTS

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

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

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

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

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

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

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

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

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

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~~$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of ~~not more than~~ $100 for ~~each offense.~~a first offense, $200 for a second offense, and $300 for a third or subsequent offense.

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

d. Employees who violate any provision of Section 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 by-laws.

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

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

SECTION 8.23.7 SEVERABILITY

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

Passed by a unanimous Vote

ROLL CALL VOTE:
Favorable Action
Daly
DeWitt
Wishinsky
Franco

ADVISORY COMMITTEE'S RECOMMENDATION

Warrant Article 11 seeks to amend the General By-laws, Article 8.23 (Tobacco Control), by proposing the following:

1. Subject e-cigarette purchasing to the same restrictions and regulations as other smoked tobacco
2. Have 100% smoke-free hotel rooms
3. Include smokeless tobacco products in the 400 feet ban around the High School
4. Prohibit self-service display of tobacco products
5. Align definitions and fine schedules with Massachusetts General Laws

RECOMMENDATION:
The Advisory Committee, by a vote of 23 -0-1, recommends FAVORABLE ACTION on the amended language offered by the Board of Selectmen.

DISCUSSION:
WA 11 defines e-cigarettes and subjects e-cigarettes to the same rules and regulations as smoked tobacco products, including compliance with the no-smoking buffer zone around the High School; prohibits self service displays of tobacco products in commercial establishments. WA 11 increases non-smoking rooms in hotels, motels and inns to 100% and aligns Brookline's definitions and fine schedules with the more stringent Mass. General Laws. Including e-cigarettes in our Tobacco Control Bylaws will decrease nicotine addiction among youth and promote a healthier environment for all.

E-cigarettes

High School Peer Leaders expressed concerns that will be alleviated by applying the same rules to e-cigarettes as we have for smoked tobacco products.
After the buffer zone was passed in the Spring many students planned to use e-cigarettes. Students convince each other that there are no health concerns since the FDA has not regulated e-cigarettes. It has been reported that some Football Team members view e-cigarettes as cool and use them instead of cigarettes and students have used e-cigarettes with marijuana.
Peer Leaders strongly encourage regulation of e-cigarettes.
Electronic Nicotine Delivery systems contain varying amounts of nicotine; they are produced in flavors that appeal to young students and are extremely addictive.
E-cigarettes are not regulated by the FDA as an aid in smoking cessation. Even though e-cigarettes may be better than smoked tobacco it is important that they are regulated.

100% Non-smoking rooms in inns, hotels and motels

Current regulations expect hotel, motel and inn rooms to be 90% smoke free.
This means that for example an inn must have a minimum of 10 rooms to provide one room that permits smoking. None of the hotels/motels in Brookline permit smoking in rooms. The Brookline Housing Authority adheres to a 100% smoke free environment.
The new hotels at route 9 corridor and Cleveland Circle plan to be 100% smoke free as well.

The proposed amendments provide more clarity to our Tobacco Control Laws as well as promoting delay of the use of nicotine products for our student residents.

BACKGROUND:
The Advisory Committee supports favorable action on the amendments in article 8.23 (Tobacco Control) offered by the Board of Selectmen.

XXX

ARTICLE 12

MOTION TO REFER ARTICLE 12
SUBMITTED BY JENNIFER GOLDSMITH, TMM-11, KEN LEWIS, TMM-11, REBECCA MAUTNER, TMM-11

Moved: to refer the subject matter of article 12 to a Moderator's committee, to report back to the 2015 Annual Town Meeting.

Explanation: The purpose of the Moderator's committee would be to review the concerns about Registered Marijuana Dispensaries (RMDs) that have been raised pursuant to the article and in general in the community and to identify ways of addressing those concerns through changes to the Town's Zoning By-Law or otherwise. As petitioners we propose referring discussion of Article 12 related to zoning of Registered Marijuana Dispensaries (RMDs) in order to create an alternative path to consider this important issue. Through months of discussing the zoning and location of RMDs with constituents and fellow town meeting members, it has become evident to us that, despite our November 2013 vote in support of modification of state zoning, there remains much to be considered related to location and zoning of RMDs in Brookline. Article 12 addresses a relatively narrow subset of zoning concerns.

A referral to committee would allow us to consider for example location in medical office buildings, neutral of proximity to other zoning barriers, parking considerations in line with medical offices rather than general commerce, and a rational approach to considering proximity to schools and places where children congregate, if we deem those to be relevant factors. It would allow us to address and reconcile the disconnect between the proposed article and more generalized concerns potentially resulting in revision of zoning, but at a minimum allowing sufficient discussion. The article as written denies the ability to address numerous highly relevant variables regarding siting, yet voting against the article also takes those important discussions off the table. A vote in favor of referral will allow a committee charged with reconciling these complex, considered issues respecting the needs and interests of our constituents.

Defeated by an Electronic Recorded Vote of 165 In Favor, 141 Opposed, and 5 Abstentions.

ARTICLE 12

AMENDMENT OF REFERRAL MOTION TO REFER ARTICLE 12 SUBMITTED BY ANGELA HYATT TMM-5, BETSY SHURE-GROSS TMM-5, DAVID KNIGHT TMM-5, BRIAN HOCHLEUTNER TMM-6, AND LEE SELWYN TMM-13

Moved: to amend the Goldsmith et al referral motion by adding the following: "and to place a moratorium, until the conclusion of the 2015 Annual Town Meeting, on all activity associated with the special permitting for any Registered Marijuana Dispensary seeking to operate in Brookline."

Explanation: Until the conclusion of the 2015 Annual Town Meeting, a moratorium on activity associated with special permitting for any Registered Marijuana Dispensary seeking to operate in Brookline will allow the Moderator's committee time to more carefully analyze these issues without significant impact to the overall permitting timeline.

ARTICLE 12

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:
Article 12 has been submitted by citizen petitioners. It would amend Section 4.12 of the Zoning By-Law to prohibit any Registered Marijuana Dispensary (RMD) within 500 feet of a "daycare center or any facility in which children commonly congregate." The petitioners have indicated that they will offer a revised motion that would prohibit any RMD within 500 feet of a "daycare center or any playground or park that includes a play structure." RMDs would continue to be prohibited within the 500-foot buffer zone around schools that already exists in the Zoning By-Law.

The current Zoning By-Law was amended by Article 7 of the November 2013 Town Meeting to allow RMDs to operate by special permit in General Business, Office, or Industrial zones. No RMD may be located within 500 feet of a public or private elementary or secondary school or in a building that contains a daycare center.

The November 2013 Town Meeting also voted Favorable Action on Article 6, which grants the Board of Selectmen the authority to issue licenses for RMD operators in Brookline and to subject any such licenses to annual review.

In the process of considering Articles 6 and 7 in 2013, Town Meeting and the various boards and committees that held hearings and made recommendations on those Articles attempted to balance the need for patient access to medical marijuana with the need to mitigate any potential negative effects on the community. Many of the issues raised by Article 12 were discussed during that extensive process, which included contributions from Town Counsel and the Planning, Building, Police, and Health Departments. The Zoning By-Law Committee deliberately chose to allow other boards, committees, and commissions the flexibility to recommend more stringent regulations. For example, amendments similar to the petitioners' motion were considered and rejected by the Advisory Committee. The November 2013 Town Meeting did, however, vote to exclude RMDs from Local Business districts, thereby amending the original Warrant Article 7, which would have allowed RMDs in such districts. At the end of this process, Town Meeting overwhelmingly voted Favorable Action on Article 7, which established a 500-foot buffer zone around schools, but not around parks or daycare centers.

Article 12 presents an opportunity to revisit the question of where to allow RMDs in Brookline. Since November 2013, a proposal for an RMD on Beacon Street near Summit Avenue has been presented and withdrawn. An RMD has been proposed at the former Brookline Bank building at the intersection of Route 9 and Washington Street. The petitioners believe that conditions have changed in the past year and that the Town

accordingly should change its zoning for RMDs. In particular, they argue that the proposed RMD at the former Brookline Bank building in Brookline Village will attract a large number of patients and create traffic and congestion problems. They also contend that RMDs pose many risks to the areas in which they are located.

It is important to recognize that the debate on Article 12 should not turn on the merits (or lack thereof) of any particular applicant that seeks to operate an RMD in Brookline. New England Treatment Access (NETA), Inc. has applied to operate an RMD in Brookline and has indicated that it would like to open that RMD in the former Brookline Bank. NETA representatives have participated actively at public hearings and meetings of the various Town boards and committees that have considered Article 12. NETA, however, still needs to obtain a license from the Board of Selectmen and a special permit from the Zoning Board of Appeals. Town Meeting's vote on Article 12 is a vote on zoning pertaining to RMDs, not a decision on NETA's application.

DISCUSSION:

Advisory Committee Recommendation and Rationale

The overwhelming majority of the Advisory Committee voted against amending the Zoning By-Law's provisions regarding RMDs. There are three general reasons for this recommendation.

It is Important to Preserve Access to Medical Marijuana for patients in Brookline

The Advisory Committee felt that further restricting the potential sites for an RMD would limit access to medical marijuana for patients in Brookline, as well as those in nearby areas.

The original version of Article 12 and all amended or revised versions that have been offered would severely limit the number of sites at which an RMD could be located. The original Article would have eliminated most or all potential sites. The petitioners' current motion would be slightly less restrictive, but if it were to become law the primary option for an RMD would be a small strip along Route 9 between Hammond Street and the Brookline/Newton line.

Restricting the potential sites for an RMD to a very limited number of addresses makes it less likely that an RMD could open in Brookline. It is difficult to find sites that have space available, parking, and access to public transit. Some landlords do not want to rent to RMDs.

Having an RMD in Brookline not only will maximize access for Brookline patients, but will ensure that Brookline boards, commissions, and departments—including the Selectmen, Health Department, and Police—will have oversight and enforcement responsibilities.

The Advisory Committee also recognized that the negative consequences, if any, of an RMD in Brookline, must weighed against the benefits that patients would receive from access to medical marijuana.

The Potential Negative Effects of an RMD in Brookline Have Been Exaggerated

The proponents of Article 12 have claimed that an RMD would have multiple negative effects on Brookline, but those effects and fears have been overstated.

First, a Brookline RMD is unlikely to become a "regional dispensary" that would attract an excessive number of patients from throughout the Greater Boston area. Although Boston Mayor Martin Walsh initially opposed having an RMD in Boston, he has changed his position. On November 7, the Massachusetts Department of Public Health (DPH) gave Patriot Care Corp. preliminary approval to operate an RMD in Boston. Patriot Care hopes to open its RMD at 21 Milk Street in downtown Boston. Mayor Walsh reacted by saying, "We're going to live with the law. I didn't support it in the beginning; I just thought it was too open-ended. But in saying that, it's the law today, and everything can be worked out." Walsh also said, "As long as there's good tight regulation here — and I think the state has put some good tight regulations on it, as well as the Boston Public Health Commission — things will be OK." RMDs are also planned for Newton and Quincy. Others are likely to open in communities near Brookline as the state approves additional licenses. Patients in the Greater Boston area will not be forced to rely on an RMD in Brookline.

In addition, it is not true that the state DPH has relaxed the requirements for a doctor-patient relationship that must exist in order for a physician to prescribe medical marijuana. DPH regulation 725.010 (D) states: "A certifying physician may issue a written relationship only for a qualifying patient with whom the physician has a bon fide physician-patient relationship." Moreover, the August 21, 2014, revised DPH Guidelines for Physicians Regarding the Medical Use of Marijuana indicate that the physician must have "a role in the patient's ongoing care and treatment." DPH regulations also define and enumerate the debilitating conditions that a patient must have in order to be eligible for medical marijuana. The DPH regulations limit the number of potential medical marijuana patients and thus make it less likely that a Brookline RMD and the surrounding area will be overwhelmed by massive numbers of patients.

Second, it is doubtful that children in daycare centers will be put at risk by a Brookline RMD. Article 12's proponents argue that there should be a buffer zone to prevent RMDs from operating within 500 feet of a daycare center. Children at a daycare center, however, are heavily supervised. Preschoolers from a daycare center may observe patients entering and leaving an RMD, but they are unlikely to be harmed by that experience, even if they are able to identify which adults in the area are patients. State DPH regulations prohibit edible medical marijuana products from looking like commercially available candy, so there is little or no risk that a child will think that he or she has found a candy bar if a patient inadvertently drops some medical marijuana. (Note

that current Brookline zoning prohibits RMDs in buildings that contain a daycare center, but that provision recognizes that no separation at all would be possible between patients and children under those circumstances, regardless of the level of supervision.)

Third, proponents of Article 12 suggest that medical marijuana will be diverted for illicit use and that Brookline should thus further restrict where an RMD could be located. Fears of diversion may be exaggerated. Diversion of medical marijuana is a felony under Massachusetts state law. Patients receiving medical marijuana would likely be deterred by the possibility of a felony conviction. There is also now a state database to track sales of medical marijuana and further reduce the risk of diversion. The MMJ Online System was launched on October 8. It will be used "by law enforcement to verify that an individual can legally purchase and possess marijuana for medical use; and by RMDs to track the amount of marijuana purchased by patients each month." Furthermore, it is not clear whether the level of diversion, if any, is related to the location of the RMD. If patients intend to divert marijuana for illicit use, they may take it home instead of attempting to sell it on the street outside the RMD or in response to a tap on the shoulder from a potential buyer. Thus changing zoning to allow RMDs in some areas but not others—as Article 12 does—might not address any potential diversion concerns.

The Selectmen Can Use the Licensing Process to Regulate RMDs and Minimize Any Adverse Consequences

The Advisory Committee recognized that the Board of Selectmen could limit any adverse consequences (e.g., traffic and parking concerns) of a Brookline RMD. Newton has imposed conditions on the operation of its RMD that may serve as a model for Brookline. In Newton, the conditions include: The facility will not be open on Sunday; A police detail will be hired during operating hours for the first week after opening; Walk-in appointments will not be allowed; No more than six staff will be on-site at one time; On-site transactions will be limited to one ounce per customer per visit, with the balance of the order delivered to the customer.

The Board of Selectmen have adopted regulations pursuant to their role as the licensing board for RMDs under the by-law amendments made by Article 6 at the November 2013 Town Meeting. Those regulations can be found here: http://www.brooklinema.gov/documentcenter/view/5819

Under the regulations, the Selectmen can limit the RMD's hours of operation, require a security guard, and mandate that patients use the rear lower level. The Selectmen might be able to follow Newton's lead to require that all patients have an appointment before visiting the RMD. Any attempt to require that the RMD use deliveries as the only means of distributing medical marijuana might be subject to legal challenge, but the Selectmen should consider how deliveries could alleviate traffic at the RMD site. The Selectmen also reserve the right to change the regulations, so other provisions could be added.

The Selectmen are fully aware of their regulatory authority during the licensing process, and their report on Article 12 makes clear that they intend to use that authority.

When it grants a special permit to an RMD, the Zoning Board of Appeals also can impose conditions related to parking and security measures.

Other Arguments and Issues

Many arguments and questions have emerged in the debate on Article 12. A few are discussed below.

Is the Former Brookline Bank Building is a Poor Location?

Although Article 12 is about Brookline-wide zoning, not a particular site, it is clear that some proponents of the Article think that the former Brookline Bank building is not a good location for an RMD. Last year, the Zoning By-Law Committee also questioned whether a building such as the Brookline Bank building would be the best location for an RMD. At that early stage in the process, the Zoning By-Law Committee envisaged an RMD in a medical or other office building where it would be relatively invisible and unobtrusive. Since then, it has become clear that such space may not necessarily be available to an RMD.

No location is ideal, but the Brookline Bank building offers some advantages in terms of security, proximity to multiple modes of public transit, and on-site parking. Concerns about the use of the building as an RMD should be weighed against the alternatives, including prolonged vacancy, another use that would generate as much or more traffic, or even demolition.

Will Federal Law be Enforced against a Brookline RMD?

Proponents of Article 12 suggest that the U.S. Department of Justice may decide to enforce federal law and close down a Brookline RMD if, for example, it is located within 1000 feet of a school or public housing. The question of how the U.S. Department of Justice will act to enforce federal marijuana laws is not new. The petitioner's description (prepared by the Planning Department) for Article 7 for the November 2013 Town Meeting notes that "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."

NETA spokespersons claim to have studied federal enforcement guidelines closely. NETA believes that the risks are minimal and that federal enforcement practices have changed since 2013. The extensive Massachusetts state regulations were formulated in part to reassure the U.S. Department of Justice that medical marijuana would be carefully controlled in Massachusetts.

The Advisory Committee noted that the possession, sale, and use of marijuana remain illegal under federal law and that federal enforcement guidelines could change, either to relax enforcement or to make it more vigorous. Most important, however, the Advisory Committee recognized that the primary risk, if any, due to federal law enforcement will be borne by the operator of any RMD in Brookline. Any business venture confronts various risks. RMD operators will assess those risks, including the risk of federal law enforcement, and they will act accordingly. If the Town is subject to significant legal risk, Town Counsel can advise the Selectmen on how to proceed in the licensing process.

Why Not Adopt the State Default Guidelines?

Proponents of Article 12 have suggested that the guidelines in the 2013 state regulations on medical marijuana are recommendations. The original version of Article 12 would amend Brookline's Zoning By-Law to follow those guidelines. The actual language of the state regulations, however, makes clear that cities and towns may adopt their own standards and that the state guidelines only apply to communities that do not impose their own requirements.

In the process that preceded the 2013 Town Meeting vote, Brookline's boards and committees considered the state default regulations and decided that adopting them would essentially prevent any RMD from operating in Brookline.

What Impact Will the ANR Application Have?

The owner of the former Brookline Bank building filed an Approval Not Required (ANR) Subdivision Application with Brookline's Planning Department on September 17, 2014. The Planning Board has voted an endorsement of this plan. Associate Town Counsel Patty Correa has informed the Advisory Committee that "it appears that the statutory filing requirements for an ANR endorsement are satisfied."

The ANR filing essentially "freezes" the zoning of the property for three years. Associate Town Counsel Correa reports that G.L. c. 40A, s. 6 states that the "use of the land shown on [the] plan shall be governed by applicable provisions of the zoning … by-law in effect at the time of the submission of such a plan … for a period of three years from the endorsement by the planning board."

Notwithstanding, it is possible that there could be a legal challenge to RMD use of the Brookline Bank property if the site is re-zoned to prohibit such a use and NETA or another operator were to open an RMD there during the next three years.

Motions Considered by the Advisory Committee

The Advisory Committee did not vote on the original language of Article 12. Instead, it considered a motion offered by its Subcommittee on Planning Regulation:

In Sec. 4.12—Registered Marijuana Dispensary (RMD), paragraph 2, General Restrictions, insert the following new language, which is in bold type:

b. "Be located more than 500 feet from an elementary or secondary school, public or private, **or 100 feet from a daycare center, or 500 feet from any playground or park that includes a play structure,** as measured from lot boundary to lot boundary."

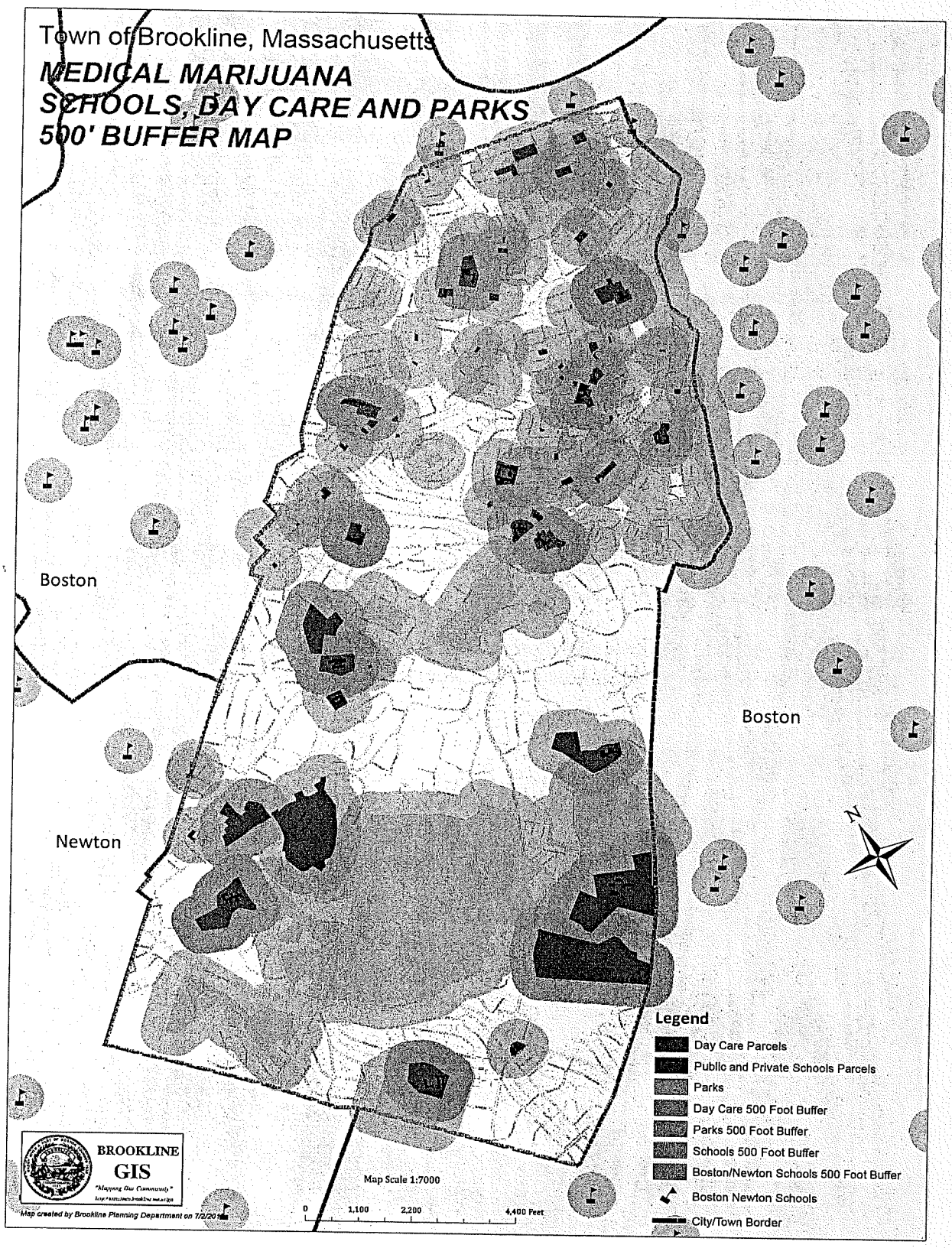
The Subcommittee motion reflected a desire to further limit where an RMD could operate while still allowing a potential RMD a broader choice of sites than the original language of Article 12.

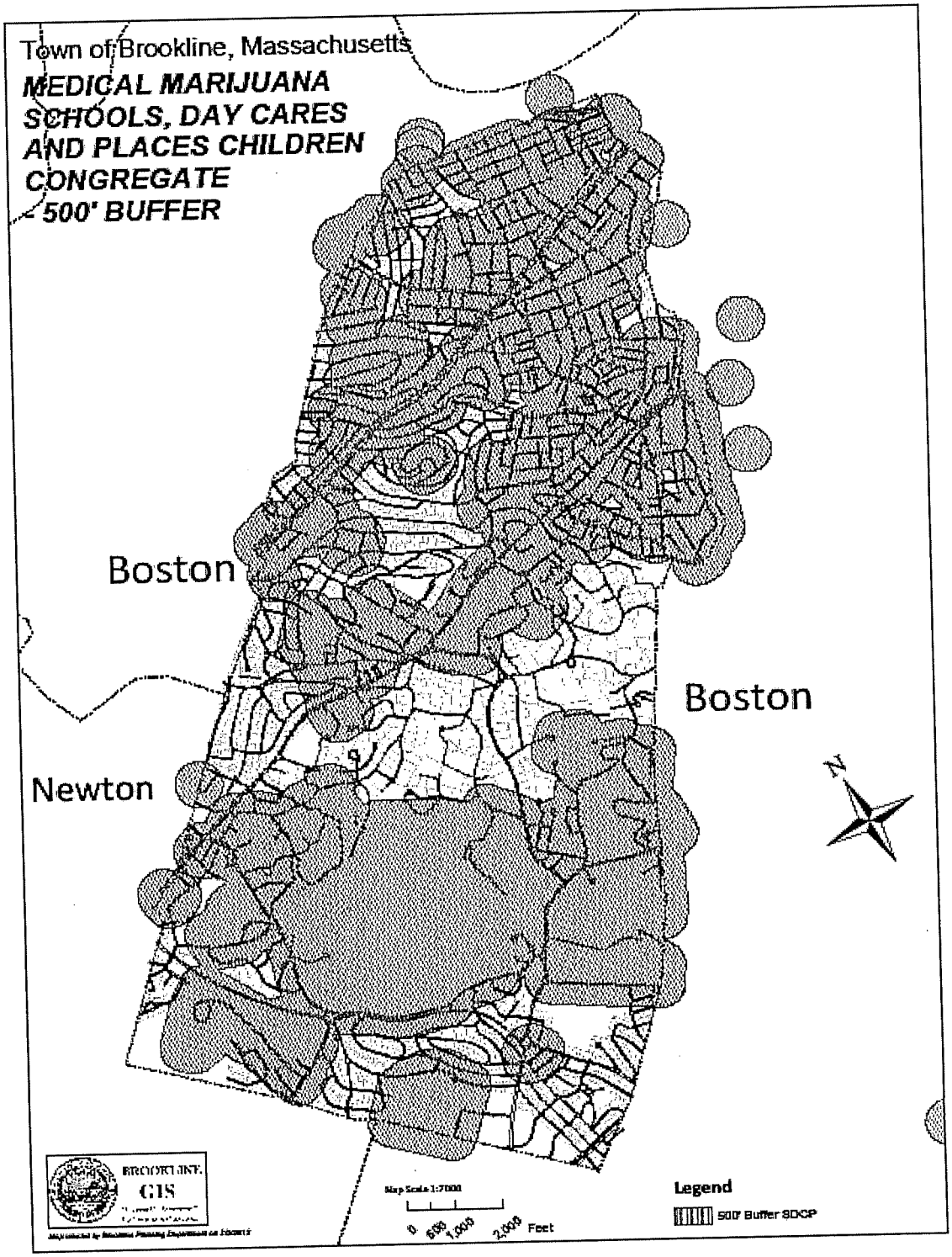
The Advisory Committee also considered the petitioners' amendment to the Subcommittee motion:

b. "Be located more than 500 feet from an elementary or secondary school, public or private, **daycare center, or any playground or park that includes a play structure,** as measured from lot boundary to lot boundary."

RECOMMENDATION:
By a vote of 25–1–1, the Advisory Committee recommends NO ACTION on the petitioners' motion under Article 12.

By a vote of 23–3–1, the Advisory Committee recommends NO ACTION on the motion offered by the Advisory Committee's Subcommittee on Planning and Regulation under Article 12.


Town of Brookline, Massachusetts
MEDICAL MARIJUANA
SCHOOLS, DAY CARE AND PARKS
500' BUFFER MAP
Boston
Boston
Newton
N
Legend
Day Care Parcels
Public and Private Schools Parcels
Parks
Day Care 500 Foot Buffer
Parks 500 Foot Buffer
Schools 500 Foot Buffer
Boston/Newton Schools 500 Foot Buffer
Boston Newton Schools
City/Town Border
BROOKLINE
GIS
Map Scale 1:7000
0
1,100
2,200
4,400 Feet


Town of Brookline, Massachusetts
MEDICAL MARIJUANA
SCHOOLS, DAY CARES
AND PLACES CHILDREN
CONGREGATE
500' BUFFER
Boston
Boston
Newton
N
BROOKLINE
GIS
Map Scale 1:7000
0 500 1,000 2,000 Feet
Legend
500' Buffer SDCP

ARTICLE 12

TWELFTH ARTICLE
Submitted by: Gordon Bennett

To see if the Town will amend the Brookline Zoning By-Laws, Article 4.12, Registered Marijuana Dispensary (RMD), to make Brookline's requirements consistent with the generally-applicable statewide requirements for the location of registered marijuana dispensaries as set forth in Commonwealth of Massachusetts Regulations at 105 CMR 725.110(A)(14), as follows (language to be deleted appears as strike-out and new language is 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, **daycare center, or any facility in which children commonly congregate,** 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.
d. ~~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.
e. ~~f.~~ Require that if an RMD cultivates marijuana in Brookline, it shall be in an entirely enclosed building for security purposes.
f. ~~g.~~ Submit a detailed description of security measures for the RMD, such as lighting, fencing, gates, and alarms, etc., comply with the requirements of 105 CMR 725, to ensure the safety of persons and protect the premises from theft.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Introduction

On November 6, 2012, more than 70 percent of Brookline voters approved the "Law for the Humanitarian Medical Use of Marijuana." (the Law) The Law took effect on January 1, 2013. In passing that Law, Brookline residents' compassion for patients in pain was paramount.

Perhaps influenced by the Ballot question's super-majority support, a little over a year later on November 19, 2013, Brookline Town Meeting passed three warrant articles that created a framework for the operation of an RMD in Brookline. From this warrant article's perspective, the most important was article 7, which dealt with zoning. Rather than adopting Massachusetts Department of Public Health's (DPH) five hundred foot buffer zones created to protect children, the article eliminated one whole category of safeguards ("any facility in which children commonly congregate") and drastically relaxed a second (rather than a five hundred foot setback, a daycare now cannot be in the same building). The third category of setback for schools was maintained.

Brookline voters were never asked, and did not consent to these changes. Support for the Ballot question and medical marijuana in general, should not be construed as support for its subsequent de-facto regulatory reality. If left to stand, these zoning changes have the potential to seriously harm the neighborhood where an RMD is sited. Thus, we propose amending the General Restrictions for RMDs by adopting the Commonwealth's standards for protection of children. This amendment conforms to the original goal of providing access to medical marijuana for critically ill patients. At the same time, this change strengthens Brookline's family-friendly culture and maintains its "streetscape" walking neighborhood character.

Recognized by the state as a build-out community, Brookline is a dense, urban area making setbacks vitally important. Surrounding communities have actually adopted even more restrictive buffer zones for RMDs than were originally foreseen in the state regulations. Using the five hundred foot buffer zone state standard, Newton includes "houses of worship or religious use." Cambridge, also using the five hundred foot setbacks, established special overlay districts to restrict the areas in which an RMD could be sited. Amending Brookline's By-Laws to be in accord with state standards still leaves Brookline with the least stringent buffer zones in the area.

