**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 15, 2016, at 7:00 P.M., adjourned to Wednesday, November 16, 2016 and dissolved on Thursday, November 17, 2016 at 11:05 P.M.

ATTEST:

Patrick Joseph Ward
Town Clerk

# Town of Brookline

# BOARD OF SELECTMEN

**Neil A. Wishinsky, Chairman**

**Nancy A. Daly** **Benjamin J. Franco**

**Nancy S. Heller** **Bernard W. Greene**

**Melvin A. Kleckner, Town Administrator**

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

# MODERATOR

Edward N. Gadsby, Jr.

# ADVISORY COMMITTEE

Sean M. Lynn-Jones, Chair, 53 Monmouth Street (Pct. 1) ..... 738-6228
Carla Benka, Vice-Chair, 26 Circuit Road (Pct. 13) ..... 277-6102
Clifford M. Brown, 9 Hyslop Road (Pct. 14) ..... 232-5626
Carol Caro, 1264 Beacon Street, #2 (Pct. 10) ..... 739-9228
Lea Cohen, 1060 Beacon Street, #11 ..... 947-9713
John Doggett, 8 Penniman Place (Pct. 13) ..... 739-7266
Dennis Doughty, 57 Perry Street (Pct. 3) ..... 566-5474
Harry Friedman, 27 Claflin Road (Pct. 12) ..... 232-0122
Janet Gelbart 216 St. Paul Street #601 (AL) ..... 566-5616
David-Marc Goldstein, 22 Osborne Road, #2 (Pct. 8) ..... 232-1943
Neil Gordon, 87 Ivy Street (Pct. 1) ..... (508)265-1362
Kelly Hardebeck, 18 Littell Road (Pct. 7) ..... 277-2685
Amy Hummel, 226 Clark Road (Pct. 12) ..... 731-0549
Sytske V. Humphrey, 46 Gardner Road (Pct. 6) ..... 277-1493
Angela Hyatt, 87 Walnut Street (Pct. 5) ..... 734-3742
Alisa G. Jonas, 333 Russett Road (Pct. 16) ..... 469-3927
Janice Kahn, 63 Craftsland Road (Pct. 15) ..... 739-0606
Steven Kanes, 89 Carlton Street (AL) ..... 232-2202
Bobbie M. Knable, 1443 Beacon Street, #702 (Pct. 11) ..... 731-2096
David Lescohier, 50 Winchester Street, #103 (Pct. 11) ..... 383-5935
Fred Levitan, 1731 Beacon Street (Pct. 14) ..... 734-1986
Robert Liao, 55 Meadowbrook Road (Pct. 15) ..... (530)988-8887
Pamela Lodish, 195 Fisher Avenue (Pct. 14) ..... 566-5533
Shaari S. Mittel, 309 Buckminster Road (Pct. 14) ..... 277-0043
Mariah Nobrega, 33 Bowker Street (Pct. 4) ..... 935-4985
Michael Sandman, 115 Sewall Ave., No. 4 (AL) ..... 232-7125
Lee L. Selwyn, 285 Reservoir Road (Pct. 13) ..... 277-3388
Stanley L. Spiegel, 39 Stetson Street (Pct. 2) ..... 739-0448
Charles Swartz, 69 Centre Street (Pct. 9) ..... 731-4399
Christine M. Westphal, 31 Hurd Road (AL) ..... 738-7981

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

# NOVEMBER 15, 2016
# 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. | FY2017 budget amendments. (Selectmen) |
| 4. | Amend Article 8.23 of the Town's By-Laws – Tobacco Control -- enhance tobacco control regulations for reducing youth access to conform to State's best practices. (Petition of Makena Binker-Cosen) |
| 5. | Amend Article 8.32 of the Town's By-Laws – Polystyrene Based Disposable Food Packaging --to expand products subject to enforcement. (Petition of Clint Richmond and Claire Stampfer) |
| 6. | Amend Article 8.33 of the Town's By-Laws – Plastic Bags --to expand imposed limitations and enforcement. (Petition of Clint Richmond and Andrew Fisher) |
| 7. | Amendment to the Zoning By-Law – Zoning Map -- adds a new Emerald Island Special District under Section 5.06.4j, and amending Sections 2.04.3, Definitions; Sec. 3.01.3a, Industrial Services; Sec. 4.07, Table of Use Regulations; Sec. 5.01, Table of Dimensional Requirements; Sec. 6.02, Paragraph 1, Table of Off Street Parking Space Requirements; and adding a new district, I-(EISD), to the Zoning Map (River Road Study Committee) |
| 8. | Amendment to the Zoning By-Law – Zoning Map – Alternative Zoning proposed for the Emerald Island Special District (requiring an 18 foot width sidewalk at 25 Washington Street, with 10 feet of it as a planting strip). (Petition of Hugh Mattison, TMM5) |
| 9. | Accept a Restrictive Covenant and authorize the Selectmen to enter into a PILOT Agreement for 25 Washington Street. (Selectmen) |
| 10. | Authorize the Selectmen to enter into agreements and amend existing agreements related to the development of 25 Washington Street. (Selectmen) |
| 11. | Resolution regarding the width of the sidewalk at 25 Washington Street. (Petition of Hugh Mattison, TMM5) |
| 12. | Authorize a 10-year Land Lease of Light Poles and Land at the Municipal Service Center for the continuation of the Town's Distributed Antenna System (DAS). (Selectmen) |

13. Amend Article 5.8 of the Town's By-Laws – Sign By-Law -- to improve its content neutrality in light of U.S. Supreme Court decision in Reed v. Town of Gilbert. (Planning & Community Development)

14. Amend Article VII of the Town's Zoning By-Law – Signs, Ilumination, & Regulated Façade Alterations -- to improve its content neutrality in light of the U.S. Supreme Court decision in Reed v. Town of Gilbert. (Planning & Community Development)

15. Amend Article 8.20 of the Town's By-Laws– Soliciting Money -- to delete panhandling from requirement of permission by Chief of Police in light of the U.S. Supreme Court decision in Reed v. Town of Gilbert and other court decisions. (Police Department)

16. Resolution regarding Responsibility for Town Electric Vehicle Charging Facilities (Petition of Scott Ananian)

17. Amend Section 6.04 of the Town's Zoning By-Law to require parking spaces for charging Electric Vehicles. (Petition of Scott Ananian)

18. Resolution urging the Selectmen to petition for a change in the State Electrical Code, as applied to Brookline, to require outlets suitable for Electric Vehicle Charging in newly constructed garages. (Petition of Scott Ananian)

19. Amendment to the Zoning By-Law- Zoning Map -- by adding (e) a Transit Parking Overlay District, under Sec. 3.01.4, Overlay Districts; new parking requirements under Sec. 6.02, Paragraph 2; amending the last footnote under Sec. 6.02, paragraph 1, Table of Off-Street Parking Requirements; and adding a new Transit Parking Overlay District to the Zoning Map. (Petition of Scott Englander)

20. Authorize Selectmen to contract with an operator for the Hubway Regional Bicycle Share Program. (Planning & Community Development)

21. Amend Section 4.07 of the Town's Zoning By-law - Regulation of Non-emergency and non-commercial manned aircraft landing areas. (Planning & Community Development)

22. Amend Sections 5.09, 5.22 and 7.06 of the Zoning By-Law – Floor Area Ratio -- under Sec. 5.09, Design Review; under Sec. 5.22, Exceptions to Maximum FAR Regulations for Residential Units; Sec. 7.06 Regulated Façade. (Moderator's Committee on FAR and others)

23. Amend Article 8.15 of the Town's By-Laws– Noise Bylaw and Article 8.31 – Leaf Blowers --to Revise and Consolidate Regulations into a Single Leaf Control By-Law. (Moderator's Committee on Leaf Blowers)

24. Resolution to appoint a Leaf Blower Control Officer. (Moderator's Committee on Leaf Blowers)

25. Amend Article 8.16 of the Town's By-Laws – Collection and Recycling of Waste materials --to Require Town Meeting Approval for Pay as You Throw. (Petition of Harry Friedman, TMM12)

26. Amend Article 8.16 of the Town's By-Laws – Collection and Recycling of Waste materials -- to prohibit Town from requiring use of Wheeled Toter Carts weighing more than 10 pounds in connection with Town's waste and recyclables collection. (Harry Friedman, TMM12)

27. To Name a square at utility pole 44/16A, near the northeast corner of Cypress and Boylston Streets, as "Walter F. Brookings Square". (Naming Committee)

28. Miscellaneous Amendments to Article 3.14, 3.15, 5.5 and 10.2 of the Town's By-Laws -- Diversity, Inclusion and Community Relations, Human Resources Program, Board and Office, Fair Housing and 10.2 Prosecutions and Enforcement. (Commission for Diversity Inclusion & Community Relations)

29. Petition regarding Police Officer training and responsibility for dangerous dogs or animals. (Petition of Gary Jones)

30. Petition regarding the online posting of Police Reports. (Petition of Gary Jones)

31. Amendment to Article 2.1of the Town's By-Laws – Town Meeting --to extend requirements of the Massachusetts Open Meeting Law to Town Meeting-created committees. (Petition of Regina Frawley, TMM16)

32. Resolution regarding support for Town Counsel's funding requests to defend the Town's planning interest before the Housing Appeals Committee. (Petition of Harriet Rosenstein, Chuck Swartz and Derek Chiang)

33. Resolution urging the Selectmen to Establish a Committee to Study Enhanced Brookline Tax Relief for Senior Homeowners with Modest Incomes. (Petition of Susan Granoff, TMM7)

34. Resolution in Support of Affordable Senior Housing Development Using Air Rights over Town-Owned Parking Lot in Brookline Village. (Petition of Harry Winkelman and Ken Goldstein)

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

# 2016 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 2016 Special Town Meeting to be held on Tuesday, November 15, 2016 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.

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### 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.

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### SELECTMEN'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. As of the writing of this Recommendation, there are no unpaid bills from a previous fiscal year. Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on September 13, 2016.

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### ADVISORY COMMITTEE'S 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

A Vote of No Action Was Passed by a Unanimous Vote

## 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.

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## 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.

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## SELECTMEN'S RECOMMENDATION

TOWN of BROOKLINE

*Massachusetts*

HUMAN RESOURCES OFFICE

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

Sandra A. DeBow-Huang,

Human Resources Office

October 25, 2016

To: Neil Wishinsky, Chairman

Board of Selectmen

Melvin Kleckner, Town Administrator

From: Sandra DeBow, Director
Human Resources

Re: **Article 2: Funding of Collective Bargaining Agreements**

On October 4, 2016 the Board of Selectmen voted to support Article 2 which seeks to fund Memorandum of Agreements (MOAs), executed by the Board of Selectmen and various unions. The two MOAs moving forward to town meeting are the Towns agreements with the Brookline Fire Union and the AFSCME, Local 1358, Library bargaining unit.[1]
On October 12, 2016 the AFSCME, Library bargaining unit unanimously ratified the MOA it had entered with the Town on September 29, 2016. The Board of Selectmen voted to approve the AFSCME, Library MOA on October 18, 2016. The two contracts have the following provisions:

**Fire Union MOA (summary):** The Town of Brookline and the Brookline Fire Union, Local 950, IAFF, AFL-CIO executed two Memoranda of Agreement on June 27, 2016 and a third on June 29, 2016. Together these MOAs cover three contract periods, including FY2013-FY 2015, FY 2016-2017 and FY 2018. The Fire Union ratified the three MOAs on Sept. 22, 2016 and the Board unanimously voted to support the MOAs on Oct. 4, 2016.

Briefly the multi-year MOAs provide a 2% increase to wages for each fiscal year from FY 2013 to FY 2018. Certain peripheral pays also increased across the MOAs including:

- Hazardous Pay stipend,
- Night shift differential,
- Education incentive provision and
- Uniform allowance

The Town of Brookline negotiated language that puts in place a number of checks and balances to prevent the misuse of sick time, thereby decreasing replacement costs. A provision regarding pay for EMT training ensures Firefighters are paid for certification training only when they pass the course. The Town will also experience administrative efficiencies as all firefighters will be required to use direct deposit and provide electronic advisories. The Parties also agreed to language that increases the efficiency of staffing.

The total cost of the six-year agreements is 16.9%, reflected below. Article 3 addresses the budget adjustment that will be necessary to deal with the funding shortfall.

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[1] On October 4, 2016, the Board of Selectmen voted to approve the AFSCME, Local 1385, School Traffic Supervisors' (STS) MOA; executed on September 29, 2016 and ratified by the bargaining unit on October 3, 2016. However, the voting members of the STS bargaining unit challenged the vote and when the MOA was voted again on October 11, 2016, it was not ratified with a vote of 4 in favor and 5 against. Therefore, the AFSCME, STS bargaining unit will be returning to negotiations and the MOA does not go forward to Town Meeting.

*COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH FIRE*

| ITEM | FY13 | FY14 | FY15 | FY16 | FY17 | FY18 | TOTAL | |
|---|---|---|---|---|---|---|---|---|
| 7/1/2012 - 2% | 223,406 | 223,406 | 223,406 | 223,406 | 223,406 | 223,406 | 1,340,434 | |
| 7/1/2013 - 2% | | 227,874 | 227,874 | 227,874 | 227,874 | 227,874 | 1,139,369 | |
| 7/1/2014 - 2% | | | 232,431 | 232,431 | 232,431 | 232,431 | 929,725 | |
| 7/1/2015 - 2% | | | | 237,080 | 237,080 | 237,080 | 711,240 | |
| 7/1/2016 2% | | | | | 241,821 | 241,821 | 483,643 | |
| 7/1/17 2% | | | | | | 246,658 | 246,658 | |
| HazMat Pay | | | 98,523 | 140,663 | 315,537 | 321,848 | 876,570 | > from 1.33 to 2.5, 3 and then 4.5 is added to base |
| Shift Differential | | | | 126,419 | 126,419 | 126,419 | 379,258 | > Incr from 7 to 8.5 |
| Ed Incentive | | | | 112,617 | 112,617 | 112,617 | 337,850 | > Incr Assoc from $2,500 to $5K; Bach from $5,000 to $10K; no partial |
| Clothing | | | | 19,000 | 19,000 | 19,000 | 57,000 | > 125 per ff |
| TOTAL ROLL-OUT COSTS OF 6-YEAR PERIOD | 223,406 | 451,279 | 782,234 | 1,319,489 | 1,736,185 | 1,989,154 | 6,501,746 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Each 1% = | 111,703 | 113,937 | 116,216 | 118,540 | 120,911 | 123,329 | |
| New Wages - $ = | 223,406 | 227,874 | 330,954 | 537,256 | 416,696 | 252,969 | |
| New Wages - % = | 2.0% | 2.0% | 2.8% | 4.5% | 3.4% | 2.1% | 16.9% |

**<u>AFSCME, Local 1358, Staff Association of the Public Libraries (summary)</u>:** Briefly, the Town and AFSCME, Local 1358, Library unit executed a three-year MOA with wages of 2% for each of the Fiscal Years FY 2016 – FY 2018. The bargaining unit, like the AFCSME Main contract (funded in May 2016) also received a $50 increase in the longevity steps for each fiscal year FY17 and FY18 and a one-time ratification bonus. Neither the one-time ratification bonus nor the annual longevity is applied to base wages but is a lump sum amount provided to eligible employees.

The parties agreed to extend the probationary period of new employees from 6-months to 12-months and to incorporate into the contract a longstanding practice surrounding the schedule for New Year's Eve. The overall cost of the Agreement is 6.1%.

*COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH LIBRARIANS*

| ITEM | FY16 | FY17 | FY18 | TOTAL |
|---|---|---|---|---|
| 7/1/15 - 2% | 35,032 | 35,032 | 35,032 | 105,097 |
| 7/1/16 - 2% | | 35,733 | 35,733 | 71,466 |
| 7/1/17 - 2% | | | 36,448 | 36,448 |
| Longevity Pay | | 1,150 | 2,300 | 3,450 |
| One-time Signing Bonus $200 | | 7,000 | | 7,000 |
| | | | | |
| TOTAL ROLL-OUT COSTS | 35,032 | 78,916 | 109,513 | 223,461 |

| | | | | |
|---|---|---|---|---|
| Each 1% = | 17,516 | 17,867 | 18,224 | |
| New Wages - $ = | 35,032 | 43,883 | 37,598 | |
| New Wages - % = | 2.0% | 2.5% | 2.1% | 6.5% |
| Wages on Base - $ = | 35,032 | 36,883 | 37,598 | |
| Wages on Base - % = | 2.0% | 2.1% | 2.1% | 6.1% |

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

FIRE UNION

There are three separate contracts totaling five years, one for FY13-FY15 another for FY16-FY17 and one for FY2018. The contracts call for a base wage increase of 12% over the course of the contract (2% in each year). Other monetary changes are the following:

- Hazardous Pay stipend- increased from 1.33% to 2% in FY15, 3% in FY16, 4.5% in FY17 which is then rolled into base pay.
- Night shift differential- increased from 7% to 8.5%
- An increase in the education incentive
- Uniform allowance- an increase of $125 per member

These items bring the total economic package to 16.9% over the six years.

The MOAs are attached to this warrant article report.

The collective bargaining agreement with the Town and the Firefighter's union represents the settlement of a dispute that was before the state's Joint Labor Management Committee (JLMC). The JLMC exists to facilitate collective bargaining agreements between municipalities and public safety unions. When voluntary mediation efforts of the JLMC fails, it engages in a third party arbitration of the dispute. Faced with the

possibility of an unfavorable arbitration award, the Town and the Union reached a voluntary settlement of the dispute. While the Board thanks its bargaining team and the Union for their efforts in reaching this settlement, it nonetheless expresses its concern with the JLMC process that tends to inflate the costs and scope of collective bargaining agreements than if the agreements were negotiated through voluntary processes required of all other unions. The costs of the agreements that are covered by this Article are substantially higher than the amounts the Town had set aside in the various budgets covering this period. As discussed in Article 3, the Town was able to set aside additional sums of money to the Collective Bargaining Reserve in anticipation of an unfavorable award by JLMC. Still, the funding was insufficient to support the full costs of the settlement and we have recommended reductions in the FY 2017 Fire Department budget to cover the remaining portion and to make the Fired Department's budget sustainable going forward.

Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 25, 2016, on the following:

VOTED: To approve and fund by an appropriation, provided for in the FY2013 (Item 20) FY2014 (Item 20) FY2015(Item 21)FY2016, (Item 21) FY2017 (Item #20) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2012- and expires on June 30, 2018:

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

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated October 25, 2016 which report is incorporated herein by reference.

AFSCME LIBRARY

This is a three-year agreement (FY16-FY18) calling for a base wage increase of 6% over the course of the contract (2% in each year). The other monetary change is a $50 increase in the longevity steps for each fiscal year FY17 and FY18 and a one-time ratification bonus.

The MOAs are attached to this warrant article report.

Again, the Selectmen thank the Town's negotiating team and the union for reaching a fair and equitable settlement. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 27, 2016, on the following:

VOTED: To approve and fund by an appropriation, provided for in the FY2016, (Item #21) FY2017 (Item #20) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2015- and expires on June 30, 2018:

AFSCME, Local 1358, Staff Association of the Public Libraries

all as set forth in the reports of Sandra DeBow, Director of Human Resources, dated October 25, 2016, which reports are incorporated herein by reference.

Favorably a Unanimous Vote

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
The Town has negotiated new agreements with two of its collective bargaining units: the Brookline Fire Union, Local 950, IAFF, AFL-CIO and the Staff Association of the Public Library of Brookline, Council 93, AFSCME, AFL-CIO.

The agreements with the Fire Union cover three contract periods (FY2013–FY2015, FY2016–FY 2017, and FY 2018) and are the result of a settlement reached as a result of mediation just prior to a hearing before the Joint Labor-Management Committee (JLMC). The total cost over the six-year period is $6,501,746 or 16.9%, which is more than has been assumed in recent budgets. However, the cost of "no settlement" was calculated to be much higher given recent actions by the JLMC. Most of the money needed to fund the agreements has already been set aside in the Collective Bargaining Reserve. A budget shortfall for FY2017 of $191,882 is addressed in the budget amendment submitted under Warrant Article 3. The Advisory Committee voted 22–1–3 to recommend Favorable Action to fund the agreements with the Fire Union.

The agreement with the Library Staff covers a three-year period (FY2016–FY2018) for a total cost of $223,461, and its terms are consistent with agreements reached with other bargaining units last fall. The Advisory Committee voted unanimously (26-0-0) to recommend Favorable Action to fund the agreement with the Library Staff.

DISCUSSION:

*(1) Fire Union Wage Agreements*

The agreements call for an annual 2% increase in base wages retroactive to July 1, 2012 and continuing through July 1, 2017 as detailed in the table below. Additional stipends for hazardous materials, night shift differentials, education incentives, and uniform allowances were also increased. Most significant is the increase in the hazardous materials (HazMat) stipend. Under the terms of the agreements, the stipend increases from 1.33% to 2.5% in 2015, 3.0% in FY2016, and then to 4.5% in FY2017 at which point it is rolled into base pay. Previously, HazMat pay was considered a separate stipend calculated as a percentage of the maximum base salary of a firefighter. The total cost over the six-year period covered by the agreements is $6,501,746—an increase of 16.9%; of this amount, $876,570 is for HazMat pay.

*COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH FIRE*

| ITEM | FY13 | FY14 | FY15 | FY16 | FY17 | FY18 | TOTAL | |
|---|---|---|---|---|---|---|---|---|
| 7/1/2012 - 2% | 223,406 | 223,406 | 223,406 | 223,406 | 223,406 | 223,406 | 1,340,434 | |
| 7/1/2013 - 2% | | 227,874 | 227,874 | 227,874 | 227,874 | 227,874 | 1,139,369 | |
| 7/1/2014 - 2% | | | 232,431 | 232,431 | 232,431 | 232,431 | 929,725 | |
| 7/1/2015 - 2% | | | | 237,080 | 237,080 | 237,080 | 711,240 | |
| 7/1/2016 2% | | | | | 241,821 | 241,821 | 483,643 | |
| 7/1/17 2% | | | | | | 246,658 | 246,658 | |
| HazMat Pay | | | 98,523 | 140,663 | 315,537 | 321,848 | 876,570 | > from 1.33 to 2.5, 3 and then 4.5 is added to base |
| Shift Differential | | | | 126,419 | 126,419 | 126,419 | 379,258 | > Incr from 7 to 8.5 |
| Ed Incentive | | | | 112,617 | 112,617 | 112,617 | 337,850 | > Incr Assoc from $2,500 to $5K; Bach from $5,000 to $10K; no partial |
| Clothing | | | | 19,000 | 19,000 | 19,000 | 57,000 | > 125 per ff |
| TOTAL ROLL-OUT COSTS OF 6-YEAR PERIOD | 223,406 | 451,279 | 782,234 | 1,319,489 | 1,736,185 | 1,989,154 | 6,501,746 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Each 1% = | 111,703 | 113,937 | 116,216 | 118,540 | 120,911 | 123,329 | |
| New Wages - $ = | 223,406 | 227,874 | 330,954 | 537,256 | 416,696 | 252,969 | |
| New Wages - % = | 2.0% | 2.0% | 2.8% | 4.5% | 3.4% | 2.1% | 16.9% |

Much of the Advisory Committee's discussion of the agreements centered on the role played by the JLMC during the negotiation process, which extended over a period of several years. The JLMC exists to facilitate settlements between public safety unions (police and fire) and their respective municipal governments. If a union petitions the JLMC, the parties enter into mediated talks facilitated by the JLMC. If the parties fail to reach a settlement, the JLMC can impose a resolution through arbitration which, under state law, is binding on the municipal executive, i.e., the executive branch must not only accept the award, it cannot speak against the ruling. The municipal council–in Brookline's case, Town Meeting–can, however, refuse to fund an arbitrated award, thereby sending the parties back to the bargaining table.

Recent JLMC arbitration awards have been extremely favorable to the unions. In 2010, the JLMC gave the Boston firefighters a 19% increase over five years compared to the 14% the city had negotiated with its police and teachers unions. Three years later, the Boston patrolmen were awarded a 25.4% increase over six years. More recently, the Boston detectives received a 28% award. Watertown's Town Council did refuse to fund a JLMC award in 2014 but finally settled for much the same terms in 2015.

Deputy Town Administrator Melissa Goff indicated that prior to the agreement she was concerned that any settlement would pose major fiscal challenges. She prepared for budget cuts under a variety of scenarios with $1 million as a medium-range outcome. Human Resources Director Sandra DeBow-Huang was also concerned about the trickle-down effect that a large settlement would have for future negotiations as other bargaining units sought parity. By agreeing to a settlement, the Town retained control over when and how wage increases would be granted and was able to maintain a 2% annual base wage increase consistent with other contracts.

Fortunately, in anticipation of an unfavorable arbitration award, the Town had begun to set aside additional revenue from group health savings and favorable state aid changes. Much of the $4.5 million needed to fund the agreements through FY2017 already has been allocated to the collective bargaining reserve through contributions over and above the Town's established funding level made over the past several years.

Nonetheless, there is a shortfall of $191,882 in the FY2017 Fire Department budget. To eliminate the deficit, the budget amendment proposed under Warrant Article 3 uses $59,986 of additional state aid, $68,000 in savings from deferred replacement of fire department administrative vehicles, and personnel savings of $63,896, the equivalent of one firefighter position. The personnel savings are anticipated from better management of sick leave and overtime.

Other Negotiated Terms

For the first time in decades, the Town gained additional leverage in preventing the misuse of sick leave. Sick notes will now be required for every absence after a firefighter misses three consecutive tours (previously four consecutive tours or two weeks) and family sick time is reduced to three tours instead of three and one-half (a total of 12 hours). Further, the firefighter will call the Chief's office rather than his immediate supervisor to report sick time, allowing for tighter monitoring of sick time use. These disincentives for the misuse of sick leave would not have been possible had the Town agreed to accept the provisions of the State Sick Leave Law as was proposed to Town Meeting in the fall of 2015 and the spring of 2016.

Going forward, education incentives of $5,000 per year (Associate's Degree in Fire Science) and $10,000 per year (Bachelor's Degree in Fire Science, Fire Administration or Public Administration) will only be paid upon completion of a degree, and not as credits are earned. The Town was also able to negotiate changes regarding EMT certification. In the event that an employee fails to be certified on the initial attempt, the employee will no longer be eligible for reimbursement of tuition, fees, and materials or for overtime pay for subsequent attempts to achieve certification. The union has also agreed to accept mandatory direct deposit of paychecks and language giving the Chief more flexibility in staffing, both of which should result in efficiencies for the Town.

Despite recommending favorable action by a vote of 22–1–3, the Advisory Committee voiced concerns about the sustainability of awards of this size. Some Committee members suggested that in future negotiations the Town give serious consideration to proposing a seasonal or other reduction in required staffing levels from four firefighters per apparatus to three firefighters. As cited in the Override Study Committee Municipal Subcommittee Report (brooklinema.gov/DocumentCenter/Home/View/6249), Brookline and Boston are the only Massachusetts municipalities to require four persons on all apparatus throughout the year.

*(2) Agreement with the Staff Association of the Public Library of Brookline*

The agreement calls for 2% annual wage increases effective July 1, 2015, July 1, 2016, and July 1, 2017. As in the American Federation of State, County, and Municipal Employees (AFSCME) Main agreement funded in May 2016, there is also a $50 increase in the longevity steps each year and a one-time ratification bonus of $200. Neither the one-time ratification bonus nor the annual longevity payment is applied to base wages but is a lump sum amount provided to eligible employees. Total cost of the agreement over the three year period is $223,461 or 6.1% as detailed below.

***COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH LIBRARIANS***

| ITEM | FY16 | FY17 | FY18 | TOTAL |
|---|---|---|---|---|
| 7/1/15 - 2% | 35,032 | 35,032 | 35,032 | 105,097 |
| 7/1/16 - 2% | | 35,733 | 35,733 | 71,466 |
| 7/1/17 - 2% | | | 36,448 | 36,448 |
| Longevity Pay | | 1,150 | 2,300 | 3,450 |
| One time Signing Bonus $200 | | 7,000 | | 7,000 |
| | | | | |
| TOTAL ROLL-OUT COSTS | 35,032 | 78,916 | 109,513 | 223,461 |

| | | | | |
|---|---|---|---|---|
| Each 1% = | 17,516 | 17,867 | 18,224 | |
| New Wages - $ = | 35,032 | 43,883 | 37,598 | |
| New Wages - % = | 2.0% | 2.5% | 2.1% | 6.5% |
| Wages on Base - $ = | 35,032 | 36,883 | 37,598 | |
| Wages on Base - % = | 2.0% | 2.1% | 2.1% | 6.1% |

In addition to the wage increases, the parties agreed to extend the probationary period for new employees from 6 months to 12 months and to reduce the length of time to receive the maximum vacation benefit from 15 years to 10 years. A long-standing practice of allowing employees to choose how to adjust their New Year's Eve schedules for early closing was formally adopted in the contract.

RECOMMENDATION:
By a vote of 22–1–3, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen to appropriate the sums of money required to fund the cost items in the agreements reached between the Town and the Brookline Fire Union.

By a vote of 26–0–0, the Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Selectmen to appropriate the sums of money required to fund the cost items in the agreements reached between the Town and the Staff Association of the Public Library of Brookline.

*XXX*

Memorandum of Agreement

Between

The Town of Brookline

And

Local 950, I.A.F.F., AFL-CIO

Fiscal Years 2013, 2014, and 2015

June 27, 2016

The Town of Brookline ("Town") and Local 950, I.A.F.F., AFL-CIO ("Union"), collectively referred to as the "parties", agree to extend their July 1, 2009 – June 30, 2012 collective bargaining agreement through June 30, 2015, with the following amendments which shall become effective when this Memorandum of Agreement becomes effective unless otherwise provided.

1. Appendix B.1 - Employee Salary Schedule

   Increase the hourly rates in the Salary Schedule in Appendix B.1 for Grade F-1 at Steps 1, 2, 3, and 4 and the Flat Rate for Grades F-2, F-3, and F-4 in accordance with the following:

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

   (The Senior Step shall be adjusted in accordance with the table in Appendix B.1)

2. Appendix B.11 – Hazardous Materials Stipend

   Effective July 1, 2014, amend Appendix B.11 by adding the following to the end of the last paragraph: "Effective July 1, 2014, the hazardous materials stipend shall be 2.5%."

3. Article XII - Direct Deposit and Electronic Pay Advisories

   Add the following new paragraphs to Article XII:

   Effective with the first pay period 90 days after this Memorandum of Agreement becomes effective, <INSERT DATE>, 2016, all employees shall receive their pay through direct deposit. (The parties understand and agree that employees shall provide direct deposit information to the payroll office four weeks in advance of the implementation date to enable the Town to set up direct deposit for their paychecks in accordance with this provision.)

   Effective ninety (90) days after this Memorandum of Agreement becomes effective, <INSERT DATE>, 2016, the Town may provide employees with electronic pay advisories in lieu of paper paystubs.

4. Article XV (e)(1)

Effective July 1, 2015, amend subsection (1) of Section (e) in Article XV by adding the following sentence before the last sentence in subsection (1):

"The Chief in his/her sole discretion may elect to rely on the opinion of the employee's treating physician in lieu of obtaining the opinion of Brookline's Occupational Health physician."

5. Delete Article XXXVII, Combined dispatch. (Housekeeping)

(Leave Article XXXVII blank)

6. Appendix B 8: Emergency Medical Technician Pay

Amend Section 8 of Appendix B adding the following to the end of the third paragraph Section 8:

"In the event an employee fails to complete and/or pass the examination and/or fails to acquire the Emergency Medical Technician initial certification, the employee shall not be eligible for any further reimbursement from the Town for tuition, books, fees and shall not be eligible for overtime for any subsequent attempt to obtain EMT certification; provided however, such employee shall be allowed time off from work to attend required training sessions necessary to later acquire EMT certification as long as it does not affect minimum staffing levels."

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Board of Selectmen, and funding of the incremental cost items by Town Meeting at the next regularly scheduled Town Meeting.

Agreed to on this 27th day of June 2016, by the negotiating representatives for the parties.

For the Town of Brookline

For Local 950, I.A.F.F. AFL-CIO

**Memorandum of Agreement**

**Between**

**The Town of Brookline**

**And**

**Local 950, I.A.F.F., AFL-CIO**

**Fiscal Years 2016 and 2017**

**June 27, 2016**

The Town of Brookline ("Town") and Local 950, I.A.F.F., AFL-CIO ("Union"), collectively referred to as the "parties", agree to extend their July 1, 2012 – June 30, 2015 collective bargaining agreement through June 30, 2017, with the following amendments which shall become effective when this Memorandum of Agreement becomes effective unless otherwise provided.

1. Appendix B.1 - Employee Salary Schedule

   Increase the hourly rates in the Salary Schedule in Appendix B.1 for Grade F-1 at Steps 1, 2, 3, and 4 and the Flat Rate for Grades F-2, F-3, and F-4 in accordance with the following:

| Effective Date | Increase |
|---|---|
| July 1, 2015 | 2.0% |
| July 1, 2016 | 2.0% |

   (The Senior Step shall be adjusted in accordance with the table in Appendix B.1)

2. Appendix B.6 - Night Differential

   Amend Appendix B.6 by inserting the following new sentence before the last sentence: "Effective July 1, 2015, the night differential is increased to 8.5% of the then current weekly maximum base pay of the firefighter classification."

3. Appendix B.11 – Hazardous Materials Stipend

   A. Amend Appendix B.11 by adding the following two new sentences to the end of the last paragraph:

      "Effective July 1, 2015, the hazardous materials stipend shall be 3.0%. Effective July 1, 2016, the hazardous materials stipend shall be 4.5%."

   B. Effective July 1, 2016, the Hazardous Materials Stipend shall be rolled into the base and Section B.11 shall be replaced in its entirety with the following:

      "The Town and Union agree that the base wages for all employees incorporate the Hazardous Materials Stipend, and therefore, no separate Hazardous Materials Stipend shall be provided."

4. Appendix B.3 – Educational Incentive Pay
   Amend Appendix B.3 as follows:

   A. Effective July 1, 2015, replace the first two sentences in the second paragraph with the following:

      "Effective July 1, 2015, firefighters who have earned an Associate's degree in Fire Science, shall receive an education incentive of $5,000 per year. Effective July 1, 2015, firefighters who have earned a Bachelor's degree in Fire Science, Fire Administration, or Public Administration, or a Bachelor's degree as a Registered Nurse shall receive an education incentive of $10,000 per year."

      [Retain the existing last sentence in the second paragraph ("Firefighters are eligible for only one education incentive per year.").]

   B. Amend the first paragraph in Appendix B.3 by inserting the following:
      This first paragraph shall be extinguished effective June 30, 2015; however, each employee who prior to June 30, 2015, received payment for credits earned towards his/her Associate's degree shall be "grandfathered" and shall continue to receive such payment in the same amount as he/she received prior to June 30, 2015 until such time as he/she has earned a qualifying Associate's or Bachelor's degree as provided below.

5. Article VI: Sick Leave

   A. Amend Section (h) by replacing "four cumulative tours" with "three cumulative tours" in the second sentence in Section (h).

   B. Amend Section (i) by replacing "not to exceed three and one-half (3-1/2)" with "not to exceed three (3)" in the first sentence in Section (i).

   C. Amend section (g) by replacing the "immediate supervisor" with "Fire Chief or his/her designee."

   D. Amend section (i) by replacing "appointing authority" with "Fire Chief or his/her designee."

6. Article XIII Uniforms and Safety Equipment
   A. Effective July 1, 2015, amend Article XIII by replacing the second sentence in the second paragraph with the following:
      "Annually thereafter, a $615.00 per year uniform allowance shall be paid to members of the Fire Department."

   B. Amend Article XIII Uniforms and Safety Equipment (housekeeping) by replacing the list of uniform items in the second paragraph with the following list:
      1 Dress Blues Blouse and pant,
      2 Dress Shirts, one short sleeve, one long sleeve
      1 Dress Cap, bell style,

1 Dress Overcoat/Rain Coat
1 Black Tie
1 Pair Dress Shoes
3 Pairs of work pants
4 work shirts (polos): 2 long sleeves and 2 short sleeves
1 pair work shoes
3 Tee shirts
2 pair of shorts (optional), and
1 jacket, listed as D, E, or F in the uniform standard

7. Appendix B Senior Steps (Housekeeping)

Appendix B, Senior Steps, delete second to last paragraph of section 1 "Such senior steps shall not be considered in calculating Night Differential, Emergency Medical Technician Pay, and Hazardous Materials Stipends or any other pay or stipend that is based upon the maximum base salary of a firefighter."

Delete "Effective June 30, 2012," in the last paragraph of section 1.

Delete "effective July 1, 2010" above the table.

8. Appendix A. Paid Detail Compensation Schedule

Effective thirty (30) days after this Memorandum of Agreement ("MOA") becomes effective (after Town Meeting funding of this MOA):

A. Amend to add the following to the first paragraph:

"for details worked in excess of six (6) hours but less than eight (8) hours, an eight (8) hour minimum shall apply"

The parties understand that time is calculated from the time the employee starts working at the detail.

B. Amend the Private Detail Schedule as follows:

| | |
|---|---|
| Firefighter | $45.00 |
| Lieutenant | $50.00 |
| Captain | $55.00 |
| Deputy Chief | $60.00 |

9. Article XXXV (Housekeeping)
Delete the 1st, 2nd, and 4th paragraphs.

10. Appendix B.12 Tuition Reimbursement
Effective July 1, 2015, increase the tuition reimbursement fund from $10,000 per fiscal year to $15,000 per fiscal year and change the application deadlines from fall, spring and summer to June 1st of each year.

11. Scheduled Leave

The Town shall provide five (5) opportunities per 24-hour scheduled tour for employees to schedule leave time including but not limited to personal time (such as earned and unearned personal time and 20-year days), vacation time, and union leave, but excluding sick leave and injury leave. In the months of July and August only, the Town shall provide six (6) opportunities instead of five (5) opportunities, per 24-hour scheduled tour for employees to schedule leave time including but not limited to personal time (such as earned and unearned personal time and 20-year days), vacation time, and union leave, but excluding sick leave and injury leave, provided that the employee requesting the sixth opportunity for leave has a full earned personal day (also known as a full "white day") available in his/her bank; such employee may use his/her white day or a vacation day, or an unearned personal day (pink day).

(This provision extinguishes the settlement agreement between the Town and the Union regarding AAA Case No. 01-14-0000-0963 and MUP-14-3741 addressing personal days.)

12. Temporary Assignments of Aides
    Replace Appendix B, section 9 with the following:
    When in the opinion of the Chief or Chief of Operations, a firefighter(s) are temporarily required as Aides to the Chief, Chief of Operations, or Deputy Chief, such firefighter shall be paid his/her regular rate of pay plus one dollar ($1.00) per hour for all hours worked as an Aide. Should the manning levels necessitate the calling back of an off-duty firefighter to serve as an aide, the firefighter would be compensated at an overtime rate, following the addition of one dollar ($1.00) added to his/her normal base pay rate used in calculating the overtime rate.

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Board of Selectmen, and funding of the incremental cost items by Town Meeting at the next regularly scheduled Town Meeting of the parties Memorandum of Agreement for Fiscal Years 2013, 2014, and 2015.

This Memorandum of Agreement covering Fiscal Years 2016 and 2017 is subject to ratification by the Union membership, approval by the Board of Selectmen, and funding of the incremental cost items by Town Meeting at the next regularly scheduled Town Meeting.

Agreed to on this 27th day of June 2016, by the negotiating representatives for the parties.

For the Town of Brookline

For Local 950, I.A.F.F. AFL-CIO

**Memorandum of Agreement**

**Between**

**The Town of Brookline**

**And**

**Local 950, I.A.F.F., AFL-CIO**

**Fiscal Year 2018**

**June 29, 2016**

The Town of Brookline ("Town") and Local 950, I.A.F.F., AFL-CIO ("Union"), collectively referred to as the "parties", agree to extend their July 1, 2015 – June 30, 2017 collective bargaining agreement through June 30, 2018, with the following amendments which shall become effective when this Memorandum of Agreement becomes effective unless otherwise provided.

1. Appendix B.1 - Employee Salary Schedule
   Increase the hourly rates in the Salary Schedule in Appendix B.1 for Grade F-1 at Steps 1, 2, 3, and 4 and the Flat Rate for Grades F-2, F-3, and F-4 in accordance with the following:

| Effective Date | Increase |
|---|---|
| July 1, 2017 | 2.0% |

   (The Senior Step shall be adjusted in accordance with the table in Appendix B.1)

2. Article XXVI
   Replace the third paragraph in Art XXVI with the following:

   "Within the limits of the number of officers actually on duty during each tour, it is the intent of the parties that there be a minimum of one permanent, temporary or acting officer on duty in each fire company. The assignment and/or movement of any such officer(s) is at the discretion of the Fire Chief or his/her designee."

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Board of Selectmen, and funding of the incremental cost items by Town Meeting at the next regularly scheduled Town Meeting.

Agreed to on this 29th day of June 2016, by the negotiating representatives for the parties.

For the Town of Brookline

For Local 950, I.A.F.F. AFL-CIO

MEMORANDUM OF AGREEMENT
BETWEEN
THE TOWN OF BROOKLINE
AND
THE STAFF ASSOCIATION OF THE PUBLIC LIBRARY OF BROOKLINE
COUNCIL 93, AFSCME, AFL-CIO

September 29, 2016

This Memorandum of Agreement ("Agreement") is made between the Town of Brookline ("Town") and the Staff Association of the Public Library of Brookline, Local 1358, AFSCME, Council 93, AFL-CIO. Except as specifically modified by this Agreement, the terms and provisions of the Parties' July 1, 2012 through June 30, 2015 collective bargaining agreement shall continue in full force and effect through June 30, 2018.

1. Article XXIX: Duration
   July 1, 2015- June 30, 2018

2. Wages: Appendix A
   Increase the schedules in Appendix A as follows:

| Effective Date | Increase |
|---|---|
| July 1, 2015 | 2% |
| July 1, 2016 | 2% |
| July 1, 2017 | 2% |

3. $200 One-Time Ratification Payment
   Effective after Town Meeting funding of this Memorandum of Agreement ("MOA"), the Town shall make a two hundred dollar ($200) one-time payment (not added to the base) to each full-time employee in this bargaining unit on the date of Town Meeting funding who has worked for the Town in this bargaining unit for the full year prior to the date of funding; such payment shall be prorated for employees in the bargaining unit who have not worked the full year prior to the date of funding of this MOA.

4. Article V c): Longevity
   Effective July 1, 2016 increase the longevity at each level by fifty dollars ($50.).
   Effective July 1, 2017 increase the longevity at each level by fifty dollars ($50.).

5. Article XII b): Vacation
   In the table in section b), replace "less than 15 years" with "less than 10 years" and replace "15 full calendar years or more" with "10 full calendar years or more".

6. Article III c): Permanent Employee (Probationary Period)
   Replace "six (6) months" with "twelve (12) months".

7. Article VII h) New Year's Eve
   Amend Article VII h) by adding the following to the end of section h):
   Employees who are regularly scheduled to work past 5:00 P.M. and when such employee is scheduled to work on New Year's Eve, such employee shall have the following options:

1. Adjust his/her hours for New Year's Eve to begin at 9:00 A.M.; or
2. Work his/her scheduled hours until closing time and use accrued vacation or personal leave to cover the balance of such employee's regular shift; or
3. Work his/her scheduled hours until closing time and receive pay for those hours actually worked in accordance with this section h).