1) Protecting Children

Children are protected under Massachusetts law. Along with those disabled by illness, their care and security must be considered. Indeed, the state's RMD buffer zones recognize and

safeguard only children. No protection is afforded property owners, religious institutions, and other commercial ventures.

The Massachusetts criminal code acknowledges the increased risk to children of drugs and their exposure to those who have or would sell them. It protects areas where children congregate even beyond the crime of predatory sale to children. M.G.L. Chapter 94c, Section 32J, for instance, makes it a felony to distribute drugs near schools, parks, and playgrounds.

Concern about poisoning and overdose is an important motivation for buffer zones. Accidental ingestion is of particular concern given the menu of edibles and fizzy drinks. "Children's Hospital see surge in kids accidently eating marijuana" is a headline from the May 21st, 2014 Denver Post. The article discusses how seven of the nine kids brought in this year have had to be admitted into the intensive-care unit of the hospital. As a point of reference, between 2005 and 2013 only eight children were admitted for unintentional ingestion. Currently, there is no maximum dosage limits so that the ingestion of a single brownie can be dangerously toxic to a young child. In Colorado, "marijuana exposures resulted in more ED evaluations, hospital admissions, and clinical symptoms than did ethanol exposures" (Wang, S., et al, "Pediatric Marijuana Exposures in a Medical Marijuana State" JAMA Pediatrics, 2013;167(7);630-633).

Creating a "safe zone" for children is the intent of the state regulatory standard. In addition to schools, daycare centers are included for this very purpose. As of this writing, Brookline has thirty seven. The regulations simply and pragmatically recognize that the area around an RMD is likely to be problematic. Large amounts of cash and marijuana must be transported through the immediate neighborhood when entering and exiting the store. Not all customers are driven by genuine medical need. In addition to being possible targets of crime, less scrupulous customers have strong financial incentives for resale as described below. Including daycare centers as part of the buffer zone protects young children.

"A facility in which children commonly congregate," is the third, five hundred foot buffer zone category. The words are vague and open-ended for a reason: written to protect children, the regulations recognize kids can be found in far more places than can practically enumerated. As a community, Brookline has a long history of supporting families and children with its excellent schools, parks, libraries, and recreation opportunities. Brookline is also the home of numerous religious institutions, children-centric businesses including toy stores, clothes stores, a children's bookstore, a puppet theatre, dance studios, etc. Daycare centers are required to go to playgrounds on a daily basis. This diversity of locales in which children can be found is the very reason the DPH included the language. It is deliberately expansive rather than restrictive.

The three state setbacks are germane. By including them, the Commonwealth recognized that, despite other protective regulatory measures, siting RMDs next to schools, daycare centers, and facilities where children commonly congregate will be harmful to our kids.

2) Diversion

Diversion of legal medical marijuana into the hands of youth and recreational users is a certainty. DPH chose to liberally interpret the Law's language of a sixty day supply purchase limit setting it at ten ounces. This amount of marijuana is enough to roll nearly one thousand joints, sufficient for a person to smoke an entire joint nearly every waking hour of every day for the entire two month period (0.3 to 0.5 grams per "joint", RAND Institute study).

In comparison, Colorado allows no more than two ounces for medical use in a person's possession at any one time and no more than one ounce for recreational use. New York does not allow possession of marijuana buds at all; patients are only allowed to consume marijuana through food, oils, pills, and vapors. Unlike other states, New York only permits marijuana to be dispensed at hospitals and has strict limits on which illnesses can be treated. Terence O'Leary, a New York State official said, "We're treating this like medicine in every way, shape or form, including how it's produced and how it's dispensed and how it's used." ("New medical marijuana law inches along in New York State", Buffalo News, August 30, 2014) Washington State allows possession of up to two ounces at any one time. By allowing ten ounces of marijuana in an individual's possession, Massachusetts heightens the risk of diversion.

Other factors increasing the risk of diversion include:

- Elevated potency. According to the National Institute on Drug Abuse, typical marijuana today is five to eleven times as powerful as forty years ago.

- Dispensary to "street" price spread. As a stated business policy, the RMD plans to sell marijuana at $300 per ounce, "below market rates." With street prices around $400 an ounce, the $100 spread per ounce presents dangerous financial incentives.

- Lack of real-time tracking system.

Policing the public consumption of edibles will be especially difficult as the telltale sign of marijuana's pungent aroma will be absent. For example, "in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses. (California Police Chiefs Association White Paper on Marijuana Dispensaries, 2009)

Diversion is particularly dangerous for teenagers. In "Teenage kicks: cannabis and the adolescent brain" (Lancet Vol 381, March 16, 2013) researchers found that adolescent cannabis use is more damaging to cognitive abilities during adulthood than is adult use. From the article:

"The findings showed, first, that persistent cannabis use is associated with a statistically significant decline in cognitive ability. That is, the more persistent the cannabis use, the greater the cognitive decline. Second, the association between persistent cannabis use and cognitive decline was significantly greater for people who began using cannabis before, compared with after, 18 years. Third, if cannabis use started in adolescence (before 18 years), the cognitive deficit remained significant when people had stopped using for at least 1 year before testing. The results remained significant after adjustment for other possible confounding factors, including alcohol and so-called hard-drug dependence (eg, heroin, cocaine, or amphetamines), years of education, and diagnosis of schizophrenia."

Diversion activity is expected to be highest closest to the RMD. In the February 2007 issue of the Journal "Pain Medicine" an article entitled "Mechanisms of Prescription Drug Diversion Among Drug-Involved Club and Street-Based Populations" states the data suggest "that there are numerous active street markets involving patients ... Many ... have been appropriately diagnosed ..., but are selling their prescription drugs for profit... In addition, there are many individuals posing as legitimate patients for the purposes of scamming ... or otherwise defrauding the system." Mitigating diversion risk is not done at the state level alone but by local education, awareness, law enforcement and sensible, community-specific implementation of laws, including zoning safety standards, to minimize this risk.

Given the price gap, the ability to purchase ten ounces, the lack of a real-time purchase tracking system, difficult-to-identify edible products, and patient reselling, diversion into Brookline is a near certainty. An RMD in Brookline is likely to be a regional distribution center not only for legal medical use, but also for illegal recreational enjoyment. This is not what Brookline voters anticipated when they voted overwhelming for medical marijuana. The importance of distancing this activity from residences, neighborhoods, daycares and playgrounds as well as schools will maintain community spaces where families feel safe and businesses can thrive.

3) The DPH's Reinterpretation of the Law, the Growth of Prescription Mills, and the Expansion of Medical Marijuana Users

In 2012, Brookline voted overwhelmingly to support critically ill patients. They did not vote for a single-use retail store serving hundreds of thousands of people sited near schools, daycare centers, and facilities in which children commonly congregate.

One of the regulatory changes that has altered the actual implementation of medical marijuana is the definition of diseases. The original petition language stated:

"a patient must have been diagnosed with a debilitating medical condition, such as cancer, glaucoma, HIV-positive status or AIDS, hepatitis C, Crohn's disease, Parkinson's disease, ALS, or multiple sclerosis."

The DPH's regulatory definition, however, is a:

"debilitating medical condition shall mean: cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient's physician."

The difference is subtle but critical. Rather than defining the list of debilitating conditions itself, the DPH relegates that decision to doctors. That change expands the pool of likely patients by a factor of ten.

Colorado's experience is instructive. While not directly comparable, according to a June 2013 report from the Colorado Office of the State Auditor, only 8 percent of all the reported conditions are described as cancer, glaucoma, cachexia, or ALS. The non-listed condition of severe pain accounted for ninety-four percent (percentages do not add up to 100 percent because some patients have more than one condition). This suggests that the percentage of customers served as intended by the original Massachusetts legislation is more likely around 0.2 percent of the general population, rather than the 2 percent of the current population that DPH estimates. By making explicit the ability of a doctor to go beyond the original list, the DPH regulations enable an ever-growing list of conditions for which medical marijuana can be obtained.

Colorado is also instructive of what Massachusetts can expect regarding the statistics of physicians involved in this business. According to the same report mentioned above, in Colorado, just 12 physicians had certified half of the 108,000 registered patients and one had registered more than 8,400. Already in Massachusetts, commercially-minded physicians are following their Colorado colleagues in setting up specialty offices to provide access specifically to marijuana. The conflict of interest for doctors is clear. The best interests of patients are subordinated. ("Doctors open offices in Mass. to prescribe marijuana – Boston Globe, March 16, 2014) Charging $200 to $250 for an evaluation and a certificate, these physician-run prescription mills undermine the notion of a bona fide relationship.

With fewer RMDs statewide (currently only eleven of thirty-five that were to be opened according to the Law by 2013 have a provisional license) and a larger pool of patients accessing each RMD, the concerns for the host community and adjacent neighborhoods are intensified.

4) Neighborhood Impact

The analogy is often drawn between marijuana and liquor with the logical inference being that RMDs have little or no adverse impact. This inference is false:

- Brookline's RMD will serve a super-regional customer base.
- Market price and street price for liquor are equivalent.
- Marijuana is still illegal for recreational use creating inducements for illegal follow-on sales.
- Predominantly cash nature of the business.

Due to the proposed RMD's unexpectedly large population pool, this concentrates the number of visits, the traffic, the parking requirements, the amount of cash coming into each location, and the amount of marijuana leaving each RMD. The neighborhood closest to the RMD bears a significant burden.

Brookline can expect a particularly high concentration of visits because of its proximity to Boston. Boston's Mayor Marty Walsh has stated that he is "dead set" against RMDs ("Mayor Walsh says he aims to block dispensaries", Boston Globe, April 9, 2014) and campaigned against the 2012 ballot question which authorized medical marijuana. He thinks it could lead to a spike in illegal drug activity. His implacable opposition makes it possible that Boston may not ever have an RMD during his term as Mayor.

Including Boston, Brookline's RMD pool of customers is approximately 700,000. Based on the Colorado experience, New England Treatment Access (NETA) state application, and DPH estimates, at least two percent of those individuals, approximately 14,000, will receive qualifying certificates. Using the average number of 2.5 visits per customer per month (NETA's assumption), a Brookline RMD can expect 35,000 visits a month. As the RMD is expected to be open 7 days a week, 9 hours a day, 365 days a year, the number of visits on average will be around 130 customers an hour. An increase of this magnitude raises the risk of traffic-related accidents and is problematic for the surrounding neighborhood. Furthermore, careful consideration must be given to the very real possibility that the RMD becomes a full-fledged retail store if the state eventually legalizes recreational marijuana.

The immediate neighborhood around an RMD has an increased risk of crime due to the large amount of cash carried in, and the high street value of the product carried out of that RMD. NETA's experience in Colorado is that the average customer buys 1.6 ounces of marijuana a month. This translates to nearly ¾ of a ton, or in dollar terms, around $6,720,000 per month. The majority of these sales will be paid in cash because most finance companies refuse to do business with RMDs due to the Federal government classification of marijuana as a Class 1 drug.

While medical marijuana industry groups frequently cite studies suggesting no increase in violent crime in the vicinity of RMDs or in states that have legalized medical marijuana, it is also true that violent crime has been dropping nationally since 1990. In comparing twelve year trends of violent crime within each state pre and post adoption of medical marijuana with the national numbers over the same period, in ten out of twelve states, violent crime rates fell less or actually rose compared with the U.S. as a whole. (American Thinker, April 23, 2014) This suggests that crime did increase on a relative basis in states with medical marijuana.

Further, local police recognize the possibility of crime and deploy more resources to the area around RMDs. This impacts their ability to perform other duties. Speaking in front of the Long Beach, California Planning Department on July17th this year, Police Chief Jim McDonnell said:

"Our attempts to address the complaints and criminal activity in and around marijuana dispensaries proved to be a substantial burden on our already strained resources... At the

same time we have been asked from a resource standpoint to address dispensaries, we've been directed also, and will continue to look at other serious issues ... So taking a step backward, the medical marijuana arena will negatively impact our ability to be able to address these and other issues." (Long Beach Report – July 21st, 2014)

Brookline has the advantage of drawing on the experiences of others to understand more fully the impact of RMDs. A particularly relevant one, given the community's similarity to Brookline, is Noe Valley / Mission area in San Francisco. It welcomed its first RMD in October of 2004 serving around 75 customers a day, less than one tenth of that expected in Brookline. By the summer of 2005, the neighborhood was complaining about cars, loitering, feeling intimidated, and observing open marijuana use, distribution and resale. By December 2005, the RMD was ordered to move by the San Francisco Board of Appeals. (The Noe Valley Voice, October 2004, July-August 2005, December-January 2005)

In Noe Valley the changes were rapid and dramatic. Nonviolent crime impacts the quality-of-life of a neighborhood. Proactive zoning buffering young children, playgrounds, and residences mitigates the exposure of families to the realistic risk of increased nonviolent crime.

Mark Kleiman, UCLA professor of Public Policy and an expert on the legalization of marijuana, advocates a 100 percent deliver model to alleviate local impacts rather than having full-fledged retail stores. (Los Angeles Times – December 4th, 2013) While this resolves many of the aforementioned issues, this is not the proposed licensee's business model.

5) State Standard Buffer Zones Do Not Block RMDs from Brookline

Massachusetts law prohibits towns from banning RMDs. In a March 13, 2013 ruling striking down the town of Wakefield's total ban on RMDs, Margaret Hurley in the Massachusetts Attorney General's Office wrote:

"We conclude that a municipality may not completely ban such centers within its borders, we also conclude that municipalities are not prohibited from adopting zoning by-laws to regulate medical marijuana treatment centers, so long as such zoning by-laws do not conflict with the Act (or regulations adopted to implement the Act), and are not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare."

During the debate surrounding RMDs at Town Meeting last November, it was suggested that following the Commonwealth's buffer zone standards would have led to an "effective ban" on RMDs in Brookline. Town Planning Department bubble charts show however, that if the proposed state regulatory "default" buffer zones are applied to Brookline's General Business, Office, and Industrial Zones, there will be several areas in Brookline where an RMD can be sited. Thus, adopting the state standards will still enable an RMD in Brookline to serve critically ill patients, and can hardly be considered "arbitrary and unreasonable."

6) Conclusion

With the most honorable of intentions, Brookline voted for medical marijuana in 2012. The contrast between Ballot question's idealism and the sobering reality of the Law's execution however, is overwhelming. Only a modern-day Casandra could have foreseen these results:

- Heightened risk to Brookline's children, youth, and teenagers
- A Brookline RMD becoming a super-regional marijuana distribution center
- Boston Mayor Walsh's implacable opposition to RMDs
- Extensive menu of edibles and fizzy drinks elevating risk to children and facilitating illegal public consumption
- Open-ended expansion of qualifying conditions
- Growth of doctor mills mocking bona fide physician – patient relationships
- Unexpected wave of customers causing traffic and parking issues
- Surprisingly high maximum ten ounce marijuana purchase quantity
- Increased risk of diversion because of RMD's below market pricing
- Large magnitude of cash and marijuana introduced on Brookline's streets
- Strained police resources

Given our now more nuanced understanding of the Law's consequences and a new comprehension of the complexities surrounding an RMD's impact on Brookline, it is reasonable, sensible, and prudent to adjust course to the pragmatic implications of the Law's implementation.

Adopting the Commonwealth's setback standards' language for five hundred foot buffer zones for "a school, daycare center, or any facility in which children commonly congregate" does not block RMDs from Brookline. It still permits an RMD to be sited in Brookline while simultaneously protecting the children and neighborhoods of Brookline from concentrated exposure to the activity around an RMD.

The petitioners urge you to vote for this amendment to the Zoning By-Law.

MOTION TO BE OFFERED BY THE PETITIONER

VOTED: that the Town amend the Brookline Zoning By-Laws, Article 4.12, Registered Marijuana Dispensary (RMD), to make Brookline's requirements consistent with the generally-applicable statewide requirements for the location of registered marijuana dispensaries as set forth in Commonwealth of Massachusetts Regulations at 105 CMR 725.110(A)(14), as follows (language to be deleted appears as strike-out and new language is in bold):

Sec. 4.12 - Registered Marijuana Dispensary (RMD)

November 18, 2014 Special Town Meeting

12-10

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, **daycare center, or any playground or park that includes a play structure,** 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.
d. ~~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.
e. ~~f.~~ Require that if an RMD cultivates marijuana in Brookline, it shall be in an entirely enclosed building for security purposes.
f. ~~g.~~ Submit a detailed description of security measures for the RMD, such as lighting, fencing, gates, and alarms, etc., comply with the requirements of 105 CMR 725, to ensure the safety of persons and protect the premises from theft.

Defeated by an Electronic Recorded Vote of 69 In favor, 147 Opposed and 10 Abstentions

ZONING BY-LAW COMMITTEE REPORT AND RECOMMENDATION

The current Zoning By-law requires a 500 foot buffer zone from any K-12 school around the location of a Registered Marijuana Dispensary (RMD) and prohibits them from being located in a building that houses a daycare facility. Fall 2013 Town Meeting approved this restriction after much discussion about appropriate parameters to control locations in Town for an RMD facility, while not effectively banning RMD facilities from the Town. The proposed citizen petition would restrict RMDs by requiring a 500 foot buffer around K-12 schools, daycare centers and "places where children congregate". This would effectively ban RMDs in Brookline.

Because the amendment would leave no sites in Brookline where an RMD could be located by special permit, the citizen petitioners have indicated that they might amend their proposal before Town Meeting to a 500 foot buffer zone around schools and parks and a 100 foot

buffer zone around daycares and would omit a buffer zone around "places where children congregate".

The Committee was made aware that a day care center plans to open on Boylston Street, next to the Brookline Bank site.

After the public hearing and a thorough discussion of the issues, the Zoning By-Law Committee unanimously supported the current language of the Zoning By-Law. The Committee felt that no convincing evidence was presented on how children in daycare, who are so closely supervised, would be negatively impacted by an RMD. The Committee felt that greater restrictions proposed by the petitioner are arbitrary and motivated by a specific desire to thwart the proposed Brookline Bank site. They noted that there are 'site control' restrictions in the State statute, such as the prohibition of display of products in windows and size of signage. An RMD is already restricted by the current Zoning By-Law from being located in the same building as a day care center. The Committee also was given no rationale for how a 100 foot buffer zone was chosen over a 300 or 500 foot buffer zone.

The Committee also discussed the danger of diversion of medical marijuana to others. They saw no evidence that the area in close proximity to an RMD was more likely to be a site where diversion took place. Committee members pointed out that diversion of medical marijuana is a felony, whereas small amounts of black market marijuana diverted to others is a misdemeanor.

In conclusion, the Zoning By-Law Committee felt that with the required review of an RMD application by the Planning Board, Board of Appeals and Board of Selectmen (through its licensing procedure) issues of concern can be addressed through imposed conditions. These may include restrictions on the method employed to sell and deliver medical marijuana to patients, the hours and days of operation, number of patient visitors at any one time, traffic impacts, and security measures. Most importantly, annual review of the Board of Selectmen license is required, and as with liquor licenses, the Board of Selectmen would have the opportunity to amend or add new conditions when necessary.

Therefore, the Committee unanimously recommends NO ACTION on Article 12.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to modifying the types of facilities that must be a certain distance from registered marijuana dispensaries (RMDs) and is being submitted by citizen petitioner Gordon Bennett. The proposed amendment would require RMDs to be at least 500 feet from not only elementary and secondary schools, which is the current restriction, but also from daycares and "any facility in which children commonly congregate."

Currently, the Zoning By-law requires that RMDs be at least 500 feet from any K-12 school, and it excludes them from being in the same building as a daycare center. This buffer zone was adopted by Fall Town Meeting in 2013 after extensive discussion about what would be

an adequate distance, as well as which facilities should be included in such a buffer. Several maps were generated showing different buffer zone distances ranging from 300 feet to 1,000 feet, and included buffers from K-12 schools, daycare centers, parks, and playgrounds. Only after many hours of analysis and debate with several different boards and committees, including the Planning Board, did Town Meeting settle on allowing RMDs in General Business (G) districts with a 500-foot buffer from any K-12 school, public or private.

The proposed amendment would require that any RMD be at least 500 feet from not only any K-12 school, but also from any daycare center or place where children congregate. There are 20 K-12 schools in Brookline, but there are 89 licensed daycares. While the proposed language "place where children congregate" appears quite vague, the Massachusetts Department of Public Health, the state-level entity that is regulating and licensing RMDs, does provide some guidance about what places fit into this classification: facilities where children commonly attend in a structured, scheduled manner (i.e. dance or gymnastic schools); facilities where programs or activities targeting children or youth take place; family home day cares; and town parks with play structures intended for children. The guidelines indicate the "place where children congregate" language does not include places like ice cream shops, where children might gather but not in a structured, scheduled manner.

The minor wording change proposed by Article 12 results in a dramatic increase in the number of locations that would be restricted from having an RMD, so much so that there are no sites outside the proposed buffer zones that are also in G districts. Therefore, the proposed warrant article would effectively remove any chance of an RMD locating in Brookline.

When the Department of Planning and Community Development proposed a temporary moratorium on RMDs in the spring of 2013 in order to wait for formal Department of Public Health regulations prior to creating RMD zoning, Town Meeting passed the moratorium but strongly emphasized that Town staff should move forward with developing appropriate regulations to allow for RMDs in Brookline as soon as possible. The currently proposed warrant article would indirectly prohibit any RMD in Brookline, without an expiration date. Although the proposed warrant article explanation indicates that this wording change simply adopts the full buffer zone regulations put forth by the Department of Public Health, the DPH buffer zone regulation is the only regulation that can be overridden by a municipal requirement; a municipality has the leeway to adopt stricter or more lenient siting requirements for RMDs. The actual language of the DPH buffer zone regulation seems to assume that a municipality will adopt its own siting requirements:

> An RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be located within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. (105 CMR 725.110(A)(14))

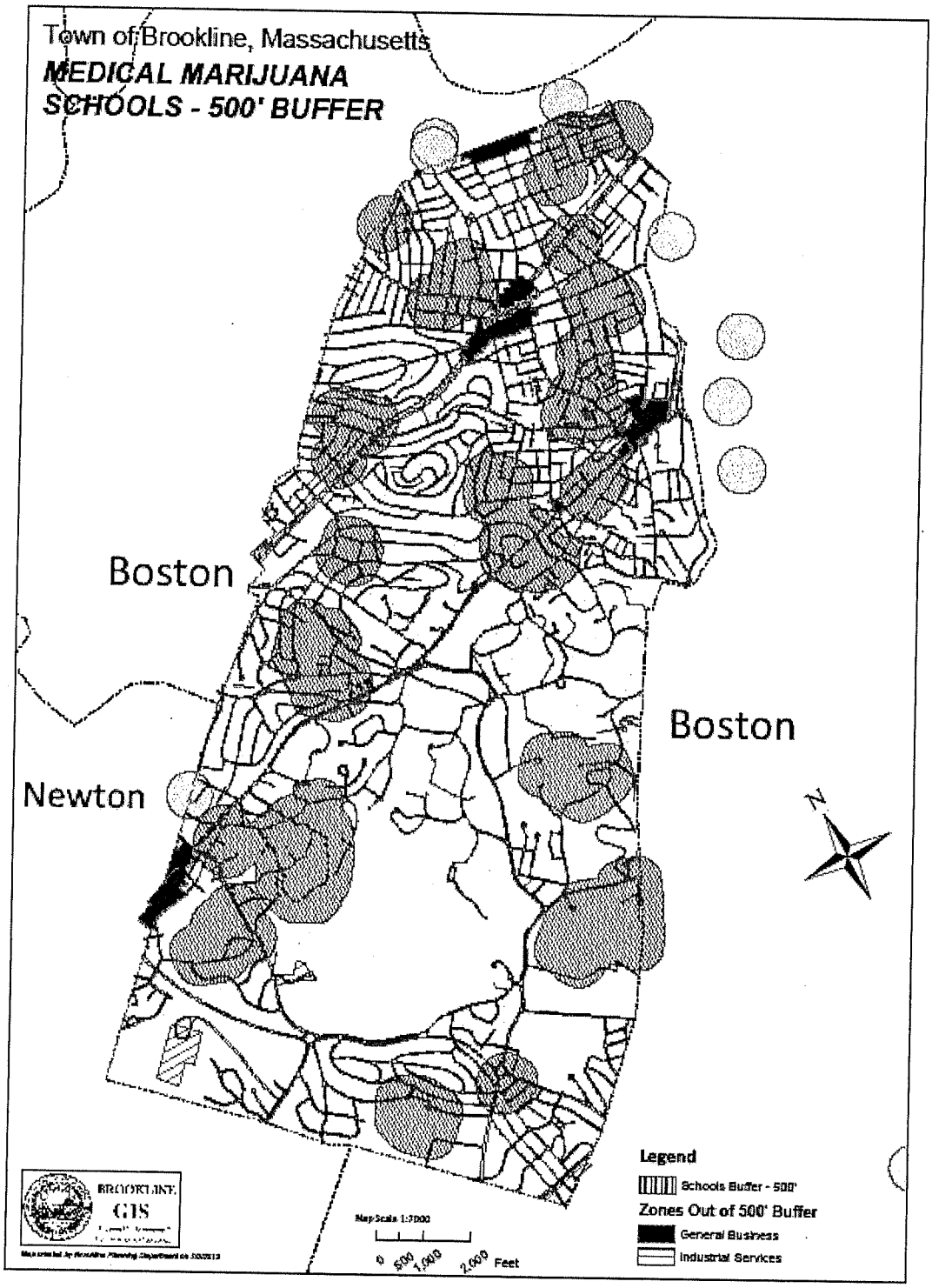
The 500-foot buffer put forth by DPH seems meant to help those municipalities that do not or cannot undertake the analysis and research needed to adopt municipal-specific siting requirements. Brookline has staff and volunteers who spent a significant amount of time researching siting issues and the likely impacts of RMDs, prior to Town Meeting's adoption of RMD zoning regulations last fall. The existing zoning regulations balance the concerns of

the general public, along with those of patients in need of medical marijuana. The risk of medical marijuana to infants and young children under constant supervision and care in daycare settings seems quite low. The possibility of diversion seems higher near K-12 schools, where children have less supervision. Excluding daycares but retaining K-12 schools in the RMD buffer zone still allows for several locations in Brookline to house an RMD and keeps the risk of diversion to non-medical marijuana patients low. RMDs are not allowed to be in the same building as a daycare under Brookline's zoning, ensuring a base level of separation from very young children.

The Planning Board is opposed to the proposed amendment. The existing zoning regulations require the documentation and implementation of security measures approved by the Brookline Police Department, ensure all signage is approved by the Planning Board, and ensure the RMD applicant has the required licenses from the both the state and Board of Selectmen. Brookline's citizenry voted overwhelmingly in favor of allowing medical marijuana, and Brookline's Town Meeting also strongly supported the RMD zoning established in fall 2013. To revise that zoning, which was adopted after considerable thought and debate, with a regulation that would effectively prohibit RMDs in Brookline, runs counter to all previous public efforts.

Therefore, the Planning Board unanimously recommends NO ACTION on Article 12.

CURRENT ZONING BY-LAW



ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

This article is related to modifying the types of facilities that must be a certain distance from registered marijuana dispensaries (RMDs) and is being submitted by citizen petitioner Gordon Bennett. The proposed amendment would require RMDs to be at least 500 feet from not only elementary and secondary schools, which is the current restriction, but also from daycares and "any facility in which children commonly congregate." The focus of the ACPH was to evaluate the impact of this proposed warrant article on public health. Members of the APCH acknowledged that this zoning bylaw has implications for many aspects of the quality life in Brookline. However, we felt our best contribution and expertise was to objectively evaluate the impact of this requested zoning change on our community's health.

Presentations were made by Mr. Saltzman and Dr. Childs on behalf of the petitioners. They outlined a broad array of concerns including public safety, traffic and parking issues, proximity to playgrounds and parks, proximity to public housing, volume, and diversion, among others.

Representatives of New England Treatment Access presented information related to the needs of patients for safe access to medical therapies, the therapeutic benefits of cannabis, and their plans for a dispensary at the Brookline Bank building.

Members questioned both the petitioners and NETA representatives, focusing on the evidence that proximity of RMDs near daycare centers had a negative impact on public health, and in particular, children. It was agreed that no evidence existed, although there was disagreement regarding why no evidence existed (medical cannabis is too recent for research to have been conducted vs medical cannabis has been in place for over a dozen years and no negative effects are present)

Members listened to dozens of comments from community members on a broad array of concerns and issues, with speakers having diverse views.

Council members expressed the view that, while many concerns raised were very important, this zoning article failed to demonstrate an adverse impact on public health. Furthermore, this warrant article failed to address many of the legitimate concerns identified by the petitioners. Members felt that the venue to address these issues was via the ZBA process, and ultimately, via the Board of Selectmen licensing process.

Therefore, the Advisory Council on Public Health recommends NO ACTION on Article 12 by a vote of 6 - 0.

Members also unanimously asked that the concerns regarding public safety and neighborhood impact be scrupulously considered if the RMD siting process moves to consideration by the ZBA and Board of Selectmen.

SELECTMEN'S RECOMMENDATION

Article 12 is a petitioned article that would amend the zoning by-law established in November, 2013 allowing Registered Marijuana Dispensaries (RMDs) in Brookline. That by-law was enacted after Massachusetts residents voted, in November 2012, to allow medical marijuana to be used for the treatment of patients with certain medical conditions. At the May, 2013 Annual Town Meeting, a temporary moratorium on RMDs in Brookline was approved through June 30, 2014 to allow the Town to formulate regulations in conformance with State regulations, which had not yet been adopted. Then, in the fall of 2013, Town Meeting approved a Zoning By-Law to allow RMDs, by special permit, in certain locations of Town, if strict safeguard and security conditions were met. These were formulated with input from the Departments of Planning and Community Development, Public Health, Building and Police, as well as Town Counsel. Additionally, Town Meeting approved a Town By-Law requiring an annual license for RMDs from the Selectmen.

When the Zoning By-Law was adopted, there was much discussion about where in Brookline RMDs should be allowed. The Zoning By-Law that was approved restricted RMDs to General Business, Office and Industrial districts, with a restricted buffer zone around elementary and secondary schools, both public and private. Larger potential buffer zones, such as those including parks with playgrounds, daycare centers and places where children congregate, were not supported as they would effectively block RMDs from locating in Town, nor was allowing them in Local Business zones supported, as initially proposed.