8. Article XIV: Other Leaves with Pay
   Amend Section f) by replacing "Trainees" with "Employees enrolled in an accredited graduate MLS program"

9. Article XXVI: Miscellaneous Working Conditions
   Amend Article XXVI by deleting Section 1) (purchase of books) in its entirety and replacing it with the following: "This Section 1) intentionally left blank."

10. Housekeeping
    a. Replace "Town Librarian" with "Library Director"
    b. Article VII g) – Remove obsolete language by deleting the first two sentences and revising the third sentence by inserting "assigned to the Technical Services Division" after the words "employees hired after July 1, 1984".

**This Memorandum of Agreement shall be subject to ratification by the Union membership, approval by the Board of Selectmen, approval by the Trustees of the Brookline Public Library, and funding by Town Meeting at the next regularly scheduled Town Meeting.**

Agreed to on this 29th day of September 2016 by the negotiating teams for the:

Town of Brookline

Sara Slymon
Library Director

Anne Reed
Assistant Library Director

Sandra DeBow-Huang
Human Resources Director

Staff Association of the Public Library of Brookline, Local 1358, AFSCME, Council 93, AFL-CIO

Bruce Genest
President, Local 1358, AFSCME, Council 93

Ed Nastari
Assistant Field Service Director
AFSCME Council 93

Roy MacKenzie
Steward, Local 1358, AFSCME, Council 93

# ARTICLE 3

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Article 3 provides for amendments to the budget for this fiscal year. The state aid that Brookline received for FY2017 was $119,972 more than had been estimated in the budget approved by Town Meeting in May 2016. In accordance with the Town/School Partnership formula, this additional aid will be divided evenly between the Town and the Schools, with each receiving $59,986. Article 3 includes budget amendments that will make it possible to fund the labor contract negotiated with Brookline's firefighters. The Town's share of the additional state aid will be appropriated into the Collective Bargaining Reserve, along with $131,896 to be transferred from the Fire Department budget. Article 3 also includes appropriations for the Singletree tank and gatehouse improvements. These were inadvertently omitted from the appropriation authorizations voted by the May 2016 Town Meeting. By a vote of 12–4–0, the Advisory Committee recommends FAVORABLE ACTION.

BACKGROUND:
An Article similar to Article 3 is placed on the Warrant for every fall Special Town Meeting so that Town Meeting can, if necessary, vote to amend the budget that the Annual Town Meeting has approved for the current fiscal year. This year, as is often the case, the Town needs to make various budget adjustments that reflect receiving additional aid from the Commonwealth of Massachusetts. Action under Article 3 is necessary to appropriate additional State aid that was not included in the revenue estimates in the FY2017 budget voted by the May 2016 Town Meeting. Some of these adjustments involve the transfer of funds between accounts. Town Meeting also needs to vote on two authorizations that were omitted from the May 2016 Town Meeting approval of the FY2017 budget. Only the appropriation of the additional state aid increases the overall Town budget.

DISCUSSION:
Article 3 would amend the FY2017 budget by appropriating the $119,972 in additional state aid as recommended by the Town/School Partnership Committee, on a 50-50 basis to the Public Schools of Brookline budget ($59,986) and to the Collective Bargaining reserve ($59,986). In addition, to fund the firefighters' contract (see Article 2), Article 3 would adjust the FY2017 budget by decreasing the Fire Department budget by ($131,896) and by increasing the Collective Bargaining reserve by $131,896, as shown in amended FY2017 Budget Tables I and II.

Two appropriations for the Singletree tank improvements ($340,000) and the Singletree Hill Gatehouse improvements ($320,000) are also included in the motion offered under Article 3. Although both items were included in the FY2017 Budget approved by Town

Meeting in May, the authorizations for the appropriations were erroneously omitted from Warrant.

During its review of Article 3, the Advisory Committee discussed the Town/School Partnership process. Some members raised concerns as to whether the formulaic split of State aid, on a 50-50 basis, should be continued or whether it should be replaced by an approach that would allocate additional revenue to the Town or Schools on the basis of which departments and programs had the greatest need. Members also considered how such an approach might be implemented. The discussion focused on the annual budgeting process that takes place every spring. Should there be, for example, "add back" lists from each department, including the Schools, that would then be evaluated as to the merits so that departments would essentially compete for the extra funds? It was pointed out that the Advisory Committee is the Town's Finance Committee and should be taking a lead in recommending to Town Meeting its priorities for the Town, which may reflect a 50-50 split of new funds. The Advisory Committee did not take any votes on these questions, but members requested more information on the meetings and decisions of the Town/School Partnership and expressed particular interest in information on how the Public Schools of Brookline would use the additional state aid received for FY2017. The primary use of those funds appears to be to offset the loss of a kindergarten grant that the Schools had received from the state in previous years. The grant program was eliminated in the FY2017 state budget.

The Town Administration recommends the following appropriations of state aid and inter-account fund transfers to fund the new firefighter's contract:

1. Allocating the State aid of $119,972 by increasing the School budget by $59,986 and the Collective Bargaining reserve by $59,986, to help fund the new firefighter's contract.
2. That the Collective Bargaining reserve is increased by transferring $131,896 (by eliminating the purchase of vehicles and reducing one position) from the Fire Department budget
3. Appropriate additional net state aid of $119,972, with inter-account transfers, as shown in the table below:

| ITEM# | ORIGINAL BUDGET | PROPOSED CHANGE | AMENDED BUDGET |
|---|---|---|---|
| 20. Collective Bargaining Town | $2,921,346 | $191,882 | $3,113,228 |
| 11. Fire Department | $13,014,196 | ($131,896) | $12,882,300 |
| 22. Schools | $101,058,795 | $59,986 | $101,118,781 |

*Group Health Budget*

The Group Health budget was built based on an assumed level of employee growth in the Schools, building a contingency for additional new hires pending School Committee approval of the School budget plan. School employee onboarding is substantially complete. While enrollment has grown by 45 positions compared to an anticipated 30,

there has been migration to less expensive plans. Analysis shows a $59,000 surplus based on current enrollees.

Town Administration recommends that this surplus remain in the Group Health budget, to account for additional enrollment that could result from the filling of the remaining benefit-eligible positions (approximately 15) in the Schools, and consequently proposes no adjustment to the Group Health budget.

*Singletree Appropriation Omissions*
Town Meeting approved the FY2107 budget at May 2016 Town Meeting, and that budget included the Singletree tank and gatehouse improvements of $340,000 and $320,000 respectively. However, the appropriation authorizations were erroneously omitted. The Town Administration recommends that this error be corrected and that $340,000 for the Singletree tank and $320,000 for the Singletree gatehouse be approved.

RECOMMENDATION:
The Advisory Committee, by a vote of 12–4–0, recommends FAVORABLE ACTION on the motion offered by the Selectmen.

## ARTICLE 3

THIRD ARTICLE
To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2017 budget or transfer funds between said accounts;

B) Appropriate $340,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree tank improvements.

C) Appropriate $320,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree Hill Gatehouse improvements.

D) 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.

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### 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. For FY2017, the warrant article is necessary to balance the budget based on higher than projected State Aid, re-allocate funds, and appropriate two Water and Sewer Enterprise Fund capital improvement projects.

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### SELECTMEN'S RECOMMENDATION

Article 3 of the Warrant for the 2017 Fall Town Meeting proposes amendments to the FY17 budget. The article is required to address three outstanding items:

1. Appropriation of a higher state aid amount for Brookline than what was assumed in the budget approved by Town Meeting.

2. Adjustments to the Fire Department budget contingent on Town Meeting approval of the MOA between the Town and the Fire union.
3. Appropriation of two Water and Sewer projects that were included in the CIP but not listed on the Annual Town Meeting warrant.

## ADDITIONAL NET STATE AID

The final State budget resulted in an additional $119,972 of Net State Aid (without Offsets[1]), bringing the total FY17 Net State Aid (without Offsets) figure to $12,617,655, an increase of $748,272 (6.3 %) over FY16. As a result $119,972 is available for appropriation. The table below shows how the final State budget results in $119,972 more in Net State Aid (without Offsets):

| | FY16 FINAL CHERRY SHEET | FY17 TM VOTE | FY17 FINAL STATE CHERRY SHEET | Final Cherry Sheet Vs FIN PLAN | % VARIANCE |
|---|---|---|---|---|---|
| *RECEIPTS* | | | | | |
| Ch. 70 | 12,183,520 | 12,612,632 | 12,729,627 | 116,995 | 0.9% |
| Unrestricted General Gov't Aid | 5,852,785 | 6,104,455 | 6,104,455 | 0 | 0.0% |
| Vets Benefits | 108,730 | 108,730 | 110,883 | 2,153 | 2.0% |
| Exemptions | 39,059 | 41,913 | 41,913 | 0 | 0.0% |
| Charter School Reimbursements | 5,004 | 11,924 | 24,419 | 12,495 | 104.8% |
| TOTAL RECEIPTS | 18,189,098 | 18,879,654 | 19,011,297 | 131,643 | 0.7% |
| *CHARGES* | | | | | |
| County | 841,540 | 862,578 | 862,578 | 0 | 0.0% |
| Air Pollution Dist. | 28,045 | 28,747 | 28,747 | 0 | 0.0% |
| MAPC | 29,255 | 29,986 | 29,986 | 0 | 0.0% |
| RMV Surcharge | 232,380 | 232,380 | 232,380 | 0 | 0.0% |
| MBTA | 5,066,573 | 5,116,912 | 5,116,912 | 0 | 0.0% |
| SPED | 49,812 | 49,812 | 32,331 | (17,481) | -35.1% |
| School Choice Sending Tuition | 3,953 | 6,700 | 20,100 | 13,400 | 200.0% |
| Charter School Sending Tuition | 68,157 | 54,856 | 70,608 | 15,752 | 28.7% |
| TOTAL CHARGES | 6,319,715 | 6,381,971 | 6,393,642 | 11,671 | 0.2% |
| *OFFSETS* | | | | | |
| Libraries | 91,451 | 89,866 | 89,197 | (669) | -0.7% |
| TOTAL OFFSETS | 91,451 | 89,866 | 89,197 | (669) | -0.7% |
| **NET LOCAL AID** | **11,960,834** | **12,587,549** | **12,706,852** | **119,303** | **0.9%** |
| **NET LOCAL AID W/O OFFSETS** | **11,869,383** | **12,497,683** | **12,617,655** | **119,972** | **1.0%** |
| **GROSS LOCAL AID** | **18,280,549** | **18,969,520** | **19,100,494** | **130,974** | **0.7%** |

Pursuant to the Town/School Partnership, the $119,972 shall be distributed 50/50. When run through the Town/School Split; $59,986 is available for both the Town and School budgets. Recommendation for the Town appropriation is as follows:

1. Collective Bargaining Reserve - $59,986

[1] Offset Aid consists of Library aid which goes directly to the Library without appropriation. The Library will have $669 less available than in FY16.

Pending Town Meeting approval of the Collective Bargaining agreement with the Fire union, this additional state aid is a component of the funding plan for the Fire Department budget (continued below). If the contract is approved by Town Meeting this funding would then be transferred to the Fire Department's budget.

**FIRE COLLECTIVE BARGAINING**

The Memorandum of Agreement with the Fire Union through FY2017 (i.e. the contract contingent upon Town Meeting approval) is projected to cost $4,512,593 for wage adjustments including retroactive pay. The Town had taken several steps to set aside funding beyond the 2% collective bargaining reserve that had been established during several budget cycles due to the uncertainty surrounding a potential arbitration award. Last November, the Town allocated an additional $72,917 to the collective bargaining reserve. In May, Group Health savings allowed the Town to set aside an additional $221,446 was recommended for the collective bargaining reserve. Despite this additional funding and drawing on what is available in the collective bargaining account there is a shortfall of $191,822 for FY17. We will use the Town Share of state aid described above to further reduce the shortfall, leaving $131,896 that requires funding. The Town's restraint in setting this recurring revenue aside instead of using it for other appropriation requests makes this shortfall much more manageable.

This Board believes that given the resources described above that were allocated to the Fire Department, which would have otherwise been available for other Town needs, the remaining shortfall must be borne by the Fire Department. This is not an easy choice for this Board, but there are limits to what the Town can afford given the limits of recurring revenue required to fund this contract. The following reductions are needed to balance the shortfall:

| | |
|---|---|
| FY17 Funding Shortfall | (191,882) |
| Town Share of State Aid | 59,986 |
| Revised FY17 Shortfall | **(131,896)** |
| Recommended Reductions: | |
| Capital (Vehicle Reductions) | 68,000 |
| Firefighter Vacancies | 63,896 |
| | **131,896** |

**WATER & SEWER ENTERPRISE FUND**

Two items included in the FY2017-2022 CIP were not listed in the warrant this past May and need a vote of Town Meeting to appropriate the funding. These projects are a $340,000 appropriation for Singletree tank improvements and a $320,000 appropriation

for Singletree Hill Gatehouse improvements. Both appropriations have been reviewed during the CIP process and will be funded using interest free MWRA loans.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 25, 2016, on the following motion:

VOTED: That the Town:

1. Amend the FY2017 budget as shown below and in the attached Amended Tables I and II:

| ITEM # | ORIGINAL BUDGET | PROPOSED CHANGE | AMENDED BUDGET |
|---|---|---|---|
| | | | |
| 20. Collective Bargaining – Town | $2,921,346 | $191,882 | $3,113,228 |
| 11. Fire Department | $13,014,196 | ($131,896) | $12,882,300 |
| 22. School Department | $101,058,795 | $59,986 | $101,118,781 |

2. Appropriate $340,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree tank improvements.

3. Appropriate $320,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree Hill Gatehouse improvements.

Passed by a Unanimous Vote of 170 In Favor and 12 Opposed

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 3 will be provided in the Supplemental Mailing.

XXX

**FY17 BUDGET - TABLE 1 November, 2016**

| | | FY14 ACTUAL | FY15 ACTUAL | FY16 BUDGET | FY17 BUDGET | PROPOSED AMENDMENTS | FY17 AMENDED BUDGET | $$ CHANGE FROM FY16 | % CHANGE FROM FY16 |
|---|---|---|---|---|---|---|---|---|---|
| | **REVENUES** | | | | | | | | |
| | Property Taxes | 174,869,775 | 182,239,297 | 195,049,924 | 204,023,297 | | 204,023,297 | 8,973,373 | 4.6% |
| | Local Receipts | 25,522,496 | 25,847,019 | 23,568,685 | 23,836,698 | | 23,836,698 | 268,013 | 1.1% |
| | State Aid | 16,633,741 | 17,675,450 | 18,837,306 | 19,526,277 | 119,972 | 19,646,249 | 808,943 | 4.3% |
| | Free Cash | 7,665,155 | 5,084,152 | 5,016,500 | 5,311,538 | | 5,311,538 | 295,038 | 5.9% |
| | Overlay Surplus | 0 | 2,100,000 | 0 | 0 | | 0 | 0 | |
| | Other Available Funds | 6,852,688 | 6,903,508 | 7,925,643 | 7,840,067 | | 7,840,067 | (85,576) | -1.1% |
| | **TOTAL REVENUE** | **231,543,855** | **239,849,426** | **250,398,058** | **260,537,877** | **119,972** | **260,657,849** | **10,259,791** | **4.1%** |
| | **EXPENDITURES** | | | | | | | | |
| | **DEPARTMENTAL EXPENDITURES** | | | | | | | | |
| | 1 . Selectmen | 670,358 | 685,876 | 675,810 | 677,893 | | 677,893 | 2,083 | 0.3% |
| | 2 . Human Resources | 615,662 | 676,217 | 538,725 | 544,018 | | 544,018 | 5,293 | 1.0% |
| | 3 . Information Technology | 1,705,110 | 1,783,823 | 1,825,979 | 1,888,165 | | 1,888,165 | 62,186 | 3.4% |
| | 4 Diversity, Inclusion, and Community Relations | 0 | 177,539 | 198,077 | 201,144 | | 201,144 | 3,067 | 1.5% |
| | 5 . Finance Department | 2,933,343 | 2,869,580 | 2,941,627 | 3,171,822 | | 3,171,822 | 230,195 | 7.8% |
| | *a. Comptroller* | *536,293* | *551,138* | *574,670* | *582,201* | | *582,201* | *7,531* | *1.3%* |
| | *b. Purchasing* | *636,616* | *667,116* | *665,955* | *651,983* | | *651,983* | *(13,972)* | *-2.1%* |
| | *c. Assessing* | *654,772* | *664,015* | *674,651* | *676,454* | | *676,454* | *1,803* | *0.3%* |
| | *d. Treasurer* | *1,105,661* | *987,311* | *1,026,350* | *1,261,184* | | *1,261,184* | *234,833* | *22.9%* |
| | 6 . Legal Services | 888,936 | 889,316 | 846,116 | 955,774 | | 955,774 | 109,658 | 13.0% |
| | 7 . Advisory Committee | 13,129 | 13,021 | 25,005 | 25,230 | | 25,230 | 225 | 0.9% |
| | 8 . Town Clerk | 557,591 | 645,463 | 613,064 | 686,119 | | 686,119 | 73,055 | 11.9% |
| | 9 . Planning and Community Development | 757,716 | 851,249 | 813,169 | 877,554 | | 877,554 | 64,385 | 7.9% |
| | 10 . Police | 15,258,118 | 16,260,029 | 16,769,605 | 16,794,674 | | 16,794,674 | 25,069 | 0.1% |
| | 11 . Fire | 12,886,490 | 12,960,394 | 12,935,851 | 13,014,196 | (131,896) | 12,882,300 | (53,551) | -0.4% |
| | 12 . Building | 7,163,183 | 7,029,407 | 7,410,771 | 7,523,922 | | 7,523,922 | 113,151 | 1.5% |
| (1) | 13 . Public Works | 15,220,421 | 16,330,565 | 14,215,844 | 14,110,546 | | 14,110,546 | (105,298) | -0.7% |
| | *a. Administration* | *847,278* | *874,470* | *872,392* | *874,473* | | *874,473* | *2,080* | *0.2%* |
| | *b. Engineering/Transportation* | *1,191,962* | *1,165,797* | *1,283,424* | *1,222,661* | | *1,222,661* | *(60,763)* | *-4.7%* |
| | *c. Highway* | *4,644,618* | *4,872,841* | *4,808,439* | *4,908,444* | | *4,908,444* | *100,004* | *2.1%* |
| | *d. Sanitation* | *2,988,704* | *2,858,581* | *3,092,724* | *2,996,227* | | *2,996,227* | *(96,497)* | *-3.1%* |
| | *e. Parks and Open Space* | *3,552,206* | *3,322,096* | *3,661,556* | *3,625,933* | | *3,625,933* | *(35,623)* | *-1.0%* |
| | *f. Snow and Ice* | *1,995,654* | *3,236,779* | *497,308* | *482,809* | | *482,809* | *(14,500)* | *-2.9%* |
| | 14 . Library | 3,827,172 | 3,894,348 | 3,888,386 | 3,977,262 | | 3,977,262 | 88,876 | 2.3% |
| | 15 . Health and Human Services | 1,280,036 | 1,184,308 | 1,159,971 | 1,162,496 | | 1,162,496 | 2,524 | 0.2% |
| | 16 . Veterans' Services | 327,315 | 361,218 | 331,435 | 331,908 | | 331,908 | 472 | 0.1% |
| | 17 . Council on Aging | 837,172 | 855,130 | 880,240 | 894,573 | | 894,573 | 14,333 | 1.6% |
| | 18 . Recreation | 1,022,391 | 1,010,362 | 1,022,334 | 989,764 | | 989,764 | (32,570) | -3.2% |
| (2) | 19 . Personnel Services Reserve | 715,000 | 715,000 | 715,000 | 715,000 | | 715,000 | 0 | 0.0% |
| (2) | 20 . Collective Bargaining - Town | 1,900,000 | 2,321,220 | 1,596,442 | 2,921,346 | 191,882 | 3,113,228 | 1,516,786 | 95.0% |
| | *Subtotal Town* | *68,579,144* | *71,514,067* | *69,403,452* | ***71,463,405*** | ***59,986*** | ***71,523,391*** | ***2,119,939*** | ***3.1%*** |
| | *21 . Schools* | *82,780,770* | *86,842,575* | *95,916,094* | *101,058,795* | *59,986* | *101,118,781* | *5,202,687* | *5.4%* |
| | **TOTAL DEPARTMENTAL EXPENDITURES** | **151,359,914** | **158,356,642** | **165,319,546** | **172,522,200** | **119,972** | **172,642,172** | **7,322,626** | **4.4%** |
| | **NON-DEPARTMENTAL EXPENDITURES** | | | | | | | | |
| (1) | 22 . Employee Benefits | 49,570,654 | 50,474,515 | 54,064,860 | 56,848,195 | | 56,848,195 | 2,783,335 | |
| (3) | *a. Pensions* | *17,409,988* | *17,882,573* | *18,707,021* | *19,718,677* | | *19,718,677* | *1,011,656* | |
| | *b. Group Health* | *24,090,743* | *25,110,830* | *27,484,720* | *29,042,056* | | *29,042,056* | *1,557,335* | |
| | *c. Health Reimbursement Account (HRA)* | *55,880* | *49,478* | *70,000* | *0* | | *0* | *(70,000)* | |
| (3) | *d. Retiree Group Health Trust Fund (OPEB's)* | *3,514,360* | *3,311,860* | *3,499,119* | *3,774,838* | | *3,774,838* | *275,719* | |
| | *e. Employee Assistance Program (EAP)* | *24,900* | *24,900* | *28,000* | *28,000* | | *28,000* | *0* | |
| | *f. Group Life* | *137,555* | *132,666* | *145,000* | *145,000* | | *145,000* | *0* | |
| | *g. Disability Insurance* | *12,367* | *10,221* | *16,000* | *16,000* | | *16,000* | *0* | |
| (3) | *h. Worker's Compensation* | *1,720,000* | *1,450,000* | *1,550,000* | *1,450,000* | | *1,450,000* | *(100,000)* | |
| (3) | *i. Public Safety IOD Medical Expenses* | *400,000* | *300,575* | *250,000* | *250,000* | | *250,000* | *0* | |
| (3) | *j. Unemployment Compensation* | *450,000* | *325,000* | *300,000* | *300,000* | | *300,000* | *0* | |

| | | FY14 ACTUAL | FY15 ACTUAL | FY16 BUDGET | FY17 BUDGET | PROPOSED AMENDMENTS | FY17 AMENDED BUDGET | $ CHANGE FROM FY16 | % CHANGE FROM FY16 |
|---|---|---|---|---|---|---|---|---|---|
| | *k. Medical Disabilities* | *20,543* | *18,565* | *40,000* | *40,000* | | *40,000* | *0* | |
| | *l. Medicare Coverage* | *1,734,318* | *1,857,847* | *1,975,000* | *2,083,625* | | *2,083,625* | *108,625* | |
| (2) | 23 . Reserve Fund | 1,615,626 | 1,718,000 | 2,200,198 | 2,348,737 | | 2,348,737 | 148,539 | |
| | 24 Stabilization Fund | 250,000 | 0 | 0 | 0 | | 0 | 0 | |
| | 25 Affordable Housing | 555,106 | 170,390 | 163,078 | 158,539 | | 158,539 | (4,539) | |
| | 26 . Liability/Catastrophe Fund | 154,115 | 234,839 | 78,969 | 144,322 | | 144,322 | 65,352 | |
| | 27 . General Insurance | 325,017 | 332,137 | 382,645 | 394,148 | | 394,148 | 11,503 | |
| | 28 . Audit/Professional Services | 115,649 | 81,500 | 130,000 | 137,000 | | 137,000 | 7,000 | |
| | 29 . Contingency Fund | 13,377 | 10,528 | 15,000 | 15,000 | | 15,000 | 0 | |
| | 30 . Out-of-State Travel | 2,704 | 2,253 | 3,000 | 3,000 | | 3,000 | 0 | |
| | 31 . Printing of Warrants & Reports | 27,190 | 28,046 | 35,000 | 35,000 | | 35,000 | 0 | |
| | 32 . MMA Dues | 11,516 | 11,746 | 12,278 | 12,585 | | 12,585 | 306 | |
| | *Subtotal General* | *3,070,300* | *2,589,439* | *3,020,169* | *3,248,330* | | *3,248,330* | *228,162* | |
| (1) | 33 . Borrowing | 9,304,647 | 9,403,333 | 9,478,591 | 10,742,938 | | 10,742,938 | | |
| | *a. Funded Debt - Principal* | *7,209,938* | *7,196,544* | *7,183,044* | *7,923,973* | | *7,923,973* | | |
| | *b. Funded Debt - Interest* | *2,083,707* | *2,193,256* | *2,135,547* | *2,658,965* | | *2,658,965* | | |
| | *c. Bond Anticipation Notes* | *4,225* | *0* | *100,000* | *100,000* | | *100,000* | | |
| | *d. Abatement Interest and Refunds* | *6,777* | *13,533* | *60,000* | *60,000* | | *60,000* | | |
| | **TOTAL NON-DEPARTMENTAL EXPENDITURES** | **61,945,601** | **62,467,287** | **66,563,620** | **70,839,464** | **0** | **70,839,464** | | |
| | **TOTAL GENERAL APPROPRIATIONS** | **213,305,515** | **220,823,929** | **231,883,166** | **243,361,664** | **119,972** | **243,481,636** | | |
| | **SPECIAL APPROPRIATIONS** | | | | | | | | |
| | 34 . Parking Garage Town Hall/Pierce Phase 4 (revenue financed) | | | | 300,000 | | 300,000 | | |
| | 35 . Town Building Furniture (revenue financed) | | | | 25,000 | | 25,000 | | |
| | 36 . Technology Applications (revenue financed) | | | | 275,000 | | 275,000 | | |
| | 37 . Major Parcel Study (revenue financed) | | | | 100,000 | | 100,000 | | |
| | 38 . Fire Station Renovations (revenue financed) | | | | 670,000 | | 670,000 | | |
| | 39 . Library Furnishings (revenue financed) | | | | 110,000 | | 110,000 | | |
| | 40 . Library Interior Painting (revenue financed) | | | | 110,000 | | 110,000 | | |
| | 41 . Bicycle Access Improvements (revenue financed) | | | | 36,000 | | 36,000 | | |
| | 42 . Parking Meter Technology Upgrade (revenue financed) | | | | 161,040 | | 161,040 | | |
| | 43 . Dean / Chestnut Hill Avenue Signal (revenue financed) | | | | 260,000 | | 260,000 | | |
| | 44 . Street Rehabilitation (revenue financed) | | | | 1,630,000 | | 1,630,000 | | |
| | 45 . Sidewalk Repair/Reconstruction (revenue financed) | | | | 304,000 | | 304,000 | | |
| | 46 . Winthrop Path Rehabilitation (revenue financed) | | | | 65,000 | | 65,000 | | |
| | 47 . Brookline Reservoir Park - Design (revenue financed) | | | | 140,000 | | 140,000 | | |
| | 48 . Emerson Garden Playground (revenue financed) | | | | 770,000 | | 770,000 | | |
| | 49 . Harry Downes Field & Playground - Design (revenue financed) | | | | 80,000 | | 80,000 | | |
| | 50 . Playground Equipment, Fields, Fencing (revenue financed) | | | | 300,000 | | 300,000 | | |
| | 51 . Town/School Grounds Rehab (revenue financed) | | | | 90,000 | | 90,000 | | |
| | 52 . Comfort Stations (revenue financed) | | | | 40,000 | | 40,000 | | |
| | 53 . Tree Removal and Replacement (revenue financed) | | | | 225,000 | | 225,000 | | |
| | 54 . School Furniture Upgrades (revenue financed) | | | | 80,000 | | 80,000 | | |
| | 55 . Town/School ADA Renovations (revenue financed) | | | | 70,000 | | 70,000 | | |
| | 56 . Town/School Elevator Renovations (revenue financed) | | | | 275,000 | | 275,000 | | |
| | 57 . Town/School Energy Conservation Projects (revenue financed) | | | | 170,000 | | 170,000 | | |
| | 58 . Town/School Energy Management Systems (revenue financed) | | | | 175,000 | | 175,000 | | |
| | 59 . Town/School Building Security / Life Safety (revenue financed) | | | | 175,000 | | 175,000 | | |
| | 60 . Town/School Compactor Replacements (revenue financed) | | | | 50,000 | | 50,000 | | |
| | 61 . School Feasibility studies - K-8 and High School (revenue financed) | | | | 800,000 | | 800,000 | | |
| | 62 . Old Lincoln School Modifications (revenue financed) | | | | 350,000 | | 350,000 | | |
| | 63 . Classroom Capacity (revenue financed) | | | | 1,038,000 | | 1,038,000 | | |
| | 64 . Tower #1 Replacement (bond) | | | | 800,000 | | 800,000 | | |
| | 65 . Fire Training & Maintenance Facility (bond) | | | | 4,500,000 | | 4,500,000 | | |
| | 66 . Corey Hill Park (bond) | | | | 700,000 | | 700,000 | | |
| | 67 . Town/School Bldg Envelope/Fenestration Repairs (bond) | | | | 2,100,000 | | 2,100,000 | | |
| (4) | **TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS** | **8,581,000** | **9,415,000** | **10,113,000** | **8,874,040** | **0** | **8,874,040** | | |

| | FY14 ACTUAL | FY15 ACTUAL | FY16 BUDGET | FY17 BUDGET | PROPOSED AMENDMENTS | FY17 AMENDED BUDGET | $$ CHANGE FROM FY16 | % CHANGE FROM FY16 |
|---|---|---|---|---|---|---|---|---|
| **TOTAL APPROPRIATED EXPENDITURES** | **221,886,515** | **230,238,929** | **241,996,166** | **252,235,704** | **119,972** | **252,355,676** | | |
| **NON-APPROPRIATED EXPENDITURES** | | | | | | | | |
| Cherry Sheet Offsets | 111,026 | 126,443 | 91,451 | 89,866 | | 89,866 | | |
| State & County Charges | 6,196,321 | 6,201,536 | 6,319,715 | 6,387,305 | | 6,387,305 | | |
| Overlay | 1,726,503 | 2,080,721 | 1,965,726 | 1,800,000 | | 1,800,000 | | |
| Deficits-Judgments-Tax Titles | 3,049 | 25,000 | 25,000 | 25,000 | | 25,000 | | |
| **TOTAL NON-APPROPRIATED EXPEND.** | **8,036,899** | **8,433,700** | **8,401,892** | **8,302,171** | | **8,302,171** | | |
| **TOTAL EXPENDITURES** | **229,923,414** | **238,672,629** | **250,398,058** | **260,537,875** | **119,972** | **260,657,847** | | |
| **SURPLUS/(DEFICIT)** | **1,620,440** | **1,176,796** | **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).

| 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) | 647,988 | 6,100 | 4,000 | 17,600 | | 2,205 | | | 677,893 |
| Human Resources Department (Human Resources Director) | 301,669 | 200,709 | 9,000 | 31,000 | | 1,640 | | | 544,018 |
| Information Technology Department (Chief Information Officer) | 1,102,893 | 516,272 | 10,350 | 17,550 | | 241,100 | | | 1,888,165 |
| Diversity, Inclusion, and Community Relations (Director) | 171,122 | 20,000 | 9,000 | 150 | | 873 | | | 201,144 |
| Finance Department (Director of Finance) | 2,157,620 | 933,603 | 50,310 | 20,957 | 1,332 | 8,000 | | | 3,171,822 |
| Legal Services (Town Counsel) | 606,965 | 230,309 | 3,500 | 112,000 | | 3,000 | | | 955,774 |
| Advisory Committee (Chair, Advisory Committee) | 22,090 | | 2,275 | 570 | | 295 | | | 25,230 |
| Town Clerk (Town Clerk) | 557,692 | 106,172 | 18,525 | 2,450 | | 1,280 | | | 686,119 |
| Planning and Community Department (Plan. & Com. Dev. Dir.) | 840,898 | 19,193 | 9,712 | 4,550 | | 3,200 | | | 877,553 |
| Police Department (Police Chief) | 15,220,611 | 555,403 | 217,250 | 69,000 | 284,766 | 447,644 | | | 16,794,674 |
| Fire Department (Fire Chief) | 12,190,679 | 162,740 | 167,488 | 31,350 | 197,266 | 132,777 | | | 12,882,300 |
| Public Buildings Department (Building Commissioner) | 2,326,100 | 2,308,264 | 32,250 | 10,400 | 2,717,208 | 129,700 | | | 7,523,922 |
| Public Works Department (Commissioner of Public Works) | 7,684,138 | 3,375,098 | 920,750 | 53,500 | 1,065,956 | 991,104 | 20,000 | | 14,110,546 |
| Public Library Department (Library Board of Trustees) | 2,860,942 | 185,841 | 583,490 | 4,700 | 316,289 | 26,000 | | | 3,977,262 |
| Health & Human Services Department (Health & Human Svcs Dir) | 896,317 | 202,087 | 15,100 | 4,120 | 40,852 | 4,020 | | | 1,162,496 |
| Veterans' Services (Veterans' Services Director) | 164,275 | 2,538 | 650 | 163,935 | | 510 | | | 331,908 |
| Council on Aging (Council on Aging Director) | 752,155 | 44,083 | 19,763 | 2,900 | 69,472 | 6,200 | | | 894,573 |
| Recreation Department (Recreation Director) | 710,662 | 23,037 | 86,480 | 12,400 | 153,165 | 4,020 | | | 989,764 |
| School Department (School Committee) | | | | | | | | | 101,118,781 |
| **Total Departmental Budgets** | **49,214,817** | **8,891,449** | **2,159,893** | **559,132** | **4,846,306** | **2,003,568** | **20,000** | | **168,813,945** |
| | | | | | | | | | |
| **DEBT SERVICE** | | | | | | | | | |
| Debt Service (Director of Finance) | | | | | | | | 10,742,938 | 10,742,938 |
| **Total Debt Service** | | | | | | | | **10,742,938** | **10,742,938** |
| | | | | | | | | | |
| **EMPLOYEE BENEFITS** | | | | | | | | | |
| Contributory Pensions Contribution (Director of Finance) | 19,623,677 | | | | | | | | 19,623,677 |
| Non-Contributory Pensions Contribution (Director of Finance) | 95,000 | | | | | | | | 95,000 |
| Group Health Insurance (Human Resources Director) | 29,042,056 | | | | | | | | 29,042,056 |
| Health Reimbursement Account (HRA) (Human Resources Director) | | | | | | | | | |
| Retiree Group Health Insurance - OPEB's (Director of Finance) | 3,774,838 | | | | | | | | 3,774,838 |
| Employee Assistance Program (Human Resources Director) | 28,000 | | | | | | | | 28,000 |
| Group Life Insurance (Human Resources Director) | 145,000 | | | | | | | | 145,000 |
| 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) | 250,000 | | | | | | | | 250,000 |
| Unemployment Insurance (Human Resources Director) | 300,000 | | | | | | | | 300,000 |
| Ch. 41, Sec. 100B Medical Benefits (Town Counsel) | 40,000 | | | | | | | | 40,000 |
| Medicare Payroll Tax (Director of Finance) | 2,083,625 | | | | | | | | 2,083,625 |
| **Total Employee Benefits** | **53,790,574** | | | | | | | | **56,848,195** |
| | | | | | | | | | |
| **GENERAL / UNCLASSIFIED** | | | | | | | | | |
| Reserve Fund (*) (Chair, Advisory Committee) | | | | 2,348,737 | | | | | 2,348,737 |
| Liability/Catastrophe Fund (Director of Finance) | | | | 144,322 | | | | | 144,322 |
| Housing Trust Fund (Planning & Community Develpoment Dir.) | | | | 158,539 | | | | | 158,539 |
| General Insurance (Town Administrator) | | 394,148 | | | | | | | 394,148 |
| Audit/Professional Services (Director of Finance) | | 137,000 | | | | | | | 137,000 |
| Contingency (Town Administrator) | | | | 15,000 | | | | | 15,000 |
| Out of State Travel (Town Administrator) | | 3,000 | | | | | | | 3,000 |
| Printing of Warrants (Town Administrator) | 15,000 | 10,000 | 10,000 | | | | | | 35,000 |
| MMA Dues (Town Administrator) | | | | 12,585 | | | | | 12,585 |
| Town Salary Reserve (*) (Director of Finance) | 3,113,228 | | | | | | | | 3,113,228 |
| Personnel Services Reserve (*) (Director of Finance) | 715,000 | | | | | | | | 715,000 |
| **Total General / Unclassified** | **3,843,228** | **544,148** | **10,000** | **2,679,182** | | | | | **7,076,558** |
| | | | | | | | | | |
| **TOTAL GENERAL APPROPRIATIONS** | **106,848,619** | **9,435,597** | **2,169,893** | **3,238,314** | **4,846,306** | **2,003,568** | **20,000** | **10,742,938** | **243,481,636** |

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

ARTICLE 4

**REVISED PETITIONER MOTION**

VOTED that the Town amend Article 8.23 of the Town's General By-laws, Tobacco Control, as follows (language to be deleted appearing in ~~strikethrough~~, new language appearing in **bold underline;** and changes from the warrant article appearing in ***bold underlining and italics***):

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 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.~~ **Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.**

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.

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.

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 products without assistance from an employee or store personnel.

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

g. Employee - An individual who performs services for an employer.

h. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.

i. Workplace - 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.

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

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.

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

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.

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

**o. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.**

**p. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette products or component**

**part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.**

**q. Component part - Any element of a tobacco or e-cigarette products, including, but not limited to, the tobacco, filter and paper, but not including any constituent.**

**r. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco or e-cigarette products during the processing, manufacturing or packaging of the tobacco or e-cigarette products. Such term shall include a smoke constituent.**

**s. Distinguishable - Perceivable by either the sense of smell or taste.**

***t. Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco or e-cigarette product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco or e-cigarette product.***

***u.* Flavored tobacco or e-cigarette product - Any tobacco product or e-cigarette component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco or e-cigarette products, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco or e-cigarette products, that such tobacco or e-cigarette products has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco or e-cigarette products is a flavored tobacco or e-cigarette products.**

***v. Retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.***

***w. Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.***

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 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel 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 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.

(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.

(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.

(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.

(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. 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. 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.

**h. Required Signage**

**1. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by the Town of Brookline that discloses current referral information about smoking cessation.**

**2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone under the minimum legal sales age of 21 years of age is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.**

**i. Tobacco Sales**

**1. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this By-law and federal and state laws regarding the sale of tobacco and e-cigarette and signs a statement, a copy of which will be placed on file in the**

**office of the employer, that he/she has read the regulation and applicable state and federal laws.**

**2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older.**

**3. All retail sales of tobacco or e-cigarette products within the Town of Brookline must be face-to-face between the seller and the buyer and occur at the permitted location.**

***4. Original Cigar Package Price - All single cigars shall be sold for no less than two dollars and fifty cents ($2.50). No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at $5.00 or more. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Brookline.***

***5.* No *entity* shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.**

***6.* No entity shall sell or distribute or cause to be sold or distributed blunt wraps.**

SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who 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 $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 $100 for a first offense, $200 for a second offense, and $300 for a third or subsequent offense.

~~c.~~ ***d.*** Any entity violating any other section of this by-law shall receive a fine of $300.00 for each offense.

~~d.~~ c. Employees who violate any provision of Section 8.23.3(b) shall be punished by a fine of $100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a noncriminal 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 Counted Vote
of 178 In Favor, 2 Opposed
and 5 Abstentions

ARTICLE 4

FOURTH ARTICLE

Submitted by: Makena Binker-Cosen

To see whether the Town will amend Article 8.23 of the Town's General By-laws, Tobacco Control, as follows (language to be deleted appearing in ~~strikethrough~~, new language appearing in **bold underline**):

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 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.~~ **Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.**

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.

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.

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.

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

g. Employee - An individual who performs services for an employer.

h. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.

i. Workplace - 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.

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

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.

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

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.

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

**o. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.**

**p. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco or e-cigarette product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that**

**do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.**

**q. Component part - Any element of a tobacco or e-cigarette product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.**

**r. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco or e-cigarette product during the processing, manufacturing or packaging of the tobacco or e-cigarette product. Such term shall include a smoke constituent.**

**s. Distinguishable - Perceivable by either the sense of smell or taste.**

**t. Flavored tobacco or e-cigarette product - Any tobacco or e-cigarette product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco or e-cigarette product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco or e-cigarette product, that such tobacco or e-cigarette product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco or e-cigarette product is a flavored tobacco or e-cigarette product**

**u. Non-Residential Roll-Your-Own (RYO) Machine - A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.**

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 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel 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 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.

(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.

(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.

(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.

(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. 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.

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

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.

**h. Required Signage**

**(1) The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by the Town of Brookline that discloses current referral information about smoking cessation.**

**(2) The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone under the minimum legal sales age of 21 years of age is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.**

**i. Tobacco Sales**

**(1) No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this By-law and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read this By-law.**

**(2) Identification - Each person selling or distributing tobacco or e-cigarette products at an entity authorized to sell tobacco or e-cigarette products at retail shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco or electronic cigarette products to an individual under 21 years of age.**

**(3) All retail sales of tobacco or e-cigarette products must be face-to-face between the seller and the buyer and occur at the permitted location.**

**(4) Single Cigar Sales - No entity shall sell or distribute or cause to be sold or distributed a single cigar. This prohibition shall not apply to the sale or distribution of any single cigar having a retail price of two dollars and fifty cents ($2.50) or more or to an entity engaged in the business of selling or distributing cigars for commercial purposes to another entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Town of Brookline.**

**(5) Original Cigar Package Price - No entity shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at five dollars ($5.00) or more.**

**(6) The amounts set forth in this Section may be adjusted from time to time to reflect changes in the applicable Consumer Price Index by amendment of this By-law.**

**(7) No person shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in authorized retail tobacco stores.**

**(8) No entity shall sell or distribute or cause to be sold or distributed blunt wraps.**

SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who 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 $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 $100 for 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 $300.00 for each offense.

d. Employees who violate any provision of Section 8.23.3(b) shall be punished by a fine of $100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a noncriminal 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.

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PETITIONER'S ARTICLE DESCRIPTION

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat[1];

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station[2];

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes[3];

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin[4] and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development[5];

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

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[1] Center for Disease Control and Prevention (CDC). 2012. *Health Effects of Cigarette Smoking Fact Sheet.* Retrieved from: *http://www.cdc.gov/tobacco/data_statistice/fact_sheets/health_effects/effects_cig_smoking/index.htm.*

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

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

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

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

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose"; enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth[6];

Whereas sales of flavored cigars in convenience stores increased by 39% between 2008 and 2011[7]; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets[8];

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes[9], largely because these flavored products were marketed to youth and young adults[10], and younger smokers were more likely to have tried these products than older smokers[11];

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law[12], neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction[13];

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

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

[8] SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health.* Retrieved from: *http://www.samhsa.gov/data/sites/default/files/NSDUH2011MRB/NSDUH2011MRB/NSDUHmrbMHSSDataColl2011.pdf.*

[9] 21 U.S.C. § 387g.

[10] Carpenter CM, Wayne GF, Pauly JL, et al. 2005. "New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies." *Health Affairs.* 24(6): 1601–1610. Retrieved from: *http://content.healthaffairs.org/content/24/6/1601.full.pdf+html*; Lewis M and Wackowski O. 2006. "Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands." *American Journal of Public Health.* 96(2): 244–251. Retrieved from: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470487/pdf/0960244.pdf*; Connolly GN. 2004. "Sweet and Spicy Flavours: New Brands for Minorities and Youth." *Tobacco Control.* 13(3): 211–212. Retrieved from: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1747891/pdf/v013p00211.pdf*; HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, *www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.*

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

[12] 21 U.S.C. § 387g.