After consideration of all the public comments at its hearing, the Board of Selectmen felt that the best way to regulate RMDs is not through further restrictions on the allowed locations, but rather through the conditions that can be attached to any Zoning Board of Appeals (ZBA) special permit and Board of Selectmen license for an RMD. Conditions can address the type and amount of product sold; the delivery model, the operating hours and procedures, such as requiring appointments to control the number of people at the facility and limit traffic impacts; security, including requiring the presence of a security guard on site; and signage. This annual oversight by the Selectmen will provide the opportunity to evaluate whether imposed conditions are being met and if they are effectively limiting any impacts to the Town. Annual review by the Board of Selectmen will allow addressing any issues that may arise by amending or adding conditions, or even suspending the license if conditions have not been met, just as is done with liquor licenses.

Therefore, the Board of Selectmen recommends NO ACTION, by a vote of 5-0 taken on October 28, 2014.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee will be provided in the Supplemental Mailing.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: Bobbie Knable and Ruthann Sneider

To see if the Town will amend Article IX of the Zoning By-Law as follows (new language in bold print):

Article IX, Section 9.08

1. At least seven days before any public hearing on an application for a variance, a special permit, or an extension of time pursuant to s.9.07, the Board of Appeals shall mail or deliver a notice of such hearing, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located and to those Town Meeting Members within all immediately adjoining precincts. At least seven days before any Planning Board Meeting, whether preliminary or final, on an actual or future application for a variance, special permit, or extension of time, the Planning Board shall mail or deliver a notice of such meeting to the applicants, to immediate abutters to the subject property, to each elected Town Meeting Member for the precinct in which the subject property is located, and to Town Meeting members within all immediately adjoining precincts, to all neighborhood associations registered with the Planning and Community Development Department and to all those specified on the Planning Board interoffice and distribution lists which may be amended from time to time. Notice to Town Meeting Members shall be in accordance with the names and addresses in the records of the Town Clerk.

2. **The Board of Appeals shall mail or deliver a notice to each elected Town Meeting Member for the precinct in which the property is located, to those Town Meeting Members within all immediately adjoining precincts, and to others requesting such notice, upon the occurrence of the following events:**

   a. **When the Board of Appeals grants a continuance to the applicant, including notification of the date certain when the hearing will be resumed;**
   b. **When the applicant withdraws the appeal before the Board of Appeals renders its decision, but after the application has been noticed;**
   c. **When the applicant withdraws the appeal after public notice or after a public hearing has begun.**
   d. **When the Board of Appeals renders a decision either granting or denying the application.**

3. **Minutes of all Board of Appeals hearings shall be part of the public record and shall be accessible electronically from the Town's website within 21 days of the hearing, including those resulting in a continuance of the hearing or withdrawal of the application.**

4. **The results of all Board of Appeals hearings resulting in a decision or withdrawal shall be accessible electronically from the Town's website within 21 days of such hearing.**

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Decisions by the Board of Appeals are of importance not only to the petitioner who seeks to carry out a project but also to abutters and other neighborhood residents, whose enjoyment of their property and sometimes the monetary value of that property may be affected by the outcome.

The intention of this by-law amendment is to insure that interested parties in cases brought before the Board of Appeals are provided information at crucial times during the Board's consideration of the appeal and when a decision on the appeal has been reached, and that members of the public have access to the public records of those appeals within a reasonable time.

Massachusetts General Laws, Chapter 40A, Sections 11 and 12, require that local Boards of Appeal adhere to certain "Notice Requirements", as follows (edited):

> Section 12: "The Board [of Appeals] shall cause notice of such hearing [of a petitioner's appeal] to be published and sent to parties in interest as provided in section eleven."
>
> Section 11: "Parties in interest'...shall mean the petitioner, abutters, owners of land directly opposite...and abutters to the abutters within three hundred feet of the property line of the petitioner...The assessors maintaining any applicable tax list shall certify to the permit granting authority...the names and address of parties in interest..."
>
> "...where notice to individuals...is required, notice shall be sent by mail, postage prepaid. "

PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to modifying Zoning Board of Appeals (ZBA) hearing notice procedures required by the Brookline Zoning By-Law and MGL, Chap. 40A. The article is submitted by citizen petitioners, Bobbie Knable and Ruthann Sneider.

The proposed article would amend *Section 9.08* of the Zoning By-Law by adding subparagraphs requiring notice for all Board of Appeals application extensions, continuances, withdrawals, and final Board decisions to those Town Meeting Members of the precinct in which the subject property is located, as well as all immediately adjoining precincts. The proposed article would also require all ZBA meeting minutes and final decisions to be made available on the town's website within 21 days of such hearings. Because currently there is a Town By-Law (Art. 3.21), which requires all committee/board minutes to be posted on the Town website as soon as practicable, this restriction would be more stringent for the Board of Appeals than for other committees and boards in Brookline.

The Planning Board does not support this article. All special permit/variance applicants and abutting residents within 300 feet are currently informed of Board hearings, rescheduling dates, and final decisions by mailed notice in accordance with Massachusetts General Law, Chapter 40A. Hearing dates and agendas are also made public through the Brookline town website, posted notice at Brookline Town Hall, and weekly Brookline TAB legal notices. In the event of a special permit/variance application extension or continuance, amended hearing notices are again made public in this same manner. Whenever anything is posted on the Town Calendar, Town Meeting Members automatically receive notices of the meeting or hearing. One issue that had previously been problematic was that sometimes cases were continued for very long times. The Board of Appeals has addressed this by recently adding to its Rules and Regulations a requirement that any case continued must be to a date certain.

ZBA special permit/variance decisions are similarly mailed to pertinent abutters, and made available to the public on the town's website. These decision notices include the deadline for appeal (20 days from the Town Clerk filing date) and clarification that full decision reports are available on the town's website and in the Town Clerk's Office. These decisions typically incorporate previously recorded Planning Board reports and ZBA meeting minutes.

Town Meeting Members specifically receive automatic email notification whenever ZBA hearing agendas are posted on the town website. These agendas include case addresses and a brief description of the proposal. Town Meeting Members who do not maintain active email accounts (currently 12 people) receive direct mail notice of this same information.

For these reasons, proposed additional notification to Town Meeting Members would create a redundancy of Town staff effort, present an increase in work for Town staff, and possibly overload Town Meeting Members with electronic notifications.

Most importantly, a new Zoning Coordinator position was created in the Brookline Planning and Community Development Department and filled September of 2014. The new coordinator works closely with the Planning and Building Departments to oversee all requirements related to Zoning Board of Appeals cases. Previously, many of these functions were provided by the Town Clerk's office. By locating the new position in the Planning Department (and across from the Building Department), communication about cases between the departments and with applicants and interested residents will be much

more efficient. One of the responsibilities of this position is to post ZBA meeting minutes and final decisions on the town's website "as soon as practicable" in accordance with current town bylaws. All meeting minutes indicate ZBA hearing outcomes, including continuances and withdrawals. The most difficult issue has been posting ZBA meeting minutes in a timely fashion, because drafts must first be approved by the Board of Appeals, which rotates its members to be able to meet frequently, and the members who sit each week may be different. The Zoning Coordinator is currently working with Board of Appeals members and Town Counsel on the most efficient way to finalize and post the minutes in a timely fashion.

It is the opinion of the Planning Board that current public notification of ZBA actions not only sufficiently fulfills all the requirements of the Brookline Zoning By-Law and MGL c. 40A, but also it allows interested Town Meeting members and citizens to follow a ZBA case from beginning to end. (Please see the table below.)

Therefore, the Planning Board unanimously recommends **NO ACTION** on Article 13, as submitted.

By-Law Section 9.08 ZBA Hearing Notice to Town Meeting Members and Others

Notice Action	*Current Regulation*	*Current Practice*	*Proposed Article XIII*
Hearing Notices Mailed or Delivered to Applicant & Abutters	✓	✓	Not requested but done
Hearing Notices Mailed or Delivered to Precinct/Adjacent Precinct Town Meeting Members	Email notification to Town Meeting Members in precinct and adjacent precincts	Email notification to all Town Meeting Members	Already done
Hearing Agendas Posted on Town Hall Bulletin Board*	✓	✓	Not requested but done
Hearing Agendas Included on Town Website Events Calendar*	✓	✓	Not requested but done
Hearing Details Included in Brookline Tab Legal Notices	✓	✓	Not requested but done
Meeting Minutes Posted on Town Website	Posted "as soon as practicable"	Available upon request but infrequently posted on town website	Required within 21 days of hearing
Final Decisions Filed with Town Clerk	✓	✓	Not requested but done
Final Decisions Posted on Town Website	Posted "as soon as practicable"	Posted "as soon as practicable"	Required within 21 days of hearing
Notice of Decisions Mailed to Applicant and Abutters	✓	✓	Not requested but done
Notice of Decisions Mailed or Delivered to Precinct/Adjacent Precinct Town Meeting Members		ZBA decisions posted on town website	Not currently delivered to TMMs but decision vote in minutes and decision available on line within a reasonable time
Case Continuation or Withdrawal Notices Mailed or Delivered to Precinct/Adjacent Precinct Town Meeting Members		ZBA meeting minutes posted on town website	Not currently delivered to TMMs but withdrawal vote or continuance to date certain in minutes

ZONING BY-LAW COMMITTEE REPORT AND RECOMMENDATION

At its public hearing, the Zoning By-Law Committee learned about the meetings between the Planning Department and the citizen petitioners to improve ways that the public would easily be able to find out information about the status of Board of Appeals cases from the time a request is submitted to the time a final decision is filed.

To facilitate this process, the Planning Department in September hired a Zoning Coordinator, a newly created position, to track and record electronically the progress of each Board of Appeals case from the time it is filed with the Building Department and to post information about the cases on the Town's website. This new position includes some responsibilities previously handled by the Town Clerk's Office. It was felt that to improve efficiency and communication it was important to have the zoning coordinator on the third floor to work cooperatively with both the Planning and Building Departments.

Discussions between the Zoning Coordinator, the Planning and Building Department staffs and the citizen petitioners resulted in several actions, including: amending the Board of Appeals Rules and Regulations to only allow continuances of cases to a date certain; sending email notification to all Town Meeting members of Planning Board and Zoning Board of Appeals agendas, with precinct numbers listed for each case; posting of the Zoning Board of Appeals action on the town website, the day following the hearing, if possible, or within 5 business days; posting of minutes in a timely manner once approved by the Board of Appeals; and having at each Board of Appeals hearing, handouts with information about the Board of Appeals process and a sign-up sheet for anyone wanting to be noticed about future hearings of the case.

The citizen petitioners found that their issues had been addressed and stated they would recommend No Action on Article 12. The Planning staff acknowledged the valuable contribution the citizen petitioners made and agreed to continue to meet with them to brainstorm about further improvements.

Therefore, the Zoning By-Law Committee unanimously recommends NO ACTION on Article XII.

SELECTMEN'S RECOMMENDATION

Article 13 is a petitioned article that would modify Zoning Board of Appeals (ZBA) hearing notice procedures. Specifically, it would require notice for all ZBA application extensions, continuances, withdrawals, and final decisions to those Town Meeting Members of the precinct in which the subject property is located, as well as all immediately adjoining precincts. The proposed article would also require all ZBA meeting minutes and final decisions to be made available on the Town's website within 21 days of such hearings. The goal of the article is to improve access to information about appeals brought to the ZBA.

After the article was filed, the Department of Planning and Community Development was assigned responsibility for, among other things, issues related to communication between the ZBA and various constituencies. The Department was very responsive to the concerns of the petitioners, meeting with them a number of times to discuss implementation of improved procedures. As a result of those conversations, the Department has indicated that it will institute new procedures that will meet the needs of timely information about hearing outcomes. Specifically, they will post online a summary of ZBA hearing outcomes within five business days of the hearing. The summaries will include the address and precinct of the property involved and the hearing outcome: whether an appeal was granted or denied, withdrawn or, if continued, will include the reason for the continuance and a date certain for the hearing to be resumed. Approved minutes will usually be posted within 21 days of the hearing, but until they are available, minutes in draft form may be obtained by request from the Department.

Since these new practices will satisfy the intent the Petitioners, they recommend No Action on the article. Therefore, the Board of Selectmen recommends NO ACTION, by a vote of 4-0 taken on October 28, 2014. The Board appreciates the work of the Department of Planning and Community Development to address the Petitioners' concerns. We also want to highlight that the changes in procedures were made possible by the reorganization of ZBA duties that was included in the FY15 budget. It was recommended by the Town Administrator and Director of Planning and Community Development, supported by this Board and the Advisory Committee, and ultimately approved by Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 13 would require improved notice of and more information on Zoning Board of Appeals meetings and decisions. Staff of the Department of Planning and Community Development have met with the petitioners to discuss Article 13. The department has adopted new procedures that address the petitioners' concerns. The petitioners are now requesting No Action under Article 13. The Advisory Committee unanimously concurs with that recommendation. The Advisory Committee commends the petitioners and the Planning Department staff for their work on this issue.

BACKGROUND

Article 13 has been submitted by citizen petitioners Bobbie Knable and Ruthann Sneider. The petitioners believe that the actions of the Zoning Board of Appeals (ZBA) are particularly important, because ZBA decisions can affect the value of abutters' properties as well as the general quality of life in Brookline's neighborhoods.

The petitioners have placed Article 13 on the Warrant because they are aware of previous ZBA cases in which members of the public were not adequately informed when a case was continued and when an appeal was eventually withdrawn. They believe that the public should be able to find out the status of ZBA cases.

Article 13 attempts to ensure that interested parties are given information on ZBA cases during the ZBA's consideration of those cases and when a decision has been reached. The Article also attempts to improve public access to the minutes of ZBA meetings.

Article 13 would:

- Require the ZBA to deliver (mail or email) notices to Town Meeting members in the precinct where the property is located, to Town Meeting members in adjoining precincts, and to other requesting such notices when (1) the ZBA grants a continuance (including the date of the resumed hearing); (2) when the applicant withdraws the appeal before a decision, but after notice of the application; (3) when the applicant withdraws the appeal after public notice or after a hearing has begun; and (d) when the ZBA renders a decision.

- Require ZBA minutes to be posted on the Town website within 21 days of the hearing.

- Require the results—whether a decision or a withdrawal—of ZBA hearings to be posted on the Town website within 21 days of a hearing.

DISCUSSION:
The Department of Planning and Community Development initially expressed concerns that Article 13 could place an undue burden on Town staff and suggested that recent changes in Zoning Board of Appeals procedures address many of the concerns that motivated Article 13.

How the Petitioners' Concerns are Being Addressed

After discussions with the petitioners, the Planning Department issued the following statement outlining its procedures for giving notice of ZBA meetings and posting the results of ZBA hearings and decisions.

Zoning Board of Appeals Notice of Action Improvements

1. All Town Meeting Members receive e-mail notification when Planning Board and Zoning Board of Appeals agendas are published on the town website

- Confirmed with Information and Technology Department on 10/9/2014
- Hard copy mailing to 15 Town Meeting members who do not have active e-mail

2. Precinct # included on all Zoning Board of Appeals agendas and abutter notices

3. Summary of Zoning Board of Appeals hearing results published on town website within 5 business days. Results include:

- Address and precinct of property that is the subject of the appeal

- Date of the hearing
- Outcome of the hearing

Decision (appeal granted, appeal denied, appeal withdrawn, continuance granted to a date certain, reason for continuance)

4. Hearing minute approval process established after conferring with Town Counsel and the District Attorney's Office to ensure compliance with the Open Meeting Law – Approved by Board Chair

- Draft minutes distributed to sitting board members
- 1-week review period
- If no suggested edits received then approval vote occurs during next available hearing
- If suggested edits received then must be discussed and approved at next available hearing comprised of the same 3 sitting Board members
- Approved minutes published on town website usually within 21 business days
- Minutes approved and posted (7/17/14 – 10/2/2014) http://www.brooklinema.gov/AgendaCenter/Zoning-Board-of-Appeals-53

5. Hearing Procedure information document and notification sign-up sheet made available to the public at all Zoning Board of Appeals hearings

In addition, in accordance with the Massachusetts Open Meeting Law, members of the public can request draft ZBA minutes.

Petitioners' Request for No Action

The petitioners of Article 13 have sent the following communication to the Advisory Committee:

> The goal of WA 13 was to improve access by TMMs and Town residents to information about appeals brought to the ZBA.
>
> The Planning Department was recently assigned responsibility for, among other things, issues related to communication between the ZBA and various constituencies. It has been very sympathetic to the concerns that led to the drafting of WA 13 and has met with us a number of times to discuss implementation of improved procedures.
>
> As a result of those conversations, the Planning Department has indicated that it will institute the following procedures intended to meet the needs of most TMMs and residents for timely information about hearing outcomes:
>
> It will post online a summary of ZBA hearing outcomes within 5 business days of the hearing. The summaries will include the address and precinct of the property involved and the hearing outcome: whether an appeal was granted or denied, withdrawn or, if continued, will include the reason for the continuance

and a date certain for the hearing to be resumed. Approved minutes will usually be posted within 21 days of the hearing, but until they are available, minutes in draft form may be obtained by request from the Planning and Community Development Department.

Implementation of the above practices will satisfy the intent of WA 13, and, for that reason, we move No Action on the article.

We very much appreciate the willingness of the Planning Department to address our concerns, their consideration of suggestions we made, and their prompt implementation of measures to deal with issues raised in the WA.

—Bobbie Knable and Ruthann Sneider

RECOMMENDATION

The Advisory Committee commends the petitioners and the staff of the Department of Planning and Community Development for their work on the issues raised by Article 13.

By a vote of 26–0, the Advisory Committee recommends NO ACTION on Article 13.

a vote of No Action was passed unanimously.

XXX

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: Naming Committee

To see if the Town will approve the name of the athletic fields at the Cypress Street Playground, a town playground designated as Lot 195, Block 09-00 in the Town Assessor's Atlas, as the "Thomas P. Hennessey Fields at Cypress Street Playground", such name to terminate ten years after passage by Town Meeting,

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

On August 12, 2014, the Naming Committee voted 4-1-1 to recommend to Town Meeting that the athletic fields at the Cypress Street Playground be named the "Thomas P. Hennessey Fields at Cypress Street Playground". The Committee added the provision that the name would terminate ten years after passage by Town Meeting. This followed a unanimous vote from the Park and Recreation Commission in support of the naming of the athletic fields, although the 10-year term limit was not part of the Commission's vote.

This change was recommended by former Selectmen Donna Kalikow, Joe Geller, Mike Merrill and Bob Allen who thought it was an appropriate site to honor the memory of Tom Hennessey. Mr. Hennessey's supporters have also established a 501c3 in order to provide scholarships in his name and to provide support for field maintenance. Tom Hennessey served as a member of the Board of Selectmen for two terms, including one as Chair and as a member of the School Committee for nine years, including two as Chair. He was also an outstanding athlete participating in football, basketball and track while at Brookline High School. He then went on to play football at Holy Cross and was a member of the Boston Patriots from 1965-1966.

After hearing the testimony of several family, friends and colleagues, the Naming Committee agreed that naming the fields after Tom Hennessey was a fitting honor. Themes of integrity, humility and leadership were woven throughout all the stories retold by family and friends. It was clear that Tom Hennessey was an exemplary leader and role model. Naming the fields in his honor will serve as a reminder of the legacy of leadership and service for future generations to emulate.

SELECTMEN'S RECOMMENDATION

Article 14 would rename the athletic fields at the Cypress Street Playground the "Thomas P. Hennessey Fields at Cypress Street Playground", something this Board fully supports and is proud to be able to endorse. However, as filed, it includes a sunset clause after 10 years, meaning the name would revert back unless Town Meeting takes action. The Board does not support that clause, but was unable to amend the article since removing that language would be "outside the scope" of the article. Therefore, on September 30, 2014, the Board voted to call another Special Town Meeting (a "Special within the Special") in order to file a version of Article 14 without the sunset clause.

Please read the recommendation under Article 1 of the "Special within the Special" to understand why the Selectmen support naming the athletic fields in honor of Tom Hennessey. By a vote of 5-0 taken on October 7, 2014, the Board recommends NO ACTION on Article 14, but voted FAVORABLE ACTION, by a vote of 5-0 taken on October 14, 2014, on Article 1 of the Special Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
The Advisory Committee recommends **No Action** on Article 14 of the Fall Town Meeting, by a vote of 17 – 3 – 3.

The Advisory Committee further recommends **Favorable Action** on the following motion under Article 1 of the Special Town Meeting being held within the Fall Town Meeting, by a vote of 19 – 0 – 4 :

VOTED: That the Town approve the name of the athletic fields at the Cypress Street Playground, a town playground designated as Lot 195, Block 09-00 in the Town Assessor's Atlas, as the "Thomas P. Hennessey Fields at Cypress Street Playground."

BACKGROUND:
The naming of the athletic fields at the Cypress Street Playground in honor of Tom Hennessey was proposed to, and unanimously approved by, the Park and Recreation Commission in June. The proposal was then forwarded to the Naming Committee for its consideration.

Some members of the Naming Committee questioned whether Mr. Hennessey's contributions to Brookline's parks and its recreational programs were sufficient to warrant naming playing fields in his honor. This issue had been raised by the Park and Recreation Commission last Fall when the Commission first considered a proposal to rename Cypress Playground "Hennessey Field" and again in January 2014 at which time the Commission unanimously rejected the initial proposal. The revised proposal – naming

the athletic fields at Cypress Playground in honor of Tom Hennessey - was approved unanimously by the Commission in June.

As a means of securing majority approval by the Naming Committee, a ten-year termination or "sunset" language was incorporated into the article that they then submitted, approved of by a 4 to 1 vote, for the Fall Town Meeting (WA 14).

Once the warrant was published, the question arose as to whether the language of the proposal in WA 14 could be amended at Town Meeting to strike the sunset provision which some individuals found problematic, but the Moderator ruled that doing so would be beyond the scope of the warrant and was therefore impermissible. The Selectmen were then asked and agreed to call a Special Town Meeting to be held within the Fall Town Meeting, consisting of a single article (WA 1) containing the text of WA 14 minus the ten-year sunset clause. Town Meeting Members who favor the naming now have the choice of either voting for it with the ten-year sunset or without it.

DISCUSSION:
All of the testimony, both oral and written, received by the Advisory Committee and its Schools Subcommittee which held a public hearing on the naming articles, was supportive of the naming to honor Tom Hennessey, whose many civic contributions and fundamental decency, modesty, and exemplary character were repeatedly stressed.

In brief, Hennessey was described as a true Brookline "Townie." A lifelong Town resident, he attended Brookline High School where he starred on the football team, and continued as an accomplished football player at Holy Cross College and then for one season on the Boston Patriots. He was known for his outstanding performances on the field and the fact that he would never seek publicity or accolades.

He subsequently pursued a career as an educator in the Boston Public Schools, first as a teacher and then as Headmaster at Madison Park High School and later at Boston High School, where he played an important role during the disruptive early days of forced busing by maintaining racial harmony and caring for his students' morale and safety. He was reportedly much loved and admired by his students.

He also played an active part in the Town's civic life, being first elected to the School Committee in 1969 and serving until 1986. He was chair during the initial years of Prop. 2-1/2 budget cutting, working to preserve as much as possible of the important educational programs that were threatened by the necessary funding cutbacks.

Mr. Hennessey also played an important role in the implementation of Title IX requirements that mandated support of athletic programs for female students equal to that for males. He had unwavering support for student athletics, which makes the naming in his honor of the Cypress Street athletic fields, adjacent to the high school where he starred as a student and whose academic as well as athletic programs he consistently championed as a Town official, singularly appropriate.

He was elected as a Town Meeting Member from Precinct 16 in 1990, and the following year he was elected to the Board of Selectmen, where he served for two terms until 1997.

He chaired the Board for one year (1994-95), and as far as can be ascertained, he was the only person in the Town's history to have chaired both the School Committee and the Board of Selectmen.

Former Selectmen Joe Geller and Donna Kalilow who served with Hennessey testified to his total disregard of political considerations while on the Board, always speaking out and casting his votes for what he thought to be the best interests of the entire town. He was widely known as a straight shooter, always approachable and consistently honest and open about where he stood on Town issues.

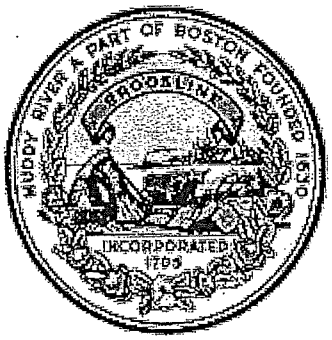
His high principles and admiral character, along with his many civic contributions, amply justify the honor of the proposed naming. There was widespread sentiment expressed that it was inappropriate for this naming to be time-limited by the sunset provision to just ten years, which could be viewed as a grudging rather than a well-deserved enthusiastic honoring.

Thus there was near-unanimous support for Article 1 of the Special-Within-the-Fall Town Meeting which approved the naming in honor of Tom Hennessey and deleted the ten-year termination provision of Article 14. If Article 1 is approved, the Advisory Committee recommendation on Article 14 is for No Action, but if Article 1 were to be defeated, the Advisory Committee considered whether the recommendation under Article 14 might be changed to Favorable Action (allowing the naming to occur even with the sunset provision). The prevailing view was that the sunset provision would be offensive and that Article 14 should not be supported with that provision – a view also expressed by former Town Clerk Jack Kendrick and former Selectmen Geller, Kalikow, and Bob Allen, who had originally sponsored the Hennessey naming and had testified in its support before the Subcommittee -- and that the Advisory Committee recommendation should thus be for no action regardless of the disposition of Article 1.

Hence the Advisory Committee's recommendation is for **No Action** under Article 14 of the Fall Town Meeting (by a vote of 17 – 3 – 3), and also for **Favorable Action** (by a vote of 19 – 0 – 4) under Article 1 of the Special Town Meeting within the Fall Town Meeting.

XXX

Report of the Moderator's Committee on Taxi Medallions to the Special Town Meeting of Brookline, Massachusetts



November 17, 2014

<u>Moderator's Committee on Taxi Medallions</u>
Josh Safer, Chairman
Chad Ellis
Jeff Kushner
Michael Sandman

Our report is divided into three sections which follow the below introduction.

Section 1: Points of agreement and disagreement

The first section lists the numerous points on which the committee agreed, along with a short but very important list of things on which we have not yet reached agreement. Most significantly the committee remains divided as to whether or not Brookline should sell taxi medallions. However, as disappointing as this conclusion or lack of conclusion may be, the committee did produce three illustrative solutions. All of us are in agreement that continuing as is, is unacceptable.

Section 2: Options

Please note regardless of path chosen the selected plan must consider the interests of all stakeholders including the incumbent taxi companies.

The first option is for a medallion auction that differs substantially from the plan developed for the town by Richard La Capra. At this point, it's irrelevant whether the La Capra plan would have worked or not; the taxi industry has changed since the report was submitted. As a result, the committee recommends unanimously against the LaCapra plan.

The auction plan presented here has the advantage of achieving the best possible return for the town from selling medallions. There are many variations possible within the suggested structure. For example, we might issue 50 or 60 medallions and continue to issue annual licenses for the remaining cabs on the street, thereby creating a hybrid system while we wait to see how much demand there is for traditional taxis once the demand for Internet-based ride systems reach equilibrium.

The second option is for an open license system. Again, many variations are possible, including an open license system with a limit to the total number of taxis that could be operated at any one time.

The third option is to continue with the existing closed license system. Neither the taxi companies, the drivers, nor the members of the Moderators Committee believe that the current system is viable over the long run. Without some mechanism for bringing new vehicles into the taxi fleet, customers will increasingly migrate away from taxis and, even more importantly, drivers will increasingly migrate to alternative services, leaving the companies with taxis but no one to drive them.

Section 3: Pros and Cons

This is an abbreviated list of pros and cons for all options.

Points of Agreement and Disagreement

The Committee agrees on the following:

1. Taxi service has a value to the residents and services like Uber are not a complete substitute; therefore we should not simply let taxi service wither away.
2. Competition amongst taxi companies is important but competition is more important in dispatch service
    a. Therefore we should try to preserve a place for more than one economically viable operator
    b. Four independent operating companies, each with its own dispatch service, are not viable.
3. The current situation in the taxi industry is unsatisfactory to all parties:
    a. Customer service is poor partly due to the poor condition of the existing fleet and the lack of investment by the operating companies in technology to improve dispatch;
    b. Drivers' earnings are not commensurate with their time and effort
    c. Current operators do not believe that they make a high enough return to justify investing more capital in their businesses and they have no assurance of license continuity, which reduces the resale value of their companies
    d. The Town seeks to generate revenue for various purposes including enforcement of regulation.
4. Without medallions or some equivalent form of permanent transferable right to operate a taxi, it's unclear how the existing players in the industry could be capitalized or recapitalized to provide the funds needed to replace the current fleet with new, fuel-efficient vehicles.
5. We believe that a well regulated taxi market that allows participants a fair chance to earn a return of capital will retain existing and attract new participants

6. Even if we go forward with medallions to solve these problems, the La Capra plan is unlikely to produce the desired outcomes for all participants. This plan is dependent on a number of assumptions, some of which are no longer valid. In order to discern the best plan, we will need a clear set of priorities to be defined in order of importance.
7. There are currently too many taxis in Brookline to generate a living wage for the drivers, so if we go forward with medallions, we should reduce the number from the current 177 to perhaps 100 – 120. It is important to note that the town is unlikely to be able to discern the correct number of medallions that would provide an optimal outcome for the majority of the parties affected. A market-based solution would likely create a better solution.
8. Medallions are the only way to achieve the town's fiscal objective.
9. Medallions are a route for individual drivers to become independent operators, and making that possible is an appropriate public policy objective. It is important to note that unless independent operators can purchase medallions at a discount to Fair Market Value, the cost of entry for these independent operators is higher with a medallion system than without. Some small owner/operators have stated an interest in medallions due to the anticipated increase in value of what is a financial asset.

10. An open license system should make it easier for owner/operators to participate in the market. This is due to the fact that the issuance of medallions will in all cases increase the cost of entry to the Brookline Taxi Market for all participants. In all cases this cost will be greater than with an open licensing process.
11. While Uber and its imitators have cut into the demand for taxi service somewhat, the main effect on operators has been to expand the overall market and to siphon drivers away from driving taxis. There is significant evidence that many Uber drivers affiliate with Uber as a second source of income. It is likely that Brookline Taxi drivers are leaving due to the decreased income opportunity.
12. Existing taxi operators are suffering from competition from Uber and similar services for drivers, and this has hurt the companies more than the loss of ridership. It is important to note that there are two markets in the Taxi industry: 1) Drivers to Passengers and 2) Drivers to Taxi Owners. As in 11 above, it is likely that the first market saw a decline in business before the effects were felt by the second market.
13. Although drivers do not have the rights of employees, responding to that issue is beyond the scope of the medallion debate and can only be resolved at the state level by requiring companies to treat drivers as employees rather than contractors. It is worth noting that there presently are actions occurring in State Court that address this issue.
14. It is unlikely that the town can craft a solution that improves the employment quality of life of drivers, absent state action to change the status of drivers vis-à-vis taxi owners or by the town's significantly reducing the number of taxis so as to increase the revenue opportunity per driver.
15. The balance sheet boost provided by medallions is substantially a one-time benefit, created by selling medallions at less than a market price. A benefit can arise from an increase in market value over time but this is unsure, likely to be smaller, take longer and could actually be a negative if medallion prices decline.
16. Medallions add a permanent entry cost and annual finance cost to the taxi industry.
17. A wide range of taxi regulatory systems – both with and without medallions – work, and thus it is reasonable to assume that Brookline's long-term taxi market can succeed on either path.
18. The regulations and enforcement of regulations in Brookline has been highly inadequate over a long period of time. This has created a disincentive to investment in the taxi industry. This lack of effective regulation is NOT in and of itself a reason to favor medallions over licenses or vice versa.
19. Any solution will require clear, consistent, and transparent regulation. Operators will not invest in a business in which the rules of engagement are unclear. Additionally, resources must be allocated toward enforcement of said regulations. Regulation should be the same regardless of if medallions are issued.
20. Medallions are non-operating assets and do not in and of themselves eliminate any costs involved in operating a taxi business.
21. Lack of investment on the part of current operators is at least partly due to regulatory uncertainty.
22. Due to competition (both from Uber-types and other taxis), increasing fares is not a viable lever for improving profitability.
23. Although medallions create a monopoly, Uber and similar services provide competition that forces taxi companies to improve their service and improve their appeal to drivers.

24. The town faces some element of legal risk in changing the license process for taxis. This risk comes primarily from exiting license holders.
25. There is evidence that issuance of medallions increases legal action by medallion holders against issuing municipalities. This is likely due to the enhanced legal standing that medallions confer.

The committee does not agree on the following:

1. We don't agree on the principal reason no one wants to invest.
2. We don't agree on whether we need to "fix" the industry or merely to create an environment in which people can make money.
3. We don't agree on the risk associated with enacting a permanent framework in the form of a medallion system during a time of substantial industry change.

Options

The original public policy goals were stated as follows:

1) Raise revenue for the town
2) Ensure no gap in service
3) Reward Owners
4) Create Owner/Operator model
5) Improve Service
6) Create Market

Upon polling the Transportation Board and the Board of Selectmen, the desired goals are much more clear:

1) Ensure no gap in service
2) Improve service and safety

These two goals have significantly more support than:

3) Raise revenue for the town
4) Create Market

There is little or no support or concern for:

5) Reward Owners
6) Create Owner/Operator model

Given these clarified goals and the shortcomings identified in the LaCapra plan, we identify two additional logical approaches – one with medallions and one without as well as what would have to be done to keep the existing closed license system. In doing so, this document will not discuss the pros and cons of medallion vs. non-medallion systems.

It is important to note that regardless of the instrument used to confer rights on vehicle owners and drivers, the regulations used should be the same. These regulations must be made clear to all participants prior to any auction or new licenses being issued.

Additionally, regardless of instrument, the town MUST fund sufficient resources in the form to technology and personnel to enforce regulation for the benefit of all participants. Technology should include a database of owners and drivers linked to the ultimate owner or driver. We should seek to prevent drivers and owners who are bad actors from changing vehicles. The funding for this may come from the sale of medallions, license fees, or from the general fund.

Medallion Process

In order to achieve the goals of improving service and safety, ensuring no gap in service, and raising revenue for the town, a medallion process must do the following:

1) Attract well-capitalized bidders
2) Attract experienced taxi operators

We propose that these goals would best be met by a totally open auction.

Anyone who can meet the agreed upon standard may participate:

a. agree within six months of auction closing to purchase and lease/drive an acceptable vehicle. Can drive legacy vehicle for six months assuming medallion is paid in full.
b. agree to comply with all new town regulations.
c. auction winners to pay full price of medallion to town with in 60 days.
d. bidders must produce full financial statements prior to auction.
e. bidding fee of $1,000 per license (refundable assuming bidder bids minimum or applicable to winning bids)

We propose a Vickrey type Auction – a sealed-bid auction in which all winners pay the lowest winning price. This type of auction rewards bidders for bidding their true estimate of value because for any set of rival bids, bidding true value is a dominant strategy.

The auction would be for a specified number of medallions – we propose 100 – with some potential for more based on price. The top 100 bids would win medallions and would pay the price of the 100th highest bid.

For example if there are 50 bidders @ 150K, 25 bidders @ 125k, and 25 bidders @100K then all 100 would purchase their medallions @ 100K. This process may theoretically allow for a "gain in value" from the purchase price" and some capitalization but the goal is to maximize revenue for the town.

We propose to initially auction 100 medallions unless there are enough bids to purchase medallions at a price higher than 100K. We propose the following schedule of medallions to be auctioned:

Clearing Bid Price	Number of Medallions
100-125K	110
126-150K	120
151-200K	130
201-250K	140
up to 300K	150

We would strongly recommend not selling any more than 150 medallions at the initial auction, given our understanding of taxi demand in the town. One possibility to allow for future growth without trying to assess supply and demand from outside would be to create rules that allow the town to sell additional medallions when an observable

transaction occurs at the following inflation adjusted prices:

350K 20 medallions
400K 10 medallions
450K 10 medallions
500k 10 medallions

One concern over this approach is that changes in taxi medallion prices have been driven more by interest rates than supply and demand for taxis. Thus, there is a risk that a further decline in rates could suggest that more medallions are needed or that rising rates could incorrectly indicate that enough medallions were in service.

To protect the town from price collusion on the part of bidders, we would set a reserve price on the sale of medallions. If there are insufficient bidders to sell 100 medallions at the reserve price then we will go to an alternate license system. We recommend that we use a *sealed* reserve price – that is, a reserve price is set in executive session, sealed and revealed only after the auction is complete. (This would address the risk that collusion would aim just above the reserve price.)

If the Board of Selectmen desire to reward incumbents, we propose the following structure for consideration: They are to receive a 20% discount to the winning price of the auction for all successful bids. For example, if they bid $100,000 or higher and the winning bid is $100,000, the price payable by incumbents would be $80,000. For any bid made by an incumbent license holder that is above the reserve price, but not a winning bid, the incumbent shall receive their pro-rata share of the "Exiter's" pool. This pool shall be 10% of the total proceeds of the auction. As an example, if the total proceeds of the auction are 10,000,000 and there are 100 licenses that have a high enough bid to meet the reserve price but do not bid high enough to obtain a license each "Exiter" shall receive $10,000 ((10,000,000 * 10%) /100)).

In order to ensure no gap in service, the above payments would be contingent on existing owners keeping their presently licensed cars on the road for a period of six months after the close of the auction. (Meaning of "on the road" to be defined).

Secondary market sales of medallions should be handled as defined in the LaCapra report with the town receiving a transfer fee and having a reasonable right of refusal over sales.

The town should take necessary steps to publicize the auction and attempt to vet the viability of the process prior to the auction date.

Open License Process

The town's interest lies in attracting the most experienced and well-capitalized owners and drivers to its market place. As it is highly unlikely that any administrative body can properly determine the correct number of vehicles to best serve all constituents, we propose to let the market determine this number.

As such, we recommend that the town opens up the license process to any vehicle owner or driver who can comply with the towns enhanced regulations. While there is a good chance that supply of taxis will exceed demand for taxis in the short run, this is to the benefit of end users and over time the market is highly likely to find equilibrium.

As with the medallion process there will be minimum standards for entry to the Brookline taxi market:

a. agree to purchase and lease/drive an acceptable vehicle. To ensure no gap in service, any incumbent owner may keep their existing car in service for a period not to exceed six months after the date of license issuance.
b. agree to adhere to any/all town regulations pertaining to vehicles and drivers.
c. pay annual vehicle license fee of an amount sufficient to cover costs of enforcement.
d. driver License fee to an amount sufficient to cover costs of enforcement.

We recommend that all licenses have a minimum amount of on the road time attached to them (that means that license holders can not warehouse licenses as an option to use later or to discourage others from entering the market).

Licenses will not be transferrable in any form.

Closed License Process

In this option, the town opts to keep the existing license process and existing owners retain their licenses. Like with the other solutions the success of this option is dependent on transparent, enforceable, and enforced regulations.

As with the medallion process there will be minimum standards for participating in the Brookline taxi market:

a. agree to purchase and lease/drive an acceptable vehicle. To ensure no gap in service, any incumbent owner may keep their existing car in service for a period not to exceed six months after the date of license issuance.
b. agree to adhere to any/all town regulations pertaining to vehicles and drivers.
c. pay annual vehicle license fee of an amount sufficient to cover costs of enforcement.
d. driver License fee to increase to an amount sufficient to cover costs of enforcement.

Pros/Cons

Medallion

Pros

1. Raises money for the town
2. Attracts capital to the industry
3. Is an understood instrument among industry players
4. Aligns Brookline with neighboring towns

Cons

1. Eliminates flexibility at a time of industry change
2. Adds permanent costs to the industry
3. Increases legal risk to town due to enhanced legal standing of medallions vs. annual licenses.
4. Increases financial barriers to entry for owner operators. Other barriers are similar to existing closed license system.

Open License

Pros

1. Allows market to determine the proper number of taxis
2. Lower financial barriers to entry than other options
3. Lower operating costs than medallion system
4. Greater flexibility to respond to change

Cons

1. Increased legal risk in transition
2. Lower certainty of attracting capital
3. Does not reward existing players
4. Does not generate one time revenue for the town

Closed License

Pros

1. Reduced legal risk to town in transition
2. Easiest transition

Cons

1. Difficult or impossible for incumbents to attract or be willing to commit capital necessary to comply
2. Does not generate one time revenue for the town

ARTICLE 15

Motion Offered by the Petitioner

VOTED: ~~Moved~~: that the Town adopt the following resolution:

RESOLUTION OPPOSING A TAXI MEDALLION REQUIREMENT FOR OPERATION OF A TAXICAB

Whereas taxi medallions provide no benefit to taxicab customers that cannot be accomplished through rigorous taxicab regulation and licensing.

Whereas issuing taxi medallions adds a permanent and ongoing cost to the taxi industry, which must be paid for either through higher fares for customers, lower wages for drivers, or lower earnings for taxicab owners.

Whereas taxi medallions represent a highly inflexible system that is dangerous for an industry facing substantial change.

Whereas a robust, affordable, and efficient taxi industry is a crucial component of a multi-modal, green transportation system, along with bicycles, walking, short-term automobile rentals, and public transit. Brookline should encourage innovation and facilitate alternatives to private automobile ownership, including taxicabs, rather than hindering them, as a medallion system threatens to do.

Whereas in other communities with medallion systems, the high cost of medallions has historically led to high concentration of ownership. This would be detrimental to the entry of people of modest income who wish to become owner-drivers.

Whereas it is unethical to place a substantial additional financial burden on one component of a single industry (the "ride for hire" industry) that is not required (and should not be required) of any other private business serving the citizens of the Town. Tthe disparity is made worse by the fact that medallions would not be required for, and are not sought by, the other branches of the common-carrier "ride for hire" industry (livery services or "app-services" such as Uber or Lyft).

Whereas medallion systems are likely to reward incumbent companies regardless of service quality.

Whereas issuing taxi medallions exposes the town to significant legal risk.

Whereas any financial benefits from medallions, whether for the Town or for operators, are primarily a one-time benefit that does not justify the ongoing cost.

Whereas the previous medallion plan took years to develop and negotiate but still had serious structural flaws, the likelihood is remote that the town can develop, in the short time available, a new plan that is acceptable to all stakeholders and does not itself contain significant flaws.

Whereas the great majority of towns and cities of size comparable to Brookline do not use a taxi medallion system and there are no known examples of a town moving from licenses to medallions in at least a decade.

BE IT RESOLVED that it is the will of the town that the Board of Selectmen not sell, lease, rent or otherwise make available or require taxi medallions as a condition of any taxicab owner doing business in Brookline,

and directs that this Resolution shall take effect immediately upon its passage.

Passed by an Electronic Recorded Vote of 111 In Favor, 83 Opposed and 7 Abstentions

Explanation:

What follows is a brief summary of some of the arguments against going to a medallion system. It would be hard to design a worse idea than medallions for today's taxi market – when else has the solution to an industry struggling with low profitability and facing rapid change been to impose new costs and a rigid framework?

Ultimately there is one real argument in favor of medallions – a cash injection for the Town. If that is your top priority, then vote No Action on Article 15. But if you want to ensure that Brookline has a sound taxi policy that maximizes the chances of having a viable and healthy taxi industry going forward, say no to medallions. Vote Favorable Action on Article 15.

The LaCapra plan is dead.
Six months ago you were asked to support a specific medallion plan that had been negotiated and developed over a period of years and designed by a consultant, Richard LaCapra. Now that plan is dead.

My view is that the LaCapra plan was structurally flawed and would likely have been a disaster for Brookline if enacted. However, even if you agree with Mike Sandman that the LaCapra plan was good when written but has been overtaken by circumstances, its death should be a red flag.

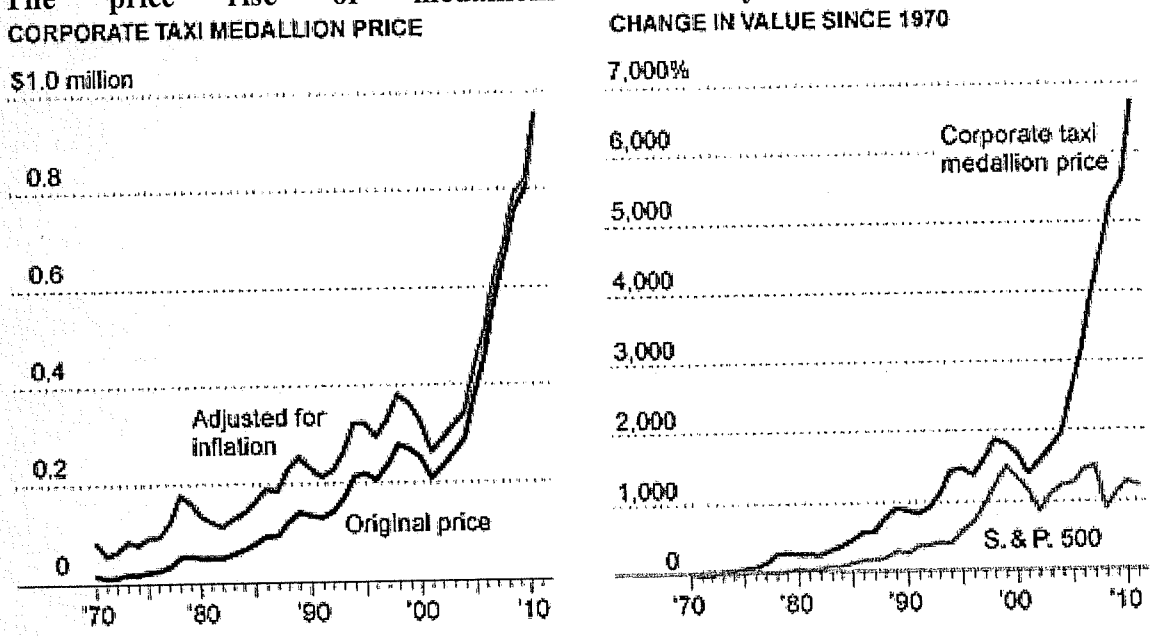
If years of work with a leading industry consultant led to a plan that either contained large hidden flaws or was overtaken by events in just a couple of years, why should we assume that we'll be able to design and negotiate a new plan that has no such problems and will remain sound long into the future? When you consider this, bear in mind that one thing everyone – the

industry, the Moderator's Committee and the Transportation Board – agree on is that we need to reach a decision quickly. The LaCapra plan took years; our next plan will have months.

Medallions lock us in to an inflexible system for an industry that is undergoing rapid change.
The Moderator's Committee has identified several areas where our current system is simply too rigid — for example, Brookline's taxi business is highly seasonal and would benefit from added capacity in winter and lower capacity in summer. More fundamentally, the entire taxi industry is in a period of rapid change and how we approach it will need to adjust to reflect changes we can't yet anticipate. Such adjustments become prohibitively difficult under medallions because medallion owners have higher legal standing and can block measures that are unfavorable to them *individually*. Medallions are (essentially) forever.

Medallions add a permanent cost both to entry and annual operations in exchange for a one-time benefit.
Medallions can provide capital to the original operators who receive them at a discount to market value. After that, however, new entrants must come up with additional entry capital to finance a down payment and then interest payments on their loan. For a short-term fix we will impose long-term costs, and basic economics tells us that those costs cannot be free. Fares must be higher or industry earnings must be lower than in an equivalent system where this coes doesn't exist. More fundamentally, do we *want* to add a substantial entry cost to a job that is traditionally available to hard-working immigrants?

The price rise of medallions is likely at or near its end.



This chart explains a lot of enthusiasm for medallions. As long as the price keeps going up, everyone can win. At a meeting where company representatives talked about how drivers want to

buy medallions (at full price – only the companies get a discount), I asked how many of those drivers were confident that the price of medallions would keep going up – the answer was 100%.

This is a human reaction that has existed around all sorts of assets. If prices go up steadily for long enough people start to believe that they can only go up. Indeed, when I asked Mr. LaCapra about the vulnerability of his plan if medallion prices fell he replied that this basically couldn't happen.
But it can. Medallion prices have gone up in part because the taxi industry has not faced serious new competition (and has had regulatory protection) but that is changing. Medallions set a permanent floor on supply, so if demand does fall below a level that can sustain that number of cabs, the value of medallions would come under real pressure.

The other major factor being the rise in medallion prices is that interest rates on medallions have plummeted, especially in the last ten years – see the spike on the price chart.

Medallions are, in essence, a perpetuity, which means their value is highly sensitive to interest rates. Not only have interest rates declined overall, but loan terms of medallions have gotten *much* more favorable in parallel. Instead of 50% down and an eight-year loan, a medallion is now purchased with 10-20% down and up to a 30-year loan at rates of 4-5%. Just as improving mortgage terms can fuel sharp rises in house prices, falling rates led to a boom in medallion prices. But interest rates are unlikely to get much lower and medallion terms are unlikely to get much more favorable. Meanwhile, drivers are starting to feel loss of business from mobile app competition. Of course, one might argue that if the bubble is about to burst we should rush to sell ours while prices are still high. But even if we're successful, a fall in medallion prices would lead to cash calls from banks and a far worse industry situation than we're in now — and this time the operators would have legal standing.

Increased risk of lawsuits.
It's not an exaggeration to say that threats of lawsuits — either direct or indirect (i.e. one operator saying that another operator would sue) were made at more of our Committee meetings than not. With LaCapra out, any new medallion approach will be met with the same threats of legal action as characterized the last negotiation. Moreover, because medallions confer legal status and a valuable financial asset, cities with medallions face far more legal action from operators than those without.

Medallions aren't necessary.
The pro-medallion argument seems to assume an almost magic state for Brookline's taxi industry. On the one hand we're told that without the financing windfall of medallions the industry will go out of business. On the other, we're told that once we're past this crisis there's nothing to fear and the existing companies can compete, despite having taken on new costs. Finally, we're somehow to believe that Brookline is unique — that while most towns and cities

have healthy taxi industries without medallions the only way anyone will invest in Brookline is if we issue medallions. In reality, the taxi business, like any other, will work if it is profitable. Bay State Taxi has indicated that over 40 of its drivers are waiting to buy medallions. This means that those drivers have enough cash for a new car and a medallion down payment. They are ready to invest in Brookline, and contrary to what owners (who stand to make a fortune off of medallions) indicate, there is no reason to think that medallions are the only way that people will operate taxis in Brookline. We do have work to do, both on regulations and enforcement, but Brookline isn't so different that what works in most of America won't work here.

Why Not Article 16?
It's been argued that rather than saying "no" to medallions we should prefer Article 16, which directs the Transportation Board and Selectmen to reconsider the issue more carefully and does not specifically endorse medallions. I do not support this view for two reasons.

First, if an idea is bad we should be able to say so and let it go. This is true generally but is especially true here because regulatory uncertainty and the prospect of a medallion windfall have contributed substantially to the problems our operators currently face. We do no one – them least of all – any favors by keeping the prospect of medallions open.

Second, as a practical matter the Transportation Board remains committed to medallions. If Article 15 fails and Article 16 passes, a new medallion system will be developed and recommended to the Selectmen. While it may be better than the LaCapra plan, it will retain most if not all of the problems identified here.

I've been proud to serve as a Town Meeting Member because I've seen Brookline's willingness to do the right thing and to act for the long term. I'd hate to see us enact a wrong-headed policy now for a quick payoff. Medallions are a bad policy and we should say so.

Please vote Favorable Action on the revised Warrant Article 15, and No Action on Warrant Article 16

Warrant Article 15

A SAMPLING OF SUMMARIES OF REGULATORY AGENCIES EVALUATING RESTRICTIONS ON TAXICAB MARKETS
(in reverse-chronological order):

The **Office of the Chief Financial Officer of the Government of the District of Columbia**, in "Taxicab Medallions—A review of experiences in other cities"[1], in 2011:

"Introduction of a medallion system institutes entry barriers to the taxicab market by restricting the supply of taxicabs. There is broad consensus among economists that such restrictions allow a small group of private citizens—those who are among the first round of recipients of medallions—to earn windfall profits at the expense of consumers and taxicab drivers who don't receive medallions in the first round. Evidence from other jurisdictions suggests that limiting entry into a taxicab market leads to a decline in overall service: consumers pay higher fares, wait longer for an available taxicab, face more service refusals, and receive less service than they would otherwise. Service to the outlying areas of the city becomes poorer, and in order to meet the demand, an alternative off-the-books market may develop with poor safety, security, and insurance standards. This system also discourages many from entering the taxicab industry since drivers who lease taxicab medallions earn very little after paying lease dues. High lease amounts for medallions wipe out any above-normal earnings for drivers who lease medallions, and deprive them of the chance of accumulating long term wealth through ownership.

"The literature on the taxicab medallions suggests that gains from such restrictions are one-time: Future taxicab owners have to pay very high prices to obtain a medallion, which virtually eliminates any possible above-market profits. Since all the revenue in the restricted taxicab market, even after years of demographic and economic growth, remain concentrated in a limited number of hands, medallion owners fiercely resist any possible threat that may challenge their advantage. So the market becomes less responsive to consumer needs in the long run" (p. 1).

The **Organization for Economic Cooperation and Development (OECD)** (a 32-nation organization "dedicated to global development") in "Taxi Services: Competition and Regulation"[2], in 2007:

"Taxi services are subject to a variety of potential limitations of competition that most notably include entry restrictions in many jurisdictions...Such rules restrict the total number of supplier and typically lead to an undersupply of services" (p. 6).

"It is increasingly widely accepted that restricting taxi numbers constitutes an unjustifiable restriction on competition and reduces economic welfare" (p. 7).

---

[1]Government of the District of Columbia, Office of the Chief Financial Officer, Office of Revenue Analysis. Briefing Note May 31, 2011: Taxicab Medallions—A review of experiences in other cities by Anna Barlett and Yesim Yilmaz.
http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_taxicab_briefing_note.pdf. Accessed 111314.

[2]http://www.oecd.org/regreform/sectors/41472612.pdf.. Accessed 111314.

"The economics literature provides little support on theoretical grounds for supply restrictions" (p. 7).

"Even if it is believed that a regulated supply has the potential to yield improved outcomes, there is little likelihood that regulators will be able to deliver such improvements reliably and consistently. There are no widely accepted models of "optimum" taxi supply to guide regulators' decision-making....In the absence of a structured approach to setting taxi numbers, regulators have necessarily acted in an ad hoc manner. Ion these circumstances, there is a high risk they will become unduly responsive to lobbying by consumer interests and act to restrict supply to levels far below free market equilibrium levels" (p. 7).

"There is no evidence to suggest that taxi drivers incomes are higher in markets with restrictive entry conditions. Rather, the monopoly rents that accrue due to these restrictions appear to be appropriated solely by license owners" (p. 8).

"Restricting entry to the taxi industry causes significant equity problems: low income groups are disproportionately users of taxi services. The impacts of entry restrictions in increasing price and reducing availability is therefore highly repressive in its consumer impact–poor consumers are hurt more by entry restrictions than wealthy ones" (p. 8).

"Where taxi supply has previously been heavily restricted and these restrictions were removed, very large increases in taxi supply have been experienced....moreover, these higher taxi numbers have generally been sustained in the medium term" (p. 8).

Lifting of restrictions also led to "strongly positive results measured against a range of criteria. Substantially increased taxi numbers mean customer waiting times tend to fall substantially, while customer satisfaction levels have also substantially improved. Price levels have often fallen following reform, though this has not always been the case" (p. 8)

In 1986, the chairman of the **Federal Trade Commission** warned Mayor Koch of New York City that by restricting taxi medallions, the city is effectively issuing "an engraved invitation to corruption." He said that limiting the number of taxi medallions inevitably leads to "higher fares and reduced availability" of taxis, and also creates a class of people "with a financial interest in regulatory decisions" who are "strongly motivated to influence the deliberative process."[3]

[3]http://www.nytimes.com/1986/12/19/nyregion/head-of-ftc-says-taxi-limits-promote-municipal-corruption.html
Accessed 033014

Federal Trade Commission: "An Economic Analysis of Taxicab Regulation: Bureau of Economics Staff Report May 1984"[4]:

"The principal conclusion of this report is that no persuasive economic rationale is available for some of the most important regulations. Restrictions on the total number of firms and vehicles...waste resources and impose a disproportionate burden on low income people" (p.1).

"It appears that taxi regulations have often been designed to protect...existing taxi firms from competition" (p. 5-6).

"However, potential market failures provide a credible theoretical rationale for some other types of regulations, including fare ceilings and regulations dealing with vehicle safety and liability insurance" (p. 155).

"Experience with open entry and fare competition in the radio-dispatch market segment has generally been favorable. This is apparently true in Seattle, Oakland, Berkeley, Spokane, Sacramento, and Charlotte. 214 This is important because typically about 75 percent of taxi trips are produced by radio-dispatched cabs" (pp. 155-156).

"The favorable effects of open entry in radio-dispatch market segments include increases in the number of taxi firms and decreases in the market shares of the largest firms, increases in the number of cab hours of service, reductions in fares and response times, and reductions in the amount of time city councils devote to licensing and fare setting.

"Overall, there have been no widespread significant problems related to open entry in radio-dispatch market segments. While an increase in customer complaints was recorded in Indianapolis and Fresno, these can best be dealt with through driver qualification and vehicle safety requirements rather than restrictions on the total number of cabs" (p. 156).

Warrant Article 15:

Transportation issues have significant environmental implications:

- Environmental Protection Agency (EPA): "Transportation accounts for 28% of greenhouse gas emissions, making it the second largest contributor of U.S. greenhouse gas emissions after electrical generation."[1]
-
- EPA: "The EPA estimates that mobile (car, truck, and bus) sources of air toxics account for as much as half of all cancers attributed to outdoor sources of air toxics."[2]

---

[4]http://www.ftc.gov/sites/default/files/documents/reports/economic-analysis-taxicab-regulation/233832.pdf. Accessed 111314.

- EPA: "From a pollution perspective, what matters most is not new vehicle emission standards but actual emissions from vehicles on the road."[3]

- Union of Concerned Scientists: "Transportation is the largest single source of air pollution in the United States."[4]

• Taxis and other one-way hired trips are a critical part of a balanced and sustainable transportation system:

- David King, Assistant Professor of Urban Planning, Columbia University: "Taxi service is a critical aspect of a transit system, and taxi usage exhibits complementary characteristics to conventional transit. Specifically, taxi usage is asymmetrical where origins and destinations have very different spatial distributions. This suggests that taxi riders have multi-modal travel journeys. In many cases taxi trips are part of journeys that began with transit trips."[5]

- International Association of Public Transport: "By the very nature of their services, taxis are an integral element in the multimodal mobility chain. They complement the mobility chain and enlarge public transport's service portfolio, filling in the gaps left by traditional mass transit in inaccessible, decentralised areas. Taxis can extend the catchment area of public transport, offering a great solution for first and last mile issues. They play a determinant role as partners by providing feeder services between remote housing areas and formal public transport routes, or by serving areas with a poor or non-existent formal service."[6]

- International Road Transport Union: "By the very nature of their services, taxis are an integral element of the multimodal public transport chain in both urban and rural areas. Thanks to their flexibility, which equals and sometimes even surpasses the flexibility of the private car, taxis also contribute to empowering other public transport modes, since they complement the multimodal public transport chain with a 24-hour/365-day availability, coupled with a unique door-to-door customised service offered to the individual passenger."[7]

A medallion system will worsen taxi service by limiting supply and protecting incumbents that provide inferior service:

- Paul Krugman, Nobel Prize Winner: "A taxi medallion system is a form of quantity control, or quota, by which the government regulates the quantity of a good that can be sold rather than the price at which it is transacted…whatever the reason for such controls, they have certain predictable – and usually undesirable – economic consequences."[8]

- Steve Chapman, Chicago Tribune Editorial Board Member: "At the heart of the opposition [of cab owners to Uber] is naked self-interest, not consumer

protection...Breaking up a cartel is bad for the cartel participants. Having pushed for and profited from a system that artificially limits the supply of cabs, the medallion owners now argue that it must be preserved for their benefit. But 21st-century technology and entrepreneurial ingenuity have demonstrated the value of opening up the market for hired cars. The industry has had its way for decades. It's time to put consumers in the driver's seat."

- Edward Rogoff, Baruch College Economics Professor: "This is an industry whose regulation has been dominated by the 13,000 or so taxicab medallions [in NYC] for a long time and that situation remains."[9]

- Robin Chase, Founder of Zipcar: "But the underlying question is whether these regulations make sense and protect the public good. More than a hundred years in the making, some of these laws are antiquated (in New York, until recently, you couldn't use GPS to measure fare distance), some exist to protect existing interests (in Miami, you can't order a limo for immediate pickup, there has to be a 30 minute delay to protect street taxis), and some exist to generate tax revenues (many kinds of fees are applied to car-for-hire). Taxi Medallions in many cities shelter the incumbent taxi businesses."