[13] Food and Drug Administration (FDA). 2011. *Fact Sheet: Flavored Tobacco Products, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf*; HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.*

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes[14];

Whereas tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine[15];

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012[16];

Whereas nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum[17];

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one[18];

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes[19];

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.3% in 2011[20];

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Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

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

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

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

[17] Cameron JM, Howell DN, White JR, et al. 2014. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tob Control.* 23(1):77-8, http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full; HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

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

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

Whereas the 2015 Youth Risk Behavioral Survey (YRBS) results show that 27% of Town of Brookline high school smokers tried to quit smoking cigarettes, compared with 39% in 2013[21];

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported[22];

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history[23];

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

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit[25] and high prices deter youth from starting[26]. Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments

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

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

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

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

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

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

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

dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)[27];

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

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## ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

The hearing was held in the Denny Room, Brookline Department of Public Health, on Wednesday, September 28, 2016.

Council members in attendance:
Cheryl Lefman, MA
Patricia Maher, RN/NP, MA/MS
Nalina Narian, Ph.D.
Anthony L. Schlaff MD, MPH (Chair)

Also in attendance: Alan Balsam PhD, MPH (Director, Brookline Public Health).

Makena Binker-Cosen outlined her proposal to tighten Brookline's tobacco control regulations to conform with those of numerous other communities in Massachusetts. She pointed out that while Brookline was the first community to ban tobacco in public facilities and among the first to raise the age of purchase to 21, over the past couple of years, Brookline has fallen behind Boston, Newton, Cambridge, Belmont, Arlington, and others in regulating tobacco sales.

Article 4 would specifically require:

1. Expansion of the restriction of the sale of flavored tobacco products (already banned in cigarettes) to include cigars and all other products.
2. Enhanced signage at the point of purchase regarding age restrictions on tobacco sales.
3. Setting a minimum price for the purchase of individual cigars of $2.50.
4. Banning the sale of blunt wraps (any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers).

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

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

The Council also heard from Natalie Miller, MPH, tobacco control coordinator for Brookline. Ms. Miller emphasized the fact that these changes would bring Brookline in line with many other communities in Massachusetts, including all adjacent cities and towns.

Two business owners, Mr. Patel and Mr. Igbal, spoke against the Warrant article. Both stated that flavored tobacco, in particular, represented a significant portion of their tobacco sales, especially since all of the adjacent cities and towns had banned flavored tobacco.

Council members expressed concern regarding the loss of business for Brookline tobacco retailers, but felt that flavored tobacco, in particular, targeted young people. They were concerned that Brookline, once in the vanguard, had fallen behind many other communities in our tobacco control regulations.

Motion to support Article 4 – vote 4 – 0 to support.

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## SELECTMEN'S RECOMMENDATION

Article 4 is a petitioned article to tighten Brookline's tobacco control regulations by expanding restrictions on the sale of flavored tobacco products, providing enhanced signage on age restrictions, setting a minimum price for cigars and banning the sale of blunt wraps in Brookline. While the Selectmen applaud the petitioner for her efforts they feel that this warrant article may duplicate the work of the Tobacco Control Committee that was created at the last Town Meeting this past spring under Article 10. This new committee will be tasked with the question of how we can most effectively regulate the product.

The Selectmen's charge for this newly formed Committee is as follows:

> The Selectmen's Committee on Tobacco Control will examine the impact and feasibility of stronger anti-tobacco measures in the Town of Brookline. The examination may include but not necessarily be limited to the proposal for a tobacco-free generation (a ban on the sale of cigarettes to persons born after 1995) and a ban or restrictions on the issuance of tobacco permits to businesses that do not currently hold a tobacco permit in Brookline, as of June 1, 2017 as discussed in connection with Warrant Article 10 at the Spring 2016 Town Meeting. The Committee will further examine the proposed changes to the General By-laws, Article 8.23, as proposed in Warrant Article 4, which will be before the upcoming Fall 2016 Town Meeting. The Committee may consider other measures to control the use and sale of tobacco in Town, particularly among people under the age of 18. The Committee will report back to the Board of Selectmen as soon as possible, but no later than prior to the Spring 2017 Town Meeting.

This Board hopes that this article will be incorporated into the committee's review. Adopting these by-law changes at this time may make it difficult for the committee to provide a comprehensive recommendation. The Tobacco Control Committee also has representatives from the business community who expressed concerns about the impact on the viability of their businesses. A balanced committee will take those views into consideration when making their recommendations.

The Board is pleased that the petitioner would like to participate as a member of the new committee, and therefore on September 27, 2016 a unanimous Board of Selectmen recommended FAVORABLE ACTION on the following motion:

VOTED: To refer Article 4 to the Tobacco Control Committee

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 4, a citizen petition, would amend Article 8.23 of the Town's General By-Laws–Tobacco Control—to enhance tobacco control regulations in order to reduce youth access to tobacco products and to make Brookline's by-laws conform to the best practices in the Commonwealth of Massachusetts. The Advisory Committee applauded the petitioner's initiative and intentions, but concluded that the proposed by-law amendments need further study and potential revision.

By a vote of 19–4–1, the Advisory Committee recommends FAVORABLE ACTION on a motion to refer Article 4 to the Tobacco Control Committee that the Selectmen have established.

BACKGROUND:
Brookline has made many changes to the Town's tobacco by-laws to decrease use of tobacco products and avoid nicotine addiction in young people. In recent years, Brookline has adjusted the age of sale of tobacco products to 21; incorporated reference to e-cigarettes and developed a tobacco-free zone around the High School. These measures are successful and according to 2016 Healthy Brookline data the smoking rates of our High School and other youth continue to decrease:

- The rate of first use of tobacco before age 13 declined from 5% to 2%.
- The rate of lifetime cigarette smoking declined from 26% in 2013 to 15% in 2015.
- Smoking in the past 30 days declined from 10% to 5%.
- The rate of recent use of chewing tobacco, snuff, or dip decreased from 4% in 2013 to 2% in 2015.
- At the 7th and 8th grade level, the reported rate of lifetime use of tobacco and/or electronic cigarettes was 3%.

The petitioner, however, feels that Brookline can do more. The Town was a leader in restricting sales of tobacco products and limiting youth smoking, but other communities are now in the vanguard of attempts to prevent the use of cigarettes and other tobacco products. The key is to prevent teenagers from starting to smoke, and to limit their access to tobacco products that are especially appealing to young people. According to the petitioner, 90% of smokers start before age 18 and tobacco products are becoming increasingly cheap, sweet, and easy to get in convenience stores and gas stations.

Brookline has been part of a Community Consortium (Brookline, Newton, Arlington, Belmont and Watertown) to decrease smoking. Brookline was the first in the Commonwealth to ban smoking in public places, but now Brookline is the only town that has not banned the sale of flavored cigars and e-cigarettes, and also has not set a minimum price for cigars. Currently one can buy a flavored cigar for 60 cents—cheaper than a candy bar.

Article 4 offers proposals that the petitioner believes would enhance Brookline's efforts to prevent young people from smoking or using tobacco products and becoming addicted to nicotine.

Article 4 seeks to restrict the sale of flavored additives in combustible tobacco products (e.g., cigars) and in nicotine delivery products (vaporizers). These additives are already banned in cigarettes. Flavored additives are geared to youth. The tobacco industry keeps prices for these products low, and the combination of "fun" flavors and low prices makes it often cheaper and more attractive to buy a flavored cigar rather than a candy bar. The U.S. Food and Drug Administration and the Surgeon General have stated that flavored tobacco products are considered "starter" products that help lead to long-term addiction. Federal law prohibits the fruit- and candy-flavored tobacco products, but this ban does not apply to non-cigarette tobacco products, such as cigars, smokeless tobacco and electronic smoking (e-cigs).

Article 4 also would require Brookline stores that sell tobacco products to post enhanced signage regarding age restrictions on tobacco sales—so that purchases could clearly see that sales to those under 21 are prohibited—and require that all sales be on a face-to-face basis. Buyers who appeared to be under 30 (under 27 in the petitioner's revised Article) would be required to show a government-issued identification card with a photograph.

The Article would set $2.50 as the minimum price for the purchase of individual cigars. Low-priced individual cigars are popular with young people.

Finally, Article 4 would ban the sale of blunt wraps—any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Approximately 15% of students nationwide smoke, 11% in Massachusetts, and 5% in Brookline. However, the use of e-cigs among middle and high school students nationwide doubled between 2011 and 2012, a disturbing trend that suggests that further anti-smoking measures are necessary.

DISCUSSION:
The Advisory Committee commends the petitioner for presenting this Warrant Article in the spirit of promoting a tobacco-free generation and building on the Town's current efforts to control tobacco use by teenagers.

The Committee strongly supports moving toward the goals of Article 4, but has several reservations and would like to have a clearer understanding of several issues raised by the Article.

The wording of Article 4 seems awkward, particularly the "Definitions" section adopted from Rhode Island Tobacco legislation, even though the definitions apparently have stood up to legal scrutiny. Moreover, some issues raised in this Article appear to be state-level problems (e.g., price-setting). Raising the price of tobacco products usually results in less consumption, but can the Town set the price (minimum of $2.50)? Do we have the right to increase the cost of flavored and non-flavored cigars? Should taxes on cigars be raised?

In general Brookline's smoking by-laws appear effective: the penalty for a vendor that does not check a buyer's identification to verify age and sells to underage customers is a fine at the first offence and a fine and pulling of the permit at a second offence. Sanctions are in place for students found smoking on school grounds. Should youthful offenders be fined as well? The Advisory Committee also raised questions about the identification process: Should there be increased carding? What forms of identification are acceptable? What alternatives exist besides a driver's license and college ID? The minimum age for purchase of tobacco is 21. Are these tobacco-buyers adults able to make their own decisions or "youth" to be protected? How does tobacco flavoring compare to similar flavoring in alcohol (candy cane, honey etc.)? Why should one type of product be more heavily regulated? Should flavoring in other potentially dangerous products come under more scrutiny here as well?

The Advisory Committee also was aware of the potential concerns of the business community, but did not have detailed information on the likely impact of the by-law amendments included in Article 4.

Having piecemeal tobacco legislation is not helpful, for this reason the Advisory Committee supports referral to a committee to clean up the definition section and questionable language. The questions raised should be addressed. This will delay the completion of any amendments to the Town's tobacco by-laws for at least eight months, but it will result in a stronger document.

RECOMMENDATION:
By a vote of 19–4–1 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Board of Selectmen

XXX

ARTICLE 5

FIFTH ARTICLE

Submitted by: Clint Richmond, Claire Stampfer

To see if the Town will amend Article 8.32 of the General By-Laws as follows (additions appear in underlined text, and deletions appear in stricken text):

Article 8.32
Sustainable~~Prohibition on the Use of Polystyrene Based Disposable~~ Food Containers and Packaging

~~Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline.~~

~~In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.~~

~~And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.~~

**Section 1: DEFINITIONS**
The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment. Any ASTM D7081 product must be clearly labeled with the applicable standard.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Any compostable product must be clearly labeled with the applicable standard.

DISPOSABLE FOOD SERVICE WARE All food and beverage containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, film wrap, and other items designed for one-time or non-durable uses on or in which any food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and leftovers from partially consumed meals prepared at food establishments.

DIRECTOR refers to the Director of the Department of Public Health or its designee.

FOOD ESTABLISHMENT An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This includes without limitation restaurants and food trucks.

PACKING MATERIAL means polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, for example, packing "peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE means and includes (1) blown polystyrene and expanded and extruded foams (sometimes called "Styrofoam," a Dow Chemical Co. trademarked form of insulation) also referred to as expanded polystyrene (EPS); and in this chapter is referenced as "Foam Polystyrene." Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term also means and includes (2) clear or solid polystyrene, which is also known as "oriented," and referenced in this chapter as "Rigid Polystyrene." "Rigid Polystyrene" is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

PREPARED FOOD Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, bottled, frozen, squeezed or otherwise prepared on the food establishment's premises within the Town, regardless whether it is eaten either on or off the premises.

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using the Brookline curbside municipal collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

RETAIL ESTABLISHMENT Any commercial business facility that sells goods directly to the consumer including but not limited to grocery stores, pharmacies, liquor stores, convenience stores, restaurants, retail stores and vendors selling clothing, food, and personal items, and dry cleaning services.

REUSABLE Products that will be used more than once in its same form by a food establishment. Reusable food service ware includes: tableware, flatware, food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is

provided take-out containers. Reusable materials include aluminum and glass. Reusable also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

**Section 2. PROHIBITED USE AND DISTRIBUTION OF POLYSTYRENE PRODUCTS**

Starting January 1, 2018:

(a) Food establishments are prohibited from providing prepared food to customers using polystyrene or polyethylene terephthalate food service ware.
(b) All food establishments using any disposable food service ware will use biodegradable, compostable, reusable or recyclable food service ware. All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.
(c) Retail establishments are prohibited from selling or distributing foam polystyrene or rigid polystyrene food service ware to customers.
(d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

Starting January 1, 2019:
(e) Food establishments are prohibited from providing prepared food to customers using any food service ware made of polystyrene, polyethylene terephthalate, high and low density polyethylene, polyvinyl chloride food or polypropylene.

**Section 3. EXEMPTIONS**

(a) Foods prepared or packaged outside the Town are exempt from the provisions of this chapter.

(b) Food establishments and retail establishments will be exempted from the provisions of this chapter for specific items or types of disposable food service ware if the Department of Health or its designee finds that a suitable biodegradable, compostable, reusable, or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship.

(c) Any establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the Department of Health or its designee. The Department of Health or its designee may waive any specific requirement of this chapter for a period of not more than one year if the establishment seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. For purposes of this chapter, an "undue hardship" is a situation unique to the food establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that food establishment. An establishment granted an exemption must re-apply prior to the end of the one-year exemption period and

demonstrate continued undue hardship if the establishment wishes to have the exemption extended. The Health Department's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

**Section 4. PENALTIES AND ENFORCEMENT**

(a) Each permittee as defined above, operating in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Director shall issue a warning notice to the permittee for the initial violation.

(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the permittee.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) $50 for the first offense

B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court.

(4) No more than one (1) penalty shall be imposed upon a permittee within a seven (7) calendar day period.

(5) A permittee shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

**Section 5. SEVERABILITY**

Each section of this chapter shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that chapter and all other chapters shall continue in full force.

Or take any other action relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

**Summary:**

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

**Problems with Petrochemical Plastics**

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

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

2. **Solid waste problems**

The enormous number of plastic packaging is difficult to manage.

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

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

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

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

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

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

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

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

- Phthalates - a class of plasticizer added to increase flexibility, which is also a hormonal disrupter.

- Benzophenone - an ultraviolet blocker to prevent photo-degradation especially of clear plastics.

In addition, there are:

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

**Sustainable Packaging**

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

**Why revisit the polystyrene by-law?**

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

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

**Summary**

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

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

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

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

## SELECTMEN'S RECOMMENDATION

The petitioners have indicated that they would like to re-file this article in the spring and offer no motion at this time. The Board will not be submitting a motion for this article.

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## ADVISORY COMMITTEE'S RECOMMENDATION

Warrant Article 5 pertains to restrictions on polystyrene disposable food packaging. The petitioners have informed the Advisory Committee that they do not plan to move changes to the Town's Bylaw 8.32 at this time. Based on feedback at various Town advisory boards and committees, the petitioners felt that they needed more time to work with the local business community before proceeding. They plan to resubmit the article in the spring. Consequently, the Advisory Committee took no vote on Article 5.

RECOMMENDATION:
The Advisory Committee has been informed that no motion will be offered under Article 5. The Advisory Committee therefore makes no recommendation on this Warrant Article.

XXX

No Action Was taken

# ARTICLE 6

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Warrant Article 6 would amend Article 8.33 of the Town's General By-Laws to prohibit the use of polyethylene plastic checkout bags by most retail establishments in the Town regardless of the thickness of the plastic. This strengthens the current by-law, which permits the use of polyethylene checkout bags that are at least 2.25 mils thick. Further, the by-law amendment would require large supermarkets (stores with more than 6,000 square feet of retail space) that provide product bags for loose bulk items, such as produce or baked goods, to use bags made of either compostable materials, recyclable paper, or reusable plastic. The current by-law makes no reference to product bags.

The petitioners are concerned that plastic bags, however defined and regardless of the number of times they are re-used, ultimately end up in landfills and never degrade. Their goal is to eliminate the use of plastic bags entirely because petrochemical plastics are not sustainable, create solid waste problems, and impair human health. The Advisory Committee agreed with the petitioners' goal, but a small majority of was skeptical about whether this Article would do much to achieve it. The reservations included the additional cost involved, whether paper or plastic had a larger carbon footprint, and the potential for unintended consequences, such as replacement of loose bulk items with prepackaged foods. Proponents of the Article felt that Brookline residents could easily absorb the additional cost, which amounts to pennies per bag, and argued that any negative impacts could be offset by future amendments to the by-law.

By a vote of 13 in favor, 10 opposed, and 1 abstention, the Advisory Committee recommends NO ACTION on Article 6.

BACKGROUND:
In May, 2012, Brookline became the first Massachusetts municipality to limit the use of plastic checkout bags to those that are at least 2.25 mils thick. Currently, 37 other Massachusetts cities and towns prohibit distribution of "single-use" plastic carryout bags, defined as bags with thicknesses varying between less than 1.5 mils (e.g. Watertown) and less than 4.0 mils (e.g. Wellesley). Most of these laws have been enacted within the past year and are only starting to go into effect. Only Williamstown and Lee extend the restriction to product bags. Nantucket prohibits the use of any packaging material which is not biodegradable.

Since Brookline enacted its bylaw, large chain retail outlets, such as CVS, have introduced checkout bags which the petitioners claim are only marginally better than the single-use bags currently prohibited. Though these bags are called "reusable" (the CVS

bag has an imprint which says it is washable and reusable 125 times) and can be recycled, they ultimately must be added to solid waste landfill and will never degrade.

As originally submitted by the petitioners, Warrant Article 6 would have eliminated the current by-law's small business exemption to include any retail space, pharmacy, and convenience store located within the Town regardless of size or gross sales. The expanded scope was intended to treat all retail outlets equally. Since it included stores not under the licensing jurisdiction of Brookline's Health Department, enforcement was moved to the Town Administrator or his/her designee.

In response to comments from local merchants, Health Department Director Alan Balsam, and Town Administrator Mel Kleckner, the petitioners revised the Article to restore the small store exemption and limit the product bag ban to larger supermarkets with over 6,000 square feet of retail space. This eliminates any new requirements for most local merchants, and instead targets the major chains that generate the bulk of the plastic checkout and product bags. Eliminating the need to monitor compliance in retail establishments that are not currently licensed by the Town would enable the Health Department to continue to enforce the by-law without requiring additional staff.

DISCUSSION:
The petitioners are concerned that plastic bags, however defined and regardless of the number of times they are re-used, ultimately end up in landfills and never degrade. Their goal is to eliminate the use of plastic bags entirely because petrochemical plastics are not sustainable, create solid waste problems, and impair human health. They argue that we need to take steps to insure that fossil fuels remain in the ground and that the best way to do this is to stimulate grass roots support at the local level.

Article 6 is meant to eliminate the use of all polyethylene and PVC bags at checkout regardless of thickness. The changes to current law were made to explicitly prohibit the type of bags now distributed by CVS or sold for ten cents in some supermarkets.

The petitioners argue that because product bags are used in much greater quantity than checkout bags, they present an even greater environmental hazard. The requirement that product bags be made of washable plastic at least 4 mils thick would be cost prohibitive for merchants and encourage the use of recyclable paper instead. Petitioners estimated the cost of a paper bag, exclusive of shipping, to be two cents, as opposed to a one-cent cost for a comparable polyethylene bag. Bags made of compostable material, such as cloth or bioplastics, have become more readily available and are now a viable alternative to the thin-film plastic bags currently used by supermarket chains. The pre-shipping cost of these bags is estimated to be about four cents each.

Advisory Committee members were generally sympathetic to the goal of eliminating the use of petrochemicals, but a small majority remained skeptical about whether Article 6 would have the desired impact. Supermarkets operate on extremely thin profit margins of

2-3% and could not easily absorb the cost of replacing plastic with paper or bioplastic. The additional cost would be passed along to consumers.

Furthermore, it is not clear that paper products create less of a carbon footprint than plastic. Paper manufacture involves the use of large amounts of energy and water, noxious emissions including carbon dioxide, and potential water contamination from heavy metals. Paper bags are heavier than plastic, requiring the use of more fuel to transport them which also increases the cost of the bags.

Just as they eliminated on-site butchers when polystyrene was banned as a material for packaging food items in Brookline, supermarket chains might be more likely to turn exclusively to pre-packaged and shrink-wrapped produce rather than change supplies for one or two stores. Instead of reducing plastic packaging, the proposed ban on plastic product bags might lead to an increased number of polystyrene trays to be disposed of within the Town. Consumers who prefer to select their own produce and baked goods could easily shop elsewhere.

Despite these concerns, a sizeable minority of the Advisory Committee voted for Favorable Action on the motion offered by the petitioners under Article 6. Proponents felt the price differential was not significant and could be absorbed easily by Brookline residents. Although paper products are not carbon neutral, they ultimately degrade whereas plastic is forever. If businesses find new ways to circumvent the by-law, additional amendments could be enacted at a future date.

It was suggested it might be more successful to target consumer behavior than attempt to effect change at the corporate level. For example, Cambridge charges customers for any bags they might request at checkout. Unfortunately, Brookline cannot follow suit because under Massachusetts law, only cities—not towns—may impose of fee on the distribution of single-use bags by retail outlets.

RECOMMENDATION:
After hearing the arguments pro and con, by a vote of 13–10–1 the Advisory Committee recommends NO ACTION under Article 6.

# ARTICLE 6

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

The petitioners of Article 6 submitted a revision which further restricts section 8.33.2(B) to just large supermarkets, those over 6000 sq. ft. The Board felt this addressed their concerns about the impact on smaller grocery stores and that the new proposal was something that was acceptable and enforceable.

On November 9, 2016 the Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: To amend the General By-Laws by revising the Article 8.33 as follows (additions are underlined and deletions are in strikeout):

ARTICLE 8.33 SUSTAINABLE ~~PLASTIC~~ BAGS ~~REDUCTION~~

SECTION 8.33.1 Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Director", the Director of Public Health Services or his/her designee.

"ASTM D6400", the American Society for Testing and Materials (ASTM) International "Standard Specification for Compostable Plastics".

"ASTM D7081", ASTM International "Standard Specification for Biodegradable Plastics in the Marine Environment".

"Checkout bag", a carryout bag provided by a store to a customer at the point of sale. ~~Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

"Compostable plastic bag", a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

"Department", the Brookline Department of Public Health.

"Marine degradable plastic bag", a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.

"Product Bag" bags in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

"Reusable bag", a bag that is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

"Reusable check-out bag", a sewn reusable bag with stitched handles that ~~is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material~~ can carry 25 pounds over a distance of 300 feet.

"Retail establishment", any retail store that satisfies at least one of the following requirements: (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or (c) a full-line, self-service supermarket that had annual gross sales in excess of $1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

SECTION 8.33.2

(a) If a retail establishment as defined in S~~s~~ection 1 provides ~~plastic~~ checkout bags to customers, the ~~plastic~~ bags shall comply with the requirements of being either a recyclable paper bag, a reusable checkout bag, or a ~~compostable~~ plastic bag that is compostable as well as marine degradable ~~plastic bag~~.

(b) If a supermarket, a retail establishment described in the definition set forth in section 8.33.1, with more than 6,000 square feet of retail space, provides product bags to customers, the bags shall comply with the requirements of being either a recyclable paper bag, reusable bag, or a compostable plastic bag. ~~(a) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.~~

(c) The Director may promulgate rules and regulations to implement this section.

SECTION 8.33.3 PENALTIES AND ENFORCEMENT

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Retail Establishment for the initial violation. (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.
(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
A) $50 for the first offense
B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court. (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.
(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

SECTION 8.33.4
All of the requirements set forth in this by-law shall take effect ~~December~~ July 1, 201~~3~~7. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

Passed by an Electronic Recorded Vote of 182 In Favor, 15 Opposed and 5 Abstentions

## ARTICLE 6

SIXTH ARTICLE

Submitted by: Clint Richmond, Andrew Fischer

To see if the Town will amend the General By-Laws by revising the Article 8.33 as follows (additions are indicated in underlining, and deletions are indicated in strike-out):

ARTICLE 8.33 SUSTAINABLE ~~PLASTIC~~ BAGS ~~REDUCTION~~

SECTION 8.33.1 Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"~~Director~~Officer", the ~~Director of Public Health Services~~Town Administrator or his/her designees responsible for enforcement.

"ASTM D6400", the American Society for Testing and Materials (ASTM) International "Standard Specification for Compostable Plastics".

"ASTM D7081", ASTM International "Standard Specification for Biodegradable Plastics in the Marine Environment".

"Checkout bag", a carryout bag provided by a store to a customer at the point of sale. ~~Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

"Compostable plastic bag", a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

~~"Department", the Brookline Department of Public Health.~~

"Marine degradable plastic bag", a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Officer~~Director~~, provided additional, Officer~~Director~~-approved standards are as stringent as ASTM D7081.

"Product Bag" bags in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

"Reusable bag", a bag that is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

"Reusable check-out bag", a sewn reusable bag with stitched handles that ~~is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.~~can carry 25 pounds over a distance of 300 feet.

"Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

"Retail establishment", any retail space located in the City including without limitation a restaurant, food or ice cream truck, convenience store, retail pharmacy, or supermarket.~~store that satisfies at least one of the following requirements: (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or (c) a full-line, self-service supermarket that had annual gross sales in excess of $1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;~~

SECTION 8.33.2

(a) If a retail establishment as defined in Ssection 1 provides ~~plastic~~ checkout bags to customers, the ~~plastic~~ bags shall comply with the requirements of being either a recyclable paper bag, a reusable checkout bag, or a ~~compostable~~ plastic bags that is compostable ~~,~~ as well as marine degradable ~~plastic bags~~.

(b) If a retail establishment provides product bags to customers, the bags shall comply with the requirements of being either a recyclable paper bag, reusable bag, or a compostable plastic bag.~~(a) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.~~

(c) The ~~Director~~ Officer may promulgate rules and regulations to implement this section.

SECTION 8.33.3 PENALTIES AND ENFORCEMENT

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Officer~~Director~~ shall issue a warning notice to the Retail Establishment for the initial violation. (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Officer~~Director~~ shall issue a notice of violation and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) $50 for the first offense
B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court. (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.
(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

SECTION 8.33.4
All of the requirements set forth in this by-law shall take effect ~~December~~ July 1, 201~~3~~7. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the ~~Director~~ Officer may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

Or take any other action relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

**Summary:**

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

**Problems with Petrochemical Plastics**

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

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

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

2. **Solid waste problems**

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

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

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

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

3. **Plastic packaging is bad for human health**

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

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

**Sustainable Bags**

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

**Why revisit the bag by-law?**

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

**Summary**

The bylaw does several things:

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

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

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

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## ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

The hearing was held in the Denny Room, Brookline Department of Public Health, on Wednesday, September 28, 2016.
Council members in attendance:
Cheryl Lefman, MA
Patricia Maher, RN/NP, MA/MS
Nalina Narian, Ph.D.
Anthony L. Schlaff MD, MPH (Chair)

Also in attendance: Alan Balsam PhD, MPH (Director, Brookline Public Health).

Petitioner Clint Richmond outlined the main aspects of Warrant Article 6, designed to expand Brookline's ban on plastic bags to all retail establishments, include produce bags in the ban, and restrict certain reusable plastic bags allowed to those with a greater thickness, among others. He noted that other communities had followed Brookline's leadership on our plastic bag ban, and this warrant article seeks to "close loopholes" while also being more comprehensive by addressing paper and produce bags.

Mr. Richmond had previously outlined the health effects associated with the production and use of plastics (in his article 5 presentation). He pointed out that the production of single-use plastic bags made from fossil fuels is not sustainable.

Council members expressed unanimous support for the goals of this warrant article, but questioned him closely regarding the number of retailers affected and the impact on Town enforcement agencies.

Pat Maloney, Chief of Environmental Health for the Health Department, was asked to weigh in. It is estimated that there are 500+ storefronts in Brookline, not all of which sell retail. There are also an unknown number of second and third story retailers. Even shops like beauty salons and health clubs that are not primarily retailers, do sell products to the public.

The Health Department only has contact with retailers that have food permits. If the Health Department were designated as the enforcement agency, the additional workload to educate non-food retailers regarding the ban extension and enforcing the ban would be enormous.

Based on the above:

Motion to refer Article 6 to a Selectmen's Committee on Plastics Reduction.
Vote 4 – 0 to support.

Members also feel strongly that if Article 6 were passed at Town meeting, and the Department of Public Health were designated as the enforcement agency, that additional staff resources be made available for that purpose.

## SELECTMEN'S RECOMMENDATION

Article 6 is a petitioned article that seeks to make further amendments to the Town's Plastic Bag Reduction By-Law. During the course of warrant article review the petitioner revised the motion to address concerns from the Coolidge Corner Merchant's Association and Town staff about enforcement and implementation. These changes:

- left the current paper bag requirements and small store exemptions intact;
- kept the proposal to change the definition of reusable bags to explicitly address the free bags and slightly thicker bags currently distributed at CVS and other stores (leaving the more traditional polypropylene bags still available) and;
- limited the petrochemical plastic product bags ban to grocery stores.

The Selectmen appreciate the petitioner's revisions, but a majority of the Board felt they needed to hear from the business community on the revisions to the original proposal before taking a position on the Article. The Board discussed the necessity of references

to marine degradable bags and a motion to amend the petitioner's revised motion failed by a vote of 2-3 meaning that the current position of the Board is NO ACTION.

**ROLL CALL VOTE:**

| Favorable Action | No Action |
|---|---|
| Daly | Wishinsky |
| Heller | Franco |
| | Greene |

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ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 6 will be provided in the Supplemental Mailing.

XXX

# ARTICLE 7

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Warrant Article 7, submitted by the River Road Study Committee (RRSC), would amend the Zoning By-Law to create a new "Emerald Island Special District" (EISD) on the plot of land bordered by River Road, Washington Street, and Brookline Avenue that is currently zoned Industrial (I-1.0). More information about the RRSC is available at http://www.brooklinema.gov/1303/River-Road-Study-Committee.

By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on Article 7 as submitted by the petitioners.

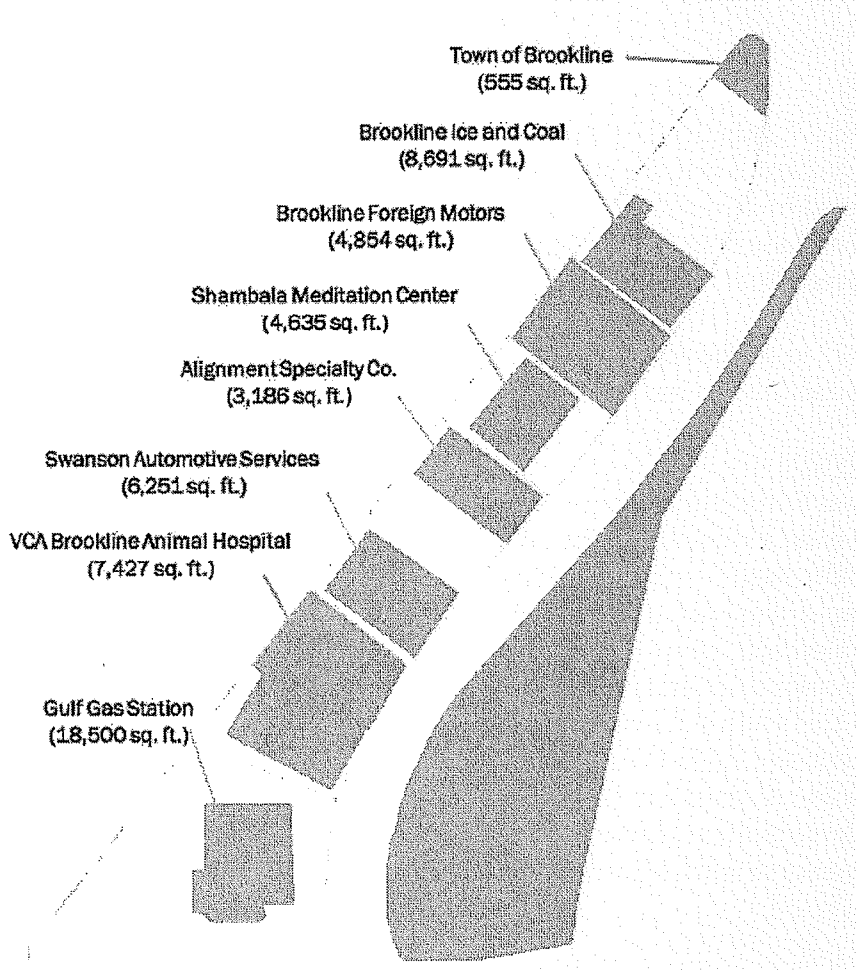
BACKGROUND:
The RRSC was formed in response to several recent developments:

- The vision articulated in the 2015 MIT study of Route 9 East, entitled "Bringing Back Boylston" — http://brooklinema.gov/DocumentCenter/View/8736.
- As part of this study, the industrial island was seen as a potential anchor point for redevelopment along Route 9 that would improve the offerings along Route 9 (e.g. public amenities, green space, and commercial spaces) as well as tie the north and south sides of Route 9 more closely together.
- The purchase of 25 Washington Street—the former Gulf station at the corner of Brookline Avenue and Washington Street by Claremont Company, the same firm that developed the Homewood Suites at the former Red Cab site. Claremont first presented plans for a hotel on the site in January 2016, shortly before the RRSC was formed.

The goal in forming the RRSC was to bring to life some of the ideas presented by the MIT study as well as earlier Town plans (e.g. the Comprehensive Plan) by developing an entire district around some of these ideas, as opposed to having just the one-off hotel development (a use that is not allowed under current zoning.) Hotels are seen as very attractive developments because they are a significant source of tax revenue (excise tax, real estate tax) without incurring the concomitant costs that full-time residents would expect in terms of town and school services.

Businesses currently occupying the proposed EISD include VCA Brookline Animal Hospital, Brookline Ice and Coal, Shambhala Meditation Center, and several auto repair shops, many of which are owner-occupied. Importantly, none of these businesses would be forced to cease operations because of the proposed zoning changes, although the new zoning will increase the worth of the land such that their current uses may not be considered the highest and best use. There is also a small Town-owned parcel at the

northern tip of the site. Claremont recently purchased the parcel occupied by Alignment Specialty and plans to use this site for construction staging. They have approached other property owners but have not been successful in negotiating additional sales to date. A map of the site with current businesses and the square footage of each lot follows.




The Emerald Island Special District has several challenges and constraints:

- River Road itself is Article 97-protected parkland.
- The northernmost tip of the site (the Town-owned parcel and a portion of the parcel currently occupied by Brookline Ice and Coal) is a flood zone with complex regulations about what can be built there and how.
- The lot parcels are extremely small and shallow, which limits their future usefulness.
  A 30' wide easement bisects the block near its midpoint; the easement is for a large storm drain and must be accessible to the Town at all times.

Notwithstanding these constraints, Article 7 introduces several concepts that are used in other communities, but would be new to our Zoning By-Law:

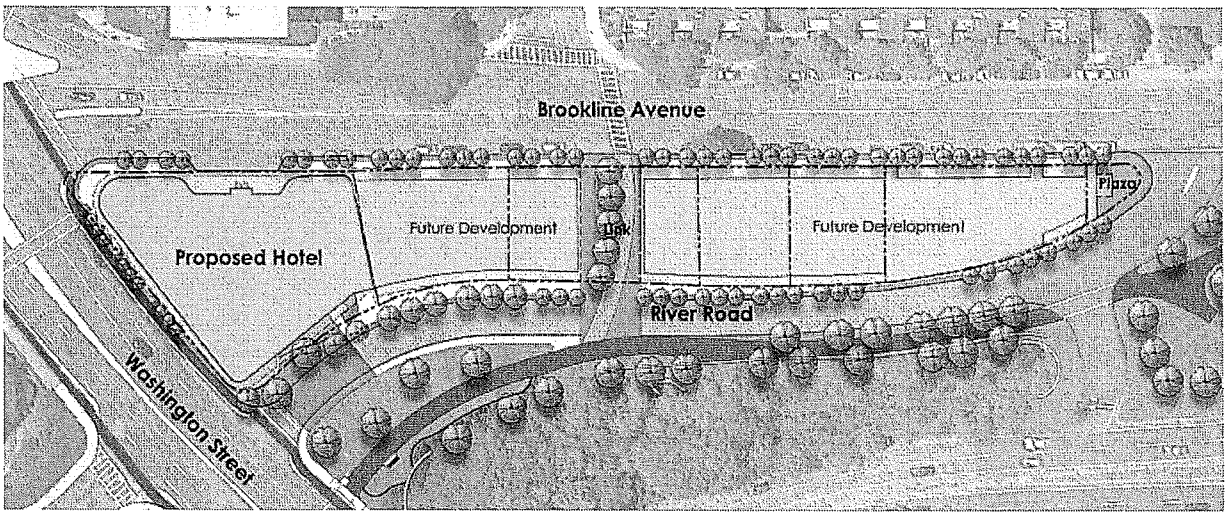
- Sets parking maximums, as opposed to the more common parking minimums, as a result of the transit-rich environment and its proximity to the Longwood Medical Area.
- Uses form-based zoning, including maximum building height and lot coverage percentages, instead of traditional floor-area ratio (FAR) and setbacks.
- Creates new categories of zoning uses, including Micro Units (< 500 SF) and Live/Work Space (< 900 SF, primary residence/studio space). (Note: The zoning also identifies age restricted housing (62+), retail, commercial and hotel as allowed on the EISD, but these are not new uses in Brookline.)

Other important elements of the proposed zoning are its use of Design Guidelines, which describe desired aspects such as lighting, streetscape and facade articulation, to ensure the buildings are visually appealing and diverse, as well as minimum sidewalk widths.

It is important to note that, while the current zoning for these parcels would remain in effect, the new zoning can only be "unlocked" once an acceptable design proposal for an allowed use on a minimum parcel size of 13,600 square feet is aggregated. This means:

- 25 Washington Street is large enough as a stand-alone parcel.
- VCA Animal Hospital and Swanson Automotive can be combined into one lot.
- Either all four commercial properties to the north of the easement must be combined, or at least three of the four must be combined. (In theory, Alignment Specialty is not needed to achieve the minimum parcel size, though calculations by the RRSC indicated the financial viability of any project would require acquisition of all lots north of the easement.)

The vision of the RRSC is a redeveloped Emerald Island comprised of the following sites:




DISCUSSION:
The Advisory Committee held a subcommittee hearing, a subcommittee meeting and two full committee meetings on the River Road articles. In attendance was Economic

Development Planner Andy Martineau as well as many members of the RRSC and the public. Areas of significant discussion included:

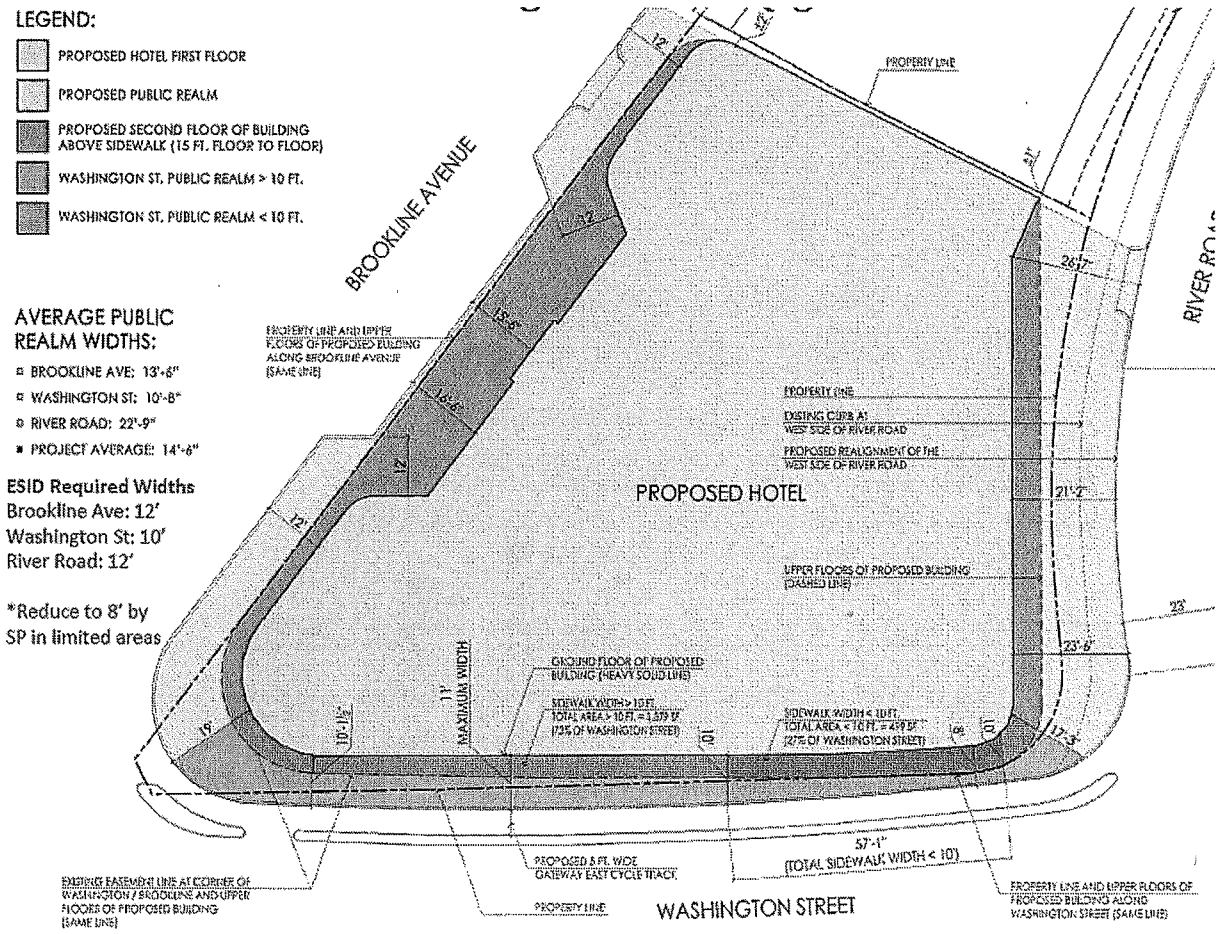
*Parking*

Many people questioned the appropriateness and validity of parking maximums for this site, specifically whether the maximums have been chosen correctly and whether this will become an unwelcome precedent in town. The response from Andy Martineau and other RRSC members present was that the committee itself discussed this at length and ultimately decided that maximums were appropriate for the following reasons:

- The RRSC worked closely with Pam McKinney, considered the preeminent real estate consultant in the Metro Boston area, to vet the ideas and ensure overall project viability. Pam was comfortable with parking maximums that addressed the minimum needs for each project type (e.g. hotel, retail, residential).
- The EISD is not in a residential neighborhood. The nearest residential development is across Brookline Avenue (Village at Brookline) and the RRSC member who is also a Village resident reported a surplus of parking at the development.
- There is significant on-street parking nearby on Brookline Avenue, and there will be additional parking at 2 Brookline Place once the new parking garage is constructed.