- Derek Thompson, The Atlantic: "The purpose of medallions, like most licenses, is to control the total supply of cabs on the street. The decades-long cap on medallions has been the subject of many economic papers. Perhaps the most famous by Edward Rogoff stated that fare increases "drive medallion prices higher without improving the earnings and quality of drivers."[10]

- Matt Yglesias, ThinkProgress: "You need to ask yourself, what problem is this supposed to solve? The problem it's supposed to solve is that incumbent cab drivers would like to limit competition and make more money. That's understandable. I'd like to see a medallion system for new bloggers implemented for the same reason. But it's still a terrible idea."[11]

[1] Source: EPA: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2012
[2] http://www.epa.gov/otaq/consumer/02-toxic.pdf
[3] Ibid.
[4]http://www.ucsusa.org/clean_vehicles/why-clean-cars/air-pollution-and-health/cars-trucks-air-pollution.html
[5] http://davidaking.blogspot.com/2012/01/visualizing-nyc-taxi-activity.html
[6] http://www.uitp.org/taxis-sustainable-mass-transit-needs-sustainable-micro-transit
[7]http://www.iru.org/cms-filesystem-action/mix-publications/0320HLGTaxirecommendations_web.pdf
[8] Essentials of Economics, Part 2, Page 99
[9]http://www.wnyc.org/story/217329-blog-city-counting-medallion-sale-upcoming-budget-fiscal-unicorn/

[10]http://www.theatlantic.com/business/archive/2011/09/better-than-stocks-better-than-gold-the-taxi-medallion-as-inflation-hedge/245602/
[11] http://thinkprogress.org/yglesias/2011/03/17/200239/no-to-taxi-medallions/

REASONS FOR VOTING FAVORABLE ACTION ON THE REVISED WARRANT ARTICLE 15

To summarize:
Taxi medallion systems are putatively created to enable medallion-owners to borrow against the value of the medallion, hopefully to pay for upgrades to their fleet.

A medallion is worth more than a token or souvenir, which is only worth the value of the materials of which it is comprised, or a license, which is worth the value of the inspection and registration program it indicates. The increased value accrues solely due to the relative scarcity of the service provided compared to the demands of the market. Therefore, taxi medallions virtually by definition create a system of artificial scarcity; that is, they guarantee that there will be insufficient taxicabs to meet the demands of the market.

They accomplish this by restricting the number of vehicles allowed on the road.

They thus prevent the participation of many interested and qualified people from plying an honorable and socially-beneficial trade.

Taxi medallions enshrine this condition by asserting a newly-created PROPERTY right. Medallion-holders are thus guaranteed Constitutional protections.

Medallion property rights have historically (since their invention in the 1930s) existed for decades, and can hypothetically exist forever. For this reason, once a medallion system is issued, they are extraordinarily difficult and expensive to alter, recall or eliminate.

At meetings of the Moderator's Committee on Taxi Medallions, we learned from Transportation Board officials that medallions were only proposed as a last resort to pay for vehicle upgrades that could not be afforded any other way.

In fact, medallions are not necessary for that purpose.

Nissan, Toyota, Dodge, Ford and other auto manufacturers manufacture dedicated taxicabs, most built on SUV chasses, and most or all of which would meet Brookline's proposed (and properly rigorous) inspection standards. Most retail for c. $30,000.

ESTIMATED START-UP COST OF TAXI OWNERSHIP
Cost of vehicle: If purchased outright: a one-time cost of $30,000.

If Auto Loan (assume a 5-year SECURED commercial auto loan): $6,000 + per year + interest. Insurance can apparently cost $15,000–$20,000 per year. Town Inspection: $1,000[5] Auto Registration, dispatch, and garaging costs. COSTS DEPENDENT ON USAGE: Maintenance and gas. Conceivably leading to a generously-estimated total start-up cost of taxi ownership that could easily run to $40,000-$50,000 the first year.

This is consistent with the start-up costs of :

1) many other mobile businesses who must travel to where the jobs are, as taxis do, such as carpenters or landscapers, who would therefore have to buy a comparably-, if not higher-priced vehicle, as well as expensive tools;

2) or many businesses that are site-specific but rent space, including retailers who rent their space but must buy expensive tools-of-the-trade. A particularly poignant example is the bodega, deli or "spaghetteria" owner who must install expensive ovens, dishwashers, and ventilation equipment in a rented space. The cost of this equipment can easily run into several tens of thousands, if not hundreds of thousands of dollars. Such businesses typically sign 10-year leases. We have all heard of trail-blazing restauranteurs whose move into risky neighborhoods sparks an urban transformation, but whose equipment investments are suddenly worth nothing when their lease expires and the landlord demands an astronomical rent increase made possible only by the positive changes sparked by that very restaurant.

This could be comparable in cost to a fast-deteriorating automobile–a taxicab.

The point is that the "real world" start-up costs, operating costs, and risks, of the taxi industry are not out of line with those of many other small businesses. Yet the fact that those other businesses continue to exist means that mechanisms exist to finance their operations without resorting to a unique financial entity created essentially by government proclamation. There is no reason why the taxi business cannot do the same.

It is important to point out that the other players in the individual "ride for hire" industry: LIVERY services (which respond to customers' phone calls), or the "APP SERVICES" such as Lyft and Uber (which respond to smart-phone apps) manage to finance themselves without medallions.

It is clear that a good living can be made offering rides for hire, even after paying significant business costs. Uber announced earlier this year that the median gross income for drivers who work 40+ hours/week in New York City is $90,766 a year in New York City, and $74,191 in San Francisco.[6] There is good reason to trust these numbers.

---

[5]The actual current per-vehicle cost of Brookline's taxi inspection program.

[6]http://www.washingtonpost.com/blogs/innovations/wp/2014/05/27/ubers-remarkable-growth-could-end-the-era-of-poorly-paid-cab-drivers/. Accessed 111314.

Because Uber's transactions are paid for by credit card, there is little likelihood that much work is done "under the table."

These examples provide very convincing evidence that **MEDALLIONS ARE NOT NECESSARY TO UPGRADE BROOKLINE'S TAXI FLEET.**

The best way to upgrade taxis in Brookline is simply to issue **rational, consistent, uniform, transparent and RIGOROUS REGULATIONS** centering on:

VEHICLE: safety, comfort, environmental impact (high gas mileage, low emissions, etc.)
DRIVER: skills, training, moral fitness (CORI checks, etc.)
LIABILITY INSURANCE: so customers (and drivers) are well covered in the event of an accident

Regulations of the taxi industry should focus on QUALITY CONTROL, NOT QUANTITY CONTROL.

REGARDING THE EFFECT OF MEDALLIONS ON DRIVERS:

ESTIMATING THE FUTURE PRICE OF BROOKLINE MEDALLIONS

It is difficult if not impossible to estimate the future market price of Brookline medallions, if they are issued. Will they match Boston at $600k+ each, Cambridge at $600k+–tracking Boston, or Somerville at $350k? Loan officers at Brookline Bank, who have offered to finance the town's medallions, estimate conservatively that the price of Brookline medallions could reach $200k+ soon after reaching the market.

Potential DRIVERS, many recently arrived from developing countries where they have had no opportunity to build a credit record (through no fault of their own; you cannot build a credit record in a countries that have an inadequate or nonexistent banking system), would be much more likely to be able to raise a down payment and qualify for a SECURED AUTO LOAN for some $30k than they would for a loan of $200k+ to purchase a medallion.

And if they did obtain a loan on a medallion, they would have to pay all vehicle costs, including loan payments, in addition to monthly mortgage payments on the medallion.

The taxi industry has recently been buffeted by "App-Services" such as Uber and Lyft, ZIPCAR is currently beta-testing "ZipCar One-Way," with a full run-out expected later this year. The near future holds the threat (or promise) of self-driving cars. Each of these could present existential challenges to medallions. So the FUTURE VALUE OF MEDALLIONS is fraught with uncertainty.

To complicate matters further, at Brookline Bank, medallion loans are subject to a "PAYDOWN" policy: if the market price of a medallion falls below the outstanding balance, the bank will demand an immediate payback of the overage. This could instantly put many drivers who bought high underwater, and ruin their financial lives.

An excellent way to improve the financial prospects of drivers would be to make it possible for them to become owners of their own small businesses, possessing ownership of the relevant PRODUCTIVE_ASSET: the vehicles that are the tools of their trade: owner-drivers. That way, those who possess sufficient skill as drivers, who possess the smarts to be in the right place at the right time (to meet demand), who make the necessary time commitment, and who build a reputation of good will can have a successful career. Note that Uber follows an owner-driver model. The services Uber itself provides are a (by this point well-known) brand name and an apparently well-functioning computerized dispatch service.

But this is not the only way. Recently, efforts are being made to reclassify drivers as employees of taxi companies, reversing the "contractor" status, with low pay and no benefits, they have been relegated to in recent decades. Additional efforts are being made to unionize drivers. All of these models would benefit from restricting the cost of entry and participation to the actual costs acquiring and maintaining the PROPERTY APPROPRIATE TO THE BUSINESS: THE PRODUCTIVE ASSET (the vehicle).

TAXI MEDALLIONS MAY IMPEDE CUSTOMER SERVICE:
At a recent public meeting regarding medallions, a Captain in the Brookline Police Department complained that customers "cannot get a taxi on Saturday nights in Brookline." This complaint must be taken seriously. The police department is responsible for public safety, so it wants to get people, many of whom may be inebriated, home quickly and safely on a Saturday night.

A medallion system will not help with that problem, because it is based on scarcity.

The best way to meet PEAK DEMAND is to ensure a comparatively LOW COST of ENTRY-that is, a cost of entry based solely on the costs of the productive assets of the business, so that ambitious people have the flexibility to suss out busy vs slow periods of the day or week, and busy vs. low-demand locations. In addition, that would also facilitate participation by part-timers: 9-5ers, schoolteachers or students who want to make some extra money.

There are currently five taxi companies operating in Brookline. By their own admission, all are in very poor financial shape. In a moment of candor at a Moderator's Committee meeting, an owner/manager acknowledged that they are hemorhaging money because they are maintaining TOO MANY VEHICLES, hoping this would be advantageous when medallions are issued.

They agree that this is NOT because their CUSTOMERS are going to Uber; in fact, they say that Uber has grown the market. The owners agree that their DRIVERS are leaving to drive for Uber. Could this be because they believe Uber offers them better prospects?

One reason given for limiting the quantity of taxis on the road is that failure to do so would lead to taxi gridlock. But it would not be easy for people of modest means to accrue the initial capital to acquire a taxi (to say nothing of the significant opportunity costs involved). So even in the best of conditions, market pressures would "naturally" limit the number of taxis on the road well before the point of gridlock. In addition, research shows that each new shared car [ZipCar, etc] put into service means that between 9 and 13 other cars are taken off the road, according to civil and environmental engineer Susan Shaheen of the Transportation Sustainability Research Center at UC Berkeley.[7] There is every reason to assume that putting more taxis on the road would have a similar effect. A multiplier effect of 9-13 to 1 would lead to a substantial net reduction in the number of cars on the road. This would go a very long way toward alleviating Brookline's roadside congestion, parking problems, etc. A pretty good bargain!

At Moderator's Committee meetings, members of the Transportation Board have acknowledged that medallions would require regulation of a different and more comprehensive kind than has existed thus far in Brookline. The first, and critical question is how the Board would determine the appropriate QUOTA. How to get the number right? The members of the Transportation Board on the Moderator's Committee acknowledge that their past efforts in this regard have had mixed results. Why should we believe they will exercise more probative judgement in the future?

The Transportation Board has a sterling record regarding exercising rigorous QUALITY CONTROL of the town's taxi industry, as exemplified by the new inspection garage that it opened c. 1999. This indicates that it should restrict its oversight to matters of service quality, and not quantity.

Proponents of medallions claim that the cost of administering the medallion system would be paid for by sales of medallions, but sales can only be sold once, so there would only be a **one-time cash inflow** to the town, and medallions would need to be administered for decades. And over time, the problem of political influence worsens, as a volunteer Transportation Board and Board of Selectmen is forced to deal with increasingly powerful property-owners (the medallion-owners), who have a vested interest in maintaining a condition of scarcity.

There is acknowledgment by all members of the Moderator's Committee that medallions will lead to CONCENTRATION of vehicle ownership. This will lead to poor service and the increased likelihood of competition. The single best defense against concentration is a cost of entry based solely on the costs of the productive asset of the industry: the taxicab itself., and not on an elaborate superstructure of debt.

---

[7]http://www.sfbg.com/politics/2014/05/23/does-carsharing-really-reduce-overall-driving. Accessed 111314.

Further, I would urge scepticism regarding WA 16, because it offers tacit acceptance of medallions. The petitioner of WA 16 says he is neutral on the question of medallions, but those who are working with him are doing so solely because they see it as a way to keep the option of medallions alive. And as long as the option exists, the current taxi company owners will continue to divert resources to an excessive fleet.

CONCLUSION:
An economist would say medallions distort the market. In Brookline, even the prospect of medallions has ALREADY distorted the market, to bizarre effect. For the last 10 years, the promise of medallions has caused a "taxicab arms race": it has forced owners to maintain more vehicles than they need, because each owner wants to own more vehicles than his/her competitors, in hopes that will qualify them for a higher percentage of the medallions dispensed in the early, discounted tiers of offering. The owners were then so busy with the care and feeding of those unnecessary cars that they did not see the REAL competitive threat coming from ZipCar and the app services, even though they had several years to prepare.

Yet we hear credible complaints that there are no cabs available on Saturday nights. There is a mismatch of customer need and product availability, in this case because Uber can't pick up street-hails.

If the revised Warrant Article 15 is approved, the promise of medallions disappears. The owners will right-size their fleets. Their financials will improve. They can then begin competing more fairly against their competitors: livery services, app services, ride brokerage services, each other, and new entrants, including more owner/drivers.

Due to increased competition, as guided by rigorous regulation mandating acceptable standards of quality control, customer service will improve substantially.

For these reasons, and many others, I cannot recommend more strongly that you vote FAVORABLE ACTION ON REVISED WARRANT ARTICLE 15 and NO ACTION on WARRANT ARTICLE 16.

ARTICLE 15

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 15 is a petitioner article that is identical to Article 26 of the 2014 Annual Town Meeting and addresses the subject matter of taxi medallions. If passed as originally filed and then approved by the State Legislature, it would repeal the Selectmen's authority to transition to a taxi medallion system. The Town began looking into the possibility of converting from a license-based taxicab system to a medallion-based system in October, 2006.

The impetus behind Article 15 appears to be an ideological opposition to a closed market system. We have a closed market now and, as far as anyone can recall, we have always had a cap on the number of licenses. Article 15 would not change that. Uber and other unregulated on-line car services, which are becoming an enormous industry, with designs on taking over the delivery industry, will be happy to remain as unregulated as possible. There are good reasons why Brookline would seek to limit the number of taxies operating in Town including traffic, curb-side space, emissions and a stable micro-economy for the drivers and operators who depend on the industry. A medallion system maintains the closed market system, assures continued regulatory control, and provides an opportunity for capital investment that does not currently exist (because under a license system the right to operate could be removed at any time).

In 2008, the Town asked the State Legislature for the ability to implement a medallion-based taxi system. By voting favorably on Article 15, the Town would give up that option, something that makes no sense. Why would the Town want to petition the General Court to give back a right that we worked hard to obtain? While the Board is opposed to Article 15, we are not necessarily married to the LaCapra plan, so maintaining the authority to develop and implement some medallion program is something we want. In addition, Article 16 is an acceptable resolution describing the goals that a new taxi system should have.

By a vote of 5-0 taken on November 10, 2014, the Selectmen recommend NO ACTION on Article 15 as filed by the Petitioner.

ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: John Harris

To see if the Town will authorize and empower the Board of Selectmen to file a petition, in substantially the following form, with the General Court:

AN ACT TO REPEAL THE BOARD OF SELECTMEN'S AUTHORITY TO SELL TAXI MEDALLIONS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

Section 1. Strike IN ITS ENTIRETY sec. 4a of the 1974 Mass. Acts ch. 317, as amended by 2010 Mass. Acts ch. 51 sec. 6, authorizing the Board of Selectmen to have exclusive authority to sell taxi licenses [MEDALLIONS] by public auction, public sale, sealed bid or other competitive process established by regulations promulgated by the board; as further amended by 2012 Mass. Acts ch. 52 sec. 3, which established a separate Taxi Medallion Fund.

Section 2: This act shall take effect IMMEDIATELY upon its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This is intended to repeal the authorization of a Brookline Taxi Medallion program enacted in the Fall 2008 Town Meeting, and amended in the Fall 2010 and Fall 2011 Town Meetings–in each case with very little debate.

In its Fall 2008 session, Brookline Town Meeting authorized the Board of Selectmen to seek approval from the Massachusetts legislature to sell a limited number of "Medallions," one medallion to be placed on each taxi. The precise number of medallions issued by the town would be determined by the Transportation Board and approved by the Board of Selectmen.

A system of taxi medallions restricts the number of cabs and imposes the expense of buying a medallion for each and every cab on the road. Because of their (artificial) scarcity, medallions often become extremely expensive. In Boston and Cambridge, the price of a single medallion exceeds $600,000; in Somerville, it exceeds $350,000. A local

bank official recently estimated that a Brookline medallion would exceed $200,000. These prices are reflected in high cab fares.

If you have ever lived in Washington DC, you know there are plentiful taxis there, and the fares are a fraction of the cost in Boston. This is because Washington DC does not require taxi medallions.

A medallion system can be contrasted with a system of open licenses, in which anyone who meets certain relevant requirements: is of age, meets regulatory standards regarding driver training, licensing, and moral fitness; vehicle features, upkeep and safety; insurance coverage, etc.; and pays a modest registration fee, could enter the field and become a taxi owner and/or driver. Every other line of business serving the residents of Brookline–restaurants, supermarkets, pharmacies, doctors' offices, daycare services, etc., that is regulated by the Town (to ensure high standards of health and safety for customers and employees), enjoys an open system of licensing, where any hardworking person can attempt to build a business and earn a living.

Those who advocate for taxi medallions would impose a system built around quotas, prohibitively high costs, and significant barriers to entry. This change would be deleterious to the citizens of the town, and once implemented, would be extremely difficult and expensive to undo.

The town sees the sale of medallions as a quick source of revenue to the town. But in order to gain the support of the town's taxi company owners, who initially vigorously opposed medallions, a three-tier system has been proposed. During the first tier, existing taxi owners would be given a certain number of medallions. In the second tier, existing owners would be permitted to purchase more medallions at a pre-determined discounted price. Both tiers would substantially reduce the expected windfall. It is only at the third tier that medallions would be offered at a market rate.

Until recently, taxi medallions have proven to be a prudent investment. Like any scarce good, the price increased over the years, sometimes astronomically. Since their initial issuance in 1938, the price of medallions in New York City, for example, rose faster than that of housing or gold. But the advent of competing services such as Uber and Lyft have left the market in turmoil. Recently, in Chicago, no one showed up to bid on a (rare) issuance of new medallions. The very real possibility exists that those who inadvertently purchase medallions at a market high may find themselves "under water."

And the town would receive a substantial financial benefit only in the initial sale of each medallion. The purchaser of a medallion acquires ownership rights to it, so the bulk of the proceeds of any subsequent sale accrue to the private owner, not to the town. To address this concern, it has recently been proposed that the town be paid a percentage of the resale price of previously issued medallions. Is this comparatively modest amount worth the negative effects of medallions?

Perhaps the most pernicious aspect of medallions is that the ownership rights they create entail, like those of any other form of property, may continue–quite literally–for centuries. Once established, a medallion system is extremely difficult to undo, because it

would require buying back all of the outstanding medallions, and the owners will not easily relinquish their investment. And because only a finite number of medallions will be issued, a medallion system would replace an open market-based system with an oligopoly, which may last well beyond the lifetime of those of us now considering this matter. For a single, relatively small influx of cash for newly-issued medallions, the town is considering relinquishing an important part of its control over the taxi industry for decades or centuries to come. This will have substantial deleterious effects on the taxi customers of Brookline.

In a medallion system, a government agency decides how many taxis are allowed to operate. As well-meaning as they might be, the administrators of the system can never ascertain the optimum number of cabs on the street as well as the market.

The inevitable result of a medallion system is scarcity by design, since operators will only purchase medallions if they guarantee competitors will be restricted. The problem compounds over time, as existing medallion holders, and the banks that loaned them the money to purchase the medallions, put constant pressure on administrators to against issuing additional medallions. This will inevitably lead to a scarcity of cabs, and significantly higher fares. The Federal Trade Commission has consistently warned against taxi medallions for these reasons.

In addition to their legitimate operating expenses, including the cost of the purchase and upkeep of the vehicles, insurance, and fuel, under a medallion system owners must amortize the price of the medallion itself. This adds a significant debt burden. At first, owners would be forced to increase the lease they charge to drivers–thus reducing the driver's gross income. Eventually, the drivers would pressure the owners, and the owners would pressure transportation officials, to increase fares.

MEDALLIONS LEAD TO INEFFICIENCIES IN SERVICE due to arcane rules of enforcement. We have all hailed empty taxis and watched them drive by: they often are in a jurisdiction where they are allowed to drop off, but not pick up, passengers. When this happens, passengers are delayed, drivers are deprived of income, gas is wasted, and carbon is exhausted into the atmosphere. This is economically and environmentally irresponsible.

A ROBUST TAXI INDUSTRY WOULD GREATLY EASE BROOKLINE'S PARKING PROBLEM. Public transportation can never be so complete that it can carry people to their final destination down every last street in town–what transportation planners call the "last mile"–but a healthy taxi system, with modest fares, can. A low-cost taxi system makes living without a car possible, especially for those living in the densely-settled parts of Brookline, and greatly mitigates the need for parking spaces.

MEDALLIONS CREATE AN ISSUE OF SOCIAL EQUITY. Taxi ownership has conventionally been a stepping-stone to the middle class for ambitious people of limited means. Locally, many taxi drivers are immigrants some only recently arrived in the United States who in addition to paying their living expenses are trying to save for their children's educations *and* send a portion of their earnings to their families back home. If a Brookline medallion sells in the $200,000+ to $600,000+ range, it is doubtful many of

these drivers could ever qualify for the substantial loan they would need to purchase one. Most drivers would be caught in a noose, paying through the nose for a taxi they cannot reasonably be expected to one day own. They would in effect be forced to remain low-paid daily contract workers for their entire careers.

The drivers' financial straits are compounded because MEDALLION SYSTEMS MAKE CORRUPTION INEVITABLE. Since only a few increasingly-wealthy medallion holders would own taxis, there would be many more drivers than medallionized vehicles. An investigative series in the Boston Globe in the spring of 2013 revealed that drivers in Boston often must bribe dispatchers to be issued keys for a 12 hour shift, in addition to paying their formal lease for their cab.

One wonders why taxis, which provide the public with a useful service, should be subject to a regulatory regime similar to that imposed on the liquor industry. We have wisely decided to regulate the number and location of establishments selling alcohol in our communities. With rare exceptions, a new restaurant or bar can only obtain a liquor license by purchasing an existing one. In this instance, society is better served by restricting trade. In contrast, there is no reason to limit the number of taxis, and every reason not to.

The taxi industry would be more appropriately regulated with a system like the one governing private drivers' licenses or automobile registrations. The state issues a license to anyone who is of age and passes written and driving tests, and issues a registration to any vehicle that is ensured and that passes an inspection (and in both cases, pays the fee). Placing a quota on the number of drivers' licenses or registrations would impose undue hardship on those prohibited from driving, and would have a devastating impact on the economy.

So too with taxi medallions. The Town can and should establish rigorous regulations regarding the vehicles (construction quality, size, safety features, accessibility, etc.), the training, licensing and moral fitness of drivers, and minimum levels of insurance coverage, but should not limit the number of cabs.

Finally, a robust taxi system would encourage more residents to forego car ownership, and save the expense of a car loan, insurance, fuel, parking, and upkeep, for vehicles that spend most of their lives parked and idle. Given Brookline's density, many citizens would be better served by walking, cycling, taking a bus or subway, renting a car hourly, daily or weekly for the occasional errand or long-distance trip–and when appropriate taking a taxi.

SELECTMEN'S RECOMMENDATION

The Selectmen will provide a Recommendation in the Supplemental mailing planned for the weekend prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 15 vs. Article 16
How and/or when we enact a taxi medallion program in Brookline is an ongoing conversation. But the notion of renouncing the right to that option is a mistake. By asking the legislature for home rule legislation in 2008, we are on record in saying that the choice of implementation should rest with us in Brookline. There is no reason to vote favorably on Article 15 and seek to give up that power.

In contrast, Article 16 addresses the criteria we need to satisfy in order to decide whether medallions should be sold, and what the regulatory structure of the taxi industry should be whether or not we sell medallions.

Each advantage of taxi medallions carries with it a corresponding disadvantage. The question is whether the advantages offset the disadvantages by a sufficient margin. Article 16 is a measured, rational approach to answering that question.

RECOMMENDATION:
Article 15 would require a home rule petition to ask the legislature to rescind permission it previously gave Brookline to sell taxi medallions.

By a vote of 22- 0-0, the Advisory Committee unanimously recommends **NO ACTION** on Article 15. Instead, it endorses Article 16

The Advisory Committee believes it is a mistake to give up a right granted by the legislature, whether or not we intend to use that right in the near term or future. The AC also voted against a substitute article that would have, in effect, withdrawn Town Meeting's November 2008 endorsement of taxi medallions, but without requiring a home rule petition.[i]

The course of action the AC recommends is to give the Selectmen the option to decide whether and how to issue medallions without imposing a delay, with the expectation that the Moderator's Committee on Taxi Medallions will issue a report that clarifies the various options open to the Town.

DISCUSSION:
The argument against Article 15 as submitted is straightforward:

In 2008, Town Meeting overwhelmingly resolved to ask the legislature for a home rule petition allowing Brookline to sell taxi medallions, if it so chose. The legislature agreed, subject to provisions intended to protect residents, drivers, the incumbent companies and the Town. To go back to the legislature now would expend some of Brookline's limited political capital on a measure that simply gives up that right, without attempting to improve on the current system of issuing a limited number of annual taxi licenses.

The Advisory Committee also voted down an amendment to Article 15 that would have substituted a resolution asking the selectmen not to sell taxi medallions until the Moderator's Committee on Taxi Medallions issues its report. [*See endnote.*]

The argument against the amendment is based on the rapidly deteriorating state of taxi service in Brookline. The taxi companies have not been losing substantial numbers of passengers to Uber, but they have been losing drivers. They cannot field enough cabs to give residents adequate service, and they are losing the lease fees they would normally get from a full complement of drivers. Without adequate cash flow from lease fees, their businesses are at risk, and they lack the funds needed to buy new vehicles to compete with Uber for drivers.

Both the companies and the remaining drivers are asking for the Town to issue medallions because they see medallions as the only way to create an asset base that will allow the industry to recapitalize and buy the vehicles it needs.

The case against issuing taxi medallions boils down to four arguments.

Arguments against medallions	**Response of medallion proponents**
(1) Free Market Concerns Medallions limit the number of taxis, which interferes with the free market by preventing new entrants from coming in. The market should be open to anyone who wants to buy a cab and put it on the road. Regulation is an unnecessary and improper burden on the taxi owners.	Public policy in Brookline supports regulation to protect the public interest Brookline has limited the number of taxi licenses for many decades, and Article 15 would not change that – *nor would a substitute resolution that simply asks the Selectmen not to issue medallions.* Meanwhile, Uber and its competitors have already opened the market to competition. Anyone with a car can become an Uber driver.
(2) Medallions lead to monopoly Medallion ownership will end up in the hands of a few companies, thereby shutting out independent owners and limiting competition.	Well, we already have a monopoly – two larger companies, two smaller ones and a handful of independent operators. The largest company says that it plans to sell most of the medallions it obtains to individual drivers. It has a list of 40 drivers who are interested. So selling medallions will increase competition and improve service, at least in the near term. But some consolidation may be a good thing. Brookline currently has four taxi companies with radio rooms and a relative handful of independent operators with from one to five taxis. The companies, the Town's consultant and the

Arguments against medallions	Response of medallion proponents
	Moderator's Committee on Taxi Medallions agree that it would benefit the public *and the drivers* if there were only two or companies with radio rooms, rather than four.
(3) Characterizing the taxi industry The taxi business is in a state of flux. Individual drivers who buy medallions would put their investment at risk. The drivers who want to buy medallions are largely first generation immigrants, and the Town should not be a party to enticing them into a potentially bad investment.	This position risks being condescending At least 40 experienced Brookline drivers prefer to pay for medallions, and they prefer medallions to driving for Uber precisely because medallions are an asset that they can eventually sell in order to recoup their investment. Drivers pay $35,000 a year in lease fees to the taxi companies. They eliminate that cost if they buy a medallion. The savings far more than offsets the costs of financing a medallion, insurance, maintenance and depreciation that they would incur.
(4) La Capra Model The plan devised by Richard LaCapra, the Town's consultant, has flaws.	The LaCapra plan is not written in stone. It was devised to fit within a narrow set of constraints, including directions to Mr. La Capra to include a reduced price to the existing taxi companies. If the constraints are modified, the Moderator's Committee of Taxi Medallions could work with the Transportation Board to develop alternatives based on the criteria written into the enabling legislation, using criteria defined by the Selectmen and the Transportation Board.

The arguments in favor of issuing medallions boil down to three:

Arguments in favor of medallions	**Response of medallion opponents**
(1) "No medallions" will mean "no taxis" Issuing medallions will allow the industry to recapitalize and rebuild its fleet, which it needs to do in order to survive. Drivers are abandoning the business and switching to Uber because the taxicab fleet is old and unattractive to younger customers. But overall demand for taxis has not dropped significantly. As more drivers switch, service deteriorates and the companies with idle cabs lose money.	Responses fall into two camps: Medallions may be a good deal for the people who purchase them in the first round, but they won't increase in value because of Uber etc. So the next buyer will simply face the increased cost of financing the medallion. *Alternatively*... medallions in Boston cost $500,000 and Brookline medallions sold for $70,000 or $100,000 will track Boston prices, making it impossible for drivers to buy in.
(2) Medallions allow the industry to recapitalize Brookline taxi licenses are valid for only a year and cannot be sold. Taxi companies have no incentive to invest in a business that has no long-term security, and banks will not lend funds to the companies at attractive rates, if at all. In contrast banks will lend to companies that have long-term security and medallions are the form of security that is understood by banks that finance the taxi industry.	Other kinds of businesses can borrow from banks, so there must be some way for taxi companies to get financing. [Lenders from Brookline Bank explained to the Moderator's Committee that medallions are bankable, but licenses, even multi-year licenses, are not understood by the lenders.]
(3) Selling medallions is the way to get fair value The Town has, in effect, been renting out space on the streets at a low annual rate – the $300 annual licensing fee it charges taxi owners for each cab. License fees cannot be raised substantially beyond the actual cost of administering the license. Selling medallions would allow the Town to recover several million dollars worth of rights that it has been virtually giving away.	Like diamonds, a medallion is forever. Once the Town sells medallions, it loses the ability to change its mind (unless it pays fair market value to buy the medallions back.) [That's true. Just like a piece of real estate owned by the Town, if we sell a medallion, it belongs to the purchaser we and can't just take it back.]