*Sidewalk widths*

Sidewalk widths are the principal difference between Articles 7 and 8, and specifically the sidewalk on Washington Street. As shown on the diagram on the next page, Claremont has proposed a <10' sidewalk for a 57' portion of that side of the hotel, which has been accounted for in the zoning in Article 7 (allowing for reduction in widths to as narrow as 8' with documented evidence of need). The narrower width includes the portion of the sidewalk reserved for tree plantings. Much of the discussion during the review of Articles 7 and 8 focused on whether this width was adequate given the foot traffic in this area. Bus routes 39, 60, 65, and 66 all run within two blocks of this corner, as do the D and E lines.




*Benefits of EISD*

Many benefits were discussed, including:

1. Additional tax revenue to the town: the hotel alone would generate $1M/year in real estate tax to the town.
2. New open/green space: the easement would no longer be used for parking as it is currently, but rather a green space that connects Pearl Street to the Emerald Necklace. The RRSC voted to add setbacks on either side of the 30' easement, to increase the width to 50'. Since the easement cannot be built on, it could serve as a grassy area, pedestrian walkway, or similar—as well as breaking up the height of the buildings to either side.
3. More standard benefits include the 1% of construction costs being returned as public realm benefits, street trees, seating, LEED certification for buildings, and no street-level parking. Claremont has also agreed to additional public benefits documented through a Memorandum of Agreement (MOA) and tax certainty agreement — see discussion of Articles 9 and 10 for those details. Importantly, the MOA is contingent on Article 7 passing in its proposed form, or something substantially similar.

*Impact of MOA on property value*

There was extended discussion of whether Article 7 could be considered "spot zoning" or "contract zoning"— particularly in reference to whether the MOA could be challenged at a later date as it might be considered to be an encumbrance on the property. Spot zoning is zoning for one parcel that is out of character for the neighboring parcels. Contract zoning is generally defined as zoning changes that are made in exchange for something of value. Associate Town Counsel Jonathan Simpson opined that the proposal under Article 7 is not considered spot zoning because it affects more than one parcel, and is generally consistent with the scale of adjacent developments at Brookline Place and the Brook House, nor is it considered contract zoning because the terms of the MOA are being offered voluntarily.

Conversely, there was also discussion about whether the Town is leaving money on the table by not identifying a mechanism to facilitate MOAs for the other two aggregated parcels that would be redeveloped under Article 7. Currently, the only potential known MOA trigger would be any desired purchase of the small piece of Town-owned land at the northernmost tip of the island; there is no similar trigger identified for the site at the center of the block between the proposed hotel and the easement. The question of limiting the EISD to the 25 Washington Street property was discussed but ultimately discarded as that would constitute spot zoning. The Advisory Committee and Town Counsel felt that the documentation of the MOA, which is part of the public record and tied to the deed, was sufficient to protect against future challenges.

RECOMMENDATION:
By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

# EMERALD ISLAND SPECIAL DISTRICT DESIGN GUIDELINES
## Adopted by the Planning Board on 8/17/16

It has been determined by the River Road Study Committee (RRSC) that additional guidance may be needed to ensure that all future buildings constructed in the Emerald Island Special District (I-EISD) are designed in a manner that reflects the vision and guiding principles established by the Committee. Both the Planning Board and Design Advisory Team should utilize this document to inform their discussions and decisions surrounding their design review of all buildings.

The I-(EISD) is a unique urban edge that serves as a gateway to the town and a dynamic transition point between neighborhoods, modes of transit and surrounding amenities. New buildings should be designed and built in a manner that reinforces an active and inviting public realm. Building design should strengthen the relationship between the built environment and the Emerald Necklace. Sustainability, synergy and porosity between existing and newly planned buildings should be emphasized.

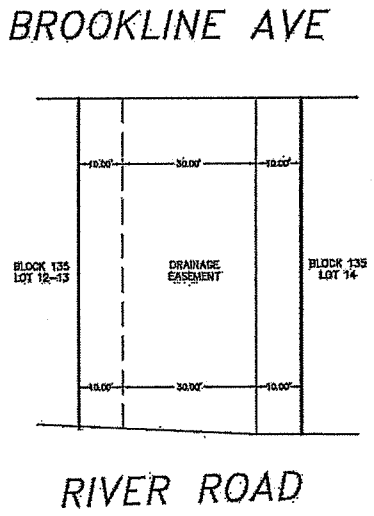
**1. Building Façade Zones**

a. First Floor Façade Zone:
The first floor should be designed and treated as a seamless extension of the adjacent public sidewalk, providing for pedestrian circulation and/or other activities typically expected on a public sidewalk. The use of columns should be limited and should provide for ample space for accessible pedestrian passage on all sides.

b. Mid- Building Façade Zone Setbacks:
The portion of the building façade located approximately between 15' and 65' above the public way may be designated as a "build-to" zone, where the building facade may be located on or near the designated property line with the intent of establishing an articulated and visually interesting facade adjacent to the street.

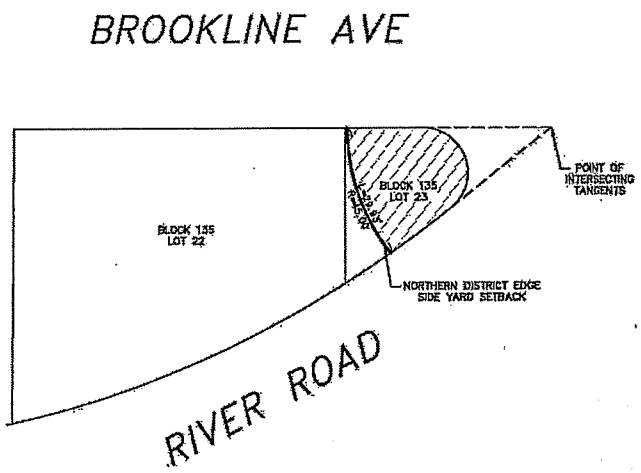
c. Upper Floor Façade Zone Setbacks:
In order to reduce any sense of unrelieved vertical rise, the upper floors above 65' should taper or step back from the public way.

**2. Mid-District Drainage Easement:**
To provide additional visual interest and active use in the public realm, the mid-block area covering the Town's drainage easement as shown in the Graphic 2.1 below should be preserved as space open to the general public. Amenities including, but not limited to, seating, trees, landscaping, planters, hardscape, and public art should be incorporated into the design. Where possible, the building façade should be setback from the easement to accommodate additional space open to the public.




**Graphic 2.1 Mid-District Drainage Easement**

3. **Northern District Edge 100 Year Flood Plane Zone:**
   To provide additional visual interest and active use in the public realm, the currently undeveloped portion of the district located at the northern most end of the EISD as shown in graphic 3.1 below should be preserved as space open to the general public. Amenities including, but not limited to, seating, trees, landscaping, planters, hardscape, and public art should be incorporated into the design.




**Graphic 3.1 Northern District Edge**

**4. Building Design Elements:**

a) **Canopies.** In order to establish an appropriate and inviting relationship to the pedestrian realm at street level and create visual and varied interest for pedestrians, all new structures in the I-(EISD) may incorporate architectural features, awnings, marquees, or canopies, that project from the building face, subject to the provisions of section 7.00 of the Zoning By-law.

**5. Vehicular Circulation, Access, and Parking:**

To minimize vehicular access (curb cuts) on primary building frontages, to reinforce a clear hierarchy and organization of circulation, to maximize uninterrupted public sidewalks and minimize conflicts between vehicles and pedestrians, to minimize the visual presence of automobile circulation as well as service functions such as deliveries and refuse pick up by locating parking and service access away from primary building frontages, new buildings are encouraged to meet the following requirements:

a. Curb cuts for driveways may be limited to a maximum of 15' in width for one-way access and 20' in width for two-way access;
b. A maximum of one (1) curb cut per building should be allowed on the Brookline Avenue, and River Road frontages, respectively;
c. Service and delivery activities should be separated whenever possible from the primary public access and screened from public view by means such as: locating underground, or locating internal to structures;
d. Wherever possible, curb cuts and driveways should be shared between multiple projects;
e. Parking structures should be designed to conceal the view of all parked cars and internal light sources from the adjacent public right of way or public open space for the full height of the structure;
f. Facade openings which face any public right of way or open space should be vertically and horizontally aligned and the floors fronting on such facades should be level;
g. Parking structures should utilize materials and architectural detailing found in the primary development being served;
h. Where appropriate, shared walls between buildings should be connected and designed to accommodate shared parking and ramp access.

**6. Architectural Scaling Elements:**

To create a human-scaled and well detailed urban environment through the establishment of an organized composition of building massing, coherent architectural form, and detail; to provide for a pedestrian friendly environment through the provision of architectural character; to avoid thoughtless areas of undifferentiated building facades; to create building facades that

may feature changes in plane, material texture, and detail through the interplay of light and shadow; and to establish architectural scale patterns or features that relate to the context, all new buildings constructed in the I-(ESID) are encouraged to incorporate the following elements:

a. Architectural elements should be used to provide scale to large building facades into architectural patterns and component building forms that may correspond to architectural or structural bay dimensions;
b. Variation in building massing may include changes in wall plane or height and may relate to primary building entries, window openings, important corners, or other significant architectural features;
c. Variation in building massing and detail should relate to the scale and function of the context of surrounding buildings and to pedestrian-oriented uses along the street.

7. **Fenestration:**
To provide a high degree of transparency at the lower levels of building facades; to insure the visibility of pedestrian active uses; to provide an active, human scaled architectural experience along the street; to establish a pattern of individual windows at upper floors that provide a greater variety of scale through fenestration patterns, material variation, detail, and surface relief, fenestration in the I-(EISD) should meet the following guidelines.

a. A majority of the ground floor facade should be constructed of transparent materials, or otherwise designed to allow pedestrians to view activities inside the building or displays related to those activities;
b. Transparent glazing on upper floors is encouraged;
c. The location and patterns of glazing should enhance building function and scale;
d. Recessed glazing, glass framing, and mullion patterns should be used to provide depth and substance to the building facade and should consider the play of sunlight across the façade where appropriate.

8. **Building Materials:**
To encourage human-scale buildings through the use of material modules and to ensure the consistent use of high quality materials appropriate to the urban environment, buildings in the I-(EISD) may incorporate the following materials and detailing as appropriate:

a. Masonry, including stone, brick, terra cotta, architectural precast concrete, cast stone and prefabricated brick panels;
b. Architectural metals, including metal panel systems, metal sheets with expressed seams, metal framing systems, or cut, stamped or cast, ornamental metal panels;
c. Glass and glass block;
d. Glazing systems may utilize framing and mullion systems that provide scale and surface relief;

e. Building materials used at the lower floors adjacent to street frontage should respond to the character of the pedestrian environment through such qualities as scale, texture, color and detail;
f. Building materials should be selected with the objectives of quality and durability appropriate within an urban context;
g. Carefully detailed selections of materials should reinforce architectural scaling requirements.

**9. Building Entries:**

Building entries should enhance the identity, scale, activity, transparency and function of the public streets and should be designed in accordance with the following criteria:

a. All buildings should provide at least one primary building entry orientated directly to a public street;
b. All pedestrian active uses with street level, exterior exposure should provide at least one direct pedestrian entry from the street;
c. Primary building entries should be emphasized through changes in wall plane or building massing, differentiation in material and/or color, greater level of detail, and enhanced lighting as well as permanent signage;
d. Entries to ground floor uses should be direct and as numerous as possible to encourage active pedestrian use.

**10. Roofs:**

a. All rooftop building systems should be incorporated into the building form in a manner integral to the building architecture in terms of form and material;
b. All mechanical, electrical and telecommunications systems should be screened from view and should minimize audible sound impacts from the surrounding streets and structures;
c. The architecture of the building's upper floors and termination should complete the building form within an overall design concept for the base, middle, and top that works in concert with architectural scaling requirements, use and functionality of the building;
d. Roof form should consider and respect the context in which it is viewed (in terms of height, proportions, use, form, and materials);
e. Roofs tops should be designed to accommodate useable open space;
f. Design should emphasize sustainability and resiliency in the form of green roofs, reflective white covering and rainwater harvesting.

# Town of Brookline
## Massachusetts
## Department of Public Works
### Engineering & Transportation Division

**TRANSPORTATION BOARD**
JOSHUA SAFER, CHAIRMAN
PAMELA ZELNICK,
VICE CHAIRMAN
CHRISTOPHER DEMPSEY
GUSTAAF C.M. DRIESSEN, PE
SCOTT ENGLANDER
ALI TALI, PE

November 14, 2016

Brookline Board of Selectmen
Brookline Advisory Committee
Brookline Town Meeting

RE: Warrant Article 7, 8, & 11 Recommendation

Per the request of the Petitioners, the Transportation Board held a public hearing on Thursday, November 3, 2016 to discuss and vote on the issuance of a letter of recommendation regarding Warrant Articles 7, 8, and 11 relative to amendments to the Zoning Bylaws following the report of the River Road Study Committee. Following the public hearing and a subsequent discussion on the ramifications of the various proposed amendments on the public way relative to the Gateway East/Village Square project and the pedestrian and bicycle improvements contained in that project the Transportation Board considered the following motion:

WHEREAS The Transportation Board for the Town of Brookline, under Chapter 317 of the Acts of 1974 as amended, are charged with the *"authority to adopt, alter or repeal rules and regulations not inconsistent with general law...relative to pedestrian movement, vehicular and bicycle traffic in the streets and in the town-controlled public off-street parking areas in the town, and to the movement, stopping, standing or parking of vehicles and bicycles on, and their exclusion from, all or any streets, ways, highways, roads, parkways and public off-street parking areas under the control of the town"*;

WHEREAS the Transportation Board, in response to the demands of our citizenry and in recognition that our community has both an urban and suburban mixture, has worked hard to enact regulations and support programs which lead to a strong multi-modal transportation system that encourages the use of public transportation, walking, and cycling as alternatives to single car commuting;

WHEREAS since 2005 the Brookline Board of Selectmen and the Transportation Board have been advancing the Gateway East/Village Square Public Realm Plan to "Increase the connection between the Emerald Necklace, the MBTA station, and Brookline Village; Improve the ability of pedestrians and bicycles to cross Route 9 safely and swiftly; Reduce confusion and improve the overall traffic situation in the area; Make the Gateway East area more attractive and livable; and, Identify the area as "Village Square", based on historic maps of the neighborhood";

*333 Washington Street ♦ Brookline, MA 02445-6863*
*Telephone: (617) 730-2177 Facsimile: (617) 264-6450*

WHEREAS following a planning process led by the Massachusetts Department of Transportation to balance the limited available space between all roadway users including pedestrians, cyclists, and motorists and improve the safety of the proposed bicycle accommodations, the Town of Brookline submitted a revised 25% design plan for the Gateway East/Village Square project which can only include a safe, raised cycle track along this portion of the corridor provided the existing driveway curb cuts can be terminated and an easement for the parcel can be obtained from the owner;

WHEREAS the River Road Study Committee, in conjunction with staff of the Planning & Community Development and Department of Public Works, has successfully secured an easement from the proposed developer which, in conjunction with a reduction in the travel lanes widths to the minimums accepted by the Massachusetts Department of Transportation, will allow for both a safe pedestrian sidewalk and raised cycle track;

THEREFORE the Transportation Board, by a unanimous vote, recommends favorable action by Town Meeting on Warrant Article 7 and No Action on Warrant Article 8 to best balance the needs of all roadway users and ensure that the Gateway East/Village Square Project can move forward with safe accommodations for all roadway users.

Furthermore the Transportation Board, by a unanimous vote, recommends favorable action by Town Meeting on the revised language for Warrant Article 11, a non-binding resolution which would encourage the Board of Selectmen to "use their best efforts to widen the sidewalk at 25 Washington Street enough to allow a planting strip that includes a row of full-canopy trees to separate the proposed cycle track from pedestrians". However, in doing so, the Transportation Board would like it known that it is supportive of this effort provided it does not place in jeopardy the raised cycle track in particular or the Gateway East/Village Square Project as a whole.

Sincerely (on behalf of the full Board),

Josh Safer
TMM Precinct 16 &
Chairman, Brookline Transportation Board

cc: Mel Kleckner, Town Administrator
Andrew Pappastergion, Commissioner - Department of Public Works
Peter M. Ditto, Director - DPW Engineering & Transportation Division

*333 Washington Street ♦ Brookline, MA 02445-6863*
*Telephone: (617) 730-2177 Facsimile: (617) 264-6450*

ARTICLE 7

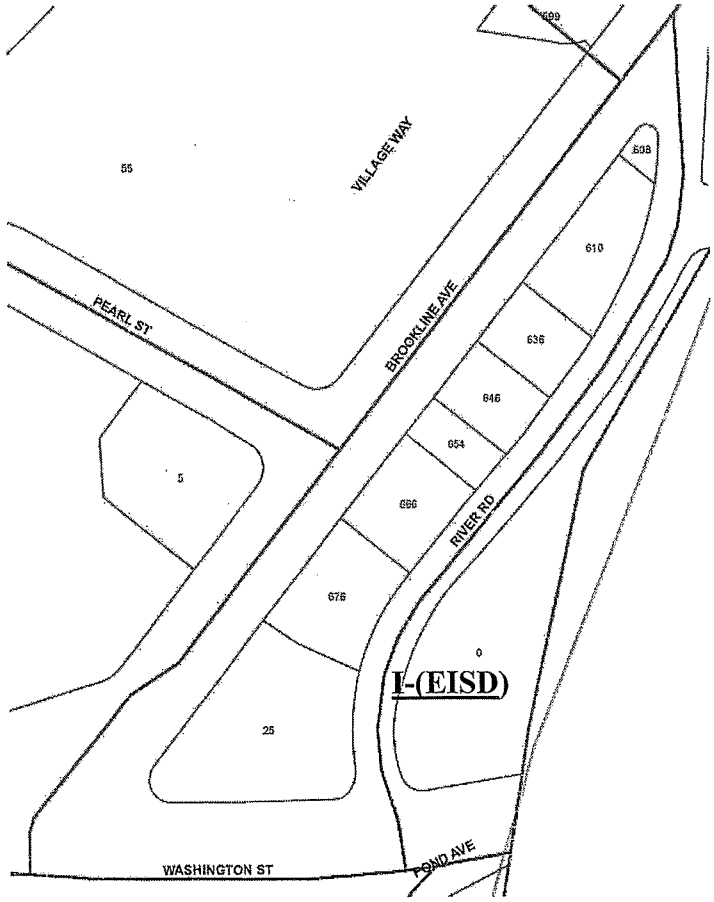
SEVENTH ARTICLE

Submitted by: River Road Study Committee

To see if the Town will amend the Zoning By-Law by amending the zoning district and corresponding sections of the Zoning By-law currently designated I-1.0 as shown on the current Zoning Map, as follows:

1. **Amending the Zoning Map as shown to add a new I-(EISD) district as shown below.**

   *(Changes in bold and underlined)*




2. **By amending Section 2.04.3 to add the following definitions**

   a. "Dwelling, Live/Work Space: A building or any portion thereof containing common work space areas and/or dwelling units measuring no more than 900 square feet in gross floor area per unit that are used by at least one occupant as

both their primary residence and primary work/artist studio space, including use 46 (Light Non-Nuisance Manufacturing) and 58A (Home Office) as certified annually by the property owner with the Building Commissioner."

b. "Dwelling, Age Restricted: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall not preclude reasonable, time-limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions."

c. "Dwelling, Micro Unit: A building or any portion thereof containing residential units measuring no greater than 500 square feet in gross floor area per unit. Buildings containing Micro Units may have flexible common areas for living and/or working."

**3. By amending Section 3.01.3a as follows:**

*(Changes in bold and underlined)*

a. 3. Industrial Districts

a. Industrial Services (I)

1) I-1.0

**<u>2) I-(EISD)</u>**

**4. By amending Section 4.07 – Table of Use Regulations as follows:**

*(Changes in bold and underlined)*

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| **RESIDENCE USES** | | | | | | | | | |
| **6B. Dwelling, Live/Work Space**<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| **6C. Dwelling, Age Restricted**<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| **6D. Dwelling, Micro Unit**<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| 8. Hotel<br>*Permitted by special permit in M-2.5 Districts and in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC, or T District.<br>****Permitted by special permit in I-(EISD) District in accordance with 5.06.4.j..** | No | No | No | No | No* | No | SP* | No | No** |
| 8A. Limited Service Hotel<br>*Permitted by Special permit in M-2.5, Cleveland Circle Hotel Overlay District **and I-(EISD) District.**<br>**Permitted as of right only in the G-1.75 (LSH) Limited Service Hotel District, provided that the applicant for a building permit certifies to the Building Commissioner that (a) at least 20% of all on-site parking spaces will be available for overnight public parking at prevailing overnight public rates, (b) that all on-site parking spaces will be available between 8:00 a.m. and 6:00 p.m. at prevailing public meter rates and (c) at least 25% of the lot area is to be used for open space open to the public. Otherwise such use shall be by | No | No | No | No | No* | No* | Yes** | No | No* |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| special permit in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC or T District. Permitted by Special Permit in G-(DP) District in accordance with Section 5.06.4.g. | | | | | | | | | |
| **INSTITUTIONAL, RECREATIONAL & EDUCATIONAL USES** | | | | | | | | | |
| 18A. Small group health and fitness club not exceeding 2,500 square feet of gross floor area operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and/or health services. ***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | Yes | Yes | Yes | Yes* |
| **OFFICE USES** | | | | | | | | | |
| 20A. Office or clinic of a licensed veterinarian for treatment of animals, including laboratories and holding facilities. No outdoor facilities for animals shall be permitted. Studies by recognized experts shall be submitted to insure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. *Verification of noise control shall include verification by a professional engineer (P.E.), utilizing an acoustical engineer under his/her supervision if necessary, that under worst-case (e.g., maximum number of animals, open windows if applicable) conditions neither daytime nor nighttime background noise levels, as defined in Article 8.15.3 of the Town By-Laws, will be exceeded at the boundary of the property where the use is located. Moreover, as a condition of a Special Permit, the ZBA shall require that further noise control measures be undertaken in the future if such background noise levels are exceeded during operation of the facility. **** Permitted by special permit in the I-(EISD)** | No | No | No | No | No | SP* | SP | SP | SP** |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **District in accordance with 5.06.4.j.** | | | | | | | | | |
| 21. Business, professional, or governmental office other than Use 20 and 20A.<br>*Provided no commodities are kept for sale on the premises<br>**** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | Yes | Yes | Yes* | Yes** |
| **RETAIL AND CONSUMER SERVICE USES** | | | | | | | | | |
| 29. Store of less than 5,000 square feet of gross floor area per establishment, primarily serving the local retail business needs of the residents of the vicinity, including but not limited to grocer, baker, food store, package store; dry goods, variety, clothing; hardware, paint, household appliances; books, tobacco, flowers, drugs.<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | Yes | Yes | No | Yes* |
| 30. Eating places of less than 5,000 square feet of gross floor area per establishment, primarily serving local needs, including but not limited to lunch room, restaurant, cafeteria, place for the sale and consumption of beverages, ice cream and the like, primarily in enclosed structures with no dancing, nor entertainment other than music.<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | Yes | Yes | No | Yes* |
| 32. Service business primarily serving local needs, including but not limited to the following uses:<br>(a) Barber, beauty shop, laundry and dry-cleaning pickup agency, shoe repair, self-service laundry, or other similar use.<br>(b) Hand laundry, dry-cleaning or tailoring, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.<br>(c) Printing shop, photographer's studio, caterer, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.<br>*Permitted by special permit in an M-1.0 (CAM) District. | No | No | No | No | No* | Yes | Yes | No | Yes** |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | | | | | | | | | |
| 33. Stores not exceeding 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, furniture and household goods.<br>*** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | No | Yes | No | No* |
| 33A. Stores over 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, supermarket, grocery store, furniture and household goods.<br>*** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | No | SP | No | SP* |
| 34. Place for the sale and consumption of food and beverages exceeding 5,000 square feet of gross floor area, or providing dancing and entertainment.<br>*Permitted by Special Permit in the Cleveland Circle Hotel Overlay District.<br>**** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | No* | Yes | No | Yes** |
| **ACCESSORY USES** | | | | | | | | | |
| 46. Light non-nuisance manufacturing, provided that all resulting particulate matter, flashing light, fumes, gases, odors, liquid and/or solid wastes, smoke, and vapor are effectively confined to the premises or disposed of in a manner so as not to create a nuisance or hazard to safety or health and in compliance with all applicable town, state, and federal laws and regulations; further provided that no vibration is perceptible without instruments at a distance greater than 50 feet from such premises and that noise limits shall conform to the **Town's Noise By-law**. At least 30 days prior to the Board of Appeals hearing, the applicant shall submit | No | No | No | No | No | No | No | No | SP** |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| studies by recognized experts to insure, to the satisfaction of the Board of Appeals, that the use will be designed and operated so as to conform to the standards above. Such studies shall include description of operations and processes proposed, materials to be used, above-and-below-ground storage facilities, and waste products. Any applications, including the required studies, shall be referred to the Conservation Commission and the Health Department for advisory reports in accordance with the procedures in **§9.04.***<br>*For uses 42 to 46 inclusive, all storage of materials and equipment and all business operations, such as loading, parking, and storage of commercial vehicles, shall be within an enclosed building. This requirement may be modified by the Board of Appeals by special permit only, provided the requirements of **§6.04, paragraph 8.** and **§9.05** are met. Such special permit may be rescinded or modified by the Board of Appeals after notice and hearing if noncompliance with the conditions of approval is determined.<br>**** Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j.** | | | | | | | | | |
| 58A. Office/studio within the place of residence provided all of the following conditions are met, except that only condition (e) below needs to be met in the G-(DP) **and I-(EISD) Districts:**<br>(a) the office occupies not more than one room;<br>(b) there are no nonresident employees;<br>(c) there are no clients visiting the premises (members of the clergy shall be exempt from this limitation);<br>(d) there are no signs nor other external evidence of the office; and<br>(e) there is no production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects. | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 66. Accessory laboratory.<br>*In permitted institutions only.<br>**** Permitted by Special Permit in the I-(EISD) District in permitted institutions only and in accordance with 5.06.4.j.** | No | No | No | No | SP* | SP* | SP | SP | SP** |

**5. By amending Section 5.01 – Table of Dimensional Requirements by adding I-(EISD) and adding footnote 20 as follows:**

*(Changes in bold and underlined)*

| DISTRICT | USE | LOT SIZE MINIMUM (sq. ft.) | FLOOR AREA RATIO MAXIMUM | PBI NBONLY | LOT WIDTH MINIMUM (feet) | MAXIMUM HEIGHT | PBI | | MINIMUM YARD | | | OPEN SPACE (% of gross floor area) | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | B | NB | Front | Side | Rear | Landsc. | Usable |
| I-1.0 & **I-(EISD)[20]** | Any structure or principal use (dwelling-footnote 5) | none [4] | ~~1.0~~ **1.0 or NA [20]** | NA | none | 40 **or 110 [20]** | NA | NA | 20 **[20]** | NA | 10+L/10 **[20]** | NA | NA |

**20. See Sections 4.07 and 5.06.4.j with respect to uses and all dimensional requirements.**

**6. By amending Section 5.06.4 to create Section 5.06.4.j "Emerald Island Special District" as follows:**

**Emerald Island Special District I-(EISD)**

1. The Emerald Island Special District – the area bounded by River Road, Brookline Avenue, and Washington Street – is an area in transition. It has been determined through study by the River Road Study Committee that specific zoning parameters are required to encourage appropriate redevelopment of this district. In developing these zoning parameters, due consideration has been given to the prominent location of this area as a major gateway to Brookline. The proximity of the Muddy River, Emerald Necklace, Longwood Medical Area as well as the differences in the scale of existing buildings, recently permitted and proposed developments, access to transit, and the solar orientation of sensitive nearby uses, including the residences of Village Way and Emerald Necklace Park all combined to shape the Special District parameters. Following a comprehensive study by financial, architecture, urban design and real estate experts, the Committee further concluded that the following concepts related to allowed uses, building heights, building form, parking requirements and the public realm are appropriate for this Special District.

2. All applications for new structures, outdoor uses, and exterior alterations in the Emerald Island Special District which exceed a floor area ratio of 1.0, a height greater than 40' and/or seek alternative parking and loading zone requirements shall be permitted only on lots greater than 13,600 square feet in contiguous area and only for the uses described in Section 5.06.4.j.3, shall be subject to Site Plan

Review by the Planning Board as described in Section 5.06.4.j.4, shall be subject to the requirements of Section 5.09, Design Review, shall obtain a special permit per Section 9.03, and shall meet the following requirements:

a. Setbacks and Sidewalk Widths:

   i. All buildings shall be setback 10 feet from the mid-district drainage easement as shown in Figure 5.06.4.j.1 below.

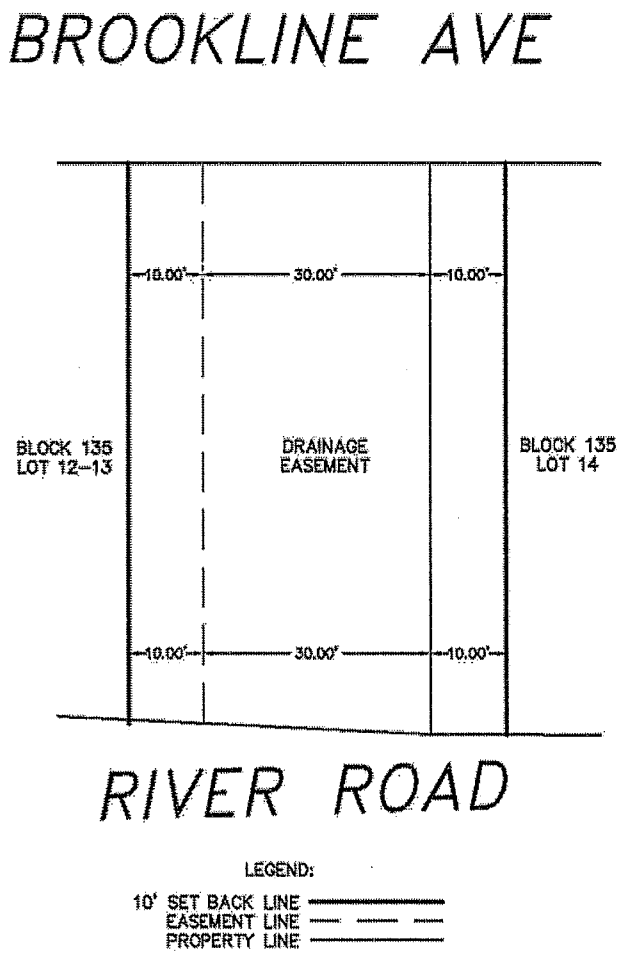



**FIGURE 5.06.4.j.1 Setbacks from Mid-District Drainage Easement**

ii. All buildings shall be setback 45 feet from the Point of Intersecting Tangents of Brookline Avenue and River Road as shown in Figure 5.06.4.j.2 below.

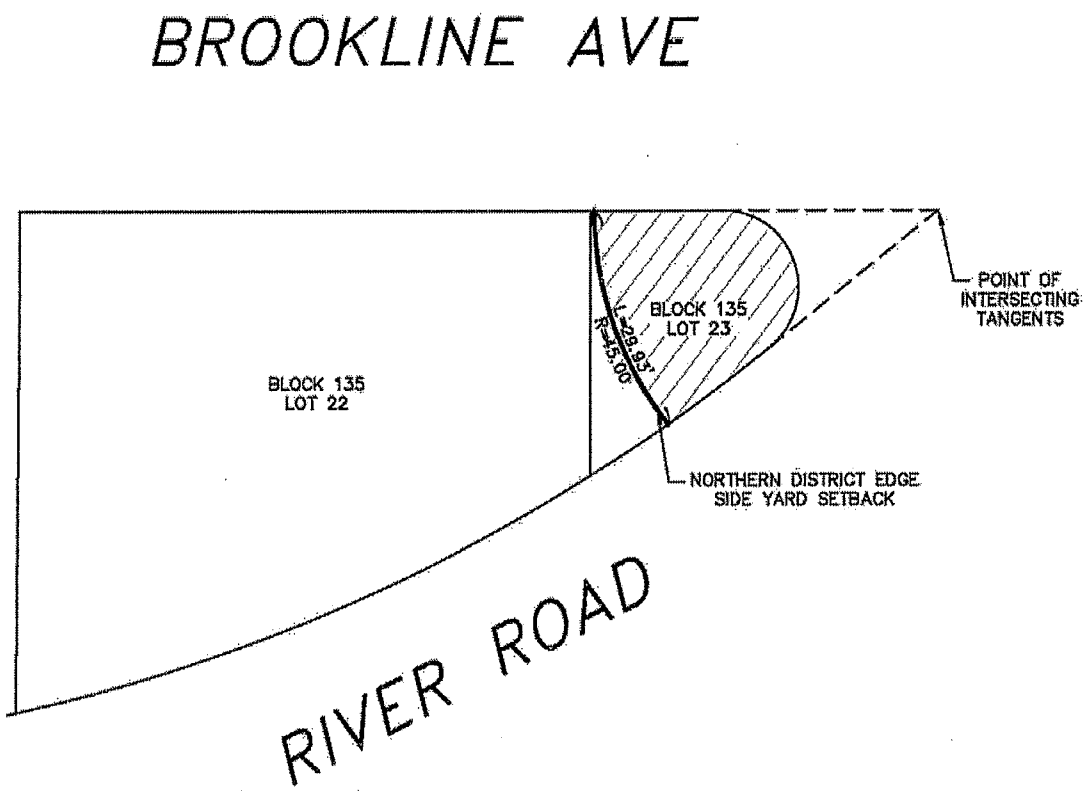



**FIGURE 5.06.4.j.2 Northern District Edge Sideyard Setback**

iii. Notwithstanding Section 5.01 and other than as provided in Sections 5.06.4.j.2a.i and 5.06.4.j.2a.ii, there shall be no additional setback requirements except as is necessary to achieve the required sidewalk widths for the district. For the purposes of the EISD only, sidewalk shall be defined as the area between the building façade and the face of the curb. The required sidewalk width shall be measured from the ground level of the proposed building façade to the face of the curb at the time of special permit application. All sidewalks shall maintain a minimum 5 foot wide walkway clear from all obstructions, including, but not limited to tree pits, structural columns and street furniture. The minimum sidewalk width along Brookline Avenue and River Road shall be no less than 12 feet. The minimum sidewalk width along Washington Street shall be no less than 10 feet.

iv. Where it can be demonstrated that achieving the required sidewalk width would be infeasible in limited areas, the Board of Appeals may by special permit reduce the required width of the affected areas to no less than 8 feet on Washington Street and River Road. No relief may

be granted for a reduction in sidewalk width along Brookline Avenue. Applicants for a special permit to reduce the width of a sidewalk shall provide written and graphic documentation to the Planning Board illustrating why the required width is not attainable in the affected area. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to reduce the width of the sidewalk in limited areas. Where relief is granted, applicants shall provide counterbalancing amenities in the form of wider sidewalks and/or landscaping on-site or in the immediate area adjacent to their site, subject to the review and approval of the Planning Board.

b. The minimum finished floor to floor height for all ground floor levels shall be no less than 15 feet.
c. No permanent on-site parking spaces shall be located on the ground level in the Special District.
d. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning and Community Development that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.
e. Street trees shall be provided at regular intervals approximately every 25 feet along the sidewalks of Brookline Avenue, Washington Street and River Road. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public way shall be approved by the Director of Parks and Open Space or his/her designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or his/her designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
f. The applicant shall devote no less than 1% of the hard construction cost of constructing its project, (including any building, site work, above ground or underground structures, but exclusive of tenant fit-up) to making off-site, streetscape and parks improvements within 500 feet of the Special District boundaries. In addition to review by the Planning Board, a plan of the proposed off-site improvements shall be submitted for the review and approval of the Director of Transportation and the Director of Parks and Open Space or their designees. Alternatively, with the approval of the Director of Transportation and the Director of Parks and Open Space, the applicant may make a financial contribution to the Town in an equivalent dollar amount to be used by the Town for such purposes.
g. Public seating and pedestrian-scale lighting shall be provided at regular intervals. The location, number and design of all seating and lighting in the

public way shall be approved by the Director of Parks and Open Space or his/her designee.

h. Notwithstanding the provisions of Sections 6.06.6 and 6.07, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.j.4 below.

i. A building shall not have more than 30% of its frontage along a street devoted to residential use including associated lobby use.

j. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential, or office, or hotel use without being considered an accessory use.

**3. Exceptions to Maximum FAR and Maximum Height**

a. Additional height may be granted by special permit up to 85 feet for buildings primarily containing only the following uses: 6B (Dwelling, Live/Work Space); 6C (Dwelling, Age Restricted); 6D (Dwelling, Micro Unit) 8 (Hotel); 8A (Limited Service Hotel); 20 (Medical Office); 21 (Professional Office); 29 (Store less than 5,000 SF), 30 (Eating Place less than 5,000 SF); 33 (Stores not exceeding 10,000 SF); 33a (Stores over 10,000 SF); 34 (Place for the sale and consumption of food and beverages exceeding 5,000 SF ); 66 (Accessory Laboratory), only for buildings located a minimum of 189.12 feet from the intersection of Washington Street and Brookline Avenue, provided that the footprint of any building mass above a height of 65 feet covers no more than 55% of the lot area. Buildings may also contain Principal Uses 18A (Small Group Health/Fitness), 20a (Licensed Veterinarian), and 32 (Service Business) provided that such uses occupy no more than 25% of the building. The required 189.12 foot distance from the intersection of Washington Street and Brookline Avenue shall be measured from the Point of Intersecting Tangents as show in Figure 5.06.4.j.3 below.

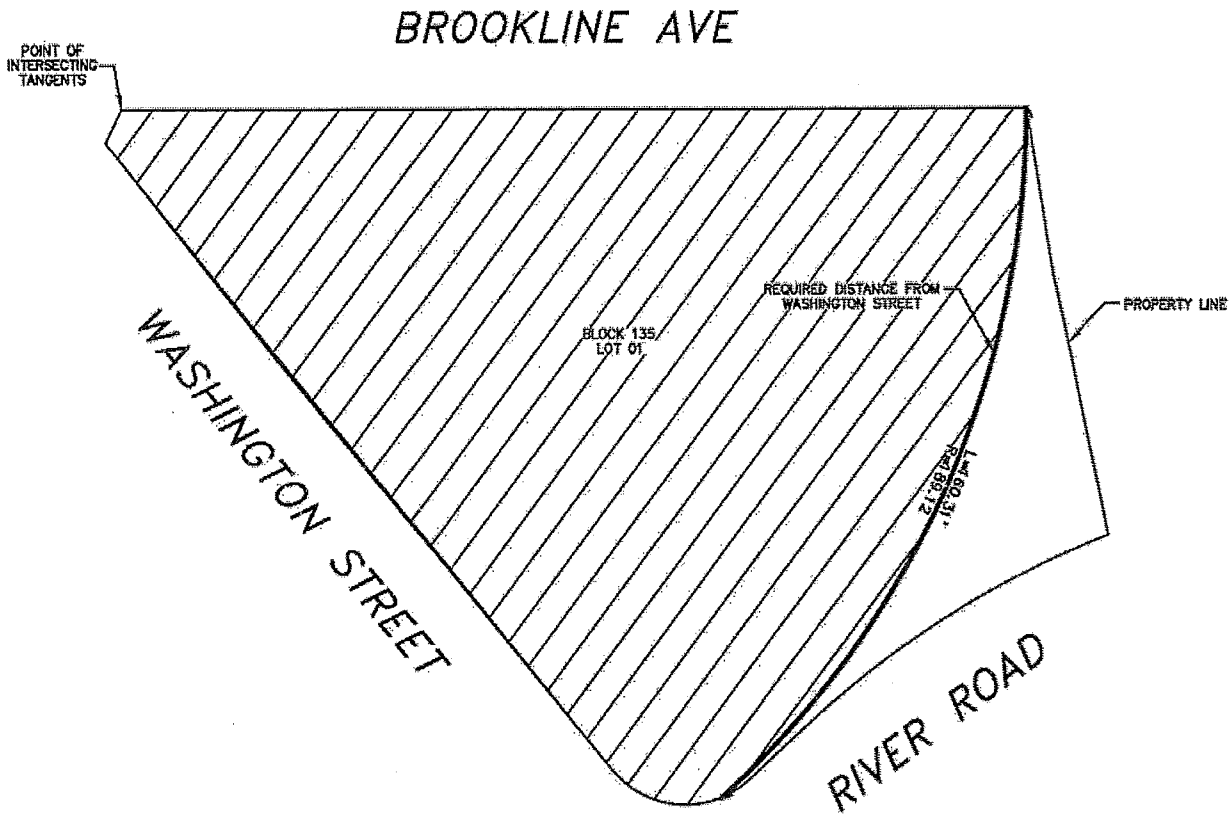



**FIGURE 5.06.4.j.3 Required Distance from Washington Street**

b. Additional height of up to 110 feet may be granted by special permit for buildings containing only the following uses: 8 (Hotel) and 8A (Limited Service Hotel) and only for buildings with frontage on Washington Street provided that the footprint of any building mass covers no more of the lot area than is specified in Table 5.06.4.j.1 and as depicted in Figure 5.06.4.j.4 below. Where an applicant can demonstrate that additional lot coverage for any building mass above 35 feet would result in an improved building design, the Board of Appeals may by special permit grant an increase in the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. Applicants for a special permit to increase the maximum percentage of lot coverage shall provide written and graphic documentation to the Planning Board and Design Advisory Team illustrating how the building design has improved. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. The Design Advisory Team shall provide a similar affirmative written recommendation.

| Building Mass Heights | Maximum % Lot Area Coverage | Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation |
|---|---|---|
| 0 up to 15' | 80% | N/A |
| 15' up to 35' | 92% | N/A |
| 35' up to 50' | 80% | 85% |
| 50' up to 75' | 75% | 80% |
| 75' up to 110' | 50% | 55% |

**Table 5.06.4.j.1 - Maximum % Lot Area Coverage By Building Height**

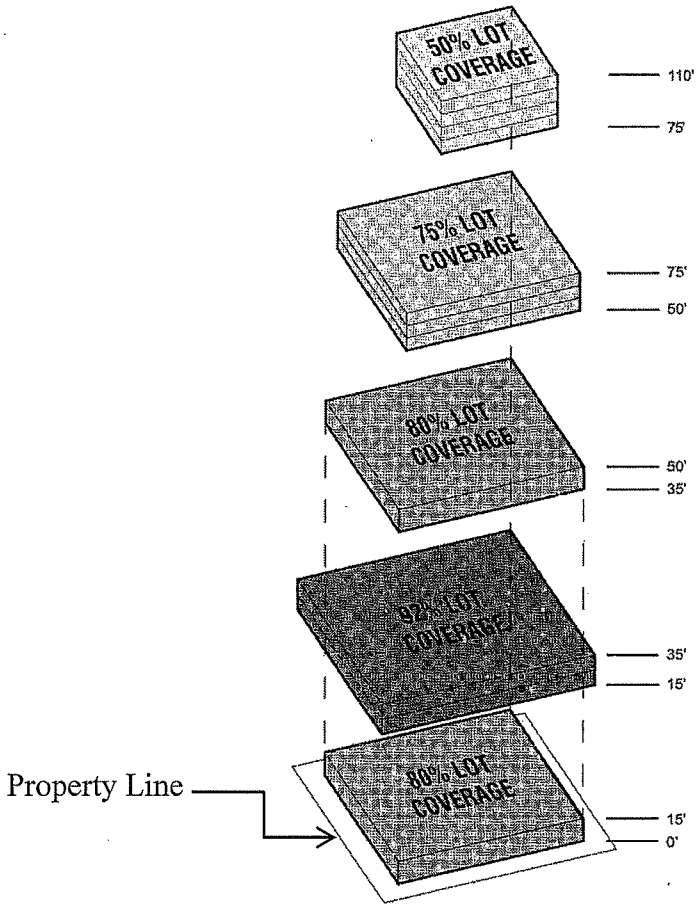



**FIGURE 5.06.4.j.4 Maximum % Lot Coverage by Building Height**

**4. Site Plan Review**

a. All applications for new structures shall be subject to site plan review by the Planning Board to: ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:

   i. Property lines and physical features, including roads, driveways, loading areas and trash storage for the project site;
   ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting and exterior lighting.