---

[i] The text of the substitute motion under Article 15 that was rejected by the Advisory Committee was:

> RESOLVED that Town Meeting requests that the Board of Selectmen take no action under the authority to sell taxi medallions granted to the Board by section 4a of Chapter 317 of the Acts of 1974, as amended, until the Moderator's Committee on Taxi Medallions issues its Final Report.

XXX

ARTICLE 16

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 16 is a petitioned resolution, the subject matter of which is the Town's potential transition to a medallion-based taxi system. The Whereas clauses of the revised resolution adopted by the Advisory Committee urge the following:

1. all relevant boards with jurisdiction to proactively and diligently implement in an equitable, balanced manner the interests enumerated in the Special Act that authorizes the Town to transition to a medallion-based taxi system. These include serving the elderly and disabled, continuity for Brookline residents, protection of business investments, climate impact, and revenue for the town;

2. Transportation Board decisions and actions should make an effort to aim for improved working conditions, a more secure future, and an opportunity to own a stake in the in the taxicab business for Brookline taxicab drivers;

3. the Transportation Board contemplating any action regarding changes in the regulation of the Brookline taxicab industry take steps it determines to be prudent to revise existing hackney and business license fees in order adequately to increase staffing devoted to taxicab regulation and public safety.

The Board believes that these are prudent actions to take while the Town continues to deliberate a move to a medallion-based taxi system. Therefore, we recommend FAVORABLE ACTION, by a vote of 5-0 taken on November 10, 2014, on the motion offered by the Advisory Committee on pages 16-7 – 16-9 of the Combined Reports.

ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: David Lescohier

Proposed resolution regarding the transition from the current taxi business and hackney license system to a mixed medallion and hackney license system in the Town of Brookline

To see if the Town will adopt the following resolution:

Whereas Town Meeting adopted Article 21 of the fall 2008 session, a home rule petition seeking an amendment, inserting section 4A, into chapter 317 of the acts of 1974, this home rule petition known as Chapter 51 of the acts of 2010, An Act Relative to the Sale of Taxi Licenses in the Town of Brookline.

Whereas Chapter 317, section 4A of the acts of 1974, as amended, states that: "The board of selectmen may direct the board [of transportation] that in taking any action the board considers necessary to implement this section and to sell taxi licenses, including the adoption, alteration or repeal of rules and regulations after public hearing, the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sale of taxi licenses."

Whereas Article 21, Special Town Meeting, 2008, selectmen's recommendation states that: "The idea of converting our license-based system to a medallion-based system similar to the cities of Boston and Cambridge was first proposed to the Town by its hackney business license holders over five years ago to the Transportation Board."

Whereas the Transportation Board chair assembled an ad hoc working group and the selectmen's recommendation states "...this article seeks exemption from this law [MGL 30B] in recognition that the working group's stated goals will most likely lead to a lower per medallion price than an unrestricted medallion."

Whereas Article 21, Special Town Meeting, 2008, selectmen's recommendation states: "The $300 administrative fee charged to the business license holder for each taxi cab is below the current cost to the Town in staffing time needed to properly regulate the industry."

Whereas Article 21, Special Town Meeting, 2008, selectmen's recommendation states that the taxi regulatory control under the transportation division and the police department hackney division are understaffed.

Whereas, many Brookline taxicab drivers have worked many years loyally serving the residents of Brookline and surrounding communities yet face increasingly difficult, sometimes dangerous, working conditions and inadequate, decreasing rewards for their labor and service and little opportunity to provide for their future.

Whereas the Brookline taxi businesses have been innovative and effective in growing their businesses, and have been able, because of effective marketing, to offer Brookline a highly reliable and responsive taxi fleet with more than triple the capacity warranted for a community of Brookline's size.

Whereas the emergence of unregulated asymmetrical transportation services employing smart phone-based apps is creating new challenges for taxi businesses in Brookline. The Brookline taxicab companies have reported a marked, recent decline in demand.

Whereas the Brookline taxi businesses depend on their ability to maintain a stable, ongoing partnership with the Town as a prerequisite to long term planning, strategic improvements, and continuing investments in their businesses.

Therefore, be it RESOLVED that town meeting favors the view that the interest of Brookline residents in the continuity of existing taxi businesses refers to the collective capacity of Brookline taxicab companies to deliver high quality, responsive, service, at a competitive price.

RESOLVED, that town meeting urge all relevant boards with jurisdiction contemplating action regarding changes in the regulation of the Brookline taxicab industry consider it mandatory, not optional, to proactively, with diligence, and affirmatively take care to implement in an equitable, balanced manner the entire interests enumerated chapter 317 of the acts of 1974 section 4A, as amended. Specifically, any board or committee should act to limit undue maximization of additional revenue for the Town when it would thereby result in excessive sacrifice of the entirety of enumerated interests in chapter 317 of the acts of 1974 section 4A, as amended.

RESOLVED, town meeting favors, in view of widely known proposals to convert to a medallion system, that all relevant boards with jurisdiction, in order to preserve continuity of existing taxicab service in Brookline, urgently consider actions likely to promote enhanced driver retention and recruitment. Specifically, town meeting recommends fair and just recognition that board decisions and actions promoting improved working conditions, a better life, and a more secure future through an opportunity to own a stake in the taxicab business for Brookline taxicab drivers has a direct bearing on taxicab driver retention and recruitment.

RESOLVED, town meeting urges all relevant boards with jurisdiction contemplating action regarding changes in the regulation of the Brookline taxicab industry take steps to revise license fees and increase staffing devoted to taxicab regulation and public safety.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article recommends that the transportation board and any other boards or committees reconsider changes to the taxi license regulations and the expected revenue for the Town from the sale of medallions.

The board of selectmen approved a modified three-tier plan for medallion pricing that consultant Richard LaCapra recommended in 2011. This modified LaCapra plan says that the Town will grant a certain number of medallions in the first tier, sets a price of $65,000 - $63,000 for the second tier, and envisions auctioning medallions in the third tier with an expected price of $125,000.

As an alternative, this warrant article advocates that the relevant boards or committees act to limit undue maximization of additional revenue when it would thereby result in excessive sacrifice of the entirety of enumerated interests in chapter 317 of the acts of 1974 section 4A, as amended.

Specifically, this warrant article recommends stabilizing the currently deteriorating economics of taxicab companies due to loss of drivers and the inability to recruit qualified replacement taxicab drivers. This deterioration threatens the continuity of existing services. In order to reduce taxicab driver losses and enhance recruitment, town meeting therefore advocates that any boards with jurisdiction pursue all reasonable actions to promote improved working conditions and a more secure future for taxicab drivers.

EXPLANATION

BACKGROUND

If it were ever true that Brookline taxi medallions could be worth $70,000, even $65,000 to $63,000, the currently approved figures, it is likely to be no longer true today. While the Town has been considering a transition to a medallion licensing system, the assumptions underlying LaCapra's recommendation that the board of selectmen used to set the prices for the three-tier transition, have become no longer realistic or sustainable.

The emergence of new smart phone-based modes of unregulated asymmetrical transportation is a likely contributing reason for the reduced demand for Brookline taxis, and therefore, the reduced value or potential value of Brookline taxi businesses, and logically, the potential value of Brookline taxi medallions.

Recently, because of the diminished prospects for taxi drivers in Brookline, a growing number of drivers have quit. The companies are having increasing difficulty recruiting replacement drivers with equivalent, satisfactory qualifications. As a result, there are fewer vehicles leaving the lot to serve the shrinking demand. The result is reduced revenue, but many fixed costs remain that the companies cannot sufficiently manage or

reduce, creating a potential significant financial problems for Brookline taxicab companies.

The Brookline taxi market is unique. Comparisons to other communities are not very relevant. Mr. LaCapra's experience managing the medallion system in Boston is, for the most part, an irrelevant qualification for appraising the Brookline situation. A member of the moderator's committee on taxi medallions asked Mr. LaCapra for examples of any other communities, comparable or not, using the three-tier system he has recommended for Brookline. The hope was to learn from any experience that may be somewhat relevant to Brookline and to acquire information about possible pitfalls and successes. It turns out the recommended three-tier method is untried and unproven. The committee learned that no other community, to LaCapra's knowledge, has employed the three-tier strategy LaCapra recommended for Brookline.

POLICY RECOMMENDATIONS
This warrant article favors five policy outcomes:

First, reduce the number of dispatch services in Brookline to achieve economies of scale. It is unlikely that Brookline can support more than two efficient dispatch services.

About 10 years ago, Brookline, believing that competition would enhance the taxicab industry, attracted additional taxicab companies. Brookline traditionally had two companies providing dispatch services and now has four, hence the problem of small scale companies that are experiencing especially difficult challenges in the current market of shrinking demand, persisting fixed costs, and taxi driver loss. Thus, this warrant article favors companies providing dispatch services to between at least 40 to 75 taxicab or affiliate members. The incentive for the smaller companies should be to consolidate or merge. In an 80% telephone; digital; and now dedicated taxicab smart phone app dispatched market such as Brookline, dispatch companies with less than 40 - 75 taxis are unlikely to be cost-efficient.

Second, in order to improve the poor, some would say disgraceful, deteriorating working conditions involving long hours, decreasing pay, danger, and no benefits for Brookline's taxicab drivers; the relevant boards with jurisdiction should provide an affirmative opportunity through an auction process for long-standing, loyal affiliated and shift-work drivers having good records, to acquire taxi medallions.

While the board of selectmen and advisory committee reports for warrant article 26 claim that the LaCapra proposed strategy promotes the opportunity for driver medallion ownership, this is not actually the case. There is nothing in the draft regulations (February 24, 2014) or the LaCapra report that would explicitly provide a realistic opportunity for the majority shift-work drivers to bootstrap themselves into owners.

On the contrary, under the draft taxi regulations, the proposed prices, and the planned distribution voted by the board of selectmen, the board in effect, has practically earmarked medallion sales only to established companies and affiliates. In order to become owners, taxi shift-work drivers would have to out-compete and out-bid

established taxi companies. They could only do so in tier three as there is no allocation for them in tiers one or two. The claim that shift-work drivers, who are the overwhelming majority of drivers, would actually have an opportunity to become owners under the LaCapra plan, as adopted, and under the current draft taxicab regulations (February 24, 2014), is not creditable.

Third, in order to achieve resiliency, sustainability, and flexibility, initially manage the sale of medallions by conducting a series of incremental auctions of small blocks of medallions over time. In order to maintain stability and continuity of taxi services in Brookline during the transition, continue hackney licenses for the remaining fleet. The board should grandfather taxicabs continuing to operate with hackney licenses under current regulations, not obliging them to meet the proposed higher standards because they would not have access to the financing that a medallion may provide. The transportation board, using its discretion, may determine that it is in the best interest of the Town, consistent with maintaining continuity of service, to keep a reasonable number of hackney licenses in the inventory as hedge against the need to reduce the fleet, as the hackney licenses do not have property rights.

Price control is fraught with complication and difficulty. Whether it is apartment rents, broadcast licenses, microwave spectrum, oil exploration leases, mining rights, or taxi medallions, a strategy that relies on defining or prescribing prices frequently is, or becomes, unworkable. This is why this warrant article recommends replacing the three-tier LaCapra price setting mechanism with a simple, incremental auction process. It is generally better to let the buyer, who is best able to judge the risks and benefits of acquiring a property or right, to be the price decision maker.

The transportation board and board of selectmen, which inherently, are distant and out of touch from the realities of running a taxicab business, should not attempt to impose themselves on the management of taxicab businesses by setting the price of required medallion licenses with the aim of increasing the companies' balance sheet net worth. How and to what extent the companies may decide to borrow or otherwise increase debt in order to invest in their business should be up to the management of the taxicab businesses. The Town boards should regulate Brookline taxicab businesses, but not manage them. In the context of a transition from a hackney license system to a taxi medallion system, the fairest and most flexible and resilient way to realistically and sustainably establish a value for the initial distribution of taxi medallions in Brookline is by auction.

Both the selectmen's and the advisory committee's discussions for Warrant Article 26, Spring 2014 claim that the taxi companies in Brookline have not, and cannot, modernize their dispatch system, introduce GPS, and eHail technologies. These generalizations are not consistent with experience or the current state of Brookline taxicab companies. The lack of medallions notwithstanding, companies already operate with digital dispatch systems. The companies are keeping the radios only for backup, have GPS, use tablets in the vehicles to display incoming requests and provide GPS, have eHail, and are testing and soon to deploy a smart phone app similar in concept to the apps employed by the unregulated competition.

Fourth, bolster the Town's fees in order to provide enhanced staffing for regulation and public safety.

Fifth, in order to maximize spending for improvement of the fleet, the board should call for payment of the medallion bid price at the time of approved sale or transfer to a new, subsequent owner (a lien) rather than at the time of first purchase from the Town.

DISCUSSION

In addition to recently attracting more competition by adding more companies, the Town of Brookline, unfortunately, has promoted the belief that medallions could cure the problems for the Brookline taxicab industry. The supporters claim that not only would medallions cure problems, but also simultaneously the sale of medallions would yield a large windfall (an estimated $15 million) for the Town.

It is manifestly true that some communities have adopted medallions and others have not. Of note, generally communities that medallionized initially offered medallions for a nominal price, not an inflated, windfall-seeking price.

There is likely no compelling case for or against medallions. It is the case that communities with, or without, medallions have well managed, or poorly managed, taxicab systems. Medallions simply are not a magic bullet.

In the case of Brookline, the effort to medallionize has been an unfortunate distraction. While the Town has been seeking to medallionize, the strategic decision to bring additional taxicab companies into Brookline to enhance competition has weakened the industry, exacerbating the current decline. The Town has promised medallions as a cure repeatedly because drivers and the companies are asking for medallions and believe that they are a cure. Currently the drivers and taxicab companies are becoming desperate. They are grasping for medallions as their lifesaver.

Unfortunately, because of the events and delayed decision making over the past ten years, currently taxicab companies face less favorable economic conditions and less attractive realistic alternatives. Recently, the situation has seriously deteriorated and it seems that tough medicine and decisions are currently the only ones that remain. This is why this warrant article recommends reducing the number of companies and promptly introducing, at least on a trial basis, a sale of some medallions through auction. Using an auction would prevent excessive medallion purchase prices. Excessive prices could end up risking possible future under water loans, which could become another nail in the coffin of the weakened Brookline taxicab industry. Further delay could be detrimental.

CONCLUSION

This non-binding warrant article is about stabilizing Brookline taxicab companies, maintaining services for the elderly and disabled, assuring continuity of services for Town residents, protecting the environment, and responsibly enhancing revenue for the town. In order to stabilize taxicab companies it is essential to attract and retain qualified taxicab drivers. Therefore, the transportation board should consider all reasonable actions to improve driver working-conditions. Brookline taxicab drivers aspire to a better life

and a better future. The Town has repeatedly told drivers and the taxicab companies that medallions are a pathway to achieving their dreams for better conditions and a more secure future. Voting for this warrant article says that town meeting endorses transportation board and the board of selectmen efforts, decisions, and actions that lead to achieving the entire enumerated goals found in Chapter 317 of the acts of 1974, section 4A, as amended. However, achieving the entire enumerated goals will succeed only if accompanied by significant improvement in taxicab driver's working conditions that shore up retention and enhance recruitment of loyal, qualified taxicab drivers.

SELECTMEN'S RECOMMENDATION

The Selectmen will provide a Recommendation in the Supplemental mailing planned for the weekend prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Article 15 vs. Article 16
How and/or when we enact a taxi medallion program in Brookline is an ongoing conversation. But the notion of renouncing the right to that option is a mistake. By asking the legislature for home rule legislation in 2008, we are on record in saying that the choice of implementation should rest with us in Brookline. There is no reason to vote favorably on Article 15 and seek to give up that power.

In contrast, Article 16 addresses the criteria we need to satisfy in order to decide whether medallions should be sold, and what the regulatory structure of the taxi industry should be whether or not we sell medallions.

Each advantage of taxi medallions carries with it a corresponding disadvantage. The question is whether the advantages offset the disadvantages by a sufficient margin. Article 16 is a measured, rational approach to answering that question.

RECOMMENDATION:
By a vote of 23 - 0, the Advisory Committee unanimously recommends FAVORABLE ACTION on Article 16 as amended, the text of which is as follows:

VOTED: That the Town will adopt the following resolution:

~~Whereas Town Meeting adopted Article 21 of the fall 2008 session, a home rule petition seeking an amendment, inserting section 4A, into chapter 317 of the acts of 1974, this home rule petition known as Chapter 51 of the acts of 2010, An Act Relative to the Sale of Taxi Licenses in the Town of Brookline.~~

Whereas Chapter 317, section 4A of the acts of 1974, as amended, states that: "The board

of selectmen may direct the board [of transportation] that in taking any action the board considers necessary to implement this section and to sell taxi licenses, including the adoption, alteration or repeal of rules and regulations after public hearing, the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sale of taxi licenses.";

~~Whereas Article 21, Special Town Meeting, 2008, selectmen's recommendation states that: "The idea of converting our license-based system to a medallion-based system similar to the cities of Boston and Cambridge was first proposed to the Town by its hackney business license holders over five years ago to the Transportation Board."~~

~~Whereas the Transportation Board chair assembled an ad hoc working group and the selectmen's recommendation states "...this article seeks exemption from this law [MGL 30B] in recognition that the working group's stated goals will most likely lead to a lower per medallion price than an unrestricted medallion."~~

Whereas Article 21, Special Town Meeting, 2008, Selectmen's recommendation states: "The $300 administrative fee charged to the business license holder for each taxi cab is below the current cost to the Town in staffing time needed to properly regulate the industry";

Whereas Article 21, Special Town Meeting, 2008, selectmen's recommendation states that the taxi regulatory control under the transportation division and the police department hackney division are understaffed;

Whereas, many Brookline taxicab drivers have worked many years loyally serving the residents of Brookline and surrounding communities yet face increasingly difficult, 1sometimes dangerous, working conditions and inadequate, decreasing rewards for their labor and service and little opportunity to provide for their future;

~~Whereas the Brookline taxi businesses have been innovative and effective in growing their businesses, and have been able, because of effective marketing, to offer Brookline a highly reliable and responsive taxi fleet with more than triple the capacity warranted for a community of Brookline's size.~~

~~Whereas the emergence of unregulated asymmetrical transportation services employing smart phone-based apps is creating new challenges for taxi businesses in Brookline. The Brookline taxicab companies have reported a marked, recent decline in demand.~~

Whereas the Brookline taxi businesses depend on their ability to maintain a stable, ongoing partnership with the Town as a prerequisite to long term planning, strategic improvements, and continuing investments in their businesses.

~~Therefore, be it RESOLVED that town meeting favors the view that the interest of Brookline residents in the continuity of existing taxi businesses refers to the collective capacity of Brookline taxicab companies to deliver high quality, responsive, service, at a competitive price.~~

Therefore, be it RESOLVED, that Town Meeting urge all relevant boards with jurisdiction, ~~contemplating action regarding changes in the regulation of the Brookline taxicab industry consider it mandatory, not optional,~~ to proactively, ~~with diligence~~, and ~~affirmatively~~ diligently ~~take care to~~ implement in an equitable, balanced manner the entire interests enumerated in chapter 317 of the acts of 1974 section 4A, as amended, which includes serving the elderly and disabled, continuity for Brookline residents, protection of business investments, climate impact, and revenue for the town; ~~Specifically, any board or committee should act to limit undue maximization of additional revenue for the Town when it would thereby result in excessive sacrifice of the entirety of enumerated interests in chapter 317 of the acts of 1974 section 4A, as amended.~~

RESOLVED, ~~town meeting favors, in view of widely known proposals to convert to a medallion system, that all relevant boards with jurisdiction, in order to preserve continuity of existing taxicab service in Brookline, urgently consider actions likely to promote enhanced driver retention and recruitment. Specifically, town meeting recommends fair and just recognition that board decisions and actions promoting improved working conditions, a better life, and a more secure future through an opportunity to own a stake in the taxicab business for Brookline taxicab drivers has a direct bearing on taxicab driver retention and recruitment.~~ that Town Meeting urges that Transportation Board decisions and actions should make an effort to aim for improved working conditions, a more secure future, and an opportunity to own a stake in the in the taxicab business for Brookline taxicab drivers;

RESOLVED, Town Meeting urges ~~all relevant boards with jurisdiction contemplating action regarding changes in the regulation of the Brookline taxicab industry take steps to revise license fees and increase staffing devoted to taxicab regulation and public safety.~~ the Transportation Board contemplating any action regarding changes in the regulation of the Brookline taxicab industry take steps it determines to be prudent to revise existing hackney and business license fees in order adequately to increase staffing devoted to taxicab regulation and public safety.
~~Or act on anything relative thereto.~~

A "clean" copy of the Advisory Committee's proposed vote may be found at the end of this report.

Passed by a Majority Vote

DISCUSSION:
Article 16 looks at the enabling legislation Brookline obtained and adds one criterion to the five criteria the Legislature established as conditions for selling medallions:

1. Preservation of taxi service for the elderly and disabled
2. Continuity of taxi service for Brookline residents [during a transition to medallions]
3. Protection of the investments made by the incumbent companies

4. Reducing the carbon footprint of Brookline's taxi fleet
5. Providing revenue to the Town

To those five criteria, Article 16 adds:

1. Provide drivers with improved working conditions, a more secure future, and an opportunity to own a stake in the taxicab business.

The Advisory Committee accepts that the additional criterion is important. It remains to be seen how these six elements can be balanced, since neither the status quo nor any known alternative plan will satisfy all of them perfectly.

CONCLUSION:
The Advisory Committee believes that the best course of action for Town Meeting is to vote NO ACTION on **Article 15**; and vote FAVORABLE ACTION on **Article 16 as amended**.

Such a decision would provide the Town with maximum flexibility within Article 16's criteria and allows the Moderator's Committee on Taxi Medallions to make recommendations to the Transportation Board for a timely alternative to both the current licensing system and the La Capra Plan.

Advisory Committee's Amended Motion:

VOTED: That the Town adopt the following resolution:

Whereas Chapter 317, section 4A of the acts of 1974, as amended, states that: "The board of selectmen may direct the board [of transportation] that in taking any action the board considers necessary to implement this section and to sell taxi licenses, including the adoption, alteration or repeal of rules and regulations after public hearing, the board may balance, in its discretion, the interest of Brookline residents in the continuity of existing Brookline taxi businesses, the interest of existing license holders in their investment in their businesses, the interest of the town in augmenting the portion of the taxi fleet serving the town that meets the needs of its elderly and disabled residents and that minimizes the fleet's detrimental impact on the town's air quality and on the level of the town's carbon emissions as a whole, and the town's interest in maximizing revenue generated from sale of taxi licenses."; and

Whereas Article 21, Special Town Meeting, 2008, Selectmen's recommendation states: "The $300 administrative fee charged to the business license holder for each taxi cab is below the current cost to the Town in staffing time needed to properly regulate the industry"; and

Whereas Article 21, Special Town Meeting, 2008, selectmen's recommendation states that the taxi regulatory control under the transportation division and the police department hackney division are understaffed; and

Whereas, many Brookline taxicab drivers have worked many years loyally serving the

residents of Brookline and surrounding communities yet face increasingly difficult, 1sometimes dangerous, working conditions and inadequate, decreasing rewards for their labor and service and little opportunity to provide for their future; and

Whereas the Brookline taxi businesses depend on their ability to maintain a stable, ongoing partnership with the Town as a prerequisite to long term planning, strategic improvements, and continuing investments in their businesses; therefore be it

RESOLVED, that Town Meeting urge all relevant boards with jurisdiction, to proactively and diligently implement in an equitable, balanced manner the entire interests enumerated in chapter 317 of the acts of 1974 section 4A, as amended, which includes serving the elderly and disabled, continuity for Brookline residents, protection of business investments, climate impact, and revenue for the town; and be it further

RESOLVED, that Town Meeting urges that Transportation Board decisions and actions should make an effort to aim for improved working conditions, a more secure future, and an opportunity to own a stake in the in the taxicab business for Brookline taxicab drivers; and be it further

RESOLVED, Town Meeting urges the Transportation Board contemplating any action regarding changes in the regulation of the Brookline taxicab industry take steps it determines to be prudent to revise existing hackney and business license fees in order adequately to increase staffing devoted to taxicab regulation and public safety.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

Submitted by: Claire Stampfer and Heather Hamilton

To see if the Town will adopt the following resolution pertaining to Town lighting;

Whereas the Town of Brookline is in the process of converting public exterior and interior lighting to Light-Emitting Diode (LED) lighting;

Whereas LED lighting technology is a significant improvement over other forms of electric illumination, because it is more energy efficient; and

Whereas different wavelengths of light, both natural and electric, have been found to affect circadian rhythms, including the sleep-wake cycle; and

Whereas adequate restful sleep is a vital component of human health and well-being; and

Whereas the public health effects of light should be taken into consideration when both exterior and interior municipal lighting is selected;

Now therefore, be it resolved that the Town Meeting requests that the Brookline Department of Public Health, Department of Public Works, and the Building Department work together to select daytime and nighttime-appropriate lighting by:

1) Keeping abreast of new scientific findings in studies of health effects of lighting, including LEDs;
2) Monitoring new technological developments in light bulb and fixture design. For example, bulbs capable of emitting multiple wavelengths may be programmable to produce different wavelengths and intensities of light for daytime and nighttime activities. Thus the wavelength and dimness or brightness may be adjusted for the requirements of time of day and the tasks to be done; and
3) Recommending the selection of light bulb specifications appropriate for daytime use in buildings and outside, and nighttime use in buildings and outside for the Town of Brookline and take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Research in circadian biology, which studies daily 24-hour rhythms in physiology, metabolism, and behavior, has shown the importance of robust circadian rhythms to health. The natural circadian cycle is slightly longer than 24 hours, on average, and therefore to maintain normal circadian rhythm we need to reset our clocks daily. This reset of our circadian clock occurs when we are exposed to stable cycles of daylight

during the day and to darkness at night. This rhythm can be disrupted by exposure to bright light at night. (1, 2)

Even low levels of exposure to light, particularly shorter wavelength blue light, can shift circadian rhythms, directly alert the brain and suppress melatonin production. (1) Melatonin is only produced at night and is the biochemical signal of darkness (2). Exposure to light at night after dusk interferes with our sleep by 1) directly alerting the brain and making it more difficult to fall asleep and have good quality deep sleep; and 2) altering the timing of circadian rhythms in sleep, hormones and other normal cellular functions that are circadian-dependent (1) Sources of nighttime light exposure include interior lighting and the screens of electronic devices, street lights, and glare from roadways and other properties..

Nighttime lighting can also cause disabling glare while driving that diminishes the field of vision. Glare is related to the intensity and direction of the light. Other organisms, such as insects, birds and plants, also have their rhythms disrupted by light at night, impacting delicate ecosystems.

White light contains all wavelengths of light. White light can be created artificially with different proportions of different wavelengths of light than occur naturally in sunlight. Light enriched in the shorter, blue wavelength, is appropriate in the daytime and if an alerting stimulus is desired. For example, shorter wavelength blue enriched white light is appropriate in the morning and during the day for persons who work during the day. Shorter wavelength blue enriched white light generally has a higher Correlated Color Temperature, CCT. White light with proportionally less short-wavelength and more longer wavelength light, such as red-enriched light, generally has a lower CCT and, especially when coupled with lower intensity, would be appropriate in the evening after dusk to provide light that will minimize the alerting effects prior to sleep and minimize interruption of sleep. Lower CCT lighting in the lowest acceptable intensity can be used for street and other exterior lighting overnight and for interior lighting after dusk so that there is less disruption of normal sleep. Thus the need for different lighting during the day and night must be taken into consideration in municipal lighting design.

In summary, research on the effects of light on health is a relatively new and growing field. Enough is known currently for the American Medical Association to have developed a public health policy statement (1). The Town of Brookline is currently in the process of converting all lighting to LED lighting to lower costs and to decrease the carbon footprint of the Town. The purpose of this warrant article is to ensure that the Town of Brookline takes into consideration the health effects of different wavelengths, intensities and direction of lighting when purchasing LED lighting bulbs and fixtures and when locating fixtures and directing the light. We recommend that the Departments of Health, Building and Public Works work together to ensure that health is considered when Town lighting is selected.

References:
1.) Council on Science and Public Health Report 4. Light pollution: adverse health effects of nighttime lighting. American Medical Association House of Delegates Annual Meeting. June 2012, Chicago, IL.

2.) Adverse Health Effects of Nighttime Lighting: Comments on American Medical Association Policy Statement
Richard G. Stevens, PhD, George C. Brainard, PhD, David E. Blask, PhD, MD,
Steven W. Lockley, PhD, Mario E. Motta, MD
Abstract: The American Medical Association House of Delegates in June of 2012 adopted a policy statement on nighttime lighting and human health. This major policy statement summarizes the scientific evidence that nighttime electric light can disrupt circadian rhythms in humans and documents the rapidly advancing understanding from basic science of how disruption of circadian rhythmicity affects aspects of physiology with direct links to human health, such as cell cycle regulation, DNA damage response, and metabolism. The human evidence is also accumulating, with the strongest epidemiologic support for a link of circadian disruption from light at night to breast cancer. There are practical implications of the basic and epidemiologic science in the form of advancing lighting technologies that better accommodate human circadian rhythmicity.
(Am J Prev Med 2013;45(3):343–346)

ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

Article 17 is a resolution urging the Town, when undertaking the conversion of lighting to LED or other energy saving lighting, to consider the effects on human health and well-being.

Presentation were made by Dr. Stampfer and Ms. Hamilton, the petitioners explaining that they became aware of this issue in 2013, and have been researching it since, with the aid of Dr. Lockley of Harvard and Dr. Balsam, Brookline's Director of Public Health and Human Services.

The petitioners support the Town's conversion to LED lighting to save money and reduce the Town's carbon footprint. They seek to have the Department of Public Health, Department of Public Works, and the Building Department take the latest research on the effect of lighting on circadian rhythms and sleep patterns into consideration when continuing to implement the conversion. Because light technology and the science behind it are evolving so rapidly, the resolution is not prescriptive and does not seek to create a regulatory frame to address the issue.

The Advisory Council on Public Health voted 6 – 0 to support warrant Article 17

SELECTMEN'S CLIMATE ACTION COMMITTEE RECOMMENDATION

The Selectmen's Climate Action Committee recommends favorable action on Article 17. This article, submitted by Claire Stampfer and Heather Hamilton, is a resolution urging the town to select appropriate daytime and nighttime lighting options for municipal facilities, taking into consideration the possible health effects of new technology. The resolution also asks town staff to keep abreast of lighting technology improvements in order to continually modify lighting as needed and limit its impact on public health.

Recently, the town has been working towards converting both its interior and exterior lighting facilities to LEDs, which are more efficient and last longer than other currently existing lighting technology. This is particularly evident with streetlights, most of which are high-pressure sodium bulbs. Although LEDs can provide real energy savings, and therefore lessen the town's overall energy use, some LED technology that is in the blue wave spectrum can disrupt the circadian rhythms of organisms, including humans, and inhibit the production of melatonin, which readies the body for sleep. Sources of nighttime light exposure include interior lighting, the screens of electronic devices, streetlights, and glare from roadways and other properties.

The town's Departments of Public Works, Health and Building have shown a real willingness to take public health into consideration when making lighting improvements, and they had already ensured that the new LED streetlights currently being installed would be below 5,000 kelvin, limiting the amount of shorter wavelength blue light. This is due to the Health Department working with Public Works to highlight the recent health concerns related to LED technology. Although there may still be some concerns about overall lighting intensity, the LED streetlight conversion project shows that when new information about a project's possible public health effects becomes available, the project is modified to address those concerns when possible.

The Climate Action Committee believes the town can still take advantage of energy-saving lighting technology while protecting the health of town residents. This resolution encourages a close working relationship between town departments to ensure that new information about technology is shared when it becomes available. Recent experience indicates that such a relationship between town departments already exists; this resolution underscores the need for the sharing of information and implementation of lighting technology going forward, particularly as the field is rapidly evolving. Doing so allows the town to continue to implement improvements to reduce its overall energy use, while still supporting the town's public health.

Therefore, the Selectmen's Climate Action Committee unanimously recommends favorable action on Article 17.

SELECTMEN'S RECOMMENDATION

Article 17 is a petitioned resolution that relates to the Town's project to convert all street lighting to LEDs in order to lower costs and to decrease the carbon footprint of the Town. The stated purpose of the warrant article is to ensure that the Town takes into consideration the health effects of different wavelengths, intensities and direction of lighting when purchasing LED lighting bulbs and fixtures and when locating fixtures and directing the light. It asks relevant Town departments to work together to select daytime and nighttime-appropriate lighting by keeping abreast of new scientific findings in studies of health effects of lighting; monitoring new technological developments in light bulb and fixture design; and recommending the selection of light bulb specifications appropriate for daytime use in buildings and outside, and nighttime use in buildings and outside.

The Board thanks the Petitioners for raising their concerns and offering specific suggestions to help assure the LED replacement project is done appropriately. The Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 14, 2014, on the article, which is reflected in the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY AND RECOMMENDATION:
Article 17 is a resolution urging that the Town, when undertaking the conversion of public interior and exterior lighting to LED (Light-Emitting Diode) or other energy-saving lighting, consider the effects of the lighting's wavelengths, intensities, and direction on human health and well-being. By a vote of 22-1-0, the Advisory Committee recommends **Favorable Action** on the Article.

While saving energy and reducing the Town's carbon footprint, LED lighting has the potential to interfere with human health and general well-being by affecting circadian rhythms and the secretion of melatonin, a hormone that helps to maintain these rhythms. Through their proposed resolution, the petitioners, recognizing that scientific research pertaining to the effects of light on human health is a rapidly developing field, have requested coordination among those Town Departments that play a role in recommending and installing exterior and interior lighting in and on public property, vigilance in staying current with relevant research, and flexibility in approving light bulb specifications appropriate for indoor and outdoor use during both daytime and nighttime hours. The Advisory Committee supports such an approach at this time since light technology continues to evolve quickly, thus making a more prescriptive regulatory framework inadvisable.

BACKGROUND:
Although the effect of light on all living creatures is a growing area of research, Article

17 focuses on the impact of light color (measured on a temperature scale referred to as Kelvin), light intensity, and light direction on human health. In their presentation to the Advisory Committee, the petitioners noted that two years ago, the American Medical Association adopted a policy that 1) recognized that exposure to excessive light at night can disrupt sleep, exacerbate sleep disorders and cause unsafe driving conditions; 2) supported the need for developing lighting technologies that minimize circadian disruption; and 3) encouraged further research on the risks and benefits of occupational and environmental exposure to light at night. Dr. Alan Balsam, director of Public Health and Human Services, has observed that the issue has been a topic at public health conferences and forums, signifying acknowledgment of its validity.

LEDs tend to produce more blue light, suppressing melatonin production more dramatically than, for example, reddish or yellowish light. Mindful of this outcome, one basic recommendation includes using both lower Kelvin ("warmer", rather than "bluer" light) and lower intensity lighting in the evening because they are more conducive to facilitating sleep and obtaining adequate rest. During daylight hours, higher Kelvin and higher intensity lighting should be used because they boost attention, reaction times, and mood.

DISCUSSION:

Exterior Lighting: In 2010, the Town began to investigate the installation of LED lighting, particularly in streetlights, to reduce both its energy costs and its carbon footprint. In FY 14, a 4-year LED Streetlight Replacement Program began. Highway Director Kevin Johnson stated that the new LED streetlights will operate at 4000k (considered to be neutral white, with little red or blue tones), compared with the current lighting that is in the 2700k range (considered to be warm white, with red or orange tones). The LED light fixtures have the capacity to be retrofitted with Smart Control technology to allow automatic dimming, but the current cost for retrofitting ($750,000) is prohibitive.

Interior Lighting: Consideration of the installation of LED lights inside public buildings also began several years ago. Cost as well as light quality were factors in determining the extent of such a change. NSTAR offered -- and continues to offer -- incentives for using more energy-efficient lighting, and the Town has taken advantage of these programs in a number of locations, including the garages in the Town Hall complex. Recently LED lighting (4000k) was piloted in a Heath School classroom. The light quality is a "clean white," the teacher is very satisfied with the lighting, and the fixtures, requiring approximately 50% less electricity than the prior fixtures, use bulbs expected to last up to ten years.

Comments: Some disappointment was expressed with the use of existing cobra head fixtures for street lights since they are not designed to be adaptable to LED bulbs. There was also strong interest in making lighting programmable, an important component in addressing the public health aspects of LED lighting. Both measures are cost-related and dependent on available funding. Additionally, there were comments about the need for well-lit streets and sidewalks for public safety at night.

Last year's collaborative efforts among the Public Works, Health, and Building departments, leading to the decision not to exceed 4000K in streetlights, were

commended and recognized as being the type of decision-making process that the petitioners' article encourages. Finally, it was noted that a number of personal electronic devices could emit the blue light that has the potential to decrease melatonin production. In fact, in response to this issue, an application, *F.lux*, has been developed to vary a device's color temperature according to its location and time of day.

The Advisory Committee thanks the petitioners for bringing this public health issue to the attention of Town Meeting and is particularly appreciative that they have proposed a resolution that recognizes the innovative and evolving nature of the lighting industry. By a vote of 22-1-0, the Advisory Committee recommends **Favorable Action** on the following:

VOTED: that the Town adopt the following resolution pertaining to Town lighting:

Whereas the Town of Brookline is in the process of converting public exterior and interior lighting to Light-Emitting Diode (LED) lighting;

Whereas LED lighting technology is a significant improvement over other forms of electric illumination, because it is more energy efficient; and

Whereas different wavelengths of light, both natural and electric, have been found to affect circadian rhythms, including the sleep-wake cycle; and

Whereas adequate restful sleep is a vital component of human health and well-being; and

Whereas the public health effects of light should be taken into consideration when both exterior and interior municipal lighting is selected;

Now therefore, be it resolved that the Town Meeting requests that the Brookline Department of Public Health, Department of Public Works, and the Building Department work together to select daytime and nighttime-appropriate lighting by:

1) Keeping abreast of new scientific findings in studies of health effects of lighting, including LEDs;
2) Monitoring new technological developments in light bulb and fixture design. For example, bulbs capable of emitting multiple wavelengths may be programmable to produce different wavelengths and intensities of light for daytime and nighttime activities. Thus the wavelength and dimness or brightness may be adjusted for the requirements of time of day and the tasks to be done; and
3) Recommending the selection of light bulb specifications appropriate for daytime use in buildings and outside, and nighttime use in buildings and outside for the Town of Brookline and take any other action relative thereto.

Passed by a unanimous vote

XXX

ARTICLE 18

EIGHTEENTH ARTICLE

Submitted by: Stephen Vogel, for The Acting for Economic Justice Committee of the Boston Workmen's Circle

RESOLUTION ARTICLE IN SUPPORT OF RESPECT AND DIGNITY FOR DOMESTIC WORKERS

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

Whereas, Massachusetts' domestic workers – comprised of housekeepers, nannies, and caregivers and service providers for children, persons with disabilities, and the elderly – work in private households to care for the health, safety and well-being of the most important aspects of our lives, our families and to our homes; and

Whereas, domestic workers play a critical role in Massachusetts' economy, working to ensure the health and prosperity of our families and freeing others to participate in the workforce, which is increasingly necessary in these difficult economic times; and

Whereas, domestic workers usually work alone, behind closed doors, and out of the public eye, leaving them isolated, vulnerable to abuse and exploitation, and unable to advocate collectively for better working conditions; and

Whereas, domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, and face termination without notice or severance pay, leaving many suddenly without both a job and a home; and

Whereas, most domestic workers work to support families and children of their own and more than half are primary income earners, yet two-thirds of domestic workers earn low wages or wages below the poverty line; and

Whereas, many employers desire to treat their caregivers and housekeepers fairly, but do not have the information to guide them in setting terms of employment, and may never develop a formal contract or clearly establish the rights and obligations each party owes to the other; and

Whereas, the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which Congress acted to ensure a fair day's pay for a fair day's work, intentionally excluded domestic workers from its protections to appease politicians from Southern states who would not support extending workers' rights to domestic workers many of whom were African American women; and

Whereas, the Commonwealth of Massachusetts has passed sweeping legislation also known as the Domestic Workers' Bill of Rights to rectify past exclusions and to assure state laws are responsive to the unique needs of domestic workers; and

THEREFORE, be it resolved, that the Town of Brookline supports respect and dignity for all domestic workers and pledges its support to ensure that domestic workers who are employed in Brookline are aware of their new rights and will collaborate with domestic worker led committees to help eliminate trafficking, exploitation and forced labor in Brookline.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Purpose of Article is to urge the Town of Brookline to demonstrate support for the Massachusetts Domestic Worker's Bill of Rights that passed earlier this summer. While the legislation applies to all Massachusetts towns, individual town resolutions help build awareness locally about domestic workers rights and reinforce the state-wide legislation. We ask Brookline to join other Massachusetts towns, such as Lynn and Somerville, that have already adopted similar resolutions in support of the rights and dignity of domestic workers.

SELECTMEN'S RECOMMENDATION

Article 18 is a petitioned resolution that seeks support for the Massachusetts Domestic Worker's Bill of Rights that was enacted this past summer. The Board recognizes and fully appreciates the often unheralded work performed by domestic workers. They should be treated with the dignity and respect they so deserve. By a vote of 5-0 taken on October 28, 2014, the Board recommends FAVORABLE ACTION on the amended motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:

The Advisory Committee recommends FAVORABLE ACTION by a vote of 17-0-4 on Article 18, as amended as follows:

VOTED: that the Town adopt the following resolution:

RESOLUTION ARTICLE IN SUPPORT OF RESPECT AND DIGNITY FOR DOMESTIC WORKERS

Whereas, Massachusetts' domestic workers – comprised of housekeepers, nannies, and caregivers and service providers for children, persons with disabilities, and the elderly – work in private households to care for the health, safety and well-being of the most important aspects of our lives, our families and to our homes; and

Whereas, domestic workers play a critical role in Massachusetts' economy, working to ensure the health and prosperity of our families and freeing others to participate in the workforce, which is increasingly necessary in these difficult economic times; and

Whereas, many domestic workers work alone, behind closed doors, and out of the public eye, leaving them isolated, vulnerable to abuse and exploitation, and unable to advocate collectively for better working conditions; and

Whereas, domestic workers may labor under harsh conditions, may work long hours for low wages without benefits or job security, and may face termination without notice or severance pay, leaving many suddenly without both a job and a home; and

Whereas, many domestic workers work to support families and children of their own and more than half are primary income earners, yet two-thirds of domestic workers earn low wages or wages below the poverty line; and

Whereas, many employers desire to treat their caregivers and housekeepers fairly, but do not have the information to guide them in setting terms of employment, and may never develop a formal contract or clearly establish the rights and obligations each party owes to the other; and

Whereas, the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which Congress acted to ensure a fair day's pay for a fair day's work, intentionally excluded from its protections domestic workers; and

Whereas, the Commonwealth of Massachusetts has passed sweeping legislation also known as the Domestic Workers' Bill of Rights to rectify past exclusions and to assure state laws are responsive to the unique needs of domestic workers; and

THEREFORE, be it resolved, that the Town of Brookline supports respect and dignity for all domestic workers and supports efforts to inform Brookline's domestic workers and their employers of these new rights and responsibilities, respectively, in order to assist with the goal of eliminating trafficking, exploitation and forced labor in Brookline.

Passed by a Unanimous Vote with 1 Abstention

BACKGROUND:
Article 18 is a resolution submitted by Brookline resident Stephen Vogel on behalf of the Economic Justice Committee of the Boston Workman's Circle, a 100 year old secular Jewish organization that has its office on Beacon Street in Brookline. Workman's Circle belongs to a coalition of non-profit organizations that worked together on behalf of nannies, housekeepers, personal caretakers, and other domestic workers who did not have rights under federal or state labor laws. For instance, many of these workers, mainly women, had no rights to sick leave or vacation, no termination rights, and are paid poverty level wages.

Approximately 4 months ago, the Massachusetts legislature passed the Massachusetts Domestic Workers Bill of Rights, however, no regulations have been promulgated yet, enforcement is currently on hold until the regulations exist, and many Massachusetts domestic workers and employers are not aware of the state legislative mandates.
(The State's Domestic Workers Bill of Rights appears at the end of this report)

DISCUSSION:
Petitioner stated that the main purpose of the resolution is to raise awareness in Brookline of the new state law and to serve as an educational tool. There is no expectation that the Town would incur any expenditures or that Town personnel would be involved in the enforcement of the new law. Rather, the organizations in support of the law hope to increase awareness in Brookline among its citizens, domestic workers and their employers, and to use Brookline's support to increase awareness in other communities. The petitioner hopes that the Town can help to educate the public by having educational material and other pertinent information available on the Town's website and in Town Hall.

Advisory Committee members recognized that there have been some notorious instances of abuse of domestic workers in Massachusetts. A brief search of the Boston Globe archives turned up two such cases, one from 2006, the other from 1993. Both involved allegations of domestic servitude and forced labor; in both cases, employers paid low or no wages and imposed long hours of work each day, seven days per week, despite promises of better wages and working conditions.

Members also focused on the language of the resolution, and suggested some wording changes to which Petitioner agreed, primarily to clarify the educational purpose of the resolution. So that changes are apparent, the revised resolution is below, with deletions crossed out and additions in bold.

Amendment Language Adopted By Advisory Committee on Warrant Article 18
In Support of Respect and Dignity for Domestic Workers

(Note: deletions are crossed out - and additions are in bold.)

THAT THE TOWN ADOPTS THE FOLLOWING RESOLUTION:

Whereas, Massachusetts' domestic workers – comprised of housekeepers, nannies, and caregivers and service providers for children, persons with disabilities, and the elderly – work in private households to care for the health, safety and well-being of the most important aspects of our lives, our families and to our homes; and

Whereas, domestic workers play a critical role in Massachusetts' economy, working to ensure the health and prosperity of our families and freeing others to participate in the workforce, which is increasingly necessary in these difficult economic times; and

Whereas, **many** domestic workers ~~usually~~ work alone, behind closed doors, and out of the public eye, leaving them isolated, vulnerable to abuse and exploitation, and unable to advocate collectively for better working conditions; and

Whereas, domestic workers ~~often~~ **may** labor under harsh conditions, **may** work long hours for low wages without benefits or job security, and **may** face termination without notice or severance pay, leaving many suddenly without both a job and a home; and

Whereas, ~~most~~ **many** domestic workers work to support families and children of their own and more than half are primary income earners, yet two-thirds of domestic workers earn low wages or wages below the poverty line; and

Whereas, many employers desire to treat their caregivers and housekeepers fairly, but do not have the information to guide them in setting terms of employment, and may never develop a formal contract or clearly establish the rights and obligations each party owes to the other; and

Whereas, the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which Congress acted to ensure a fair day's pay for a fair day's work, intentionally excluded ~~domestic workers~~ from its protections **domestic workers** ~~to appease politicians from Southern states who would not support extending workers' rights to domestic workers~~, many of whom were African American women**;** and

Whereas, the Commonwealth of Massachusetts has passed sweeping legislation also known as the Domestic Workers' Bill of Rights to rectify past exclusions and to assure state laws are responsive to *the* unique needs of domestic workers; and

THEREFORE, be it resolved, that the Town of Brookline supports respect and dignity for all domestic workers and ~~pledges its support to ensure that~~ **supports efforts to inform Brookline's** domestic workers ~~who are employed in Brookline~~ **and their employers** ~~are aware~~ of ~~their~~ **these** new rights **and responsibilities, respectively,** ~~and will collaborate with domestic worker led committees to help~~ **in order to assist with the goal of** eliminat**ing** trafficking, exploitation and forced labor in Brookline.

Existing State Statute:

The Domestic Workers Bill of Rights is included in its entirety below:

Chapter 148 AN ACT ESTABLISHING THE DOMESTIC WORKERS BILL OF RIGHTS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Section 105D of chapter 149 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 39, the words "one of chapter one hundred and fifty-one B" and inserting in place thereof the following words:- 1 of chapter 151B and section 190.

SECTION 2. Section 150 of said chapter 149, as so appearing, is hereby amended by striking out, in line 21, the words "or 159C", and inserting in place thereof the following words:- , 159C or 190.

SECTION 3. Said chapter 149 is hereby further amended by adding the following 2 sections:-

SECTION 190. (a) As used in this section and in section 191, the following

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

"Domestic worker", an individual or employee who is paid by an employer to perform work of a domestic nature within a household including, but not limited to: (i) housekeeping; (ii) house cleaning; (iii) home management; (iv) nanny services; (v) caretaking of individuals in the home, including sick, convalescing and elderly individuals; (vi) laundering; (vii) cooking; (viii) home companion services; and (ix) other household services for members of households or their guests in private homes; provided, however, that "domestic worker" shall not include a personal care attendant or an individual whose vocation is not childcare or an individual whose services for the employer primarily consist of childcare on a casual, intermittent and irregular basis for 1 or more family or household members.

"Employer", a person who employs a domestic worker to work within a household whether or not the person has an ownership interest in the household; provided, however, that an "employer" shall not include a staffing agency, employment agency or placement agency licensed or registered pursuant to chapter 140 or an individual to whom a personal care attendant provides services.

"Employ", to suffer or permit to work.

"Forced services", services performed or provided by a domestic worker as defined in section 49 of chapter 265.

"Person", 1 or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

"Personal care attendant", an individual who provides personal care attendant services to persons with disabilities or seniors under the MassHealth personal care attendant program or any successor program under sections 70 to 75, inclusive, of chapter 118E.

"Rest" or "period of rest", a period of time with complete freedom from all duties and during which a domestic worker may either leave the employer's premises or stay on the employer's premises for purely personal pursuits; provided, however, that paid days of rest shall be considered vacation time and pay under chapter 149.

"Working time", compensable time that includes all time during which a domestic worker is required to be on the employer's premises or to be on duty and any time worked before or beyond the end of the normal scheduled shift to complete work; provided, however, that "working time" shall include meal periods, rest periods and sleeping periods unless a domestic worker is free to leave the employer's premises and use the time for the domestic worker's sole use and benefit and is completely relieved of all work-related duties.

(b) An employer who employs a domestic worker for 40 hours a week or more shall provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month and, where possible, this time shall allow time for religious worship. The domestic worker may voluntarily agree to work on a day of rest; provided, however, that the agreement is in writing and the domestic worker is compensated at the overtime rate for all hours worked on that day pursuant to section 1A of chapter 151. Days or periods of rest, whether paid or unpaid, shall

be job-protected leave from employment.

(c) When a domestic worker who does not reside on the employer's premises is on duty for less than 24 consecutive hours, the employer shall pay the domestic worker for all hours as working time under chapter 151 and regulations promulgated under said chapter 151.

(d) When a domestic worker is required to be on duty for a period of 24 consecutive hours or more, the employer and the domestic worker may agree, under terms that comply with chapter 151 and regulations promulgated under said chapter 151, to exclude a regularly scheduled sleeping period of not more than 8 hours from working time for each 24-hour period.

(e) When a domestic worker is required to be on duty for a period of 24 consecutive hours or more and unless a prior written agreement is made, all meal periods, rest periods and sleeping periods shall constitute working time.

(f) An employer may deduct from the wages of a domestic worker an amount for food and beverages if the food and beverages are voluntarily and freely chosen by the domestic worker. If a domestic worker cannot easily bring or prepare meals on premises, the employer shall not deduct an amount from the wages of a domestic worker for food or beverages. An employer shall not deduct from the wages of a domestic worker an amount for food and beverages that exceeds the amounts permitted pursuant to chapter 151 and regulations promulgated under said chapter 151.

(g) An employer may deduct from the wages of a domestic worker an amount for lodging if the domestic worker voluntarily and freely accepts, desires and actually uses the lodging and the lodging meets the standards for adequate, decent and sanitary lodging pursuant to chapters 111 and 151 and the regulations promulgated under said chapters 111 and 151. An employer shall not deduct an amount from the wages of a domestic worker for lodging that exceeds the amounts permitted pursuant to chapter 151 and the regulations promulgated under said chapter 151. An employer shall not deduct from the wages of a domestic worker an amount for lodging if the employer requires that a domestic worker reside on the employer's premises or in a particular location.

(h) No deductions for meals or lodging shall be made from a domestic worker's wages without the domestic worker's prior written consent. No other deductions shall be made from a domestic worker's wages other than for specifically named and identified purposes, goods or services required or expressly allowed by law.

(i) A domestic worker shall have a right to privacy under section 1B of chapter 214. An employer shall not restrict or interfere with a domestic worker's means of private communication, monitor a domestic worker's private communications, take any of the domestic worker's documents or other personal effects or engage in any conduct which constitutes forced services or trafficking of a person in violation of sections 50 and 51 of chapter 265.

(j) A domestic worker may request a written evaluation of work performance from an employer after 3 months of employment and annually thereafter. A domestic worker may inspect and dispute the written evaluation under section 52C.

(k) If a domestic worker resides in the employer's household and the employer terminates employment without cause, the employer shall provide

written notice and at least 30 days of lodging, either on-site or in comparable off-site conditions, or severance pay in an amount equivalent to the domestic worker's average earnings during 2 weeks of employment. Neither notice nor a severance payment shall be required in cases involving good faith allegations that are made in writing with reasonable basis and belief and without reckless disregard or willful ignorance of the truth that the domestic worker has abused, neglected or caused any other harmful conduct against the employer, members of the employer's family or individuals residing in the employer's home.

(l) An employer who employs a domestic worker shall keep a record of wages and hours pursuant to section 15 of chapter 151. In addition to the information required pursuant to said section 15 of said chapter 151, an employer who employs a domestic worker for 16 hours or more a week shall provide the following information: (i) the rate of pay, including overtime and additional compensation for added duties or multilingual skills; (ii) working hours, including meal breaks and other time off; (iii) if applicable, the provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance, yearly raises and, whether or not earned, vacation days, personal days, holidays, severance, transportation costs and if health insurance costs are paid or reimbursed; (iv) any fees or other costs, including costs for meals and lodging; (v) the responsibilities associated with the job; (vi) the process for raising and addressing grievances and additional compensation if new duties are added; (vii) the right to collect workers' compensation if injured; (viii) the circumstances under which the employer will enter the domestic worker's designated living space on the employer's premises; (ix) the required notice of employment termination by either party; and (x) any other rights or benefits afforded to the domestic worker. Failure to comply with this paragraph shall constitute a violation of paragraph (3) of section 19 of chapter 151.

(m) An employer shall provide a domestic worker with a notice that contains all applicable state and federal laws that apply to the employment of domestic workers. This requirement shall be satisfied if the employer provides a notice as described in paragraph (o).

(n) Nothing in this section shall affect any policies or practices of an employer which provides for greater, additional or more generous wages, benefits or working conditions to a domestic worker than those required under this section.

(o) The attorney general shall enforce this section and shall promulgate rules and regulations necessary for enforcement. The attorney general may obtain injunctive or declaratory relief for this purpose. The attorney general shall post on its website a sample written record of information required under paragraph (l), a multilingual notice of employment rights under this section and state and federal employment laws that apply to the employment of domestic workers required under paragraph (m). A violation of this section shall be subject to paragraphs (1) and (2) of subsection (b) and subsection (c) of section 27C and section 150.

SECTION 191. (a) It shall be an unlawful discriminatory practice for an employer to: (i) engage in unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature to a domestic worker if submission to the conduct is made either explicitly or implicitly a term or condition of the domestic worker's employment, if submission to or rejection of

the conduct by a domestic worker is used as the basis for employment decisions affecting the domestic worker or if the conduct has the purpose or effect of unreasonably interfering with a domestic worker's work performance by creating an intimidating, hostile or offensive working environment; (ii) subject a domestic worker to unwelcome harassment based on sex, sexual orientation, gender identity, race, color, age, religion, national origin or disability if the harassment has the purpose or effect of unreasonably interfering with a domestic worker's work performance by creating an intimidating, hostile or offensive working environment; or (iii) refuse job-protected leave for the birth or adoption of a child by the domestic worker or a spouse under section 105D.

(b) For the purposes of clause (i) of subsection (a), "domestic worker" shall include personal care attendants as defined in section 190.

(c) This section shall be enforced by the Massachusetts Commission Against Discrimination pursuant to chapter 151B.

SECTION 4. Section 19 of chapter 151 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 4 and 5, the words "for not less than sixteen hours per week".

SECTION 5. Section 4A of chapter 151A of the General Laws, as so appearing, is hereby amended by inserting after the word "unit", in line 23, the words:- or domestic service performed by 1 or more individuals.

SECTION 6. Section 6 of said chapter 151A, as so appearing, is hereby amended by striking out subsection (b).

SECTION 7. Section 1 of chapter 151B of the General Laws, as so appearing, is hereby amended by striking out, in line 18, the word "the" and inserting in place thereof the following words:- an employer of domestic workers including those covered under section 190 of chapter 149, the.

SECTION 8. Said section 1 of said chapter 151B, as so appearing, is hereby further amended by striking out, in line 32, the words ", or in the domestic service of any person".

SECTION 9. Section 1 of chapter 153 of the General Laws, as so appearing, is hereby amended by striking out, in line 33, the words "domestic servants or".

SECTION 10. Not later than April 1, 2015 the executive office of labor and workforce development in consultation with the attorney general shall develop and implement a multilingual outreach program to inform domestic workers and employers about their rights and responsibilities. This program shall include the distribution of know your rights information, model employment agreements, educational materials for employers on their human resources duties in employing domestic workers, including information on benefits, tax and insurance laws and a model written work evaluation form.

SECTION 11. The attorney general shall promulgate regulations under subsection (o) of section 190 of chapter 149 of the General Laws on or before April 1, 2015.

SECTION 12. Sections 1 to 4, inclusive, shall take effect on April 1, 2015.

Approved, June 26, 201

XXX

ARTICLE 19

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

RECONSIDERATION:
On Thursday November 13, the Advisory Committee reconsidered its position with regard to Article 19. We now recommend an amended version of the resolution.
At a meeting the previous week, one of our members noticed the Committee of his intention to move for reconsideration, principally to remove specific references on pipelines. Subsequently, he submitted a formalized motion with explanation of the proposal (document appended to this report).

DISCUSSION:
In its first consideration of the article, the Committee wrestled with the idea of preventing pipelines for natural gas out of a concern for the need to displace other "dirtier" forms of fossil fuels (e.g. oil, coal) and the potentially detrimental effects on energy prices on low income households.

During the Committee's reconsideration discussion, these same themes were further explored.

The petitioners of Article 19 argued that we must reduce our reliance on fossil fuels. This is true. But many on the Committee pointed out that even as we reduce our reliance on fossil fuels, we will still be reliant, to an extent, on fossil fuels for some time to come. Shouldn't we then do what we can to ensure that we at least use the cleanest sources?
The petitioners maintain that our suppositions of the "cleanliness" of natural gas are misplaced. Natural gas does not contribute to CO_2 levels the way burning of coal and oil usage does. But, leaked methane (CH_4) is lost and enters the atmosphere during the extraction and transmission of natural gas. They point to methane as a significantly more potent contributor to global warming than CO_2 and, therefore, the increased use of natural gas should be avoided.

Methane may be a more potent contributor to global warming, but it is far shorter lived in the atmosphere than CO_2; and, technology exists to reduce the leakage problem. Methane remains in the atmosphere for an average lifetime of around ten to twelve years. By contrast, CO_2 and its carbon remain in the atmosphere for centuries and is only slowly eliminated via absorption by ocean and sea plants. As we wean ourselves off fossil fuels, methane levels in the atmosphere will drop, while carbon levels from other fuels will still remain.