**5. Parking and Vehicular Requirements:**

a. Notwithstanding Section 6.02, there shall be no minimum parking requirements for the following uses and such uses shall have the maximum parking limits noted in Table 5.06.4.j.2 below.

| USE | MAXIMUM PARKING |
|---|---|
| Principal Use 6B (Dwelling, age restricted) | 1.25 per unit |
| Principal Use 6C (Live/Work space) | 0.50 per unit |
| Principal Use 6D (Dwelling, Micro Unit) | 0.50 per unit |
| Principal Use 8 (Hotel) and 8a (Limited Service Hotel) | 0.40 per room |
| Principal Uses:<br>18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory) | 1.50 per 1,000 SF |

**Table 5.06.4.j.2 – Maximum Parking Limits**

b. Notwithstanding the above, where it can be demonstrated that additional parking is needed, the Board of Appeals may by special permit increase the maximum parking ratio by no more than 20%. Applicants for a special permit to increase the maximum parking ratio shall provide written documentation to the Planning Board demonstrating the need for additional parking. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum parking ratio by no more than 20%.

c. Notwithstanding the above, dedicated spaces for Car Sharing Organizations (CS0) may be provided without regard to such maximum parking limits. If such dedicated parking spaces are not leased by any CSO they shall be dedicated to bicycle parking and appropriate bicycle parking hardware shall be provided.

6. **Design Standards:**
   a. Building façades parallel to or within 45 degrees of parallel to any property line shall be designed and constructed with equal care and quality. Visual articulation shall be achieved for each façade by (a) employing variations in materials and/or ensuring that no portion of any such façade is coplanar or unbroken for more than 3,500 square feet without a change in depth of 2 feet or more, or (b) utilizing alternative methods of vertical or horizontal articulation, or (c) utilizing other design elements that, in the affirmative and written determination of the Design Advisory Team provide equivalent or better visual relief with respect to building massing, for the reasons expressed in such written determination. The Planning Board and the Board of Appeals shall provide a similar written determination and reasons with respect to façade design. During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Emerald Island Special District Design Guidelines developed by the River Road Study Committee for guidance on general exterior massing, scale and design.

   b. In order to minimize visual and audible impacts, all rooftop mechanical equipment shall be insulated and screened to the greatest extent possible from all public ways via substantial screening materials and/or shall be located in the interior of the building. Additionally, all rooftop mechanical equipment shall be located such that all shadow impacts are minimized.

7. **Amend Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements by adding a Footnote as follows:**

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

or act upon anything else relative thereto

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PETITIONER'S ARTICLE DESCRIPTION

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

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

Given the complexity of the issues, and the desire to hear from a wide range of stakeholders, there were 23 committee and subcommittee meetings and countless hours of additional volunteer work by RRSC members. The Committee met regularly with Claremont throughout its process, resulting in significant changes to its proposed hotel massing, parking configuration and sidewalk widths. All of the Committee's meetings were open to the general public and were attended by neighborhood representatives, owners of property within the proposed Special District, representatives from the existing businesses as well as representatives from the Emerald Necklace Conservancy. Members of the public were given the opportunity to, and did, actively participate in the process. The Committee's fundamental charge was to establish zoning parameters for a Special District that would incentivize redevelopment of an appropriate scale and type that enhances and connects with the Emerald Necklace, while minimizing impacts on the public and adjacent neighborhoods. The proposed Special District Zoning utilizes several means to achieve that goal, including a form-based zoning approach that prioritizes height, massing and creative building design over Floor Area Ratio (FAR). In addition to height limitations and corresponding lot coverage limits to establish a more articulated

building envelope, the proposed Special District Zoning imposes on-site parking limits, design guidelines adopted by the Planning Board and pedestrian amenity requirements, most notably minimum requirements for sidewalk widths on all sides of the district. As described below, the Special District Zoning amendment encourages a mix of uses for the eight parcels that comprise the 1.2 +/- acre Industrial District that have positive municipal financial impacts.

If adopted by Town Meeting, this zoning amendment would establish the "Emerald Island Special District" (the "EISD"). The proposed amendment would enable a proposed hotel at 25 Washington Street consisting of an 11 story, 153,000 +/- gross square foot building with up to 175 rooms and up to 70 structured parking spaces to move forward, subject to the Town's Major Impact Project permitting process, Special Permit approvals and the terms and conditions of a Memorandum of Agreement between Claremont and the Town. It should be noted that the hotel developer, Claremont Companies has agreed to significant mitigation and community benefit funding for public realm improvements in addition to those required in the Special District Zoning. These improvements will advance the vision for the public realm established by the RRSC. The remainder of the district, consisting of seven parcels including, VCA Boston, Swanson Automotive Services, Alignment Specialty Co., Shambhala Meditation Center, Brookline Foreign Motors, Brookline Ice and Coal and a small parcel owned by the Town, totaling 35,600 +/- square feet in area, will remain unchanged until such time that one or more developers is able to assemble land area sufficient to meet the minimum required lot size for the Special District.

**What is a Special District?**

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

**How is the EISD Different from Other Districts?**

The Town typically relies on FAR and setbacks to limit and guide the massing, size and location of buildings and density of development, primarily to prevent overbuilding and out-of-scale structures in more traditional residential neighborhoods. As recent experience has shown, reliance on traditional zoning tools like FAR does not necessarily

result in predictable, well-designed buildings. Throughout its analyses, the Committee remained cognizant of this issue, as well as the fact that the uses included in the Special District Zoning would each have unique floorplate and program requirements with varying floor area totals which would result in various building heights and massing regardless of having the same FAR. The Committee felt that achieving predictable and consistent height, scale and massing of buildings constructed in the Special District is more important than rigid adherence to a FAR coefficient. It was also recognized that this district is small and constrained due in large part to the shallow, odd shaped lots, and because of existing and planned infrastructure improvements. However, the district is also unique as it is bound on all sides by the public way and therefore requires a different and more innovative approach towards achieving the Committee's goals of fostering a greener, more walkable gateway district. The Committee seized the opportunity to take a more form-based approach to defining an acceptable building envelope by developing specific, but flexible dimensional criteria and supplementary design guidelines for the zoning which prioritize the public realm, encourage articulated building mass, creative design solutions and limited building heights over Floor Area Ratio.

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

- **No maximum FAR values specified**, instead:
  The height, massing and scale of buildings are defined by maximum building heights ranging from 110' for a portion of the 25 Washington Street parcel to 85' for a portion of the buildings located in other parts of the district, with limits on lot coverage percentages for upper floors, and design guidelines.
- **Limited setback requirements,** instead:
  the zoning employs minimum sidewalk widths for each side of the district with the goal of creating more space than currently exists for pedestrians, street furniture, lighting and tree planting. Additionally there are side-yard setback requirements for buildings abutting a mid-block drainage easement and for buildings abutting the northern most edge of the district for the same reasons.
- **No minimum parking requirements**, instead:
  there are parking maximums specified for each use reflective of the transit rich nature of the district, challenges with locating structured parking and less parking intensive uses being encouraged.
- **A minimum lot size of 13,600 sq. ft. is required to trigger the Special District zoning**:
  this will require developers who own a lot under the minimum lot size to consolidate additional parcels and significantly limits the potential that any one small parcel might remain undeveloped in the future.
- **Public realm treatment:** street trees, public seating and lighting are required throughout the district at regular intervals.
- **1% of the hard construction costs of constructing a project (exclusive of tenant fit-up)** will be dedicated to improvements to the public realm within the EISD.
- **Design standards in the zoning and supplementary guidelines will provide guidance to the Planning Board and Design Advisory Team on:** building articulation, ground floor facades, driveway placement, architectural detailing and the public realm.

**RRSC Focus and Process:**

The Committee focused its work on the following questions:

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

Early on in the process, the RRSC identified a number of potential commercial and very specific types of residential uses that would serve to both maximize the revenue and redevelopment potential of the district and would serve the surrounding neighborhoods while fostering new types of housing that would minimize impacts on schools. The commercial uses the Special District Zoning seeks to incentivize include hotel, retail, restaurant, medical office, general office and limited types of service uses. The site of the proposed hotel development at 25 Washington Street, in particular, represents a tremendous opportunity to transform a former dilapidated gas station and the adjacent public realm into a gateway to the town that complements the Emerald Necklace while generating significantly more tax revenue.

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

may also serve to increase much needed foot traffic for existing Brookline Village businesses.

**Redevelopment Feasibility and Financial Analysis:**

The Town's independent real estate finance consultant, Pam McKinney, was asked to review the feasibility of the 25 Washington Street hotel proposal and the other redevelopment scenarios the Committee modeled throughout its process, including the proposed minimum building envelopes the architects and real estate experts on the Committee determined would likely be necessary for any of the proposed redevelopment scenarios to be financially viable. In addition to conducting her own analyses, Ms. McKinney reviewed the financial models developed by the Committee against the Committee's proposed minimum building envelopes. Ms. McKinney determined that all of the uses included in the Special District Zoning are viable from a financial perspective and that the Committee's proposed building envelopes and parking requirements for those uses as well as those proposed for the hotel development are appropriate and are in fact the minimum required for development to be feasible considering market conditions, construction costs and site constraints. Specifically, Ms. McKinney's analysis confirmed that there is strong demand in the market for the type of hotel being proposed for 25 Washington Street as well as for the specific types of residential uses included in the EISD. Her analysis indicated that medical and general office are potentially viable uses, but are less likely given the shape of the lots, the existing and planned supply of medical office in the immediate area as well as the need for more parking for those specific uses. With respect to parking, Ms. McKinney advised that, given the Special District's proximity to public transit, this area is an opportunity to employ alternative parking restrictions versus what might normally be required in a more suburban setting, especially where the most likely uses are those that are the least parking intensive and where neighbors in the immediate area indicated that there is no shortage of off-street parking.

**RRSC Conclusions:**

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

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

**Anticipated Outcomes:**

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

**Companion Warrant Articles:**

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

<u>River Road Study Committee Membership:</u>

Ben Franco, Chair
Dick Benka
Alan Christ
Chris Dempsey
Steve Heikin
Brian Hochleutner
Yvette Johnson
Ken Lewis
Wendy Machmuller
Hugh Mattison

Tom Nally
Marilyn Newman
Mariah Nobrega
Charles Osborne
Linda Pehlke
Bill Reyelt
Daniel Weingart

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## SELECTMEN'S RECOMMENDATION

The Board of Selectmen extends its thanks to the River Road Study Committee (RRSC) for its work during much of calendar year 2016 and for the comprehensive and well thought out proposal it has delivered to Town Meeting for its consideration. The RRSC's proposal, in the form of Warrant Article 7, is a reasonable planning blueprint for future development at the Industrial Island bordered by Washington Street, Brookline Avenue, and River Road.

By way of background, the RRSC was chaired by Selectmen Ben Franco and was made up of the following Brookline residents: Dick Benka, Alan Christ, Chris Dempsey, Steve Heikin, Brian Hochleutner, Yvette Johnson, Ken Lewis, Wendy MachMuller, Hugh Mattison, Tom Nally, Marilyn Newman, Mariah Nobrega, Charles, Osborne, Linda Olson Pehlke, Bill Reyelt, and Daniel Weingart. The RRSC contained representation from the abutting neighborhoods and from various Town Boards and Commissions. The RRSC voted to submit the result of its investigation and analysis, what has become Article 7, by a 14-0 vote. Passage of Warrant Article 7 would establish the *Emerald Island Special Zoning District* (EISD).

In reviewing Article 7, the Board of Selectmen heard detailed presentations about the RRSC's eight month process and the conclusions it drew. The presentations included the details of comprehensive architectural and financial feasibility analyses, as well as information about the vision, goals and implementation strategies for enhancing the public realm within and around the Industrial Island. Contained within The RRSC's analyses of the entire Industrial Island was a specific review of the feasibility and desirability of the proposed hotel at 25 Washington Street. The Committee's analyses were supplemented by an independent review by a real estate financial consultant. In its review of this article, the Board of Selectmen discussed the following issues:

- Are the types and scale of development appropriate for this area?

- Are the proposed hotel and other developments permitted by the EISD right for Brookline?

- Will the EISD zoning improve the area by advancing long standing community goals for enhancing the public realm and incentivizing the redevelopment of vacant or underutilized parcels?

- Are the proposed hotel and other uses allowed under the ESID, feasible?
- Have the key assertions and assumptions of the hotel developer been peer reviewed by Town hired consultants and/or RRSC members with specific expertise?

- Have we considered the various approaches to dealing with physical constraints and environmental conditions combined with the question of financial feasibility?

- Have the impacts (including shadows) on neighbors, surrounding park areas and existing businesses been considered, minimized and mitigated as much as possible?

- Does the EISD zoning consider the confluence of public transportation options available in this area as well as the need to enhance bike and pedestrian circulation and experience via wider sidewalks on all sides of the district and a continuous cycle track along Washington Street?

- Does the proposed zoning enhance the design and vibrancy of the streetscape?

- Has the proposed zoning been drafted in a way to insure, to the extent possible, that the proposed hotel and future buildings modeled by the RRSC being shown will be what is delivered while providing some flexibility in the design review process?

- Will the Town receive the benefits, mitigation payments, and increases in tax payments in conjunction with tax certainty necessary to mitigate the impacts of the project?

- Does the Memorandum of Agreement (MOA) contain provisions that significantly advance the RRSC's vision for the public realm and for the entire district while improving the feasibility of development on the neighboring parcel in the future?

- Have the concerns of RRSC members over the 8-months of deliberation been addressed to the extent possible/practicable?

To all of these questions, our answer is a resounding YES. The range of questions above reflects the various issues presented by the proposed hotel, the entirety of the EISD zoning and the complexities involved in analyzing them.

The EISD zoning is complex on a number of fronts. However, the RRSC concluded – and the Board of Selectmen agrees - that its proposed approach to regulating the size and scale of buildings as well as for enhancing the public realm are necessary to create predictable outcomes with respect to the types of uses, building design and public amenities the town desires for this area. With respect to the key zoning parameters we offer the following:

- The EISD is a unique district with narrow, odd shaped lots that are bound on all sides by a public way, including River Road, which is park land protected by Article 97. These characteristics necessitate a unique approach to shaping the scale and types of projects that are permitted to occur under the special district zoning that balances redevelopment feasibility with desired enhancements to the public realm.

- The new residential uses created by the RRSC and allowed only under the EISD will address housing needs for two very specific demographics (single young professionals and seniors) while having minimal impacts on town services.

- The existing uses that will be allowed at a greater density (retail, restaurant, office, hotel) will benefit the surrounding neighborhoods and will generate significantly more tax revenue for the town. The proposed hotel alone is projected to yield $1.5M in net new taxes.

- The form-based approach the zoning takes to regulating the size and scale of buildings via maximum building heights and corresponding maximum lot coverages will accommodate the range of uses allowed under the EISD, while ensuring that all future buildings are massed and articulated in a manner to provide for architectural interest, and that also respect the surrounding neighborhood and park uses.

- The maximum building heights and building mass allowed for the upper floors in building in the middle and northern portion of the district are lower in an effort to reduce shadow impacts on abutters and neighboring parks.

- The range of public realm improvements (street trees, furniture and lighting) and public realm protections, including not allowing any on-site parking on the ground level and minimum ground floor heights will ensure that the streetscape will be more vibrant, attractive and pedestrian friendly.

- The EISD zoning codifies parking maximums by use as a means of ensuring that the district prioritizes pedestrians over automobiles while balancing redevelopment feasibility by allowing for a 20% increase in the parking ratio by Special Permit where the need can be demonstrated.

- The EISD employs side yard setback requirements for two specific portions of the district where building would be challenging, including a mid-block area where the Town has an easement for a storm water pipe and at the northern edge of the district which is affected by the 100 year flood zone. The EISD Design Guidelines adopted by the Planning Board recommend that these two areas be preserved as public space and offer guidance on how they should be designed.

- The uses, including the proposed hotel, maximum building envelope allowed under the EISD and approach to regulating parking were reviewed by the Pam McKinney, the Town's independent real estate consultant who is one of the Boston area's premier experts in the field. Pam confirmed that the proposed hotel (type, size, program) are a perfect match for this location. Additionally, Pam confirmed that the uses, maximum building envelope and parking ratios by use are feasible and appropriate for this transit rich area.

- The Special District Design Guidelines, Design Standards and required Site Plan Review will inform discussions between the Planning Board, Design Advisory Team and project architects with respect to building materials, rooftop design, window fenestration, public realm enhancements and many other key areas

- The MOA contains several provisions, including approximately $700K in additional funding for off-site public realm improvements adjacent to the proposed hotel and; a shared maintenance agreement for a portion of the Emerald Necklace Park, granting the town a permanent easement necessary for the planned Gateway East improvements (specifically the cycle track) to move forward. The MOA also contains provisions that require the hotel parking ramp and northern facing wall to be designed and constructed to allow for shared access by a future neighboring development and that Claremont grant an easement for such purposes to be held in escrow by the Town. These provisions significantly improve the feasibility of a future development on the neighboring site as well as its desirability because there will be fewer curb cuts and the ground floor of a future development will be dedicated to active uses rather than parking access.

- The tax certainty agreement preserves 100% of the property taxes from the 25 Washington Street property for a term of 95 years. The agreement will be recorded at the registry of deeds and will run with the land.

Much of the debate about Article 7 in the weeks leading up to Town Meeting has centered on the width of the Washington Street sidewalk and the size of the trees that will be planted in this portion of the district. The Board is satisfied with the conclusion the RRSC drew about the infeasibility of increasing the minimum sidewalk width while still allowing for an economically and architecturally viable project to advance. However, the Board expects the Planning Board and the Design Advisory Team the Planning Board will appoint to advise it about the particulars of building design, to continue studying the Washington Street sidewalk to ensure there is no opportunity to increase the width beyond the minimum ten foot requirement contained in the proposed zoning. The Board also expects, following passage of Article 7, conversations about the feasibility of planting larger trees along Washington Street will occur.

Articles 9 and 10 are supportive, and linked to, the zoning found in Article 7. Articles 9 and 10 deal with tax certainty, financial contributions and easements to the Town, and authorization of the Selectmen to enter into a new Memorandum of Agreement.

We estimate that the new net taxes generated by the hotel will be more than $1.5 million per year including excise taxes. The property taxes estimated at $1M annually will be preserved for at least the next 95 years and will increase over time in accordance with Proposition 2 ½ limits. For reference the FY16 tax bill for all of the parcels in the Industrial District was $163,000. Put more simply, the hotel project alone will yield nearly 10x the amount tax revenue as the entire district. Additionally, we estimate that the overall increase in taxes that would result from the full redevelopment of the Industrial Island under the EISD to be over $2.25 million.

Between the projected tax revenues and the significant public realm improvements, the EISD zoning presents a tremendous opportunity to proactively transform this overlooked corner of Town into the gateway district the Town has long envisioned it to be.

The following is a summary of the Memorandum of Agreement (MOA) the Town has negotiated with the developer that has proposed a hotel at 25 Washington Street. The complete agreement is available in the Selectmen's office and will be posted online once signed. A summary of the MOA is below.

CLAREMONT BROOKLINE, LLC MEMORANDUM OF AGREEMENT

EXECUTIVE SUMMARY

October 27, 2016

- ***Tax Certainty that the hotel property will not be removed from the Tax Rolls:***

  A Restrictive Covenant will be recorded providing that any entity purchasing the hotel property which could claim real estate tax exemption would enter into a PILOT (Payment in Lieu of Taxes) agreement guaranteeing real estate taxes for 95 years on the hotel property. This will ensure that the hotel property will remain on the tax rolls.

  Estimated net new tax revenue for the Town $1,000,000 annually

- ***Contribute funds for public realm improvements adjacent to the hotel site and within the EISD:***

  On-site pedestrian and landscaping improvements at a cost not to exceed $71,000.00

  Pedestrian, bicycle and landscaping improvements at or adjacent to the site and the Emerald Necklace park area at a cost not to exceed $376,855.00;

  A one-time cash payment equivalent to 1% of hard construction costs (exclusive of tenant fit-up) estimated at $229,000.

- ***Provide for shared parking ramp access for a future development on the neighboring parcel:***

  The hotel parking ramp and northern facing garage wall shall be designed, constructed and operated to provide a feasible and efficient potential connection point for parking access to future development on the adjacent site. Claremont shall provide a detailed Shared Parking Ramp Design to the Town's Planning Board and appointed Design Advisory Team.

  Prior to the issuance of the Special Permit(s) for the hotel, Claremont shall grant a perpetual easement in a form satisfactory to Town Counsel for the benefit of the future owner of the adjacent parcels in order to facilitate a future project to be constructed under the EISD that permits the Adjacent Property Owner to utilize the Shared Parking Ramp Design for its own intended use.

  Claremont shall execute and deliver this Shared Parking Ramp Easement in a form acceptable to Town Counsel to be held by Town Counsel in escrow and recorded only after the issuance of an appeal free building permit for the Proposed Project.

  Claremont agrees that it will not seek compensation, reimbursement for maintenance costs or other benefits for providing the Shared Parking Ramp Easement.

  Prior to the issuance of the Special Permits for the Proposed Project, Claremont agrees to deliver a term sheet, in a form satisfactory to Town Counsel, outlining the commercially reasonable terms for a future shared ramp easement agreement to be entered into with the Adjacent Property.

Prior to the issuance of any Building Permit, the final plans showing the construction of the Shared Parking Ramp Design shall be submitted for approval to the Building Commissioner and Director of Engineering, said plans shall be consistent with the plan provided to Town Counsel to be referenced in the easement.

***Assurance that Claremont will not build a larger project than they have shown throughout the RRSC process:***

The hotel shall include a maximum of 175 Select-Service hotel rooms and shall contain a maximum of 70 structured parking spaces, configured and managed in a way so as to insure that no more than 70 vehicles are parked on-site at any one time.

***Easement for the Benefit of the Town:***

In connection with the Town's Gateway East Project, Claremont or its successor-in-interest shall provide a permanent easement to the Town for roadway improvements containing up to 276.25 square feet of land.

***Environmental Protection for the Town:***

The Town will be indemnified from Environmental Conditions On/Under/From the hotel property and construction of the hotel. Claremont agrees to indemnify, defend and hold harmless the Town from and against any and all claims, charges, costs, damages or liabilities arising from or relating to the presence or release on or before the date hereof of any Hazardous Materials or Oil (as such terms are defined in the Massachusetts Contingency Plan or "MCP", 310 CMR 40.0000) on, in, under or migrating from the Property, including without limitation releases reported to the Massachusetts Department of Environmental Protection or the gross negligence or willful misconduct of Claremont or any of Claremont's contractors, Licensed Site Professionals or agents during construction of the project.

Claremont and it's successors release the town from all claims or demands for property or other damage, liabilities, obligations, penalties, costs, and expenses arising from or in any way relating to (A) the Property Environmental Conditions or (B) the environmental conditions currently present within or under the public ways abutting the Property except to the extent such claims or demands arise from either (1) the gross negligence or willful misconduct of the Town or its contractors, Licensed Site Professionals or agents after the date hereof, or (2) those environmental conditions having migrated from the public way to the Property on or after the effective date hereof due to activities or events beyond the reasonable

control of Claremont, its successors and assigns, including any future owner or any of their respective contractors or tenants.

Claremont shall perform or cause to be performed any assessment, monitoring, reporting, remediation, risk assessments, or any other response actions required by the MCP with respect to the Property Environmental Conditions, including but not limited to any work required to respond to and comply with any DEP audit regarding, or other subsequent DEP order or notice relating to, the Property Environmental Conditions.

Claremont shall install, as a voluntary precautionary measure, a vapor barrier and subslab venting system(s) beneath the building in connection with construction of the Project, the venting system to be constructed such that it can be made active if necessary, and (b) cause its Licensed Site Professional to send a letter to the Health Director and Director of Transportation/Engineering, prior to occupancy of the building, confirming that such subslab venting system and vapor barrier have been installed and are operational.

Claremont in connection with the Project shall be performed (and conditions encountered in connection with such work shall be addressed) in accordance with the MCP and, if required, a Release Abatement Measure plan prepared by a Licensed Site Professional, filed with DEP, with such Release Abatement Measures to include (a) specifications for health and safety plans, and (b)management procedures for contaminated media that include, among other details, air quality monitoring in connection with activities involving disturbance of contaminated soils or management of contaminated media to ensure protection of persons in the vicinity of the construction

Finally, we must keep in mind that passing the EISD zoning proposed under Article 7 is just the first step to the hotel and other future projects moving forward. If the Town does not pass the EISD zoning proposed under Article 7, the future of the hotel site and other parcels is unknown and all of the public benefits that have been negotiated, along with the hard work of the RRSC will be negated.

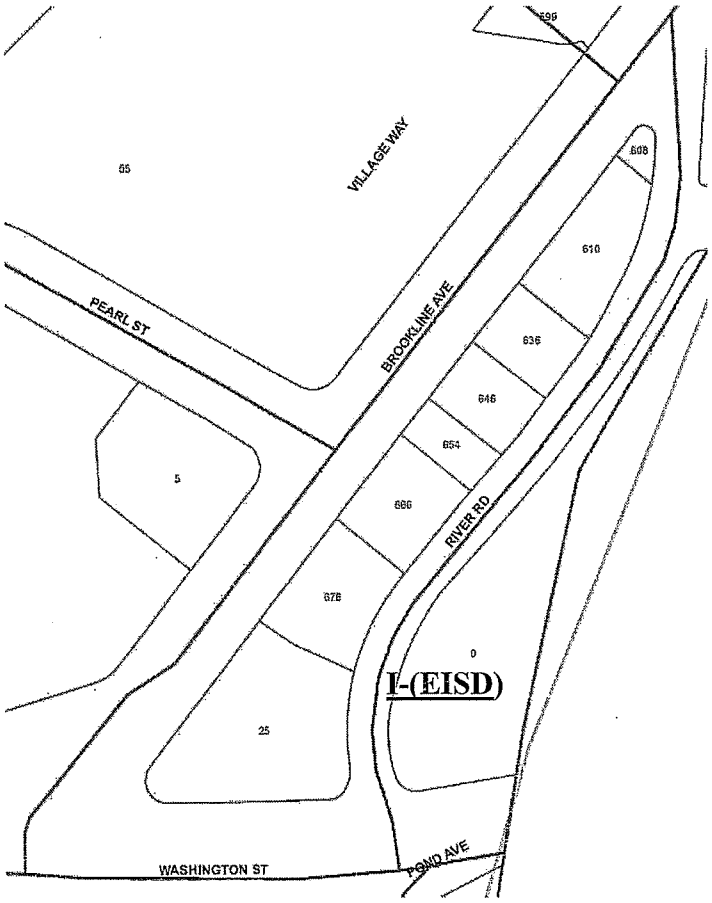
The Selectmen recommend FAVORABLE ACTION, by a unanimous vote taken on October 25, 2016 on the following motion:

VOTED: That the Town amend the Zoning Map as follows:

To amend the Zoning By-Law by amending the zoning district and corresponding sections of the Zoning By-law currently designated I-1.0 as shown on the current Zoning Map, as follows:

1. **Amending the Zoning Map as shown to add a new I-(EISD) district as shown below.**

   *(Changes in bold and underlined)*




2. **By amending Section 2.04.3 to add the following definitions**

   a. "Dwelling, Live/Work Space: A building or any portion thereof containing common work space areas and/or dwelling units measuring no more than 900 square feet in gross floor area per unit that are used by at least one occupant as both their primary residence and primary work/artist studio space, including use 46 (Light Non-Nuisance Manufacturing) and 58A (Home Office) as certified annually by the property owner with the Building Commissioner."

b. "Dwelling, Age Restricted: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall not preclude reasonable, time-limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions."

c. "Dwelling, Micro Unit: A building or any portion thereof containing residential units measuring no greater than 500 square feet in gross floor area per unit. Buildings containing Micro Units may have flexible common areas for living and/or working."

**3. By amending Section 3.01.3a as follows:**

*(Changes in bold and underlined)*

a. 3. Industrial Districts

a. Industrial Services (I)

1) I-1.0

**<u>2) I-(EISD)</u>**

**4. By amending Section 4.07 – Table of Use Regulations as follows:**

*(Changes in bold and underlined)*

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| **RESIDENCE USES** | | | | | | | | | |
| **6B. Dwelling, Live/Work Space** ***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| **6C. Dwelling, Age Restricted** ***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| **6D. Dwelling, Micro Unit** ***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| 8. Hotel<br>*Permitted by special permit in M-2.5 Districts and in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC, or T District.<br>****Permitted by special permit in I-(EISD) District in accordance with 5.06.4.j..** | No | No | No | No | No* | No | SP* | No | No** |
| 8A. Limited Service Hotel<br>*Permitted by Special permit in M-2.5, Cleveland Circle Hotel Overlay District **and I-(EISD) District.**<br>**Permitted as of right only in the G-1.75 (LSH) Limited Service Hotel District, provided that the applicant for a building permit certifies to the Building Commissioner that (a) at least 20% of all on-site parking spaces will be available for overnight public parking at prevailing overnight public rates, (b) that all on-site parking spaces will be available between 8:00 a.m. and 6:00 p.m. at prevailing | No | No | No | No | No* | No* | Yes** | No | No* |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| public meter rates and (c) at least 25% of the lot area is to be used for open space open to the public. Otherwise such use shall be by special permit in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC or T District. Permitted by Special Permit in G-(DP) District in accordance with Section 5.06.4.g. | | | | | | | | | |
| **INSTITUTIONAL, RECREATIONAL & EDUCATIONAL USES** | | | | | | | | | |
| 18A. Small group health and fitness club not exceeding 2,500 square feet of gross floor area operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and/or health services. ***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | Yes | Yes | Yes | Yes* |
| **OFFICE USES** | | | | | | | | | |
| 20A. Office or clinic of a licensed veterinarian for treatment of animals, including laboratories and holding facilities. No outdoor facilities for animals shall be permitted. Studies by recognized experts shall be submitted to insure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. *Verification of noise control shall include verification by a professional engineer (P.E.), utilizing an acoustical engineer under his/her supervision if necessary, that under worst-case (e.g., maximum number of animals, open windows if applicable) conditions neither daytime nor nighttime background noise levels, as defined in Article 8.15.3 of the Town By-Laws, will be exceeded at the boundary of the property where the use is located. Moreover, as a condition of a Special Permit, the ZBA shall require that further noise control measures be undertaken in the future if such background | No | No | No | No | No | SP* | SP | SP | SP** |

| | | | | | | | | | |
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| noise levels are exceeded during operation of the facility.<br>**<u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | | | | | | | | | |
| 21. Business, professional, or governmental office other than Use 20 and 20A.<br>*Provided no commodities are kept for sale on the premises<br>**<u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | Yes | Yes | Yes* | Yes<u>**</u> |
| **RETAIL AND CONSUMER SERVICE USES** | | | | | | | | | |
| 29. Store of less than 5,000 square feet of gross floor area per establishment, primarily serving the local retail business needs of the residents of the vicinity, including but not limited to grocer, baker, food store, package store; dry goods, variety, clothing; hardware, paint, household appliances; books, tobacco, flowers, drugs.<br>**<u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | Yes | Yes | No | Yes<u>*</u> |
| 30. Eating places of less than 5,000 square feet of gross floor area per establishment, primarily serving local needs, including but not limited to lunch room, restaurant, cafeteria, place for the sale and consumption of beverages, ice cream and the like, primarily in enclosed structures with no dancing, nor entertainment other than music.<br>**<u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | Yes | Yes | No | Yes<u>*</u> |
| 32. Service business primarily serving local needs, including but not limited to the following uses:<br>(a) Barber, beauty shop, laundry and dry-cleaning pickup agency, shoe repair, self-service laundry, or other similar use.<br>(b) Hand laundry, dry-cleaning or tailoring, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.<br>(c) Printing shop, photographer's studio, caterer, or other similar use, provided, in L and G | No | No | No | No | No* | Yes | Yes | No | Yes<u>**</u> |

| | | | | | | | | | |
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| Districts, personnel is limited to five persons at any one time.<br>*Permitted by special permit in an M-1.0 (CAM) District.<br>**** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | | | | | | | | | |
| 33. Stores not exceeding 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, furniture and household goods.<br>*** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | No | Yes | No | No* |
| 33A. Stores over 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, supermarket, grocery store, furniture and household goods.<br>*** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | No | SP | No | SP* |
| 34. Place for the sale and consumption of food and beverages exceeding 5,000 square feet of gross floor area, or providing dancing and entertainment.<br>*Permitted by Special Permit in the Cleveland Circle Hotel Overlay District.<br>**** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | No* | Yes | No | Yes** |
| **ACCESSORY USES** | | | | | | | | | |
| 46. Light non-nuisance manufacturing, provided that all resulting particulate matter, flashing light, fumes, gases, odors, liquid and/or solid wastes, smoke, and vapor are effectively confined to the premises or disposed of in a manner so as not to create a nuisance or hazard to safety or health and in compliance with all applicable town, state, and federal laws and regulations; further provided that no vibration is | No | No | No | No | No | No | No | No | SP** |

| | | | | | | | | | |
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| perceptible without instruments at a distance greater than 50 feet from such premises and that noise limits shall conform to the **Town's Noise By-law**. At least 30 days prior to the Board of Appeals hearing, the applicant shall submit studies by recognized experts to insure, to the satisfaction of the Board of Appeals, that the use will be designed and operated so as to conform to the standards above. Such studies shall include description of operations and processes proposed, materials to be used, above-and-below-ground storage facilities, and waste products. Any applications, including the required studies, shall be referred to the Conservation Commission and the Health Department for advisory reports in accordance with the procedures in **§9.04**.*<br>*For uses 42 to 46 inclusive, all storage of materials and equipment and all business operations, such as loading, parking, and storage of commercial vehicles, shall be within an enclosed building. This requirement may be modified by the Board of Appeals by special permit only, provided the requirements of **§6.04, paragraph 8**. and **§9.05** are met. Such special permit may be rescinded or modified by the Board of Appeals after notice and hearing if noncompliance with the conditions of approval is determined.<br>**** Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j.** | | | | | | | | | |
| 58A. Office/studio within the place of residence provided all of the following conditions are met, except that only condition (e) below needs to be met in the G-(DP) **and I-(EISD) Districts:**<br>(a) the office occupies not more than one room;<br>(b) there are no nonresident employees;<br>(c) there are no clients visiting the premises (members of the clergy shall be exempt from this limitation);<br>(d) there are no signs nor other external evidence of the office; and<br>(e) there is no production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects. | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 66. Accessory laboratory.<br>*In permitted institutions only.<br>**** Permitted by Special Permit in the I-(EISD)** | No | No | No | No | SP* | SP* | SP | SP | SP** |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **District in permitted institutions only and in accordance with 5.06.4.j.** | | | | | | | | | |

**5. By amending Section 5.01 – Table of Dimensional Requirements by adding I-(EISD) and adding footnote 20 as follows:**

*(Changes in bold and underlined)*

| DISTRICT | USE | LOT SIZE MINIMUM (sq. ft.) | FLOOR AREA RATIO MAXIMUM | PBI NBONLY | LOT WIDTH MINIMUM (feet) | MAXIMUM HEIGHT | PBI | | MINIMUM YARD | | | OPEN SPACE (% of gross floor area) | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | B | NB | Front | Side | Rear | Landsc. | Usable |
| I-1.0 & **I-(EISD)[20]** | Any structure or principal use (dwelling-footnote 5) | none [4] | ~~1.0~~ **1.0 or NA [20]** | NA | none | 40 **or 110 [20]** | NA | NA | 20 **[20]** | NA | 10+L/10 **[20]** | NA | NA |

**20. See Sections 4.07 and 5.06.4.j with respect to uses and all dimensional requirements.**

**6. By amending Section 5.06.4 to create Section 5.06.4.j "Emerald Island Special District" as follows:**

**Emerald Island Special District I-(EISD)**

1. The Emerald Island Special District – the area bounded by River Road, Brookline Avenue, and Washington Street – is an area in transition. It has been determined through study by the River Road Study Committee that specific zoning parameters are required to encourage appropriate redevelopment of this district. In developing these zoning parameters, due consideration has been given to the prominent location of this area as a major gateway to Brookline. The proximity of the Muddy River, Emerald Necklace, Longwood Medical Area as well as the differences in the scale of existing buildings, recently permitted and proposed developments, access to transit, and the solar orientation of sensitive nearby uses, including the residences of Village Way and Emerald Necklace Park all combined to shape the Special District parameters. Following a comprehensive study by financial, architecture, urban design and real estate experts, the Committee further concluded that the following concepts related to allowed uses, building heights, building form, parking requirements and the public realm are appropriate for this Special District.

2. All applications for new structures, outdoor uses, and exterior alterations in the Emerald Island Special District which exceed a floor area ratio of 1.0, a height

greater than 40' and/or seek alternative parking and loading zone requirements shall be permitted only on lots greater than 13,600 square feet in contiguous area and only for the uses described in Section 5.06.4.j.3, shall be subject to Site Plan Review by the Planning Board as described in Section 5.06.4.j.4, shall be subject to the requirements of Section 5.09, Design Review, shall obtain a special permit per Section 9.03, and shall meet the following requirements:

a. Setbacks and Sidewalk Widths:

   i. All buildings shall be setback 10 feet from the mid-district drainage easement as shown in Figure 5.06.4.j.1 below.

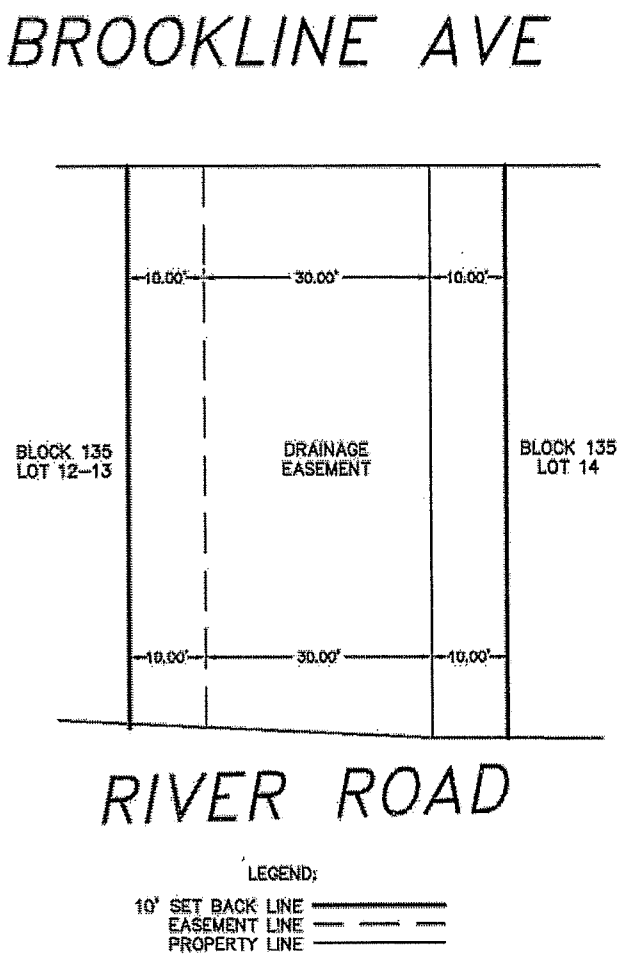


**FIGURE 5.06.4.j.1 Setbacks from Mid-District Drainage Easement**

ii. All buildings shall be setback 45 feet from the Point of Intersecting Tangents of Brookline Avenue and River Road as shown in Figure 5.06.4.j.2 below.

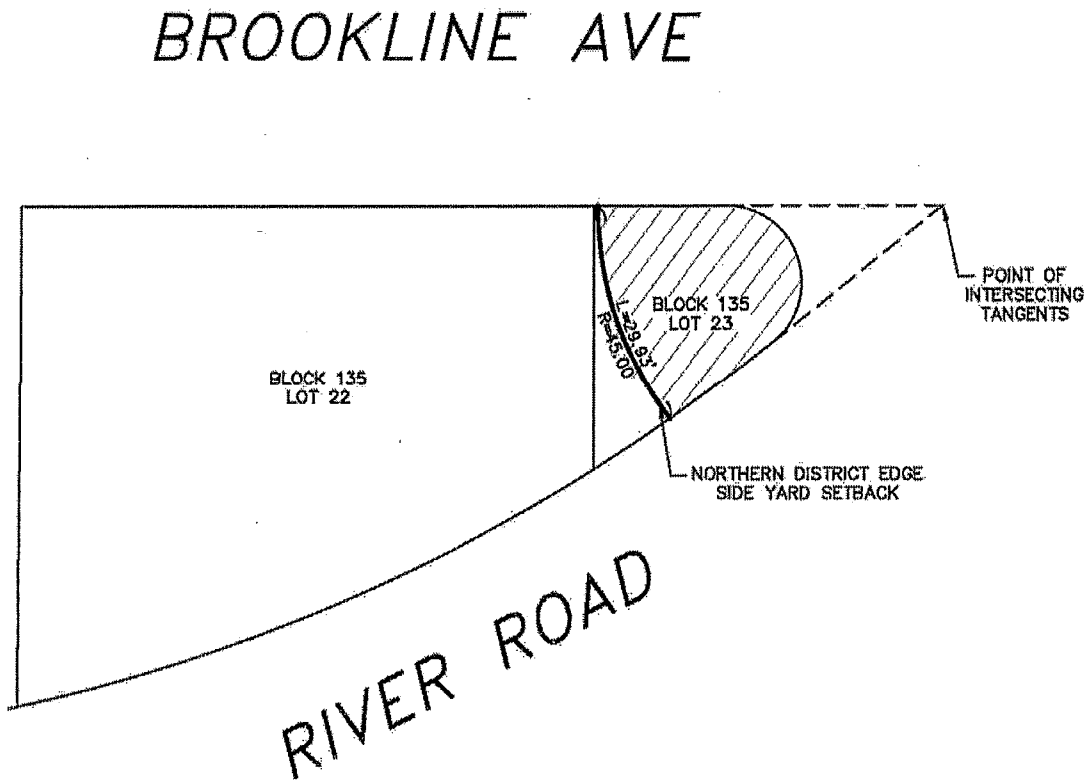


**FIGURE 5.06.4.j.2 Northern District Edge Sideyard Setback**

iii. Notwithstanding Section 5.01 and other than as provided in Sections 5.06.4.j.2a.i and 5.06.4.j.2a.ii, there shall be no additional setback requirements except as is necessary to achieve the required sidewalk widths for the district. For the purposes of the EISD only, sidewalk shall be defined as the area between the building façade and the face of the curb. The required sidewalk width shall be measured from the ground level of the proposed building façade to the face of the curb at the time of special permit application. All sidewalks shall maintain a minimum 5 foot wide walkway clear from all obstructions, including, but not limited to tree pits, structural columns and street furniture. The minimum sidewalk width along Brookline Avenue and River Road shall be no less than 12 feet. The minimum sidewalk width along Washington Street shall be no less than 10 feet.

iv. Where it can be demonstrated that achieving the required sidewalk width would be infeasible in limited areas, the Board of Appeals may by special permit reduce the required width of the affected areas to no less than 8 feet on Washington Street and River Road. No relief may be granted for a reduction in sidewalk width along Brookline Avenue. Applicants for a special permit to reduce the width of a sidewalk shall provide written and graphic documentation to the Planning Board illustrating why the required width is not attainable in the affected area. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to reduce the width of the sidewalk in limited areas. Where relief is granted, applicants shall provide counterbalancing amenities in the form of wider sidewalks and/or landscaping on-site or in the immediate area adjacent to their site, subject to the review and approval of the Planning Board.

b. The minimum finished floor to floor height for all ground floor levels shall be no less than 15 feet.
c. No permanent on-site parking spaces shall be located on the ground level in the Special District.
d. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning and Community Development that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.
e. Street trees shall be provided at regular intervals approximately every 25 feet along the sidewalks of Brookline Avenue, Washington Street and River Road. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public way shall be approved by the Director of Parks and Open Space or his/her designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or his/her designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
f. The applicant shall devote no less than 1% of the hard construction cost of constructing its project, (including any building, site work, above ground or underground structures, but exclusive of tenant fit-up) to making off-site, streetscape and parks improvements within 500 feet of the Special District boundaries. In addition to review by the Planning Board, a plan of the proposed off-site improvements shall be submitted for the review and approval of the Director of Transportation and the Director of Parks and Open Space or their designees. Alternatively, with the approval of the Director of Transportation and the Director of Parks and Open Space, the applicant may

make a financial contribution to the Town in an equivalent dollar amount to be used by the Town for such purposes.

g. Public seating and pedestrian-scale lighting shall be provided at regular intervals. The location, number and design of all seating and lighting in the public way shall be approved by the Director of Parks and Open Space or his/her designee.

h. Notwithstanding the provisions of Sections 6.06.6 and 6.07, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.j.4 below.

i. A building shall not have more than 30% of its frontage along a street devoted to residential use including associated lobby use.

j. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential, or office, or hotel use without being considered an accessory use.