Many members felt that we will continue to use a mix of fossil fuels; natural gas is the cleaner alternative of these, and access to it for the region will allow us to continue our move away from coal and oil, whereas an insufficient supply of natural gas may lead us

to be more reliant on coal and oil. They view natural gas as a "bridge fuel". Others maintained that creating supply simply reinforces demand – and eliminates any incentive for change. They point out that as supply increases, price decreases. And with reductions in price come increases in use - use that we must curtail. This led to a broader discussion of energy prices in general, and the possible effects on low income households.

According to utility companies, electricity prices have increased by more than 30% as a consequence of limited access to natural gas. These cost increases touch us all, but are felt all the more by low income households.

Choosing one's poison has been referred to as a no-win exercise, and sorting through the science is no easy task, especially when trying to evaluate the trade-offs of one form of fossil fuel against another. But we are always presented with choices.

The Committee, as a whole, felt that a statement regarding the potential hazards of hydraulic fracturing, the need to conserve and become more efficient, and the need to develop alternative energy sources was important. Views diverged, however, with regard to specifically asserting that we should limit our access to natural gas, or be so specific in a resolution of principal as to single out for curtailment an essential infrastructure for energy distribution in our region. This is why the Committee refrained from specific references to natural gas pipelines in its revised motion.

RECOMMENDATION:
Consequently, the Committee reconsidered its recommendation and now recommends, by a vote of 11-6-7, a more focused, and reduced, amended resolution.

VOTED: that the Town adopt the following resolution:

WHEREAS, natural gas might be obtainable in Massachusetts by hydraulic fracturing ("fracking"), a drilling method that can contaminate ground water, and harm human health through its chemical byproducts;

BE IT RESOLVED THAT the Town of Brookline:

1. Affirms the need for public policy at the local, state and federal levels to encourage energy efficiency, conservation, renewable energy projects to combat climate change, and supports legislation to ban or impose a long-term moratorium within the Commonwealth on hydraulic fracturing as well as storage, treatment or disposal of hydraulic fracturing fluid or byproducts.

2. Shall cause a copy of this resolution to be presented to the Town's state and Federal legislative representatives, the Governor, Massachusetts Secretary of Energy and Environmental Affairs, and Federal Energy Regulatory Commission.

Defeated by a Counted Vote of 79 In Favor, 145 Opposed and 8 Abstentions

Amendment to Article 19 by Stanley Spiegel, TMM Precinct 2

[This wording differs from the Selectmen's resolution by including only their third, slightly modified Whereas clause, and deleting the second and shortening their final Resolve clauses.]

WHEREAS, natural gas might be obtainable in Massachusetts by hydraulic fracturing ("fracking"), a drilling method that can contaminate ground water, and harm human health through its chemical byproducts;

BE IT RESOLVED THAT the Town of Brookline:

1. Affirms the need for public policy at the local, state and federal levels to encourage energy efficiency, conservation, renewable energy projects to combat climate change, and supports legislation to ban or impose a long-term moratorium within the Commonwealth on hydraulic fracturing as well as storage, treatment or disposal of hydraulic fracturing fluid or byproducts.

2. Shall cause a copy of this resolution to be presented to the Town's state and Federal legislative representatives, the Governor, Massachusetts Secretary of Energy and Environmental Affairs, and Federal Energy Regulatory Commission.

Explanation: This amendment eliminates the blanket opposition to new gas transmission pipelines from the resolution while retaining appropriate opposition to fracking. Fracking as currently utilized has been charged with harming public health and the environment. But **banning new gas transmission pipelines,** as proposed in Article 19**, can have its own unintended and harmful health and environmental consequences**.

• If the natural gas supply is restricted without sufficient renewable energy being available to meet demands, as is now the case, **the short-term result could be more burning of coal**, meaning more CO2 and toxic air pollution damaging the environment and human health, **or more importation of natural gas by LNG tankers**, with an increased danger of explosion in Boston Harbor due to accident or terrorist attack that would devastate wide areas, including portions of Brookline.

• Additionally, an insufficient supply of natural gas can result in **economic hardship for low-income residents**; note the recent **sharp hike in electric rates** (National Grid up 37%, NSTAR up 29%), attributed to a **current lack of natural gas transmission capacity**.

• Natural gas is primarily composed of methane, a potent greenhouse gas, and small amounts leak into the atmosphere at wellheads and during transmission via pipeline. However, **the average atmospheric lifetime of methane emissions is 10 to 12 years**. Unlike CO2, whose impact can last for hundreds to thousands of years, the heat-trapping contribution of methane leaked into the atmosphere associated with natural gas usage will essentially disappear within a few decades after its replacement by renewable energy

sources.

According to the EPA: *[My emphasis added in material below.]*
http://epa.gov/climatechange/ghgemissions/gases/ch4.html

• "Methane emissions in the United States decreased by almost 11% between 1990 and 2012. Emissions increased from agricultural activities, while **methane emissions decreased from sources associated with the exploration and production of natural gas.**"

According to the Union of Concerned Scientists:
http://www.ucsusa.org/climate-risks-overreliance-natural-gas-electricity-2013#.VFqL9udSwn ; see also their linked PDF report "Gas Ceiling"

• "While simply replacing coal with natural gas is not an effective long-term climate strategy, **natural gas does offer some advantages** [as a bridge to renewable energy] **in the near to intermediate term,** and it could play a modest role in a clean energy future."

• "For example, **burning natural gas instead of coal results in immediate public health and environmental benefits**, given that natural gas emits **much lower amounts of soot and smog-forming pollutants,** and **no appreciable levels of mercury, arsenic, and other toxic substances.**"

• "Because natural gas generators can be ramped up and down quickly, they can **help support the integration of variable renewable resources**, contribute to a **reliable electricity supply**, and **be utilized quickly** during periods of extremely high electricity demand."

• " . . . many cost-effective **technologies are available to reduce much of the leaking methane** during extraction and from transmission through older pipelines but **stronger policies and regulations are needed** to require the natural gas industry to deploy them."

• "**Strong state and federal laws and regulations are needed** for the monitoring, evaluating and mitigating the **serious public health, safety and environmental risks associated with fracking**, as well as its broader climate, environmental, economic, and social impacts."

From the Boston Globe Editorial, "Renewables are in New England's future, but gas pipelines still needed," October 05, 2014: [Reacting to a 37% electric rate hike that was announced by National Grid. NSTAR has just announced an electric rate hike of 29%.]

"But even fully integrating renewable resources into the grid **won't eliminate demand for natural gas**. So while **connecting to renewables must be a top priority** . . . the region simultaneously has to tackle a second task: **upgrading the natural gas network,**

which was never designed for the crucial role it now plays in New England's electricity market."

"**Congestion in the delivery network** is one of the major drivers of this year's price surge, and more pipeline capacity would lower prices."

"**New England needs new gas pipelines** . . . but can encourage them in a way that also **builds a clean-energy future**."

ARTICLE 19

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
The petitioners of Article 19 ask Town Meeting to oppose the expansion of the natural gas infrastructure in Massachusetts and oppose its extraction via hydraulic-fracturing (commonly known as fracking). A large pipeline for natural gas, derived principally from the Marcellus Shale, is being proposed. The pipeline would bring natural gas from Pennsylvania through New York State and into Massachusetts (in Berkshire County) and across Massachusetts to a distribution center in Dracut, MA. The Advisory Committee recommends FAVORABLE ACTION, by a vote of 17 – 8 – 1, on an amended version of the resolution

BACKGROUND:
Warrant Article 19 is a citizen-petitioned article entitled Resolution Opposing the Expansion of Natural Gas through Pipelines and Hydraulic Fracturing in Massachusetts. Petitioners have stated two purposes which are interrelated.

The first is to oppose the expansion of the use of natural gas, a fossil fuel, because of the dangers of climate change, and the proposed Northeast Energy Direct Project (NED) pipeline which represents an expansion of the use of natural gas. While burning of natural gas is touted as a lesser danger to climate change than other fossil fuels like coal or oil, because it emits less CO_2, petitioners argue that, when unburned, the principal component of natural gas, methane, is itself a greenhouse gas that is much more potent than CO_2 in contributing to climate change. Since methane is a gas, it leaks during its extraction and distribution, a particular problem of using natural gas as a fuel. Estimates of gas pipe infrastructure leakage range from 8 – 12 billion btu's that are being lost. It is important to note that this resolution opposes the expansion of the use of natural gas and does not affect the use of the current supply of natural gas.

The petitioners contend that our energy needs must be met by a combination of energy efficiency, conservation, and the use of renewable energy sources, rather than expanding the use of natural gas and other fossil fuels. This is to combat the increasingly devastating effects of climate change. Further, building a pipeline across a huge swath of Massachusetts will destroy trees, other vegetation, wildlife habitats, homes and farmlands, conservation lands and green space.

The second purpose of the resolution is to oppose the use of hydraulic fracturing ("fracking") to obtain natural gas. Fracking is a procedure using water and hazardous chemicals, pumped at high pressure, to break up underground shale in order to release pockets of natural gas. The pumping of hazardous chemicals deep into the earth can

result in contamination of ground water and is consequently a hazard to health. Containment, disposal and decontamination of this toxic liquid pose significant problems.

The petitioners hope that Town Meeting will again be in the forefront in opposition to the expansion of use of natural gas, as Town Meeting has on other issues, both climate change issues and others which affect our health and welfare. To date, 34 cities/towns have adopted similar resolutions. The petitioners believe that Brookline has long been a leader in energy and climate change, and the adoption of this resolution will buttress our reputation as leading the way on the significant problem of climate change and send a signal to our political and governmental leaders that Massachusetts must put climate change policies of renewable energy projects, conservation, and energy efficiencies as first and foremost.

DISCUSSION:

Kinder Morgan Energy Partners is proposing a pipeline across Massachusetts from the New York State border to Dracut Massachusetts to supply New England and Atlantic Canada with access to gas derived from the Marcellus and Utica shale deposits. This, among others, is a focus of the proposed resolution.

Recent utility-rate increases have been attributed by the utility companies as being the result of limited availability of natural gas and that additional natural gas availability will reduce consumer costs in the long run. There has been both a regional and nation trend to use more natural gas and less coal and oil. This shift has resulted in reductions in the levels of CO_2 emission, but not a reduction in the overall use of fossil fuels. Proponents of natural gas point to the CO_2 reduction in support of the fuel (and to an extent the pipeline). Opponents, and the petitioners of this resolution, contend that is merely choosing the lesser of several evils when we ought to be moving away from fossil fuel dependence.

The Advisory Committee discussion focused on some of the various climate, energy and economic issues raised by the resolution. As we attempted to sort through the various scientific claims and economic considerations, the conversations were wide ranging. What follows is a summary of some of those concerns, though certainly not exhaustive:

Do we need this pipeline and the natural gas it will bring? A high-demand assumption would have demand for natural gas in Massachusetts stripping supply by about 2022; this is often cited by the energy industry. Scarcity drives up prices and risks service interruptions. The petitioners point out though, that even in the study by Black and Veatch for NESCOE (New England States Committee on Electricity, http://www.nescoe.com/uploads/Phase_III_Gas-Elec_Report_Sept._2013.pdf) a low-demand scenario confirms that demand for natural gas can be met by current levels and conservation, energy efficiency and renewable energy projects. Managing demand seems to be the key to determining which demand scenario plays out.

Natural gas is used to heat homes as well as to make electricity, and some Advisory Committee members expressed concern as to the effects of increased rates on low and moderate income households. There are approximately 20 very cold days per year, during which natural gas demand is very high. During those days, the utility companies usually have to purchase natural gas for electricity purposes at a higher rate than those companies had contracted to purchase it. Therefore, while the companies have no problem obtaining the natural gas at this time, it does increase the price to purchase it because it is being bought on the "spot market" and these costs are ultimately borne by the ratepayers.

While the proposed pipeline would eliminate this "cost" problem of natural gas supply, the question is at what cost to our environment and climate change. And, while we as ratepayers may absorb in our utility bills the higher cost of gas purchased on the spot market, we also would absorb the cost of the proposed pipeline construction as an additional tariff to ratepayers.

The petitioners ask whether we should we spend billions on a pipeline (which consumers ultimately pay for) or billions on conservation, energy efficiency, and renewable energy projects which could address shortfalls and help to prevent the disastrous climate change that is part of our future --unless we cut our use of fossil fuels.

What is the impact on climate change of the use of natural gas? Only a few years ago, many climatologists believed that natural gas was a "cleaner" fuel than oil or coal because natural gas does not emit as much carbon dioxide as the other fossil fuels when burned. While true that the emissions of CO_2 are lower with natural gas, many have come to realize that methane is a potentially worse climate polluter than CO_2 (though methane remains in the atmosphere far shorter than CO_2), and the leakage of methane gas at production and distribution contributes to climate change. Petitioners point to a 2014 study by Robert Howarth (HOWARTH) and concluded that leaked methane has the potential to be worse than oil and coal as a climate polluter. There are some puzzling patterns involving methane, however, such as an apparent decrease in the amount of atmospheric methane up until just a few years ago. Some credit fracking for the recent increase, but there are no clear answers regarding the earlier decrease or recent increase.

How does fracking affect climate change? Is it injurious to human health? Because fracking uses toxic chemicals in water to break up underground shale, the waste water from the fracking process is highly toxic. That toxic waste is either left in the ground, with the potential to contaminate ground water and adversely affect human health, or is stored in retention tanks. But it is unclear that such storage is safe. The Petitioners cite recent studies that link fracking and water contamination: http://sites.biology.duke.edu/jackson/pnas2011.html and another site http://thinkprogress.org/climate/2014/10/21/3581800/duke-fracking-waste-tracker/

Furthermore, the process of fracking is suspected to be a cause of earthquakes, a consequence of breaking up the underground shale to release the natural gas. In

Oklahoma, fracking is believed to be responsible for 360 recent earthquakes. Before fracking, the state had not experienced any such earthquake in the last 20 years.

Other countries have been transitioning away from fossil fuels and toward cleaner renewable sources (though there are also plenty doing just the opposite). Germany has a policy goal of using 100% renewable energy sources within 10 years, and currently, does have periods where it achieves that goal. On average, however, its rate of use of renewables is in the range of 20 – 30%. The United States is still in its nascent stage.

What happens if we do not transition to alternative sources of energy, but continue to use and even expand the use of fossil fuels?
Many climate scientists believe that if we do not cut our use of fossil fuels by 6% per year, the earth's temperature may rise beyond our ability to compensate for it. While the degree and effects may at times be speculative, the clear consensus within the scientific community is that the consequences will be dire.

Therefore, we cannot afford to continue to expand the use of fossil fuels, but must begin to cut their use. One Advisory Committee member, who had initially been opposed to the resolution, came to recognize that we need to change our behavior and move forward on climate change and this resolution will send a message to our political and governmental leaders that this is the time for action.

CONCLUSION:
This article raises complex and intertwined issues of climate change, economics and energy politics. Electricity rates have been rising and the utility companies maintain it is because of the restricted availably of natural gas. Conversion from other forms of fossil fuels (coal, oil) to natural gas has resulted in decreased CO_2 emissions (though globally carbon emissions continue to soar). Energy choices, however, must have more than just a near-term considerations. We must, as a species, wean ourselves from fossil fuels. We can kick the can only so far down the road.

While the Committee wrestled with a number of specifics in this resolution, it also understood this is a vehicle to make a basic and fundamental statement. Principally, we must begin moving away from our reliance on fossil fuels rather than investing large sums in an infrastructure that will make us more dependent (not less) and reduce our incentive to make needed changes. And, by specifying particular projects, it forces the conversation into the political arena in a way unlikely to occur with only a broad statement of principal.

RECOMMENDATION:
The Advisory Committee recommends FAVORABLE ACTION, 17-8-1, on the revised version of the resolution as offered by the Board of Selectmen on pages 19-5 – 19-6 of the Combined Reports (which is also the petitioners' main motion).

ARTICLE 19

NINETEENTH ARTICLE

Submitted by: Claire Stampfer and Heather Hamilton

Resolution Opposing the Expansion of Natural Gas through Pipelines and Hydraulic Fracturing in Massachusetts

To see if the Town will adopt the following resolution:

WHEREAS, natural gas is a non-renewable fossil fuel which generates significant carbon emissions and other pollutants when burned;

WHEREAS, natural gas is primarily composed of methane, which can be lethal, is highly flammable, and leaks at every step of production and distribution where it is at least 30 times more potent than carbon dioxide in terms of climate change;

WHEREAS, natural gas might be obtainable in Massachusetts by hydraulic fracturing ("fracking"), a drilling method that contaminates ground water, and harms human health through its chemical byproducts;

WHEREAS, the so-called Northeast Energy Direct Project of the Tennessee Gas Pipeline is a new high-pressure natural gas pipeline (hereafter "the Pipeline") proposed by Tennessee Gas Pipeline Company LLC, a subsidiary of Kinder Morgan, Inc. that would run from New York through Massachusetts to nearby Dracut;

WHEREAS, the Pipeline would likely transport natural gas obtained in New York and Pennsylvania through hydraulic fracturing;

WHEREAS, said Pipeline would divide and destroy large amounts of forest, conservation land, wetlands, and farmland, which may be obtained through eminent domain;

WHEREAS, the $2-3 billion cost of the Pipeline could be borne by all ratepayers including those in Brookline through a tariff;

WHEREAS, said expansions of natural gas represent a new, long-term commitment to fossil fuels that does not honor state and local commitments to renewable energy;

BE IT RESOLVED THAT the Town of Brookline:
1. Stands in opposition to the Northeast Energy Direct Project of the Tennessee Gas Pipeline and all similar projects that may be later proposed.

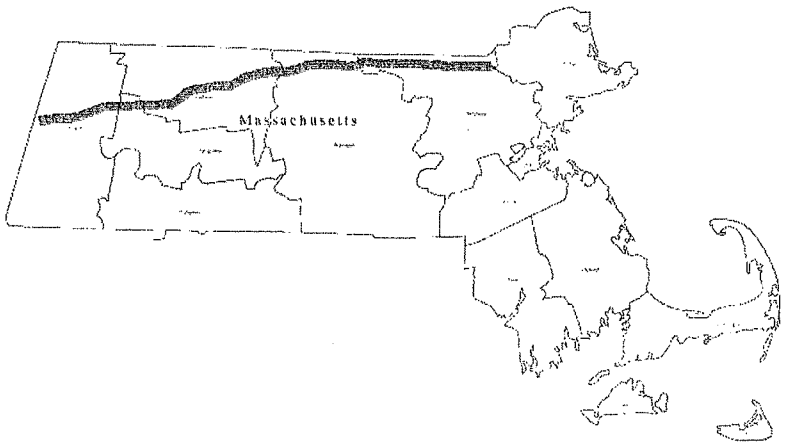
2. Affirms the need for public policy at the local, state and federal levels to encourage renewable energy and combat climate change, and supports legislation to ban or impose a long-term moratorium on hydraulic fracturing as well as storage, treatment or disposal of hydraulic fracturing fluid or byproducts within the Commonwealth.

3. Shall cause a copy of this resolution to be presented to the Town's state and Federal legislative representatives, the Governor, Massachusetts Secretary of Energy and Environmental Affairs, and Federal Energy Regulatory Commission asking them to take action to prevent the construction of the Pipeline within the borders of the Commonwealth of Massachusetts.

PETITIONER'S ARTICLE DESCRIPTION

The Pipeline Project

Kinder Morgan and their subsidiary, the Tennessee Gas Pipeline (TGP) Company, LLC, have recently expressed interest in building a pipeline to carry natural gas into Massachusetts as part of their Northeast Energy Direct Project. The pipeline would enter MA in the western portion of the state cross much of northern MA from west to east, and terminating at Dracut (see map below of the approximate route).



The existing pipeline runs from Louisiana, South Texas and the Gulf of Mexico into Pennsylvania, and the proposed northeast extension would run into New York, New Jersey, Connecticut, Massachusetts and New Hampshire. Natural gas extracted by hydro-fracturing , which is commonly called "fracking," will be infused into northeast sector of the TGP.

Why Oppose the Pipeline? Climate Change and the Hazards of Fracking

Natural gas is primarily composed of methane. When burned, methane produces ~30% less carbon dioxide (CO2) than either coal or oil. Because CO2 is the greenhouse gas primarily responsible for climate change, natural gas has been touted as an environmentally friendly alternative to coal and oil and termed a "bridge fuel" – the fuel of choice until our energy needs can be met by renewable sources.

Unfortunately, methane is also itself a greenhouse gas that is at least 30-times more potent than CO2 itself. Furthermore, because methane is a gas, it leaks during production and distribution. Recently, the Cornell University biogeochemist Robert Howarth, who did seminal work on methane leakage from fracking facilities, published a meta-analysis of all available data on the overall rate of leakage, and concluded that "...shale gas (from fracking) and conventional natural gas have a larger GHG (greenhouse gas footprint) than do coal or oil, for any possible use of natural gas..." This conclusion prompted him to

title his paper "A Bridge to Nowhere..." to indicate that natural gas is not a good interim fuel choice[1].

Much of the recent attention on the "advantages" of natural gas/methane has emerged because of its increased supply due to fracking. Unfortunately, fracking itself is a grave concern, given that the procedure involves high pressure pumping of hazardous chemicals deep into the earth, which results in ground water contamination and can lead to health hazards.

Our existing natural gas infrastructure is often antiquated, with pipes still in use from the 19th century, and leakage is rampant. According to the Conservation Law Foundation, 1,725 million cubic feet is lost through pipe leaks in MA each year, exacerbating the climate change issue.

Does Massachusetts Need More Natural Gas?

The New England States Committee on Electricity (NESCOE) recently commissioned a study to examine the demand for natural gas for electricity generation for the Commonwealth. This study took into account the currently planned coal-fired generation closures, and found that under a low demand scenario, the state's needs could be met with energy efficiency measures already planned for implementation[2].

Furthermore, the TGP would deliver more capacity than is needed to meet New England's projected energy needs under any demand scenario. Building such a massive pipeline for our region is like "trying to kill a cockroach with a sledgehammer" according to an executive whose company owns gas-fired power plants in New England, as stated in *The Wall Street Journal*.[3]

Opposition to the Pipeline from Affected Towns

Brookline opposing the project will show solidarity with other towns that oppose this project. Many towns and homeowners along the route oppose the project due to concerns that range from human safety and property values to wildlife impacts and climate change. To date, 27 towns along the route or nearby it have passed resolutions opposing the pipeline project, with another 7 towns considering resolutions. Town officials have denied TGP access to survey town-owned land in Ashburnham, Athol, Dalton, Deerfield, Groton, Montague, Orange, Pepperell, Plainfield, Royalston, Townsend and Warwick.

The opposition to the pipeline has been growing, with Senator Elizabeth Warren penning an opinion editorial in the Berkshire Eagle about her opposition on August 12th. The Senator's piece read in part "I oppose the current Kinder-Morgan proposal and share many of the concerns that have been raised by Massachusetts families, businesses, conservation commissions and towns about the pipeline's impact on their land and the environment. We must upgrade our energy infrastructure in ways that are consistent with

---

[1] Howarth, R. A Bridge to Nowhere, Energy Science and Engineering 2014 volume 2, issue 2, pages 47-60

[2] http://www.nescoe.com/uploads/Phase III Gas-Elec Report Sept. 2013.pdf

[3] http://online.wsj.com/news/articles/SB10001424052702304788404579519461682943726

Massachusetts' commitment to environmental conservation, clean energy, and energy efficiency."[4]

SELECTMEN'S CLIMATE ACTION COMMITTEE RECOMMENDATION

The Selectmen's Climate Action Committee recommends favorable action on Article 19. This article, submitted by Carol Oldham and Ed Loechler, is a resolution opposing the construction of the Northeast Energy Direct Project of the Tennessee Gas Pipeline and hydraulic fracturing, and affirming the need for public policy to encourage renewable energy.

The Northeast Energy Direct Project is a new high-pressure natural gas pipeline proposed by a subsidiary of Kinder Morgan Inc. that would run from New York through Massachusetts to Dracut. The pipeline would likely transport natural gas obtained through hydraulic fracturing in New York and Pennsylvania to Massachusetts, and possibly eventually, for export, if federal regulations are changed. As currently designed, the pipeline would hold more natural gas than what is needed to meet the Massachusetts market's current needs, according to the resolution's proponents.

The proposed resolution indicates concern with a number of issues related to the pipeline project: it would support hydraulic fracturing, a drilling method that contaminates groundwater and can impact human health with its chemical byproducts; its planned route through Massachusetts would damage large amounts of forest, conservation land, wetlands, and farmland; it does not address the leaks of methane, both at production during fracturing and through distribution through old pipes, which substantially contribute to climate change; and it represents a long-term commitment to using fossil fuels in the region rather than renewable energy.

Chiefly, the resolution emphasizes that the New England region has a choice in how to meet our energy needs, and more natural gas is not the answer that best addresses the issue of climate change. Not only would this pipeline project allow and encourage Massachusetts to continue to rely on fossil fuels for energy, but it also boosts the value of hydraulic fracturing, a significant source of leaking methane, a very potent greenhouse gas, in addition to groundwater contamination. Instead, the region should be looking to energy efficiency, renewable energy, and the prevention of natural gas leaks to enable us to meet our need for energy with the supply that we already have. The considerable investment needed to construct the pipeline, a cost that will most likely be passed on to rate payers, could instead be used to repair leaks in the distribution system or invest in energy efficiency improvements, allowing the region to more efficiently use this already existing fossil fuel-based energy supply.

The Climate Action Committee supports this resolution as it represents a new policy direction for the region. The question of how to meet the region's energy needs is complicated, multi-faceted, and difficult to quickly summarize; additionally, the impacts of regional energy policy are extensive and wide ranging. However, in order to

---

[4] http://www.berkshireeagle.com/columnists/ci_26322123/sen-elizabeth-warren-we-can-do-better-than

effectively limit the impacts of climate change, we must work to limit the overall global temperature change, and this can only happen through a reduction in dependence on fossil fuels and a greater reliance on renewable energy sources and energy efficiency technology. The Northeast Energy Direct Project pipeline signifies a continued, and possibly expanded, reliance on fossil fuels, a clear step in the wrong direction.

Therefore, the Selectmen's Climate Action Committee recommends favorable action on Article 19.

SELECTMEN'S RECOMMENDATION

Article 19 is a petitioned resolution that calls for the Town to oppose the Northeast Energy Direct Project of the Tennessee Gas Pipeline and all similar projects that may be later proposed. It also asks for an affirmation that there is a need for public policy at the local, state and federal levels to encourage renewable energy and combat climate change and to support legislation to ban or impose a long-term moratorium on hydraulic fracturing.

There is an existing pipeline that runs from Louisiana, South Texas and the Gulf of Mexico into Pennsylvania. Tennessee Gas Pipeline has proposed a northeast extension that would run into New York, New Jersey, Connecticut, Massachusetts and New Hampshire. The pipeline would enter Massachusetts in the western portion of the state, cross much of northern Massachusetts from west to east, and terminate at Dracut. Natural gas extracted by "fracking" will be infused into northeast sector of the pipeline. A majority of the Board agrees that there are a number of issues related to the project:

1. it uses hydraulic fracturing, a drilling method that contaminates groundwater and can impact human health
2. its planned route through Massachusetts would damage large amounts of forest, conservation land, wetlands, and farmland
3. it does not address the leaks of methane, both at production during fracturing and through distribution through old pipes (this is important because methane contributes to climate change); and
4. it represents a long-term commitment to using fossil fuels in the region rather than renewable energy.

It has been pointed out that the funding for this project could instead be used to repair leaks in the distribution system or invest in energy efficiency improvements. We need to reduce our dependence on fossil fuels and continue to increase the use of renewable energy sources. The pipeline extension points to a continued reliance on fossil fuels, a step that a majority of the Board believes is in the wrong direction. Therefore, by a vote of 4-1 taken on October 28, 2014, recommends FAVORABLE ACTION on the following:

VOTED: that the Town adopt the following resolution:

November 18, 2014 Special Town Meeting
19-6

Resolution Opposing the Expansion of Natural Gas through Pipelines and Hydraulic Fracturing in Massachusetts

WHEREAS, natural gas is a non-renewable fossil fuel which generates significant carbon emissions and other pollutants when burned;

WHEREAS, natural gas is primarily composed of methane, which is at least 30 times more potent than carbon dioxide in terms of climate change, and is highly flammable, and leaks at every step of production and distribution;

WHEREAS, natural gas might be obtainable in Massachusetts by hydraulic fracturing ("fracking"), a drilling method that contaminates ground water, and harms human health through its chemical byproducts;

WHEREAS, the so-called Northeast Energy Direct Project of the Tennessee Gas Pipeline is a new high-pressure natural gas pipeline (hereafter "the Pipeline") proposed by Tennessee Gas Pipeline Company LLC, a subsidiary of Kinder Morgan, Inc. that would run from New York through Massachusetts to Dracut;

WHEREAS, the Pipeline would likely transport natural gas obtained in New York and Pennsylvania through hydraulic fracturing;

WHEREAS, said Pipeline would divide and destroy large amounts of forest, conservation land, wetlands, and farmland, which may be obtained through eminent domain;

WHEREAS, the $1-3 billion cost of the Pipeline could be borne by all ratepayers including those in Brookline through a tariff;

WHEREAS, said expansions of natural gas represent a new, long-term commitment to fossil fuels that does not honor the spirit of state and local commitments to renewable energy;

BE IT RESOLVED THAT the Town of Brookline:

1. Affirms the need for public policy at the local, state and federal levels to encourage energy efficiency, conservation, renewable energy projects to combat climate change, and supports legislation to ban or impose a long-term moratorium within the Commonwealth on hydraulic fracturing as well as storage, treatment or disposal of hydraulic fracturing fluid or byproducts.

2. Stands in opposition to the Northeast Energy Direct Project of the Tennessee Gas Pipeline and all similar pipeline projects.

3. Shall cause a copy of this resolution to be presented to the Town's state and Federal legislative representatives, the Governor, Massachusetts Secretary of Energy and Environmental Affairs, and Federal Energy Regulatory Commission asking them to take action to prevent the construction of the Pipeline within the borders of the Commonwealth of Massachusetts.

Passed by a Majority Vote

ROLL CALL VOTE:

Favorable Action	No Action
Daly	Goldstein
DeWitt	
Wishinsky	
Franco	

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee will be provided in the Supplemental Mailing.

XXX

ARTICLE 20

TWENTIETH ARTICLE

Reports of Town Officers and Committees

BOARD OF SELECTMEN

Kenneth M. Goldstein, Chair
Nancy A. Daly
Betsy DeWitt
Neil A. Wishinsky
Benjamin J. Franco

ADVISORY COMMITTEE

Harry Bohrs, Chair

Town Clerk II