**3. Exceptions to Maximum FAR and Maximum Height**

a. Additional height may be granted by special permit up to 85 feet for buildings primarily containing only the following uses: 6B (Dwelling, Live/Work Space); 6C (Dwelling, Age Restricted); 6D (Dwelling, Micro Unit) 8 (Hotel); 8A (Limited Service Hotel); 20 (Medical Office); 21 (Professional Office); 29 (Store less than 5,000 SF), 30 (Eating Place less than 5,000 SF); 33 (Stores not exceeding 10,000 SF); 33a (Stores over 10,000 SF); 34 (Place for the sale and consumption of food and beverages exceeding 5,000 SF ); 66 (Accessory Laboratory), only for buildings located a minimum of 189.12 feet from the intersection of Washington Street and Brookline Avenue, provided that the footprint of any building mass above a height of 65 feet covers no more than 55% of the lot area. Buildings may also contain Principal Uses 18A (Small Group Health/Fitness), 20a (Licensed Veterinarian), and 32 (Service Business) provided that such uses occupy no more than 25% of the building. The required 189.12 foot distance from the intersection of Washington Street and Brookline Avenue shall be measured from the Point of Intersecting Tangents as show in Figure 5.06.4.j.3 below.

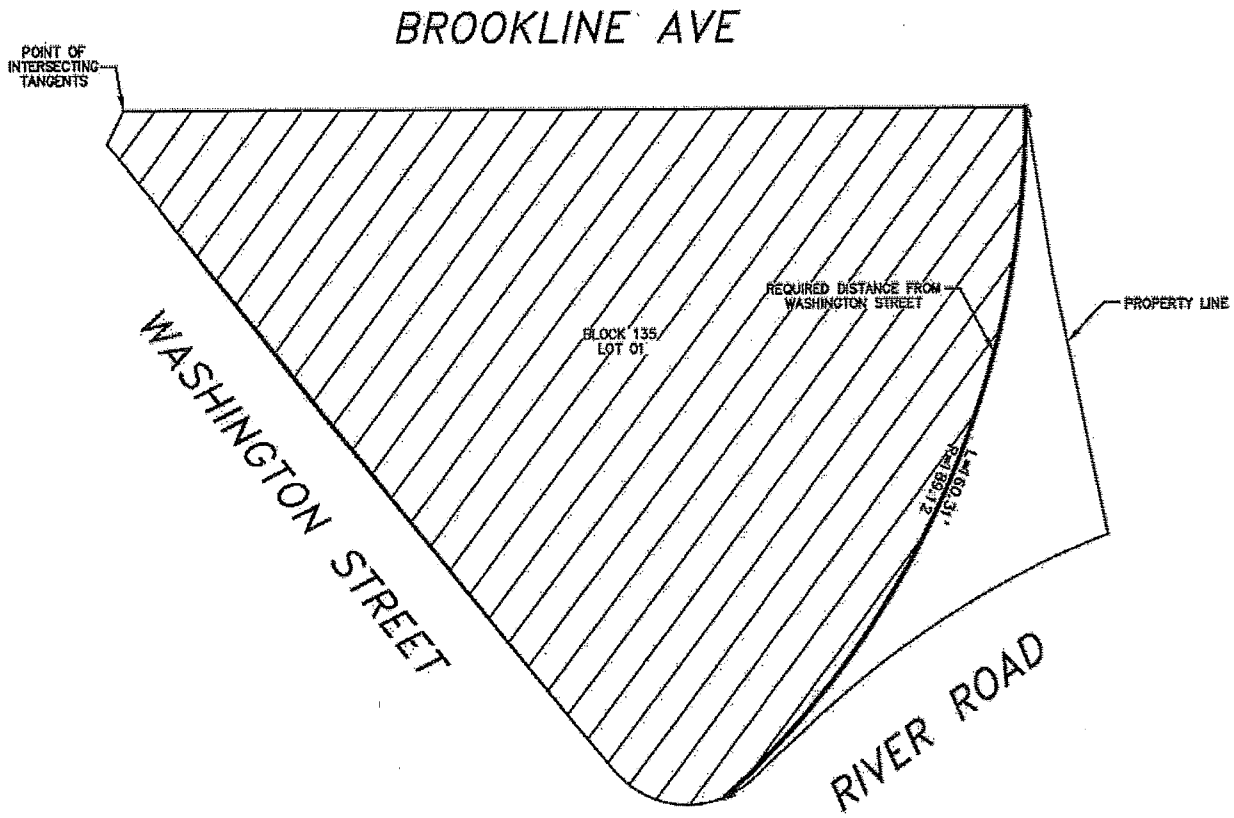


**FIGURE 5.06.4.j.3 Required Distance from Washington Street**

b. Additional height of up to 110 feet may be granted by special permit for buildings containing only the following uses: 8 (Hotel) and 8A (Limited Service Hotel) and only for buildings with frontage on Washington Street provided that the footprint of any building mass covers no more of the lot area than is specified in Table 5.06.4.j.1 and as depicted in Figure 5.06.4.j.4 below. Where an applicant can demonstrate that additional lot coverage for any building mass above 35 feet would result in an improved building design, the Board of Appeals may by special permit grant an increase in the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. Applicants for a special permit to increase the maximum percentage of lot coverage shall provide written and graphic documentation to the Planning Board and Design Advisory Team illustrating how the building design has improved. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. The Design Advisory Team shall provide a similar affirmative written recommendation.

| Building Mass Heights | Maximum % Lot Area Coverage | Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation |
|---|---|---|
| 0 up to 15' | 80% | N/A |
| 15' up to 35' | 92% | N/A |
| 35' up to 50' | 80% | 85% |
| 50' up to 75' | 75% | 80% |
| 75' up to 110' | 50% | 55% |

**Table 5.06.4.j.1 - Maximum % Lot Area Coverage By Building Height**

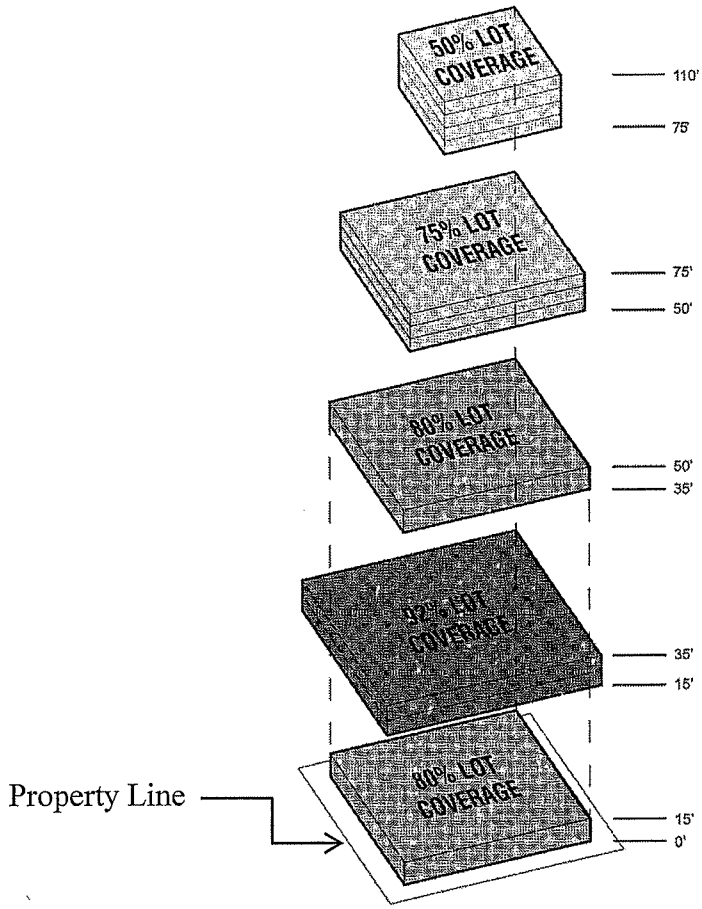


**FIGURE 5.06.4.j.4 Maximum % Lot Coverage by Building Height**

**4. Site Plan Review**

a. All applications for new structures shall be subject to site plan review by the Planning Board to: ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:

   i. Property lines and physical features, including roads, driveways, loading areas and trash storage for the project site;
   ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting and exterior lighting.

5. **Parking and Vehicular Requirements:**
   a. Notwithstanding Section 6.02, there shall be no minimum parking requirements for the following uses and such uses shall have the maximum parking limits noted in Table 5.06.4.j.2 below.

| USE | MAXIMUM PARKING |
|---|---|
| Principal Use 6B (Dwelling, age restricted) | 1.25 per unit |
| Principal Use 6C (Live/Work space) | 0.50 per unit |
| Principal Use 6D (Dwelling, Micro Unit) | 0.50 per unit |
| Principal Use 8 (Hotel) and 8a (Limited Service Hotel) | 0.40 per room |
| Principal Uses:<br>18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory) | 1.50 per 1,000 SF |

**Table 5.06.4.j.2 – Maximum Parking Limits**

   b. Notwithstanding the above, where it can be demonstrated that additional parking is needed, the Board of Appeals may by special permit increase the maximum parking ratio by no more than 20%. Applicants for a special permit to increase the maximum parking ratio shall provide written documentation to the Planning Board demonstrating the need for additional parking. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum parking ratio by no more than 20%.

   c. Notwithstanding the above, dedicated spaces for Car Sharing Organizations (CS0) may be provided without regard to such maximum parking limits. If such dedicated parking spaces are not leased by any CSO they shall be dedicated to bicycle parking and appropriate bicycle parking hardware shall be provided.

6. **Design Standards:**
   a. Building façades parallel to or within 45 degrees of parallel to any property line shall be designed and constructed with equal care and quality. Visual articulation shall be achieved for each façade by (a) employing variations in materials and/or ensuring that no portion of any such façade is coplanar or unbroken for more than 3,500 square feet without a change in depth of 2 feet or more, or (b) utilizing alternative methods of vertical or horizontal articulation, or (c) utilizing other design elements that, in the affirmative and written determination of the Design Advisory Team provide equivalent or better visual relief with respect to building massing, for the reasons expressed in such written determination. The Planning Board and the Board of Appeals shall provide a similar written determination and reasons with respect to façade design. During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Emerald Island Special District Design Guidelines developed by the River Road Study Committee for guidance on general exterior massing, scale and design.

   b. In order to minimize visual and audible impacts, all rooftop mechanical equipment shall be insulated and screened to the greatest extent possible from all public ways via substantial screening materials and/or shall be located in the interior of the building. Additionally, all rooftop mechanical equipment shall be located such that all shadow impacts are minimized.

7. **Amend Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements by adding a Footnote as follows:**

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

Passed by an Electronic Recorded Vote of 184 In Favor, 8 Opposed and 10 Abstentions

## ADVISORY COMMITTEE'S RECOMMENDATION

On October 27, 2016, the Advisory Committee voted unanimously to recommend FAVORABLE ACTION on the motion offered by the Selectmen. The Committee's full report on Article 7 will be provided in the Supplemental Mailing.

XXX

# *Town of Brookline*
## *Massachusetts*

**PLANNING BOARD**
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Sergio Modigliani
Matthew Oudens
Mark J. Zarrillo

**October 7, 2016**

## ARTICLE VII

## PLANNING BOARD REPORT AND RECOMMENDATION

The proposed zoning amendment by the River Road Study Committee (RRSC) would amend the Town's zoning map to create The *"Emerald Island Special District,* I-(EISD)" under section 5.06 of the Zoning By-law. Section 5.06 permits the creation of Special Zoning Districts in recognition that conditions present within the Town may require detailed neighborhood, district or site planning and design review. Special Zoning Districts are able to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements.

The EISD includes all of the parcels bounded by Washington Street, Brookline Avenue and River Road currently zoned (I-1.0), Industrial Services, with an allowed FAR of 1.0, a maximum building height of 40 feet and subject to the parking requirements in Section 6.02, Table of Off-Street Parking Requirements. In lieu of using Floor Area Ratio (FAR), the proposed EISD zoning takes a form-based approach to regulating the size and scale of buildings, employing very specific dimensional criteria with respect to minimum lot size, minimum ground floor height, minimum sidewalk widths, maximum building heights and associated maximum lot coverages. Other key elements of the zoning include parking maximums by use and several requirements for public benefits and public realm enhancements. The zoning criteria are supplemented by District Design Guidelines that were adopted by the Planning Board at their August 17, 2016 meeting.

The amendment also proposes to add three new use definitions to Sec. 2.04.3, "D" Definitions, for "Dwelling, Live/Work Space," "Dwelling, Age Restricted" and "Dwelling, Micro Unit." Additionally, Section 4.07, Table of Use Regulations would be changed to require a special permit for specific uses that were previously allowed or forbidden in an I district and were identified as uses the River Road Committee wanted to encourage by allowing them at a greater density subject to the EISD zoning requirements.

**Building Heights and Maximum Lot Coverages**

The proposed zoning amendment takes a form-based approach to regulating the size and scale of buildings by employing maximum building heights and corresponding maximum lot coverages for different portions of the district. Buildings with frontage on Washington Street are permitted to go up to a maximum height of 110' provided that any building mass above 35' covers no more of the lot area that is specified in the table below. Buildings in the rest of the district are permitted to go up to a maximum height of 85' provided that any building mass above 65' covers no more than 55% of the lot area.

| Building Mass Heights | Maximum % Lot Area Coverage | Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation |
|---|---|---|
| 0 up to 15' | 80% | N/A |
| 15' up to 35' | 92% | N/A |
| 35' up to 50' | 80% | 85% |
| 50' up to 75' | 75% | 80% |
| 75' up to 110' | 50% | 55% |

**Setbacks and Minimum Sidewalk Widths**

The parcels in the EISD are narrow and odd-shaped and are therefore challenging to redevelop, particularly when one considers the minimum floor plate requirements for the range of uses permitted in the district. Those factors, along with the desire to create wider sidewalks and a more vibrant, pedestrian-friendly streetscape, prompted the RRSC to structure the zoning to have minimum sidewalk requirements rather than traditional front and rear yard setback requirements. The minimum required widths are 10' on Washington Street and 12' on River Road and Brookline Avenue respectively. Recognizing that achieving the required sidewalk width may not be possible in certain areas where the lots are odd-shaped, the zoning allows for a reduction in the required sidewalk width to no less than 8' by special permit and only for limited areas. To obtain a special permit to reduce the sidewalk width, applicants must demonstrate to the Planning Board that achieving the minimum required width is not possible in certain areas. There is no relief available to reduce the sidewalk width on Brookline Avenue, as the geometry of the parcels is consistent on that side of the district. The zoning also requires buildings abutting a storm water easement in the middle of the district to be set back 10' and for buildings abutting the northern boundary of the district to be set back 45' from the Point of Intersecting Tangents of Brookline Avenue and River Road. The purpose of these setback requirements is to provide for separation between buildings and to facilitate the potential creation of additional open space in very specific portions of the district that are further constrained by the presence of a large storm water pipe and the 100 year flood zone boundaries.

**Parking**

The EISD is a unique district in that it is surrounded on all sides by public ways, has few immediate residential abutters, is in close proximity to multiple modes of public transit and is within walking distance of the Longwood Medical Area. Additionally, it has been determined that there is an excess supply of parking for the closest residential abutters at Village Way.

Notwithstanding medical office use, which is considered an unlikely use in this location because of the floor plate and higher parking requirements as well as the existing and planned supply of medical office uses in the immediate area, the uses allowed under the EISD are not parking intensive. The above factors, along with the RRSC's desire to balance development feasibility with creating a pedestrian-oriented environment that leverages the district's proximity to transit, are the primary reasons why the EISD zoning uses maximum parking requirements specified in the table below rather than the existing minimum parking requirements imposed on more traditional neighborhoods. The EISD zoning also recognizes that there needs to be some flexibility in the maximum parking ratio because of the range of uses permitted in the district. The zoning permits an increase in the maximum parking ratio by special permit by no more than 20% where the need can be demonstrated to the Planning Board. The maximum ratios by use are shown in the table below.

| USE | MAXIMUM PARKING |
|---|---|
| Principal Use 6B (Dwelling, age restricted) | 1.25 per unit |
| Principal Use 6C (Live/Work space) | 0.50 per unit |
| Principal Use 6D (Dwelling, Micro Unit) | 0.50 per unit |
| Principal Use 8 (Hotel) and 8a (Limited Service Hotel) | 0.40 per room |
| Principal Uses:<br>18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory) | 1.50 per 1,000 SF |

**Public Benefits and Public Realm Enhancements**

The EISD zoning includes several requirements for public benefit and public realm enhancements including street trees, street furniture and pedestrian-scale lighting at regular intervals. The zoning also requires that all buildings be LEED certifiable silver or greater and that all applicants make a contribution to the Town equivalent to 1% of hard construction costs exclusive of tenant fit-out to go which will towards parks and public realm improvements within 500 feet of the district boundaries.

**Special District Design Guidelines**

The Special District Design Guidelines adopted by the Planning Board will serve to inform future discussions between the Planning Board, the project Design Advisory Team and developers of the parcels in the EISD. The guidelines offer direction in many critical areas including massing, materials, rooftops, circulation, public spaces, fenestration and building entries.

**25 Washington Street Hotel Proposal**

If passed, Article 7 would allow for a proposed 11 story, 153,000 sq. ft. +/-, 175 room, select service hotel development to move forward on a currently vacant site formerly occupied by a gas station at the corner of Washington Street and Brookline Avenue. The hotel includes 70 parking spaces and a small restaurant/lounge area.

**Recommendation**

The Planning Board applauds all of the work that has been done by the River Road Study Committee through countless meetings, additional volunteer hours and extensive discussions. These efforts have resulted in a special district zoning proposal that will begin to transform an overlooked corner of the town into a gateway district and connecting point between neighborhoods. The proposed special district regulations reflect a thoughtful and balanced approach towards implementing multiple, long-standing community goals for this highly visible area of town. The form-based approach to regulating size and building massing, as well as the supplemental design guidelines, will help to ensure that the proposed hotel and all future buildings built under the EISD zoning are designed and constructed with high quality and in a manner that respects the neighboring Emerald Necklace Park. Additionally the requirements for substantially wider sidewalks than those that exist today on all sides of the district, along with the range of required public benefits and public realm enhancements, will foster a more vibrant, pedestrian-friendly environment. Finally, the Board commends the River Road Study Committee for continually working with the hotel developer to advance the design and massing of their proposed building, resulting in a substantial reduction to the bulk of the massing, wider sidewalks and a more efficient parking design, including a parking ramp that will be designed and constructed to accommodate a connection with any future developments on the neighboring parcels.

This zoning article, and the many meetings and discussions preceding its submittal to the warrant, laid the groundwork for a financially feasible development that includes substantial lasting community benefits in the near term, while proactively guiding the potential future redevelopment of the rest of the district. The Planning Board supports the balance that the zoning establishes among transit-oriented development in a prime location, enhancement of vital pedestrian amenities, and protection of neighboring properties.

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

# River Road Study Area

## RE Assessment

MARKET AND DEVELOPMENT ASSESSMENT

# Scope of Analysis
## *Development Parameters*

Highest and Best Use Analysis
- Evaluated property features and uses of sites "as improved"
- Analyzed alternative market supported uses of sites "as if vacant"

Financial Feasibility Analysis
- Evaluated market and financial potentials for alternative uses programs including consideration for:
  - Hotel
  - Medical Office
  - Senior Housing
  - Micro Unit Housing
  - Co-work/maker space

Development Parameters
- Prepared market based opinions to inform committee discussions regarding:
  - Land Use
  - Parking Ratios
  - Density
  - Height/Stories

# Highest and Best Use Considerations

## *Development Opportunities and Challenges*

Physical & Legal Issues

- Proximity to transit enhances marketability and helps to minimize parking requirements
- Excellent frontage on Brookline Avenue – potential for prominent addresses and market visibility
- River Road frontage/access eases challenges of ingress/egress and circulation on narrow sites
- Sites are small and lack depth which makes development more costly and less efficient, especially with respect to accommodating access to above grade parking on the parcels
- Open space adjacency across River Road frontage enhances views and access for end-users
- Flood zone restricts development opportunity on some parcels
- Easement rights encumber development opportunity on some parcels
- Existing improvements are valuable and current users may not easily find substitution in the market – which places pressure on assemblage costs and impacts the feasibility of site redevelopment

# Highest and Best Use Considerations

*Development Opportunities and Challenges*

## General Market & Development Observations

- Proximity to LMA a key driver of market demand (for both residential and commercial)
- Proximity to transit minimizes parking requirement but parking will be needed for any redevelopment of the sites
- Accessibility and visibility is good for a range of use alternatives
- Fractured ownership will have to be overcome via assemblage for feasible redevelopment to be possible
- No new development use is capable of supporting the cost of below grade parking
- Shared parking solutions may offer some potential for mitigating the challenges of providing the on-site parking needed for development feasibility
- Parking that may eventually be constructed at 2 Brookline Place may offer some future flexibility to accommodate overflow/visitor parking demand generated by the site(s) but cannot be counted on as the sole solution for parking at the redeveloped properties
- Ground floor uses that rely on off-site demand will be challenging in this location, but there is potential for a wide range of ancillary (perhaps even destination) food & beverage, and commercial uses that relate to uses in the upper stories.

# Highest and Best Use Considerations

## *Development Opportunities and Challenges*

### Hotel Market

- Demand for hotel rooms is strong - for select service and extended stay product – but NOT for full service or boutique product
- Lots of select service and extended stay product is planned for delivery in the market, but in spite of the coming new supply, this site is seen as feasible in the near term – for both the proposed select service hotel and perhaps even a second hotel aimed at the extended stay market
- The proposed program is consistent with the market requirement – right location (near LMA), right type (select service), right size (175 keys), right parking count (.4), right brand (Hilton)

### Medical Office

- Demand for office in general is good but....
- The current and proposed supply of product makes this site less than competitive today
- The substantial parking requirement, and lack of parcel depth makes office development inefficient and costly to develop on this site in relation to the competition.
- But, given the importance of the LMA connection and the potential for a build-to-suit development, this use may emerge as a feasible use in the future and should not be prohibited

# Highest and Best Use Considerations

*Development Opportunities and Challenges*

## Senior Housing Market

- Demand for senior housing (condo and rental) is strong across the income and age spectrums.
- Little targeted senior product is planned in the market and this site is seen as competitive in the near term
- Viable senior housing program options for the site encompass a range of options including age-restricted 55+, independent living (typically over 70), or assisted living (typically over 80).
- Parking requirements for this use vary by age and income target (from .5 for AL to 1.0 per unit for IL)

## Micro Housing/Co-Work Office

- Demand for micro housing (condo and rental) is strong and is an especially good match to ancillary commercial co-work space
- Little targeted product is planned for this market and this site is seen as feasible in the near term
- The residential product attributes are a good match the site - small unit sizes (300 to 500 SF per unit) with lesser parking requirements (+/- .5 per unit) than conventional multi-family
- Co-working space is more flexible in terms of acceptable floor plate sizes and configurations than either general or MOB office, with lesser parking requirements (<1.0 per 1,000 SF).

# Development Considerations

*Feasibility Parameters*

## Market Feasible Uses

- Hotel (select service and extended stay)
- Office (co-work today perhaps MOB in the future)
- Senior housing (55+, Independent Living, Assisted Living)
- Micro housing (rental and/or condominiums)
- Ground Floor Retail – ancillary to above grade uses
- Ground Floor Food & beverage – ancillary to upper floor uses (e.g. hotel) & destination
- Ground Floor Maker-space (ancillary to co-work/micro housing)

## Market Feasible Density

- Defined by program requirement (critical mass and scale) and desired form (height and mass) not FAR
- Above-grade parking requirements compete for above grade envelope, making story heights for feasible development challenging at below 7-8 stories.
- Use programs have been tested for feasibility and appear reasonable

# Development Considerations

*Feasibility Parameters*

## Market Feasible Uses

- Hotel (select service and extended stay)
- Office (co-work today perhaps MOB in the future)
- Senior housing (55+, Independent Living, Assisted Living)
- Micro housing (rental and/or condominiums)
- Ground Floor Retail – ancillary to above grade uses
- Ground Floor Food & beverage – ancillary to upper floor uses (e.g. hotel) & destination
- Ground Floor Maker-space (ancillary to co-work/micro housing)

## Market Feasible Density

- Defined by program requirement (critical mass and scale) and desired form (height and mass) not FAR
- Above-grade parking requirements compete for above grade envelope, making story heights required for feasible development challenging at below 7-8 stories
- Use programs have been tested for economic feasibility and appear reasonable

# Development Considerations

*Feasibility Parameters*

## Market Feasible/Supported Parking Ratios

- Hotel (market min .4 per key)
- MOB/General (market min. 1.5/1,000 RSF)
- 55+ Age restricted & Independent Living housing (market min. 1.0 per unit)
- Assisted Living & Memory Care (market min. .5 per unit)
- Micro Housing (market min. .5 per unit)
- Co-Working Office (market min .75 per 1,000)

# Development Considerations

*Other Issues*

## Other Development Issues

- Ingress and egress must be allowed from both River Road & Brookline Avenue
- Pedestrian connections strengthened across River Road to open space
- Use of flood zone and easement area for amenities (open space, café seating, public seating, handicapped parking, etc.)
- Site assemblage incentives (dimensional relief, etc.)
- Shared parking incentives district-wide

# ARTICLE 8

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Warrant Article 8 was submitted as a citizen petition to replace Article 7, which creates special zoning for the EISD (Emerald Island Special District). Articles 7 and 8 differ on only one aspect – the minimum sidewalk width along Washington Street. Article 7 calls for a 10' minimum (with potential leeway for minor reductions), while Article 8 calls for an 8' minimum sidewalk plus a 10' minimum planting strip, with no possibility for a reduction in width due to special circumstances.

By unanimous vote of 23–0–0, the Advisory Committee recommends NO ACTION on Article 8.

BACKGROUND:
Article 8 was submitted by Hugh Mattison (TMM-5), a member of the River Road Study Committee (RRSC) and chair of the Tree Planting Committee. Article 8 seeks to change only one aspect of the zoning changes described in Article 7—that of the minimum sidewalk width along Washington Street. Article 11 contains the same provisions as Article 8, but is framed as a resolution in the event that neither Article 7 or 8 passes.

Article 7 calls for the sidewalk along Washington Street to be at least 10 feet wide, but allows this to be reduced for a portion of the street frontage by Special Permit, recognizing the irregular geometry and constrained size of the site, compounded by the somewhat late addition of a cycle track as part of the Gateway East DOT project. The new hotel plans to pursue this relief, showing a sidewalk width that averages 10'-8" wide along Washington Street, although approximately one-third of the frontage is less than the 10'-0" minimum, necking down to 8'-0" for approximately 5'-0" in length. (The new cycle track is at sidewalk level and represents an additional 5'-0" in width, but is not included in the sidewalk width calculation.)

The petitioner is concerned that the sidewalk width described in Article 7, which follows the recommendations of the RRSC, is not adequate to accommodate all planned uses (pedestrians, street furniture, plantings, etc.) and that the current hotel design will be produce a streetscape that is either devoid of street trees, or has trees that are too columnar in appearance. For this reason the petitioner is proposing that an additional 8 feet be added to the "sidewalk zone" for a total of 18 feet—8 feet of this for the actual sidewalk and 10 feet for a new planting strip, with no option to reduce the width along Washington Street by Special Permit. The petitioner's goal is to create a planting zone enough to support large-scale full canopy street trees such as those proposed at 2 Brookline Place.

DISCUSSION:
After the petitioner's initial presentation at a September 21, 2016, public hearing, it became clear that the original objective of Articles 8 and 11 was to increase the building setback along the entire Washington Street frontage in order to allow the addition of large street trees. The original language of both Articles, however, refers to *sidewalk width* only. In fact, the proposed hotel design achieves the minimum sidewalk widths described in Article 11 by overhanging the upper stories over the sidewalk zone by approximately 3 feet, which is allowed because it is still within the property lines.

Claremont stated that if Article 8 were to be applied as a *building setback* to allow for full canopy trees along Washington Street, the total number of parking spaces on the two parking decks would be reduced by over 50% (from 70 spaces to 37 spaces). In order to maintain 70 parking spaces, (a figure which was corroborated by the RRSC as well as the Town's outside real estate consultant), the hotel would require two additional parking decks (for a total of 4 decks), increasing the building height by 20 feet to 130 feet high. If, on the other hand, Article 8 were applied as affecting *sidewalk width* only, the parking count would be unchanged because the parking decks could overhang the sidewalk (eliminating the possibility of full-canopy trees), but the street-level hotel interior and—perhaps most important—the shared parking ramp would not fit within the remaining street-level building footprint.

The petitioner subsequently attempted to amend Article 8 to include language to disallow a building that overhangs the sidewalk, but the proposed amendment was rejected by the Moderator as being more restrictive.

Members of the RRSC and Claremont noted that the average sidewalk width as proposed in the current project is 10'-8" (8" wider than that proposed in Article 8), with a portion approximately 5' in length that necks down to 8'-0" wide. Under the provisions of Article 7, this "pinch point" would be subject to Planning Board review and approval.

The Advisory Committee was generally sympathetic to the goals of Article 8, but agreed with the Planning Board that the special zoning envisioned by the RRSC and proposed by Article 7 represents an appropriate compromise given the various site constraints. For that reason, it recommends Favorable Action on Article 7, rather than Article 8.

RECOMMENDATION:
By a vote of 23–0–0, the Advisory Committee recommends NO ACTION on Article 8.

ARTICLE 8

EIGHTH ARTICLE

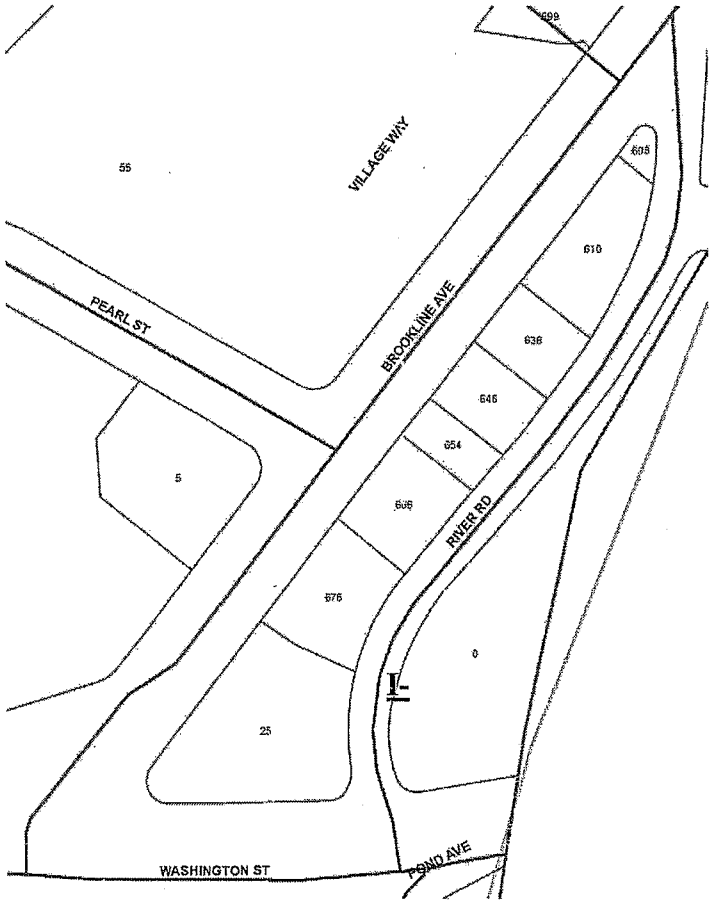
Submitted by: Hugh Mattison, TMM5

**This Warrant Article is being submitted as an alternative to an article submitted by the River Road Study Committee. It addresses the need to provide a sidewalk at 25 Washington Street which is at least 18 feet wide, 10 feet of which will be used as a planting strip.**

To see if the Town will amend the Zoning By-Law by amending the zoning district and corresponding sections of the Zoning By-law currently designated I-1.0 as shown on the current Zoning Map, as follows:

1. **Amending the Zoning Map as shown to add a new I-(EISD) district as shown below.**

   *(Changes in bold and underlined)*



**2. By amending Section 2.04.3 to add the following definitions**

a. "Dwelling, Live/Work Space: A building or any portion thereof containing common work space areas and/or dwelling units measuring no more than 900 square feet in gross floor area per unit that are used by at least one occupant as both their primary residence and primary work/artist studio space, including use 46 (Light Non-Nuisance Manufacturing) and 58A (Home Office) as certified annually by the property owner with the Building Commissioner."

b. "Dwelling, Age Restricted: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall not preclude reasonable, time-limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions."

c. "Dwelling, Micro Unit: A building or any portion thereof containing residential units measuring no greater than 500 square feet in gross floor area per unit. Buildings containing Micro Units may have flexible common areas for living and/or working."

**3. By amending Section 3.01.3a as follows:**

*(Changes in bold and underlined)*

a. 3. Industrial Districts

a. Industrial Services (I)

1) I-1.0

**<u>2) I-(EISD)</u>**

**4. By amending Section 4.07 – Table of Use Regulations as follows:**

*(Changes in bold and underlined)*

| Principal Uses | Residence | | | | | Business | | | Ind. |
|---|---|---|---|---|---|---|---|---|---|
| | S | SC | T | F | M | L | G | O | I |
| **RESIDENCE USES** | | | | | | | | | |
| **6B. Dwelling, Live/Work Space**<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| **6C. Dwelling, Age Restricted**<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| **6D. Dwelling, Micro Unit**<br>***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No** | **No*** |
| 8. Hotel<br>*Permitted by special permit in M-2.5 Districts and in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC, or T District.<br>****Permitted by special permit in I-(EISD) District in accordance with 5.06.4.j..** | No | No | No | No | No* | No | SP* | No | No** |
| 8A. Limited Service Hotel<br>*Permitted by Special permit in M-2.5, Cleveland Circle Hotel Overlay District **and I-(EISD) District.**<br>**Permitted as of right only in the G-1.75 (LSH) Limited Service Hotel District, provided that the applicant for a building permit certifies to the Building Commissioner that (a) at least 20% of all on-site parking spaces will be available for overnight public parking at prevailing overnight public rates, (b) that all on-site parking spaces will be available between 8:00 a.m. and 6:00 p.m. at prevailing public meter rates and (c) at least 25% of the lot area is to be used for open space open to | No | No | No | No | No* | No* | Yes** | No | No* |

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| the public. Otherwise such use shall be by special permit in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC or T District. Permitted by Special Permit in G-(DP) District in accordance with Section 5.06.4.g. | | | | | | | | | |
| **INSTUTITIONAL, RECREATIONAL & EDUCATIONAL USES** | | | | | | | | | |
| 18A. Small group health and fitness club not exceeding 2,500 square feet of gross floor area operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and/or health services. ***Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.** | No | No | No | No | No | Yes | Yes | Yes | Yes* |
| **OFFICE USES** | | | | | | | | | |
| 20A. Office or clinic of a licensed veterinarian for treatment of animals, including laboratories and holding facilities. No outdoor facilities for animals shall be permitted. Studies by recognized experts shall be submitted to insure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. *Verification of noise control shall include verification by a professional engineer (P.E.), utilizing an acoustical engineer under his/her supervision if necessary, that under worst-case (e.g., maximum number of animals, open windows if applicable) conditions neither daytime nor nighttime background noise levels, as defined in Article 8.15.3 of the Town By-Laws, will be exceeded at the boundary of the property where the use is located. Moreover, as a condition of a Special Permit, the ZBA shall require that further noise control measures be undertaken in the future if such background noise levels are exceeded during operation of the facility. | No | No | No | No | No | SP* | SP | SP | SP** |

| | | | | | | | | | |
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| **<u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | | | | | | | | | |
| 21. Business, professional, or governmental office other than Use 20 and 20A.<br>*Provided no commodities are kept for sale on the premises<br>**<u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | Yes | Yes | Yes* | Yes<u>**</u> |
| **RETAIL AND CONSUMER SERVICE USES** | | | | | | | | | |
| 29. Store of less than 5,000 square feet of gross floor area per establishment, primarily serving the local retail business needs of the residents of the vicinity, including but not limited to grocer, baker, food store, package store; dry goods, variety, clothing; hardware, paint, household appliances; books, tobacco, flowers, drugs.<br>**<u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | Yes | Yes | No | Yes<u>*</u> |
| 30. Eating places of less than 5,000 square feet of gross floor area per establishment, primarily serving local needs, including but not limited to lunch room, restaurant, cafeteria, place for the sale and consumption of beverages, ice cream and the like, primarily in enclosed structures with no dancing, nor entertainment other than music.<br>**<u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | Yes | Yes | No | Yes<u>*</u> |
| 32. Service business primarily serving local needs, including but not limited to the following uses:<br>(a) Barber, beauty shop, laundry and dry-cleaning pickup agency, shoe repair, self-service laundry, or other similar use.<br>(b) Hand laundry, dry-cleaning or tailoring, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.<br>(c) Printing shop, photographer's studio, | No | No | No | No | No* | Yes | Yes | No | Yes<u>**</u> |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| caterer, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.<br>*Permitted by special permit in an M-1.0 (CAM) District.<br>**<u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | | | | | | | | | |
| 33. Stores not exceeding 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, furniture and household goods.<br>**<u>* Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | No | Yes | No | No<u>*</u> |
| 33A. Stores over 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, supermarket, grocery store, furniture and household goods.<br>**<u>* Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | No | SP | No | SP<u>*</u> |
| 34. Place for the sale and consumption of food and beverages exceeding 5,000 square feet of gross floor area, or providing dancing and entertainment.<br>*Permitted by Special Permit in the Cleveland Circle Hotel Overlay District.<br>**<u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>** | No | No | No | No | No | No* | Yes | No | Yes<u>**</u> |
| **ACCESSORY USES** | | | | | | | | | |
| 46. Light non-nuisance manufacturing, provided that all resulting particulate matter, flashing light, fumes, gases, odors, liquid and/or solid wastes, smoke, and vapor are | No | No | No | No | No | No | No | No | SP<u>**</u> |

| | | | | | | | | | |
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| effectively confined to the premises or disposed of in a manner so as not to create a nuisance or hazard to safety or health and in compliance with all applicable town, state, and federal laws and regulations; further provided that no vibration is perceptible without instruments at a distance greater than 50 feet from such premises and that noise limits shall conform to the **Town's Noise By-law**. At least 30 days prior to the Board of Appeals hearing, the applicant shall submit studies by recognized experts to insure, to the satisfaction of the Board of Appeals, that the use will be designed and operated so as to conform to the standards above. Such studies shall include description of operations and processes proposed, materials to be used, above-and-below-ground storage facilities, and waste products. Any applications, including the required studies, shall be referred to the Conservation Commission and the Health Department for advisory reports in accordance with the procedures in **§9.04**.*<br>*For uses 42 to 46 inclusive, all storage of materials and equipment and all business operations, such as loading, parking, and storage of commercial vehicles, shall be within an enclosed building. This requirement may be modified by the Board of Appeals by special permit only, provided the requirements of **§6.04, paragraph 8**. and **§9.05** are met. Such special permit may be rescinded or modified by the Board of Appeals after notice and hearing if noncompliance with the conditions of approval is determined.<br>**** Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j.** | | | | | | | | | |
| 58A. Office/studio within the place of residence provided all of the following conditions are met, except that only condition (e) below needs to be met in the G-(DP) **and I-(EISD) Districts:**<br>(a) the office occupies not more than one room;<br>(b) there are no nonresident employees;<br>(c) there are no clients visiting the premises (members of the clergy shall be exempt from this limitation);<br>(d) there are no signs nor other external | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| evidence of the office; and<br>(e) there is no production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects. | | | | | | | | | |
| 66. Accessory laboratory.<br>*In permitted institutions only.<br>**** **Permitted by Special Permit in the I-(EISD) District in permitted institutions only and in accordance with 5.06.4.j.** | No | No | No | No | SP* | SP* | SP | SP | SP** |

**5. By amending Section 5.01 – Table of Dimensional Requirements by adding I-(EISD) and adding footnote 20 as follows:**

*(Changes in bold and underlined)*

| DISTRICT | USE | LOT SIZE MINIMUM (sq. ft.) | FLOOR AREA RATIO MAXIMUM | PBI NBONLY | LOT WIDTH MINIMUM (feet) | MAXIMUM HEIGHT | PBI | | MINIMUM YARD | | | OPEN SPACE (% of gross floor area) | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | B | NB | Front | Side | Rear | Lands c. | Usable |
| ~~I 1.0~~ **I-(EISD)**[20] | Any structure or principal use (dwelling-footnote 5) | none [4] | ~~1.0~~ **1.0 or NA** [20] | NA | none | 40 **or 110** [20] | NA | NA | 20 [20] | NA | 10+L/10 [20] | NA | NA |

**20. See Sections 4.07 and 5.06.4.j with respect to uses and all dimensional requirements.**

**6. By amending Section 5.06.4 to create Section 5.06.4.j "Emerald Island Special District" as follows:**

**Emerald Island Special District I-(EISD)**

1. The Emerald Island Special District – the area bounded by River Road, Brookline Avenue, and Washington Street – is an area in transition. It has been determined through study by the River Road Study Committee that specific zoning parameters are required to encourage appropriate redevelopment of this district. In developing these zoning parameters, due consideration has been given to the prominent location of this area as a major gateway to Brookline. The proximity of the Muddy River, Emerald Necklace, Longwood Medical Area as well as the differences in the scale of existing buildings, recently permitted and proposed developments, access to transit, and the solar orientation of sensitive nearby uses,

including the residences of Village Way and Emerald Necklace Park all combined to shape the Special District parameters. Following a comprehensive study by financial, architecture, urban design and real estate experts, the Committee further concluded that the following concepts related to allowed uses, building heights, building form, parking requirements and the public realm are appropriate for this Special District.

**2.** All applications for new structures, outdoor uses, and exterior alterations in the Emerald Island Special District which exceed a floor area ratio of 1.0, a height greater than 40' and/or seek alternative parking and loading zone requirements shall be permitted only on lots greater than 13,600 square feet in contiguous area and only for the uses described in Section 5.06.4.j.3, shall be subject to Site Plan Review by the Planning Board as described in Section 5.06.4.j.4, shall be subject to the requirements of Section 5.09, Design Review, shall obtain a special permit per Section 9.03, and shall meet the following requirements:

a. Setbacks and Sidewalk Widths:

i. All buildings shall be setback 10 feet from the mid-district drainage easement as shown in Figure 5.06.4.j.1 below.

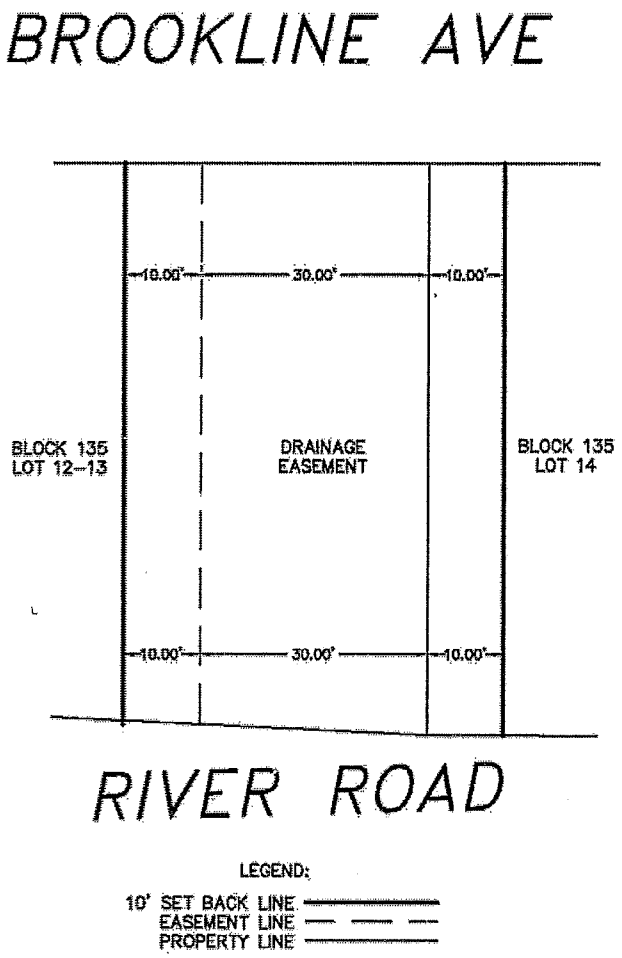


**FIGURE 5.06.4.j.1 Setbacks from Mid-District Drainage Easement**

ii. All buildings shall be setback 45 feet from the point of intersecting tangents of Brookline Avenue and River Road as shown in Figure 5.06.4.j.2 below.

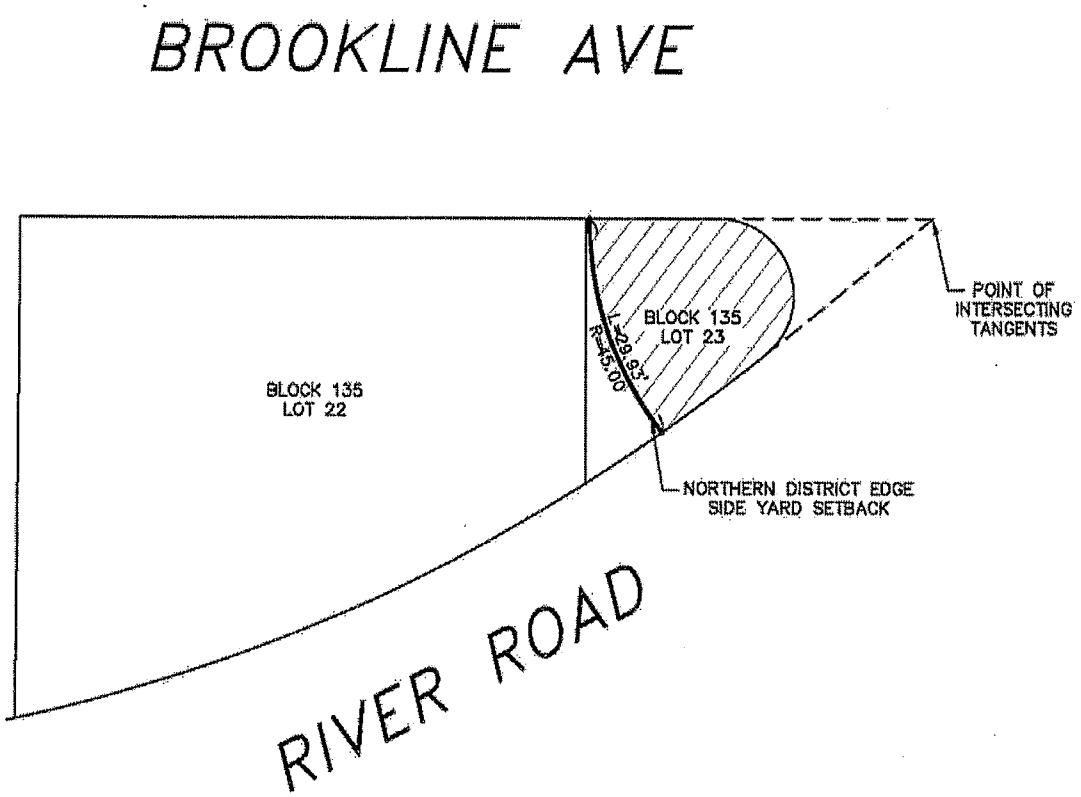


**FIGURE 5.06.4.j.2 Northern District Edge Sideyard Setback**

i. Notwithstanding Section 5.01 and other than as provided in Sections 5.06.4.j.2a.i and 5.06.4.j.2a.ii, there shall be no additional setback requirements except as is necessary to achieve the required sidewalk widths for the district. For the purposes of the EISD only, sidewalk shall be defined as the area between the building façade and the face of the curb. The required sidewalk width shall be measured from the ground level of the proposed building façade to the face of the curb at the time of special permit application. All sidewalks shall maintain a minimum 5 foot wide walkway clear from all obstructions, including, but not limited to tree pits, structural columns and street furniture. The minimum sidewalk width along Brookline Avenue and River Road shall be no less than 12 feet. The minimum sidewalk width along Washington Street shall be no less than ~~10~~ **18** feet **including 10 feet reserved as a planting strip, with the final design of all landscaping in this planting strip to be approved by the Director of Parks and Open Space or his/her designee. No relief may be granted for a reduction in sidewalk width along Washington Street.**

ii.

iii. Where it can be demonstrated that achieving the required sidewalk width would be infeasible in limited areas, the Board of Appeals may by special permit reduce the required width of the affected areas to no less than 8 feet on ~~Washington Street and~~ River Road. No relief may

be granted for a reduction in sidewalk width along Brookline Avenue **or Washington Street.** Applicants for a special permit to reduce the width of a sidewalk shall provide written and graphic documentation to the Planning Board illustrating why the required width is not attainable in the affected area. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to reduce the width of the sidewalk in limited areas. Where relief is granted, applicants shall provide counterbalancing amenities in the form of wider sidewalks and/or landscaping on-site or in the immediate area adjacent to their site, subject to the review and approval of the Planning Board.

b. The minimum finished floor to floor height for all ground floor levels shall be no less than 15 feet.
c. No permanent on-site parking spaces shall be located on the ground level in the Special District.
d. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning and Community Development that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.
e. Street trees shall be provided at regular intervals approximately every 25 feet along the sidewalks of Brookline Avenue, Washington Street and River Road. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public way shall be approved by the Director of Parks and Open Space or his/her designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or his/her designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
f. The applicant shall devote no less than 1% of the hard construction cost of constructing its project, (including any building, site work, above ground or underground structures, but exclusive of tenant fit-up) to making off-site, streetscape and parks improvements within 500 feet of the Special District boundaries. In addition to review by the Planning Board, a plan of the proposed off-site improvements shall be submitted for the review and approval of the Director of Transportation and the Director of Parks and Open Space or their designees. Alternatively, with the approval of the Director of Transportation and the Director of Parks and Open Space, the applicant may make a financial contribution to the Town in an equivalent dollar amount to be used by the Town for such purposes.
g. Public seating and pedestrian-scale lighting shall be provided at regular intervals. The location, number and design of all seating and lighting in the

public way shall be approved by the Director of Parks and Open Space or his/her designee.

h. Notwithstanding the provisions of Sections 6.06.6 and 6.07, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.j.4 below.

i. A building shall not have more than 30% of its frontage along a street devoted to residential use including associated lobby use.

j. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential, or office, or hotel use without being considered an accessory use.

**3. Exceptions to Maximum FAR and Maximum Height**

a. Additional height may be granted by special permit up to 85 feet for buildings primarily containing only the following uses: 6B (Dwelling, Live/Work Space); 6C (Dwelling, Age Restricted); 6D (Dwelling, Micro Unit) 8 (Hotel); 8A (Limited Service Hotel); 20 (Medical Office); 21 (Professional Office); 29 (Store less than 5,000 SF), 30 (Eating Place less than 5,000 SF); 33 (Stores not exceeding 10,000 SF); 33a (Stores over 10,000 SF); 34 (Place for the sale and consumption of food and beverages exceeding 5,000 SF ); 66 (Accessory Laboratory), only for buildings located a minimum of 189.12 feet from the intersection of Washington Street and Brookline Avenue, provided that the footprint of any building mass above a height of 65 feet covers no more than 55% of the lot area. Buildings may also contain Principle Uses 18A (Small Group Health/Fitness), 20a (Licensed Veterinarian), and 32 (Service Business) provided that such uses occupy no more than 25% of the building. The required 189.12 foot distance from the intersection of Washington Street and Brookline Avenue shall be measured from the Point of Intersecting Tangents as show in Figure 5.06.4.j.3 below.

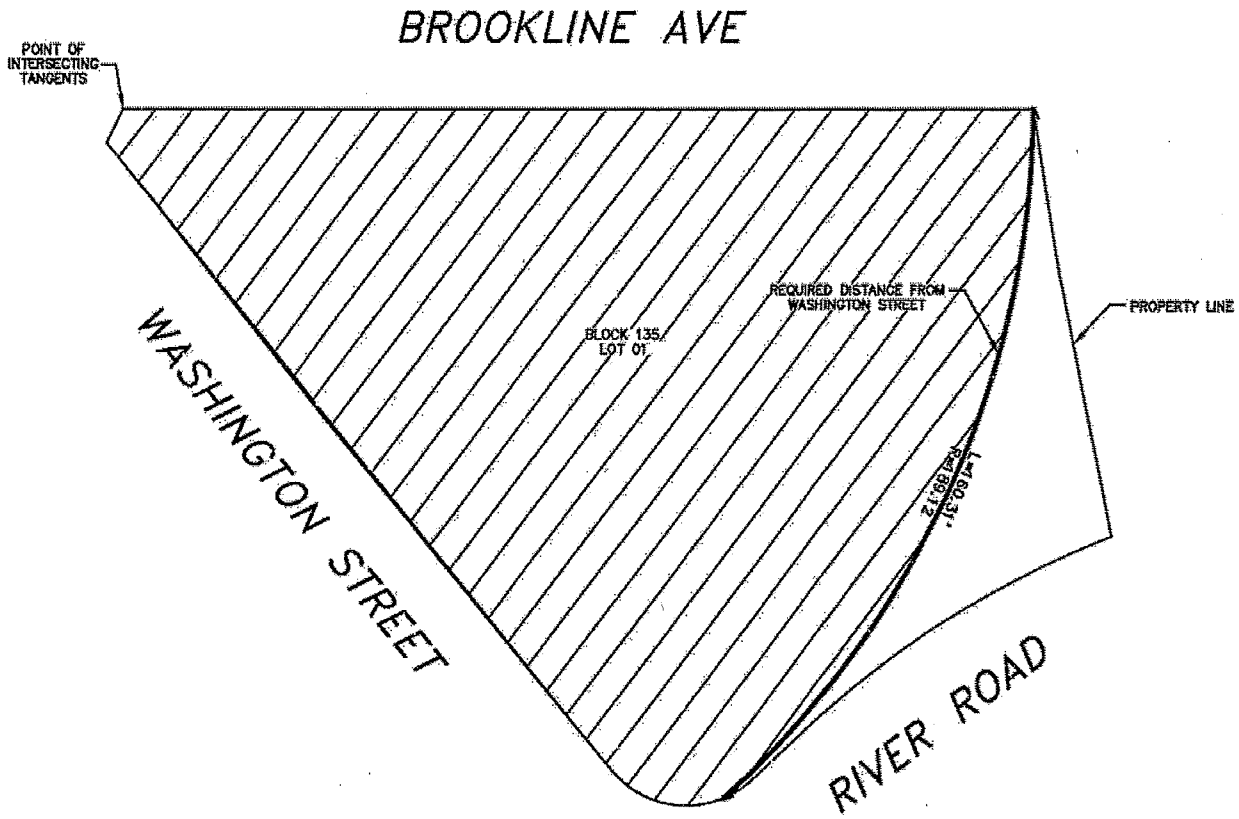


**FIGURE 5.06.4.j.3 Required Distance from Washington Street**

b. Additional height of up to 110 feet may be granted by special permit for buildings containing only the following uses: 8 (Hotel) and 8A (Limited Service Hotel) and only for buildings with frontage on Washington Street provided that the footprint of any building mass covers no more of the lot area than is specified in Table 5.06.4.j.1 and as depicted in Figure 5.06.4.j.4 below. Where an applicant can demonstrate that additional lot coverage for any building mass above 35 feet would result in an improved building design, the Board of Appeals may by special permit grant an increase in the maximum percentage of lot coverage by special permit as shown in Table 5.06.4.j.1 below. Applicants for a special permit to increase the maximum percentage of lot coverage shall provide written and graphic documentation to the Planning Board and Design Advisory Team illustrating how the building design has improved. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. The Design Advisory Team shall provide a similar affirmative written recommendation.

**Table 5.06.4.j.1 - Maximum % Lot Area Coverage By Building Height**

| Building Mass Heights | Maximum % Lot Area Coverage | Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation |
|---|---|---|
| 0 up to 15' | 80% | N/A |
| 15' up to 35' | 92% | N/A |
| 35' up to 50' | 80% | 85% |
| 50' up to 75' | 75% | 80% |
| 75' up to 110' | 50% | 55% |

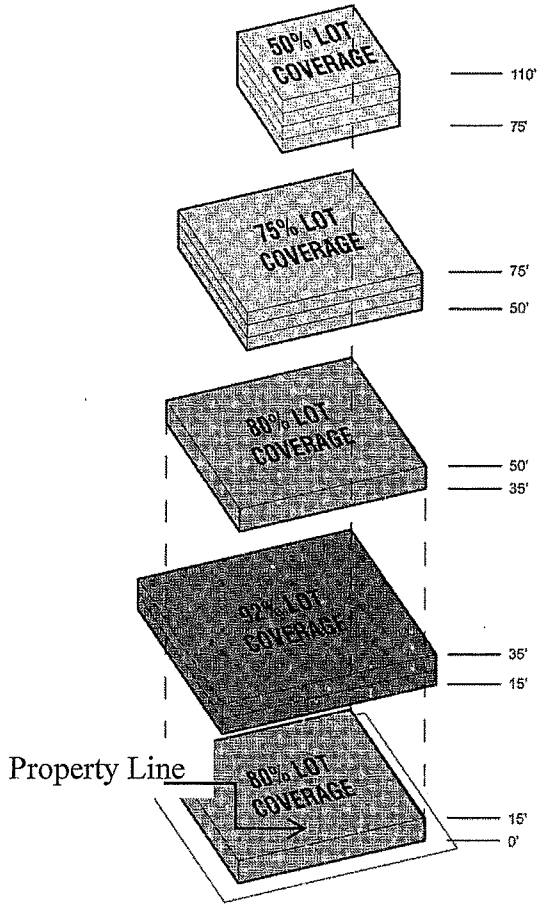


**FIGURE 5.06.4.j.4 Maximum % Lot Coverage by Building Height**

4. **Site Plan Review**
   a. All applications for new structures shall be subject to site plan review by the Planning Board to: ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review

process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:

i. Property lines and physical features, including roads, driveways, loading areas and trash storage for the project site;
ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting and exterior lighting.

**5. Parking and Vehicular Requirements:**

a. Notwithstanding Section 6.02, there shall be no minimum parking requirements for the following uses and such uses shall have the maximum parking limits noted in Table 5.06.4.j.2 below.

| USE | MAXIMUM PARKING |
|---|---|
| Principal Use 6B (Dwelling, age restricted) | 1.25 per unit |
| Principal Use 6C (Live/Work space) | 0.50 per unit |
| Principal Use 6D (Dwelling, Micro Unit) | 0.50 per unit |
| Principal Use 8 (Hotel) and 8a (Limited Service Hotel) | 0.40 per room |
| Principal Uses:<br>18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory) | 1.50 per 1,000 SF |

**Table 5.06.4.j.2 – Maximum Parking Limits**

b. Notwithstanding the above, where it can be demonstrated that additional parking is needed, the Board of Appeals may by special permit increase the maximum parking ratio by no more than 20%. Applicants for a special permit to increase the maximum parking ratio shall provide written documentation to the Planning Board demonstrating the need for additional parking. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum parking ratio by no more than 20%.

c. Notwithstanding the above, dedicated spaces for Car Sharing Organizations (CS0) may be provided without regard to such maximum parking limits. If such dedicated parking spaces are not leased by any CSO they shall be dedicated to bicycle parking and appropriate bicycle parking hardware shall be provided.

6. **Design Standards:**
   a. Building façades parallel to or within 45 degrees of parallel to any property line shall be designed and constructed with equal care and quality. Visual articulation shall be achieved for each façade by (a) employing variations in materials and/or ensuring that no portion of any such façade is coplanar or unbroken for more than 3,500 square feet without a change in depth of 2 feet or more, or (b) utilizing alternative methods of vertical or horizontal articulation, or (c) utilizing other design elements that, in the affirmative and written determination of the Design Advisory Team provide equivalent or better visual relief with respect to building massing, for the reasons expressed in such written determination. The Planning Board and the Board of Appeals shall provide a similar written determination and reasons with respect to façade design. During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Emerald Island Special District Design Guidelines developed by the River Road Study Committee for guidance on general exterior massing, scale and design.

   b. In order to minimize visual and audible impacts, all rooftop mechanical equipment shall be insulated and screened to the greatest extent possible from all public ways via substantial screening materials and/or shall be located in the interior of the building. Additionally, all rooftop mechanical equipment shall be located such that all shadow impacts are minimized.

7. **Amend Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements by adding a Footnote as follows:**

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

or act upon anything else relative thereto

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PETITIONER'S ARTICLE DESCRIPTION

**This Warrant Article is being submitted as an alternative to an article submitted by the River Road Study Committee. It addresses the need to provide a sidewalk at 25 Washington Street which is at least 18 feet wide, 10 feet of which will be used as a planting strip.**

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

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

In 2006, the Gateway East Public Realm Plan guided by a 25-citizen CAC identified a defining principle: "Define a strong, green gateway to Brookline and Brookline Village" and stated that "Street tree plantings provide a buffer between the pedestrian and the road and are the most effective tool to achieve a 'green gateway' concept."
In May 2016, the Selectmen adopted the Complete Streets Policy. To meet the objective of accommodating pedestrians, and "to further the Massachusetts Department of Transportation (MassDOT) transportation goal of shifting users to more healthful and sustainable transportation modes and to comply with M.G.L. Chapter 90I, §1 eligibility requirements to receive funding under MassDOT's Complete Streets Program, the Town's transportation projects shall be designed and implemented to provide safe and comfortable access for healthful transportation choices such as walking, bicycling, and mass transit." The Policy further states "Achieving these objectives will require context-sensitive treatments and operational strategies to balance the needs of all users", "the safety, comfort, and convenience of vulnerable users [i.e. pedestrians] must be fully considered", and "private land to be incorporated into the public way by the Town should comply with the Complete Streets Policy."

Most recently, in 2015 the MIT Department of Urban Studies and Planning issued a report Bringing Back Boylston: A Vision and Action Plan for Route 9 East. It recommended "public realm improvements that enhance the pedestrian experience."
This warrant article seeks to make the development of the Emerald Island Special District (EISD) compatible with other development planned as part of Gateway East and contribute to realizing the green, pedestrian-friendly vision that has been expressed in prior studies.

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

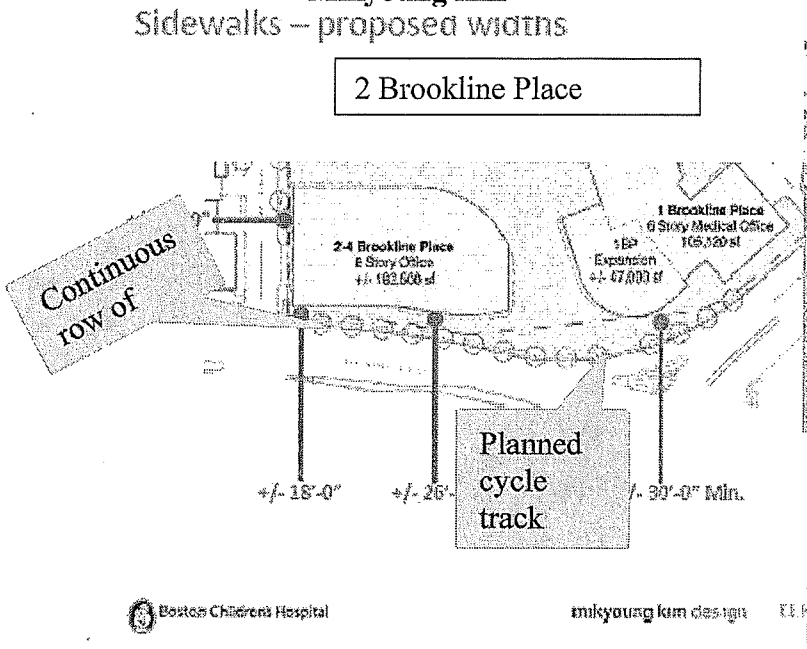
At the very edge of town, a safe, green connection with the Huntington Avenue Green Line and bus routes is necessary. The currently planned narrow, almost tree-less sidewalk in front of 25 Washington Street offered by Claremont is the exception to a greening process that Brookline has already agreed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

in meeting future needs. This warrant article seeks to complete this vision of a green, welcoming, safe entrance to our town.

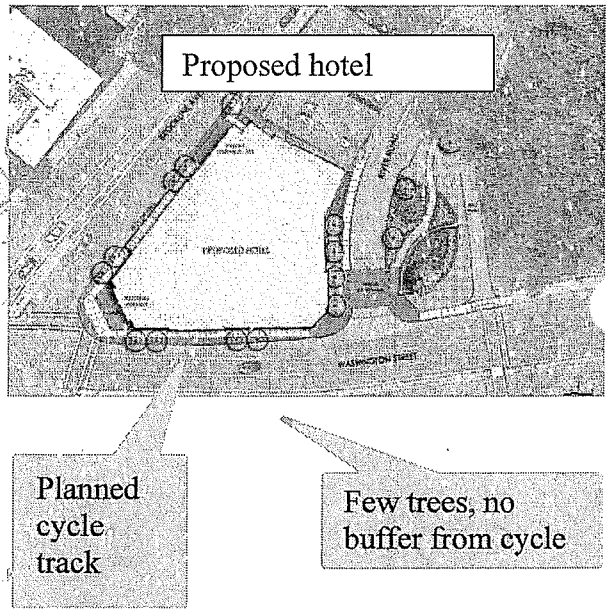
**Sidewalk Width at 25 Washington Street (Continued)**
Specifically, passage of this warrant article would create a 10-foot wide planting strip between the planned cycle track and 8' pedestrian walkway section in front of 25

- separate pedestrians from other traffic
- extend the green of the Emerald Necklace into Brookline Village
- honor previous plans
- mitigate the effect of an abutting tall building
- reduce traffic noise and improve air quality
- provide visual amenity and a welcoming entrance to Brookline
- continuous row of trees
- create a safe setting that encourages walkability

**Mikyoung kim**




**Claremont**




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

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

Prepared and submitted by:

Hugh Mattison, Town Meeting Member, Precinct 5
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Brookline, MA 02445
Email: hmattison@aol.com
Tel: 617-232-6083

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This article seeks to amend the zoning amendment submitted by the River Road Study Committee in Warrant Article 7. The specific changes pertain to Sections 6.2.a.iii and 6.2.a.iv of the proposed Emerald Island Special District Zoning related to the minimum required sidewalk width on Washington Street and the special permit relief for a reduction to the minimum sidewalk width on Washington Street.

The amendment to Section 6.2.a.iii would change the minimum required sidewalk width on Washington Street from 10 feet to *"18 feet including 10 feet reserved as a planting strip with the final design of all landscaping in this planting strip to be approved by the Director of Parks and Open space or his/her designee."* The proposed amendment to section 6.2.a.iv would not allow for special permit relief to reduce the required sidewalk width on Washington Street to 8 feet in limited areas.

The Board understands that the required sidewalk widths for the Special District were discussed at length by the River Road Study Committee, not only in the context of Washington Street and the proposed hotel development, but also with respect to River Road, Brookline Avenue and potential future developments on the other parcels in the district. The Board is also aware that a substantial amount of architectural design and financial feasibility analysis was completed by the River Road Study Committee to confirm that 10 feet is an appropriate and achievable minimum width on Washington Street. The Board also realizes that allowing for a reduction in width to no less than 8 feet in a very limited area is necessary in order for the design of the first floor of the proposed hotel and more specifically the parking access ramp to be feasible.

The Planning Board appreciates the petitioner's desire to require a wider sidewalk on Washington Street and generally supports the idea in concept. However, it has been demonstrated that the width proposed by the petitioner compromises the feasibility of the parking ramp and therefore the feasibility of the building. The Board also observes that the proposed amendment does not actually widen the useable portion of the sidewalk; rather it narrows the required sidewalk from 10 feet to 8 feet, likely further constraining an already physically constrained area.

**Therefore, the Planning Board unanimously recommends NO ACTION on Article VIII as submitted.**

## SELECTMEN'S RECOMMENDATION

Article 8 was filed as an alternative to the zoning proposal – Article 7 – submitted by the River Road Study Committee (RRSC). The petitioner states that the purpose of Article 8 is to address the need for an 18 foot sidewalk on Washington Street, 10 feet of which will be reserved for a planting strip, and to install larger trees than are currently envisioned. A second important difference between Article 8 and Article 7 is the lack of a provision to allow a reduction in sidewalk width on Washington Street should building an 18 foot sidewalk be infeasible. Article 7 would allow this, and Article 8 would not.

The petitioner asserts that the minimum Washington Street sidewalk width in the proposed zoning found under Article 7, and the sidewalk width shown in the preliminary plans for the proposed hotel at 25 Washington Street is inadequate. Today, the sidewalk widths along Washington Street abutting the 25 Washington Street parcel range between 6 - 8'. Article 7 would increase the minimum width to 10 feet. The preliminary hotel plans show the Washington Street sidewalk ranging in width between 10'-8" and 8'. The 8' sidewalk is shown as being limited to a linear distance of 5 feet. (For an explanation of why an 8' sidewalk could be built refer to the information offered in the Combined Reports for Article 7.)

The filing of Article 8 accomplishes neither of the petitioner's stated goals: to shrink the size of the proposed hotel to provide more space for planting full canopy trees instead of the proposed columnar trees on Washington Street and to increase pedestrian safety via a wider sidewalk. Article 8 does not adjust the maximum lot coverage percentage in the zoning for the second and third floors of the proposed hotel, which is one of the things limiting the planting of canopy trees along Washington Street. Additionally, Article 8 would not actually create a wider sidewalk for pedestrians than exists today, as 10' of the required 18' would be reserved as a planting strip, effectively leaving only 8' for pedestrian use. This is narrower than the minimum sidewalk width proposed in Article 7 and the same width as the widest portions of the Washington Street sidewalk in the area today.

The petitioner asserts that he was compelled to file Article 8 because the RRSC did not sufficiently push back against the developer of the proposed hotel and did not conduct the analysis necessary to justify the Emerald Island Special District zoning proposal. The Board of Selectmen is convinced with respect to the hotel proposal that the building mass, parking design, sidewalk widths, first floor program and public realm treatment were all improved as a result of the RRSC providing consistent and clear direction to the developer of the proposed hotel. With respect to the overall EISD zoning, the Committee advanced zoning criteria that reflects a balanced approach to incentivizing the desired types of redevelopment while also enhancing the public realm. And, the RRSC proposed zoning resulted from a lengthy and thorough analysis that took into account financial, architectural, and technical concerns.

Article 11 was submitted by the same petitioner as Article 8 with the intent of asking Town Meeting to urge the Board of Selectmen to use its best efforts to widen the sidewalk on Washington Street. If Article 7 passes, the Board expects a conversation about sidewalk widths will occur between the Planning Board, Design Advisory Team and Developer. The Board of Selectmen and in fact encourages that this conversation take place.

The Selectmen understand that the required sidewalk widths for the Special District were discussed at length by the River Road Study Committee, particularly the proposed width for Washington Street. The RRSC completed a substantial amount of architectural design and financial feasibility analysis to confirm that 10' is an appropriate and achievable minimum width on Washington Street. Moreover, the architects on the RRSC confirmed that allowing for a reduction in width to no less than 8' is necessary in order for the design of the first floor of the proposed hotel and more specifically the parking access ramp to be feasible.

The hotel developer has indicated that if Article 8 passes, that they will not be able move forward with the hotel proposal as the feasibility of the parking ramp and internal circulation for the parking will not be feasible. The Board of Selectmen believes this statement to be accurate as it is supported by the analysis the RRSC conducted.
The Selectmen do not disagree in concept with what Article 8 and 11 seek to accomplish, but also understand that passage of Article 8 would prevent the hotel proposal from moving forward, thereby negating all of the public benefits that have been negotiated as well as all of the hard work of the RRSC.

The Selectmen recommend NO ACTION on Articles 8 and 11 by a unanimous vote taken on October 25, 2016.

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ADVISORY COMMITTEE'S RECOMMENDATION

On October 27, 2016, the Advisory Committee voted unanimously to recommend NO ACTION on Article 8. The Committee's full report on Article 8 will be provided in the Supplemental Mailing.

XXX

No Action Was Taken

# ARTICLE 9

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Warrant Article 9 was submitted by the Board of Selectmen and, if passed, would allow the Board to enter into a Restrictive Covenant Agreement with Claremont Brookline Avenue, LLC to guarantee tax revenue on the parcel at 25 Washington Street for 95 years.

By a vote of 23–0–0 the Advisory Committee recommends FAVORABLE ACTION on Article 9.

BACKGROUND:
Article 9 was submitted by the Board of Selectmen. If passed, this Article would allow the Board to enter into an agreement with Claremont Brookline Avenue, LLC, the developer of the parcel at 25 Washington Street, that guarantees 100% of the property tax revenue for 95 years should Claremont sell the property to a nonprofit entity.

Specifically, Article 9 does the following:

1. It defines the parcel of land currently owned by Claremont Brookline Avenue, LLC.
2. It includes a draft of the restrictive covenant that details the schedule of voluntary payments, liens and/or remedies for failure to make the voluntary payments and conditions for terminating the agreement.

The property tax from the parcel is currently estimated to be $1M annually. Brookline has entered into Restrictive Covenant agreements at Brookline Place, Cleveland Circle Cinema, and the former Red Cab site, and it has become the Town's practice to negotiate such agreements, when possible.

DISCUSSION:
The benefits to the Town of an agreement with Claremont Brookline Avenue, LLC are clear: if the property is sold to a tax-exempt entity the Town would continue to receive payments equivalent to the tax revenue for 95 years. The Town has entered into agreements similar to this one at 2-4 Brookline Place, the Cleveland Circle Cinema site and the former Red Cab site, which was also developed by Claremont Company. A tax certainty agreement is recorded on the deed for the property. In order to receive the full benefit of the agreement, the Town must file a notice of extension before 35 years have expired and every 20 years thereafter.

Importantly, this agreement sets the payment amount to be equal to the property tax that would have been levied by the Town and will likely increase over time. When the Town

enters into PILOT agreements directly with nonprofits, the agreement is generally for 25% of the property tax revenue. By seeking such agreements before the property is transferred, Brookline is able to secure the full measure of tax revenue.

Questions were raised about the possibility of this agreement being considered "contract zoning" or whether the Town could extend this agreement to other parcels in the EISD. In the case of contract zoning, Associate Town Counsel Jonathan Simpson believes Articles 7 and 9 could not be considered contract zoning because (1) the benefits to the Town (such as the tax certainty) evaporate should Town Meeting fail to pass the zoning amendment, and (2) the Town is not bound to adopt the proposed zoning changes.

With regards to guaranteeing tax certainty for the other parcels, there is no developer or party with which to negotiate such an agreement.

RECOMMENDATION:
By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 9

NINETH ARTICLE

Submitted by: Board of Selectmen

To see if the Town will accept a Restrictive Covenant, in substantially the same form as the draft attached hereto as Exhibit A and incorporated herein by reference, from Claremont Brookline Development, LLC a Massachusetts limited liability company and the entity owning the eight parcels of land referred to as 25 Washington Street in Brookline, Massachusetts and described below; said Covenant will be upon such terms and conditions as the Board deems in the best interests of the Town with respect to the proposed development of the site referred to as 25 Washington Street and will provide for the future tax certainty of the land and buildings thereon, and authorize the Board of Selectmen to enter into any necessary agreement(s) in furtherance of the purposes of the Restrictive Covenant with respect to the future tax certainty of the land and buildings as more specifically set forth in the Restrictive Covenant.

**Legal Description of 25 Washington Street Property**

The following parcels of land situated in Brookline in the County of Norfolk and said Commonwealth of Massachusetts:

**Parcel One:**
A certain parcel of land with the buildings thereon situate and now numbered 690 and 692 on Brookline Avenue, bounded and described as follows: Northwesterly on Brookline Avenue fifty-three and 29/100 feet (53.29); Northeasterly by land formerly of John Dillon and now or late of Charles A. Crush et al. eighty-nine and 54/100 (89.54) feet; Easterly by River Road forty-four and 51/100 (44.51) feet; Southerly by land now or late of Yiannacopoulus forty-seven and 08/100 (47.08) feet; and Southwesterly by land now or late of Curry seventy-four (74.00) feet. Containing 5,924 square feet.

**Parcel Two:**

A certain parcel of land with the buildings thereon situate and now numbered 9 and 11 on Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two (22.00) feet; Westerly by the parcel next hereinafter described fifty-nine and 30/100 (59.30) feet; Northwesterly five (5.00) feet and Northerly eighteen and 44/100 (18.44) feet by land now or late of Curry, and Easterly by land now or late of Yiannacopoulus sixty-three and 70/100 (63.70) feet. Containing 1,300 square feet.

**Parcel Three:**

A certain parcel of land with the buildings thereon situate and now numbered 13 and 15 on said Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two and 07/100 (22.07) feet; Westerly by land now or late of

Orelovitz thirty-nine and 02/100 (39.02) feet; Northwesterly by the same land seventeen and 50/100 (17.50) feet and by the parcel next hereinafter described twelve (12.00) feet and Easterly by the second parcel herein described fifty-nine and 30/100 (59.30) feet. Containing 1,047 square feet.

**Parcel Four:**

A certain parcel of registered land lying Northwesterly of the third parcel herein described, bounded and described as follows: Westerly by Lot A as shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Northeasterly by land now or formerly by Charles H. Stearns et al. twenty-one and 83/100 (21.83) feet; Southeasterly by the third parcel hereby conveyed twelve (12.00) feet; Southwesterly by land now or formerly of Israel Jacobs ten and 50/100 (10.50) feet; Southeasterly by the same land seven and 72/100 (7.72) feet. Said parcel is shown as Lot B on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed with the Norfolk Registry District with Certificate of Title No. 7071, in Volume 36, and is described in Certificate of Title No. 7072, in said Registry District.

**Parcel Five:**

A certain parcel of registered land with the buildings thereon situate and now numbered 706 and 708 on Brookline Avenue, bounded and described as follows: Northwesterly by Brookline Avenue thirty-eight and 60/100 (38.60) feet; Northeasterly by land now or formerly of Charles H. Stearns et al. thirty-four and 34/100 (34.34) feet; Easterly by Lot B shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Southeasterly by land now or formerly of Israel Jacobs six and 45/100 (6.45) feet; Southerly by lands now or formerly of Israel Jacobs and of Eva Jacobs fifty-four and 73/100 (54.73) feet. Said parcel is shown as Lot A on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed in the Norfolk Registry District with Certificate of Title No. 7071, Vol. 36.

**Parcel Six:**

A certain parcel of land with the buildings thereon situate and now numbered 698 on Brookline Avenue, formerly numbered 27 on Brookline Avenue, bounded and described as follows: Northwesterly by said Brookline Avenue forty-five and 13/100 (45.13) feet; Northeasterly by land now or late of Warren seventy-four (74.00) feet; Southerly in part by land now or late of Yiannacopoulus and in part by land now or late of Warren twenty-eight and 28/100 (28.28) feet; Southeasterly by the last-mentioned land five (5.00) feet; Southwesterly fifty-six and 17/100 (56.17) feet in part by other land now or late of said Warren; being the premises described in Certificate of Title No. 7072 issued from the Norfolk Registry District, and in part by land now or late of Nichelini, being the premises described in Certificate of Title No. 11228 in said Registry District. Containing 2,047 square feet.

**Parcel Seven:**

The land in Brookline, together with the buildings thereon, and shown as Lots A and B on a plan of land in Brookline, Aspinwall & Lincoln, Civil Engineers, dated June 5, 1926, and recorded with Norfolk Deeds, Book 1711, Page 475, and bounded and described as follows:

Commencing at the Southeasterly corner of said premises on Washington Street by land now or formerly of James J. Warren, running Northerly and bounded Easterly by said land now or formerly said of James J. Warren, thirty-nine and 8/100 (39.08) feet to a stake three (3) feet six (6) inches from the end of the building formerly standing thereon; thence running Northeasterly seventeen and 50/100 (17.50) feet, bounded by land now or formerly of said James J. Warren, to a stake; thence turning and running Westerly bounded Northerly by land now or formerly of said James J. Warren, ten and 50/100 (10.50) feet; thence turning and running Southerly bounded Westerly by land now or formerly of said James J. Warren fourteen and 17/100 (14.17) feet to the corner of the dwelling house which formerly stood thereon; thence turning and running Westerly bounded by a 3-foot passageway and land now or formerly of James J. Warren fifty-four and 73/100 (54.73) feet to Brookline Avenue; thence turning and running Southwesterly by said Brookline Avenue fifty-two and 3/100 (52.03) feet; thence turning and running at the junction of Brookline Avenue and Washington Street in a Southeasterly direction as shown on said plan, seven and 79/100 (7.79) feet; thence turning and running Easterly by said Washington Street eighty-three and 96/100 (83.96) feet to the point of beginning; together with the right to pass and re-pass at all times over said 3-foot passageway.

**Parcel Eight:**

All of that certain parcel of land situate in Brookline in the County of Norfolk and said Commonwealth, bounded and described as follows:

Easterly by the Westerly line of River Road, forty-five and 67/100 (45.67) feet; Southeasterly by the Northwesterly line forming the junction of said River Road and Washington Street, thirty-two and 69/100 (32.69) feet; Southerly by the Northerly line of said Washington Street, thirty-eight and 72/100 (38.72) feet; and Westerly, sixty-three and 81/100 (63.81) feet, and Northerly, fifty-six and 92/100 (56.92) feet, by land now or formerly of the Gulf Oil Corporation.

All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 25231A, which is filed in Norfolk Registry District with Certificate No. 53210, Book 267, the same being compiled from a plan drawn by William S. Crocker, Civil Engineer dated June 15, 1954, and additional data on file in the Land Registration Office, all as modified by and approved by the Court.

The legal description of the parcels making up the land at 25 Washington Street in Brookline is also contained in Exhibit A to a Deed recorded on January 12, 2016 at the Norfolk County Registry of Deeds in Book 33782, Page 592 and filed with the Norfolk

Registry District of the Land Court as Document Number 1,345,623 on Certificate of Title Number 192558:

Or act on anything relative thereto.

**Exhibit A:**

**DRAFT**
**AGREEMENT**

Claremont Brookline Avenue LLC, a Massachusetts limited liability company, with a principal place of business at Claremont Companies, One Lakeshore Center, Bridgewater MA 02324, it successors and assigns ("Claremont") and the Town of Brookline, a municipal corporation ("Town"), located in Norfolk County, Massachusetts and acting by and through its Board of Selectmen (the "Board"), is made and entered into this ___ day of _____, 2016, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

**PREAMBLE**

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land along Route 9 and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town's existing property tax revenue; and

WHEREAS, Claremont owns the real property known as and numbered 25 Washington Street (hereinafter the "Premises," the legal description of which is attached hereto as Exhibit "XX") which currently consists of a vacant parcel formally occupied by a gas station, and

WHEREAS, Claremont has proposed the development on the Premises of a modern select service hotel and related parking facilities (the "Project"); and

WHEREAS, the Town requires an easement of approximately 201 square feet of land on the southeast corner of Premises to construct roadway improvements which is more particularly shown on a sketch plan provided by the Town and attached hereto as Exhibit XX (hereinafter the "The Easement") );

WHEREAS, Claremont requires a zoning amendment to construct the Project;

WHEREAS, Claremont acknowledges the value of The Easement to the Project; and

WHEREAS, Claremont has stated to the Town that the Project is not likely to result in a loss of the Town's taxable property, and in order to assure that the Premises will pay taxes or the equivalent thereof in the future it has offered to enter into this Agreement; and

WHEREAS, the Town intends to file a Warrant Article for consideration by Town Meeting toaccept The Easement and authorize the Board of Selectmen to execute and record The Easement from Claremont on certain terms and conditions and upon the assurance that Claremont would enter into an agreement binding upon its successors and assigns with respect to the future payment of taxes or the equivalent thereof; and

WHEREAS, the Town and Claremont seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may be exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third; and

**WHEREAS**, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Claremont have agreed that Claremont and its successors and assigns in title to the Premises will make, during the Term, voluntary payments to the Town in lieu of real estate taxes in circumstances in which Claremont or its successors and assigns in title would not otherwise be obligated to pay real property taxes on the Premises to the Town under applicable law. Voluntary in-lieu of tax payments are in addition to other economic enhancements provided by Claremont in developing the Premises as may be mutually agreed between the Town acting through its Board of Selectmen and Claremont;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Claremont and the Town agree as follows:

1. **Claremont Commitment to Voluntary Annual Payment to the Town**. In each fiscal tax year commencing on the first fiscal year next following the assessment date on which the improvements to be constructed by Claremont on the Premises pursuant to permits and approvals sought by Claremont and granted or issued by the Town acting by and through its departments, boards and commissions are completed and receive a final Certificate of Occupancy from the Town, and for the fiscal years thereafter during which the Premises is being used for an Exempt Use or Uses, as hereinafter defined, and expiring seventy-five years from the Effective Date of this Agreement (the "Term"), CLAREMONT shall make a direct financial contribution to the Town (the "Annual Payment"), and the Town shall accept the Annual Payment in full satisfaction of CLAREMONT's obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 4, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. During the Term, the Annual Payment shall consist of the "Voluntary Payment" more particularly described in Section 2 below. The assessment date shall mean January 1st or another date on which the Town Assessors by statute determine the value of real property for the next following fiscal year.

2. **Voluntary Payment To Be Made by CLAREMONT**. The "Voluntary Payment" shall be paid by CLAREMONT to the Town pursuant to this Agreement in quarterly installments on the

date real property taxes are due and payable in the Town in each applicable fiscal tax year during the Term. The total Voluntary Payment shall be equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the Premises were it not used for an Exempt Use or Uses and thus not exempt from real property taxes under applicable law in the relevant fiscal tax year. CLAREMONT shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided CLAREMONT shall before commencing legal action first use good faith efforts to mediate the issue of valuation with the Assessors. An Exempt Use or Uses shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law that may be adopted during the Term of this Agreement. The Town shall provide CLAREMONT with a written statement of the amount due not less than thirty (30) days prior to the due date.

3. **Termination of Agreement**. The Town or CLAREMONT shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8(a), in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Claremont of taxes, similar assessments or payments in lieu of such taxes on the Premises used for an Exempt Use or Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Claremont. This Agreement shall not in any manner whatsoever restrict the Town's exercise of its police power. Upon transfer of title of the Premises Claremont's obligations under the Agreement shall automatically terminate and the successor owner of the Premises shall be bound by the terms of this Agreement in accordance with the Successor Affirmation set forth in Section 7 of this Agreement.

4. **Representations as to Authority**. *The Town's Authority*. The Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town's Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf, are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction (which the Town will not instigate and has no reason to believe will be forthcoming), the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

*Claremont's Authority*. CLAREMONT represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. CLAREMONT represents that (i) the individual executing and delivering this Agreement on CLAREMONT's behalf, is the incumbent of the office stated under his name, and such offices has been authorized to do so by all necessary corporate action taken by and on the part of CLAREMONT, (ii) the Agreement has been duly and validly authorized, executed and delivered by CLAREMONT, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction (which CLAREMONT will not instigate and has no reason to believe will be forthcoming), the Agreement constitutes the valid and binding obligation of CLAREMONT, enforceable against CLAREMONT in accordance with

its provisions. If a third party challenges the validity and enforceability of this Agreement against CLAREMONT, CLAREMONT agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

**5. Dispute Costs** In any dispute arising from this Agreement, the parties hereby agree that the prevailing party shall be entitled to costs and attorneys' fees, including, but not limited to, any fees and costs incurred in collecting a judgment arising from such action However, prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, the Town and Claremont agree that such disputes shall first be subject to non-binding mediation, for a period not to exceed ninety (90) days. Costs of such mediation shall be shared equally by the Parties.

**6. Lien/Collection Remedies** Upon the failure to make any Voluntary Payment to the Town, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Upon written request from time to time to the Town Tax Collector, the Tax Collector shall provide the record owner of the Premises with a written statement certifying compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

**5. Deed Reference and Affirmation of Successor In Title** CLAREMONT and its successors in title agree that during the Term, that each successive deed to the Premises executed and delivered by the grantor shall contain the following statement:

> "Reference is made to an Agreement by and between Claremont Corporation. and the Town of Brookline dated _____, 2016, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (the 'Payment in Lieu of Tax Agreement'). By acceptance and recording of this deed, the Grantee acknowledges and accepts the Payment in Lieu of Tax Agreement and agrees that the same shall be binding and enforceable against the Grantee in accordance with its terms."

CLAREMONT and such successors in title shall notify the Town in the manner provided in Section 8 hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7. The Town shall not be required to issue the certification provided for in Section 6 hereof absent compliance with Section 7, where applicable.

**6. Miscellaneous Provisions.**

(a) ***Notices.*** ***All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:***

CLAREMONT COMPANIES
One Lakeshore Center
Bridgewater, MA 02324

With a copy to:

Robert Allen, Esq.
Law Offices of Robert L. Allen
10 St. James Avenue
Brookline, MA 02445

to Town of Brookline
Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

___ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) ***Severability/Captions.*** ***The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined***

*by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those CLAREMONT obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.*

(c) *Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.*

(d) *Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.*

(e) *Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 4 and 8(b), survive the Term for so long as applicable; and all of the provisions of this Section 8 shall also survive the Term in relation to any of this Agreement's other surviving provisions.*

(f) *Real Property. All references in this Agreement to real property or property owned by or of CLAREMONT shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.*

(g) *Reservations. The Town and CLAREMONT agree that this Agreement provides the Town with protection of its tax base; but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on CLAREMONT's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, an Exempt Use or Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and CLAREMONT each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or*

***inapplicability of this Agreement. CLAREMONT is entering into this Agreement voluntarily; and nothing in this Agreement or CLAREMONT's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by CLAREMONT of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by CLAREMONT for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by CLAREMONT under, and subject to all of the terms and conditions of, this Agreement.***

(h) ***Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.***

(i) ***Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.***

(j) ***Successor In Title/Recording. This Agreement shall bind CLAREMONT and its successors and assigns in title to the Premises and shall be deemed to "run with the land" for the duration of the Term. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court as appropriate upon execution of this Agreement and approval of all permitting for the Project.***

**IN WITNESS** whereof the parties have executed this Agreement under seal as of the Effective Date.

Claremont Brookline Avenue, LLC

By: The Claremont Company, Inc.
Its Manager

By _____
Elias Patoucheas
President
Hereunto duly authorized

Date: _____

Town of Brookline
Board of Selectmen:

_____

_____

_____

_____

_____

Hereunto duly authorized
Date: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this _____ day of _____, 20___, before me, the undersigned notary public, personally appeared Elias Patoucheas, President of The Claremont Company, Inc, as Manager of Claremont Brookline Avenue, LLC , proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

_____

Notary Public

Personally Known _____
Produced Identification _____
Expires:_____
Type of Identification _____

My Commission

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____ _____, _____, _____ _____ Board of Selectmen, of the Town of Brookline, proved to me through satisfactory evidence of identification to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

_____

Notary Public

Personally Known _____
Produced Identification _____
Expires:_____
Type of Identification _____

My Commission

_____

## PETITIONER'S ARTICLE DESCRIPTION

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

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## SELECTMEN'S RECOMMENDATION

The subject matter of Articles 7, 9 and 10 is the Emerald Island Special District Zoning and the hotel proposal at 25 Washington Street. Please see the Selectmen's Recommendation under Article 7 for a full explanation of the Board's full support of Articles 7, 9 and 10. Also see the Selectmen's Recommendation under Article 8 for a full explanation of the Board's opposition to Articles 8 and 11. By a vote of 5-0 taken on October 25, 2016, the Selectmen recommend FAVORABLE ACTION on the following:

VOTED: That the Town will accept a Restrictive Covenant, in substantially the same form as the draft attached hereto as Exhibit A and incorporated herein by reference, from Claremont Brookline Avenue, LLC a Massachusetts limited liability company and the entity owning the eight parcels of land referred to as 25 Washington Street in Brookline, Massachusetts and described below; said Covenant will be upon such terms and conditions as the Board deems in the best interests of the Town with respect to the proposed development of the site referred to as 25 Washington Street and will provide for the future tax certainty of the land and buildings thereon, and authorize the Board of Selectmen to enter into any necessary agreement(s) in furtherance of the purposes of the Restrictive Covenant with respect to the future tax certainty of the land and buildings as more specifically set forth in the Restrictive Covenant.

### Legal Description of 25 Washington Street Property

The following parcels of land situated in Brookline in the County of Norfolk and said Commonwealth of Massachusetts:

Parcel One: A certain parcel of land with the buildings thereon situate and now numbered 690 and 692 on Brookline Avenue, bounded and described as follows: Northwesterly on Brookline Avenue fifty-three and 29/100 feet (53.29); Northeasterly by land formerly of John Dillon and now or late of Charles A. Crush et al. eighty-nine and 54/100 (89.54) feet; Easterly by River Road forty-four and 51/100 (44.51) feet; Southerly by land now or late of Yiannacopoulus forty-seven and 08/100 (47.08) feet; and Southwesterly by land now or late of Curry seventy-four (74.00) feet. Containing 5,924 square feet.

Parcel Two: A certain parcel of land with the buildings thereon situate and now numbered 9 and 11 on Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two (22.00) feet; Westerly by the parcel next hereinafter described fiftynine and 30/100 (59.30) feet; Northwesterly five (5.00) feet and Northerly eighteen and 44/100 (18.44) feet by land now or late of Curry, and Easterly by land now or late of Yiannacopoulus sixty-three and 70/100 (63.70) feet. Containing 1,300 square feet. 50

Parcel Three: A certain parcel of land with the buildings thereon situate and now numbered 13 and 15 on said Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two and 07/100 (22.07) feet; Westerly by land now or late of Orelovitz thirty-nine and 02/100 (39.02) feet; Northwesterly by the same land seventeen and 50/100 (17.50) feet and by the parcel next hereinafter described twelve (12.00) feet and Easterly by the second parcel herein described fifty-nine and 30/100 (59.30) feet. Containing 1,047 square feet.

Parcel Four: A certain parcel of registered land lying Northwesterly of the third parcel herein described, bounded and described as follows: Westerly by Lot A as shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Northeasterly by land now or formerly by Charles H. Stearns et al. twenty-one and 83/100 (21.83) feet; Southeasterly by the third parcel hereby conveyed twelve (12.00) feet; Southwesterly by land now or formerly of Israel Jacobs ten and 50/100 (10.50) feet; Southeasterly by the same land seven and 72/100 (7.72) feet. Said parcel is shown as Lot B on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed with the Norfolk Registry District with Certificate of Title No. 7071, in Volume 36, and is described in Certificate of Title No. 7072, in said Registry District.

Parcel Five: A certain parcel of registered land with the buildings thereon situate and now numbered 706 and 708 on Brookline Avenue, bounded and described as follows: Northwesterly by Brookline Avenue thirty-eight and 60/100 (38.60) feet; Northeasterly by land now or formerly of Charles H. Stearns et al. thirty-four and 34/100 (34.34) feet; Easterly by Lot B shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Southeasterly by land now or formerly of Israel Jacobs six and 45/100 (6.45) feet; Southerly by lands now or formerly of Israel Jacobs and of Eva Jacobs fifty-four and 73/100 (54.73) feet. Said parcel is shown as Lot A on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed in the Norfolk Registry District with Certificate of Title No. 7071, Vol. 36.

Parcel Six: A certain parcel of land with the buildings thereon situate and now numbered 698 on Brookline Avenue, formerly numbered 27 on Brookline Avenue, bounded and described as follows: Northwesterly by said Brookline Avenue forty-five and 13/100 (45.13) feet; Northeasterly by land now or late of Warren seventy-four (74.00) feet; Southerly in part by land now or late of Yiannacopoulus and in part by land now or late of Warren twentyeight and 28/100 (28.28) feet; Southeasterly by the last-mentioned land five (5.00) feet; Southwesterly fifty-six and 17/100 (56.17) feet in part by other land now

or late of said 51 Warren; being the premises described in Certificate of Title No. 7072 issued from the Norfolk Registry District, and in part by land now or late of Nichelini, being the premises described in Certificate of Title No. 11228 in said Registry District. Containing 2,047 square feet.

Parcel Seven: The land in Brookline, together with the buildings thereon, and shown as Lots A and B on a plan of land in Brookline, Aspinwall & Lincoln, Civil Engineers, dated June 5, 1926, and recorded with Norfolk Deeds, Book 1711, Page 475, and bounded and described as follows: Commencing at the Southeasterly corner of said premises on Washington Street by land now or formerly of James J. Warren, running Northerly and bounded Easterly by said land now or formerly said of James J. Warren, thirty-nine and 8/100 (39.08) feet to a stake three (3) feet six (6) inches from the end of the building formerly standing thereon; thence running Northeasterly seventeen and 50/100 (17.50) feet, bounded by land now or formerly of said James J. Warren, to a stake; thence turning and running Westerly bounded Northerly by land now or formerly of said James J. Warren, ten and 50/100 (10.50) feet; thence turning and running Southerly bounded Westerly by land now or formerly of said James J. Warren fourteen and 17/100 (14.17) feet to the corner of the dwelling house which formerly stood thereon; thence turning and running Westerly bounded by a 3-foot passageway and land now or formerly of James J. Warren fifty-four and 73/100 (54.73) feet to Brookline Avenue; thence turning and running Southwesterly by said Brookline Avenue fifty-two and 3/100 (52.03) feet; thence turning and running at the junction of Brookline Avenue and Washington Street in a Southeasterly direction as shown on said plan, seven and 79/100 (7.79) feet; thence turning and running Easterly by said Washington Street eighty-three and 96/100 (83.96) feet to the point of beginning; together with the right to pass and re-pass at all times over said 3-foot passageway.

Parcel Eight: All of that certain parcel of land situate in Brookline in the County of Norfolk and said Commonwealth, bounded and described as follows: Easterly by the Westerly line of River Road, forty-five and 67/100 (45.67) feet; Southeasterly by the Northwesterly line forming the junction of said River Road and Washington Street, thirty-two and 69/100 (32.69) feet; Southerly by the Northerly line of said Washington Street, thirty-eight and 72/100 (38.72) feet; and Westerly, sixty-three and 81/100 (63.81) feet, and Northerly, fifty-six and 92/100 (56.92) feet, by land now or formerly of the Gulf Oil Corporation. All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 25231A, which is filed in Norfolk Registry District with Certificate No. 53210, Book 267, the same being compiled from a plan drawn by William S. Crocker, Civil Engineer dated June 15, 1954, and additional data on file in the Land Registration Office, all as modified by and approved by the Court. 52 The legal description of the parcels making up the land at 25 Washington Street in Brookline is also contained in Exhibit A to a Deed recorded on January 12, 2016 at the Norfolk County Registry of Deeds in Book 33782, Page 592 and filed with the Norfolk Registry District of the Land Court as Document Number 1,345,623 on Certificate of Title Number 192558:

Passed by a unanimous Vote
with 4 abstentions

## ADVISORY COMMITTEE'S RECOMMENDATION

On October 27, 2016, the Advisory Committee voted unanimously to recommend FAVORABLE ACTION on the motion offered by the Selectmen. The Committee's full report on Article 9 will be provided in the Supplemental Mailing.

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# ARTICLE 10

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Article 10 authorizes the Board of Selectmen to enter into and amend any agreements that are necessary to carry out the terms of the Restrictive Covenant and Memorandum of Agreement (MOA) between the Town and Claremont Brookline Avenue, LLC. The MOA details specific benefits to the Town that include the tax certainty agreement, shared maintenance for parkland, limits on the number of parking spaces and hotel rooms and shared parking ramp access for a neighboring building.

The Advisory Committee by a vote of 23–0–0 recommends FAVORABLE ACTION on Article 10.

BACKGROUND:
The terms of the MOA, negotiated by the Planning and Community Development Department and Selectman Ben Franco, chair of the River Road Study Committee, include:

- The Town and Claremont Brookline Avenue, LLC enter into a PILOT agreement that is recorded in the chain of title on the deed to guarantee tax certainly for 95 years;
- Claremont will provide public benefits estimated to be $376K to mitigate the cost of bike, pedestrian and landscape improvements as well as participate in shared maintenance of the parkland;
- Claremont will make a one-time payment equal to 1% of hard construction costs for parks and public realm improvements;
- Claremont will design and construct the building to accommodate shared parking ramp access for future development on an adjoining parcel;
- Claremont will grant the Town a permanent easement for the planned Gateway East improvements on Washington Street;
- Claremont agrees to limit the number of hotel rooms to 175 and number of parking spaces to 70.

DISCUSSION:
The terms laid out in Article 10 are favorable to the Town as they protect an estimated $1M annually in tax revenue, limit the scope of the hotel and parking on the site, offset the costs of improved bike and pedestrian zones, and accommodate future development on adjoining parcels.

The inclusion of shared parking ramp access was deemed necessary due to the lot size and shape, as well as the zoning requirements in Article 7 which prohibit surface parking and require the aggregation of parcels to "unlock" the new zoning.

RECOMMENDATION:
By a vote of 23-0-0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 10

TENTH 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 or other action(s) required to carry out the terms and conditions set forth in that certain Memorandum of Agreement and Restrictive Covenant between the Town and Claremont Brookline Avenue, LLC, a Massachusetts limited liability company and the entity owning the eight parcels of land referred to as 25 Washington Street in Brookline, Massachusetts in connection with a proposed hotel development consisting of approximately 153,000 square feet and containing a maximum of 175 hotel rooms and a maximum of 70 structured parking spaces; as further described below, said Memorandum of Agreement and Restrictive Covenants to include the following terms at a minimum: 1) limiting the number of hotel rooms to a maximum of 175; 2) limiting the number of structured parking spaces to a maximum of 70 spaces; 3) requiring the owner to provide a shared parking ramp design for the building for future adjacent developments; 4) providing public benefits to mitigate the impact of the proposed project including but not limited to pedestrian, bicycle and landscaping improvements; a traffic impact study and mitigation measures; and maintenance of nearby parkland; 5) granting the Town a future easement on the property in connection with the Gateway East Project; 6) providing a 75-year payment in lieu of tax agreement to protect the tax certainty of the property, in substantially the same form as the draft attached as Exhibit A to Article 9 of this Warrant and incorporated herein by reference; and 7) requiring that the agreement(s) be recorded in the chain of title; and upon any further terms and conditions that the Board deems in the best interest of the Town with respect to the proposed development of the said described land.

**Legal Description of 25 Washington Street Property**

The following parcels of land situated in Brookline in the County of Norfolk and said Commonwealth of Massachusetts:

**Parcel One:**
A certain parcel of land with the buildings thereon situate and now numbered 690 and 692 on Brookline Avenue, bounded and described as follows: Northwesterly on Brookline Avenue fifty-three and 29/100 feet (53.29); Northeasterly by land formerly of John Dillon and now or late of Charles A. Crush et al. eighty-nine and 54/100 (89.54) feet; Easterly by River Road forty-four and 51/100 (44.51) feet; Southerly by land now or late of Yiannacopoulus forty-seven and 08/100 (47.08) feet; and Southwesterly by land now or late of Curry seventy-four (74.00) feet. Containing 5,924 square feet.

**Parcel Two:**

A certain parcel of land with the buildings thereon situate and now numbered 9 and 11 on Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two (22.00) feet; Westerly by the parcel next hereinafter described fifty-nine and 30/100 (59.30) feet; Northwesterly five (5.00) feet and Northerly eighteen and 44/100 (18.44) feet by land now or late of Curry, and Easterly by land now or late of Yiannacopoulus sixty-three and 70/100 (63.70) feet. Containing 1,300 square feet.

**Parcel Three:**

A certain parcel of land with the buildings thereon situate and now numbered 13 and 15 on said Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two and 07/100 (22.07) feet; Westerly by land now or late of Orelovitz thirty-nine and 02/100 (39.02) feet; Northwesterly by the same land seventeen and 50/100 (17.50) feet and by the parcel next hereinafter described twelve (12.00) feet and Easterly by the second parcel herein described fifty-nine and 30/100 (59.30) feet. Containing 1,047 square feet.

**Parcel Four:**

A certain parcel of registered land lying Northwesterly of the third parcel herein described, bounded and described as follows: Westerly by Lot A as shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Northeasterly by land now or formerly by Charles H. Stearns et al. twenty-one and 83/100 (21.83) feet; Southeasterly by the third parcel hereby conveyed twelve (12.00) feet; Southwesterly by land now or formerly of Israel Jacobs ten and 50/100 (10.50) feet; Southeasterly by the same land seven and 72/100 (7.72) feet. Said parcel is shown as Lot B on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed with the Norfolk Registry District with Certificate of Title No. 7071, in Volume 36, and is described in Certificate of Title No. 7072, in said Registry District.

**Parcel Five:**

A certain parcel of registered land with the buildings thereon situate and now numbered 706 and 708 on Brookline Avenue, bounded and described as follows: Northwesterly by Brookline Avenue thirty-eight and 60/100 (38.60) feet; Northeasterly by land now or formerly of Charles H. Stearns et al. thirty-four and 34/100 (34.34) feet; Easterly by Lot B shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Southeasterly by land now or formerly of Israel Jacobs six and 45/100 (6.45) feet; Southerly by lands now or formerly of Israel Jacobs and of Eva Jacobs fifty-four and 73/100 (54.73) feet. Said parcel is shown as Lot A on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed in the Norfolk Registry District with Certificate of Title No. 7071, Vol. 36.

**Parcel Six:**

A certain parcel of land with the buildings thereon situate and now numbered 698 on Brookline Avenue, formerly numbered 27 on Brookline Avenue, bounded and described as follows: Northwesterly by said Brookline Avenue forty-five and 13/100 (45.13) feet; Northeasterly by land now or late of Warren seventy-four (74.00) feet; Southerly in part by land now or late of Yiannacopoulus and in part by land now or late of Warren twenty-eight and 28/100 (28.28) feet; Southeasterly by the last-mentioned land five (5.00) feet; Southwesterly fifty-six and 17/100 (56.17) feet in part by other land now or late of said Warren; being the premises described in Certificate of Title No. 7072 issued from the Norfolk Registry District, and in part by land now or late of Nichelini, being the premises described in Certificate of Title No. 11228 in said Registry District. Containing 2,047 square feet.

**Parcel Seven:**

The land in Brookline, together with the buildings thereon, and shown as Lots A and B on a plan of land in Brookline, Aspinwall & Lincoln, Civil Engineers, dated June 5, 1926, and recorded with Norfolk Deeds, Book 1711, Page 475, and bounded and described as follows:

Commencing at the Southeasterly corner of said premises on Washington Street by land now or formerly of James J. Warren, running Northerly and bounded Easterly by said land now or formerly said of James J. Warren, thirty-nine and 8/100 (39.08) feet to a stake three (3) feet six (6) inches from the end of the building formerly standing thereon; thence running Northeasterly seventeen and 50/100 (17.50) feet, bounded by land now or formerly of said James J. Warren, to a stake; thence turning and running Westerly bounded Northerly by land now or formerly of said James J. Warren, ten and 50/100 (10.50) feet; thence turning and running Southerly bounded Westerly by land now or formerly of said James J. Warren fourteen and 17/100 (14.17) feet to the corner of the dwelling house which formerly stood thereon; thence turning and running Westerly bounded by a 3-foot passageway and land now or formerly of James J. Warren fifty-four and 73/100 (54.73) feet to Brookline Avenue; thence turning and running Southwesterly by said Brookline Avenue fifty-two and 3/100 (52.03) feet; thence turning and running at the junction of Brookline Avenue and Washington Street in a Southeasterly direction as shown on said plan, seven and 79/100 (7.79) feet; thence turning and running Easterly by said Washington Street eighty-three and 96/100 (83.96) feet to the point of beginning; together with the right to pass and re-pass at all times over said 3-foot passageway.

**Parcel Eight:**

All of that certain parcel of land situate in Brookline in the County of Norfolk and said Commonwealth, bounded and described as follows:

Easterly by the Westerly line of River Road, forty-five and 67/100 (45.67) feet; Southeasterly by the Northwesterly line forming the junction of said River Road and Washington Street, thirty-two and 69/100 (32.69) feet; Southerly by the Northerly line of said Washington Street, thirty-eight and 72/100 (38.72) feet; and Westerly, sixty-three

and 81/100 (63.81) feet, and Northerly, fifty-six and 92/100 (56.92) feet, by land now or formerly of the Gulf Oil Corporation.

All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 25231A, which is filed in Norfolk Registry District with Certificate No. 53210, Book 267, the same being compiled from a plan drawn by William S. Crocker, Civil Engineer dated June 15, 1954, and additional data on file in the Land Registration Office, all as modified by and approved by the Court.

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

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

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

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

- Description of the Proposed Project
  - 153,000 +/- gross square feet
  - Maximum of 175 hotel rooms
  - Maximum of 70 structured parking spaces
- Provision for the developer to pay an amount equal to 1% of the hard construction costs, exclusive of tenant fit-out, to be used towards improvements to River Road
- Terms related to the development of a "Shared Parking Ramp Design" allowing neighboring parcels to utilize the Proposed Project's parking ramp so as to limit traffic

congestion on neighboring streets and allow for more efficient structured parking in future developments

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

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

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## SELECTMEN'S RECOMMENDATION

The subject matter of Articles 7, 9 and 10 is the Emerald Island Special District Zoning and the hotel proposal at 25 Washington Street. Please see the Selectmen's Recommendation under Article 7 for a full explanation of the Board's full support of Articles 7, 9 and 10. Also see the Selectmen's Recommendation under Article 8 for a full explanation of the Board's opposition to Articles 8 and 11.

By a vote of 5-0 taken on October 25, 2016, the Selectmen recommend FAVORABLE ACTION on the following:

That the Town authorize the Board of Selectmen to enter into any necessary agreement(s) and/or amendments to existing agreements or other action(s) required to carry out the terms and conditions set forth in that certain Memorandum of Agreement and Restrictive Covenant between the Town and Claremont Brookline Avenue, LLC, a Massachusetts limited liability company and the entity owning the eight parcels of land referred to as 25 Washington Street in Brookline, Massachusetts in connection with a proposed hotel development consisting of approximately 153,000 square feet and containing a maximum of 175 hotel rooms and a maximum of 70 structured parking spaces; as further described below, said Memorandum of Agreement and Restrictive Covenants to include the following terms at a minimum: 1) limiting the number of hotel rooms to a maximum of 175; 2) limiting the number of structured parking spaces to a maximum of 70 spaces; 3) requiring the owner to provide a shared parking ramp design for the building for future adjacent developments; 4) providing public benefits to mitigate the impact of the proposed project including but not limited to pedestrian, bicycle and landscaping

improvements; a traffic impact study and mitigation measures; and maintenance of nearby parkland; 5) granting the Town a future easement on the property in connection with the Gateway East Project; 6) providing a 95-year payment in lieu of tax agreement to protect the tax certainty of the property, in substantially the same form as the draft attached as Exhibit A to Article 9 of this Warrant and incorporated herein by reference; and 7) requiring that the agreement(s) be recorded in the chain of title; and upon any further terms and conditions that the Board deems in the best interest of the Town with respect to the proposed development of the said described land.

Passed by a unanimous vote

ADVISORY COMMITTEE'S RECOMMENDATION

On October 27, 2016, the Advisory Committee voted unanimously to recommend FAVORABLE ACTION on the motion offered by the Selectmen. The Committee's full report on Article 10 will be provided in the Supplemental Mailing.

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# ARTICLE 11

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Article 11 was submitted as a citizen petition in the event that Article 7 (special zoning for the EISD) fails. It was submitted as a resolution version of Article 8, which focuses on the minimum sidewalk width along Washington Street. Like Article 8, it seeks to increase the minimum total sidewalk zone width from 10' to 18' (8' minimum sidewalk plus a 10' minimum planting strip).

By a vote of 12–11–0, the Advisory Committee recommends NO ACTION on Article 11.

BACKGROUND:
Article 11 was submitted by Hugh Mattison (TMM-5), a member of the River Road Study Committee (RRSC) and chair of the Tree Planting Committee. Article 11 seeks to change only one aspect of the zoning changes that were recommended by the RRSC—that of the minimum sidewalk width along Washington Street. Article 11 contains the same provisions as Article 8, but is framed as a resolution in the event that neither Article 7 or 8 passes.

Article 7 calls for the sidewalk along Washington Street to be at least 10 feet wide, but allows this to be reduced for a portion of the street frontage by Special Permit, recognizing the irregular geometry and constrained size of the site, compounded by the somewhat late addition of a cycle track as part of the Gateway East DOT project. The new hotel plans to pursue this relief, showing a sidewalk width that averages 10'-8" wide along Washington Street, although approximately one-third of the frontage is less than the 10'-0" minimum, necking down to 8'-0" for approximately 5'-0" in length. (The new cycle track is an additional 5'-0" in width, and is not included in the sidewalk width calculation.)

Petitioner is concerned that the sidewalk width described in Article 7, which follows the recommendations of the RRSC, is not adequate to accommodate all planned uses (pedestrians, street furniture, plantings, etc.) and that the current hotel design will be produce a streetscape that is either devoid of street trees, or has trees that are too columnar in appearance. For this reason petitioner is proposing that an additional 8 feet be added to the "sidewalk zone" for a total of 18 feet—8 feet of this for the actual sidewalk and 10 feet for a new planting strip, with no option to reduce the width along Washington Street by Special Permit. Petitioner's goal is to create a planting zone enough to support large-scale full canopy street trees such as those proposed at 2 Brookline Place.

DISCUSSION:
After the petitioner's initial presentation at a September 21, 2016 public hearing, it became clear that the original objective of Articles 8 and 11 was to increase the building setback along the entire Washington Street frontage in order to allow the addition of large street trees. The original language of both Articles, however, refers to *sidewalk width* only. In fact, the proposed hotel design achieves the minimum sidewalk widths described in Article 11 by overhanging the upper stories over the sidewalk zone by approximately 3 feet, which is allowed because it is still within the property lines.

Subsequent to this hearing, petitioner amended the last paragraph of Article 11 as follows:

> BE IT FURTHER RESOLVED that Brookline Town Meeting urges the Board of Selectmen to ~~require a sidewalk of at least 18 feet, on the south property line of 25 Washington Street (Parcel ID 135-01-00) to include a 10 foot planting strip, with the final design of all landscaping in this strip to be determined by the Director of Parks and Open Space, or his/her designee~~ **use their best efforts to widen the sidewalk at 25 Washington Street enough to allow a planting strip that includes a row of full-canopy trees to separate the proposed cycle track from pedestrians;**

Members of the Advisory Committee questioned why petitioner identified the Selectmen rather than the Planning Board in this clause, since the Planning Board would be responsible for reviewing any future project proposal. Petitioner did not feel strongly about which group was identified and suggested both could be named.

Although Article 11 could coexist with Article 7 in theory, it seems unlikely that the amended version could be actually implemented because the design analysis performed to date by the RRSC as well as the Claremont Company illustrates that there is not adequate space for full canopy trees on Washington Street given the minimum clearances required for a hotel and its above-grade parking. Several members of the Advisory Committee, however, expressed their appreciation for the goals of Article 11 and for bringing the matter to the attention of the broader public. Ultimately, a narrow majority of the Advisory Committee felt that recommending Favorable Action on Article 7 would send a confusing message and could jeopardize the viability of the entire development.

RECOMMENDATION:
By a vote of 12–11–0, the Advisory Committee recommends NO ACTION on Article 11.

## ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Hugh Mattison, TMM5

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

WHEREAS, the 2005-2015 Comprehensive Plan for Brookline developed by over 30 residents identifies the following goals and strategies to:

- Create an attractive new gateway to the town at Brookline Village;
- Improve pedestrian amenities and safety throughout the (Route Nine) corridor;
- Create a visual gateway to the Town of Brookline at the Boston line;

WHEREAS, the Emerald Island Special District was formed to build on the vision articulated in the recently completed M.I.T. study of Route 9 East (December 2015) in which over 70 residents participated recommends transforming the Boylston/Washington Street corridor into a "safe, multi-model Complete Street;

WHEREAS, the Brookline Complete Streets Policy adopted in 2016 to further the Massachusetts Department of Transportation (MassDOT) transportation goal of shifting users to more healthful and sustainable transportation modes and to comply with M.G.L. Chapter 90I, §1 eligibility requirements to receive funding under MassDOT's Complete Streets Program, the Town's transportation projects shall be designed and implemented to provide safe and comfortable access for healthful transportation choices such as walking, bicycling, and mass transit;

WHEREAS, this section of Washington Street will be even more heavily travelled by pedestrians once the proposed hotel, and construction of Two Brookline Place, are complete;

WHEREAS, the proposed sidewalk width of 8-11 feet is inadequate to provide comfortable walkability abutting a 110'-tall building, does not allow separation between the pedestrian path and the proposed bicycle cycle track or allow planting of large-canopy street trees;

WHEREAS, this represents a once-in-a-generation opportunity to improve this Brookline gateway and maintain the visual character with a sidewalk width/setback similar to other nearby buildings;

THEREFORE, BE IT RESOLVED that Brookline Town Meeting supports the vision expressed in previous reports to create an inviting gateway to Brookline at Washington Street which will increase pedestrian safety, provide visual amenity, contribute to healthier air quality, and enhance the streetscape;

BE IT FURTHER RESOLVED that Brookline Town Meeting urges the Board of Selectmen to require a sidewalk of at least 18 feet, on the south property line of 25 Washington Street (Parcel ID 135-01-00) to include a 10 foot planting strip, with the final design of all landscaping in this strip to be determined by the Director of Parks and Open Space, or his/her designee;

Passed by an Electronic Recorded Vote of 153 Dry Favor 40 Opposed and 11 Absentees

~~Or act on anything relative thereto.~~

PETITIONER'S ARTICLE DESCRIPTION

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

**Background**

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

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

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

In May 2016, the Selectmen adopted the Complete Streets Policy. To meet the objective of accommodating pedestrians, and "to further the Massachusetts Department of Transportation (MassDOT) transportation goal of shifting users to more healthful and sustainable transportation modes and to comply with M.G.L. Chapter 90I, §1 eligibility requirements to receive funding under MassDOT's Complete Streets Program, the Town's transportation projects shall be designed and implemented to provide safe and comfortable access for healthful transportation choices such as walking, bicycling, and mass transit." The Policy further states "Achieving these objectives will require context-sensitive treatments and operational strategies to balance the needs of all users", "the safety, comfort, and convenience of vulnerable users [i.e. pedestrians] must be fully considered", and "private land to be incorporated into the public way by the Town should comply with the Complete Streets Policy."

Most recently, in 2015 the MIT Department of Urban Studies and Planning issued a report Bringing Back Boylston: A Vision and Action Plan for Route 9 East. It recommended "public realm improvements that enhance the pedestrian experience."
This warrant article seeks to make the development of the Emerald Island Special District (EISD) compatible with other development planned as part of Gateway East and contribute to realizing the green, pedestrian-friendly vision that has been expressed in prior studies.

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

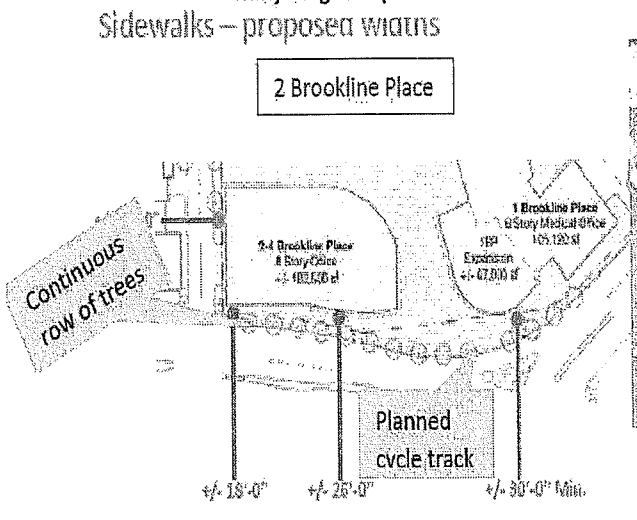
At the very edge of town, a safe, green connection with the Huntington Avenue Green Line and bus routes is necessary. The currently planned narrow, almost tree-less sidewalk in front of 25 Washington Street offered by Claremont is the exception to a greening process that Brookline has already agreed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

## Sidewalk Width at 25 Washington Street (Continued)

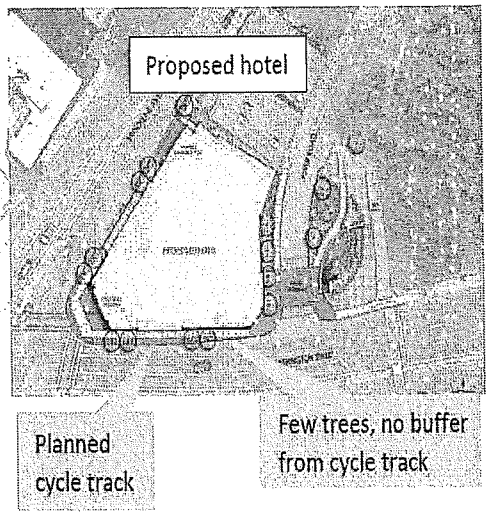
Specifically, passage of this warrant article would create a 10-foot wide planting strip between the planned cycle track and 8′ pedestrian walkway section in front of 25 Washington Street.

- separate pedestrians from other traffic
- extend the green of the Emerald Necklace into Brookline Village
- honor previous plans
- mitigate the effect of an abutting tall building
- reduce traffic noise and improve air quality
- provide visual amenity and a welcoming entrance to Brookline
- continuous row of trees
- create a safe setting that encourages walkability

Mikyoung kim plan




Claremont plan



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

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

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

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## SELECTMEN'S RECOMMENDATION

The subject matter of Article 8 is alternative zoning to the zoning proposed under Article 7. The subject matter of Article 11 is a resolution related to the proposed sidewalk width along Washington Street. See the Selectmen's recommendation under Article 8 for a full explanation of the Board's opposition to Articles 8 and 11.

By a vote of 5-0 taken on October 25, 2016, the Selectmen recommend NO ACTION on Article 11.

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## ADVISORY COMMITTEE'S RECOMMENDATION

On October 27, 2016, the Advisory Committee voted 12-11-0 to recommend NO ACTION on the motion to be offered by the petitioner under Article 11. The Committee's full report on Article 11 will be provided in the Supplemental Mailing.

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## ARTICLE 12

### TWELVTH ARTICLE

Submitted by: Board of Selectmen

To see whether the Town will authorize the Board of Selectmen to lease, for a term not to exceed ten years, the following property, including land, buildings and Town-owned light poles, upon such terms and conditions the Selectmen determine to be in the best interest of the Town:

1. A portion of 870 Hammond Street (The Municipal Service Center), and
2. Town-owned light polls on the following streets and ways:

| | |
|---|---|
| Addington Road | High Street Place |
| Allandale Road | Holland Road |
| Aston Road | Lagrange Street |
| Bonad Road | Laurel Road |
| Chestnut Street | Lee Street |
| Clyde Street | Leland Road |
| Cotswold Road | Meadowbrook Road |
| Druce Street | Newton Street |
| Dudley Street | Olmsted Road |
| Fisher Street | Payson Road |
| Gardner Road | Philbrick Road |
| Greenough Street | Pine Road |
| Goddard Avenue | Rockwood Street |
| Grassmere Road | Tappan Street |
| Grove Street | Warren Street |
| Harvard Avenue | West Roxbury Parkway |
| Heath Street | Zanthus Road |

Or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

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

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## SELECTMEN'S RECOMMENDATION

This article calls for the leasing of Town owned property including town owned public utility poles. In November, 2005 Town Meeting authorized the Board to enter into a lease in order to construct a Distributed Antenna System (DAS). The Town is nearing the end of its lease period with Extenet Systems. This warrant article would authorize the Selectmen to either extend or enter into a lease agreement for a new 10-year term. Changes to the system are subject to the Planning Board's Design Review process and other system changes would also require a public hearing for a grant of location by this Board.

This system has served South Brookline well in to mitigating Cellular and PCS coverage gaps in the South Brookline area, and it is recommended that the agreement continue. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on September 27, 2016 on the following vote:

VOTED: That the Town authorize the Board of Selectmen to lease, for a term not to exceed ten years, the following property, including land, buildings and Town-owned light poles, upon such terms and conditions as the Selectmen determine to be in the best interest of the Town:

1. A portion of 870 Hammond Street (The Municipal Service Center), and
2. Town-owned light poles on the following streets and ways:

| | |
|---|---|
| Addington Road | High Street Place |
| Allandale Road | Holland Road |
| Aston Road | Lagrange Street |
| Bonad Road | Laurel Road |
| Chestnut Street | Lee Street |
| Clyde Street | Leland Road |
| Cotswold Road | Meadowbrook Road |
| Druce Street | Newton Street |
| Dudley Street | Olmsted Road |
| Fisher Avenue | Payson Road |
| Gardner Road | Philbrick Road |
| Greenough Street | Pine Road |
| Goddard Avenue | Rockwood Street |
| Grassmere Road | Tappan Street |
| Grove Street | Warren Street |
| Harvard Avenue | West Roxbury Parkway |
| Heath Street | Zanthus Road |

Passed by a Unanimous Vote

## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 12 will authorize a 10-year Lease of light poles and land at the Municipal Service Center, as well as Town-owned light poles, for the continuation of the Town's Distributed Antenna System (DAS). A DAS consists of small boxes and whip antennas placed on utility poles. Related mechanical equipment can be located at a distance from the poles and are connected by underground cables. The DAS provides improved cell coverage and is in lieu of a large, unsightly tower.

By a vote of 21–0–1 the Advisory Committee recommends FAVORABLE ACTION.

BACKGROUND:
Town Meeting's approval is required in order to authorize the Selectmen to renew or extend a 10-year lease with ExteNet, a "neutral" provider of space on poles for various mobile providers–Verizon, ATT, T-Mobile and Sprint. Long-term telecommunication leases (defined as ten years) are subject to M.G.L.c30B and require, according to the Town's By-law, the approval of Town Meeting.

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

DISCUSSION:
ExteNet proposes to install 13 new DAS nodes, including 7 replacement poles, 5 new utility poles and an exchange of equipment on an existing pole. New conduits, fiber optic cables and equipment will be placed on each pole.

Neighborhoods where additional nodes will be located include Brookline Village, Aspinwall Hill, Fisher Hill and the Town Green area (east of the Brookline Reservoir). This should result in better wireless cell and data service to Brookline residents and other in the Town. According to the Planning Board, the new poles will be an improvement because the existing ExteNet wires are on the outside of the poles and the new wires will be inside the poles. New wiring will also be on the inside of the poles.

The location of the five new poles is still being considered, but the goal is to make coverage better throughout Brookline.

Brookline leases the right to use Town poles. The Town gets revenue, currently $32,000 per year, but it is expected to go up to $50,000. When the poles are replaced, there are certain requirements set out by the Town that must be adhered to.

RECOMMENDATION:
By a vote of 21 in favor, 0 opposed with 1 abstention the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Article 5.8 of the Town's General By-Laws pertaining to Signs as follows: (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE 5.8
SIGN BY-LAW

SECTION 5.8.1 PURPOSE
Pursuant to the authority conferred by General Laws, Chapter 93, Section 29, and every other power and authority thereto pertaining, the Town of Brookline adopts this Bylaw for the regulation and restriction of ~~billboards~~, signs ~~and other advertising devices~~ within the Town ***and on Town property*** on public ways. ~~or on private property within public view of a public way, public park or reservation.~~

SECTION 5.8.2 DEFINITIONS

~~Accessory Sign: Any billboard, sign or other advertising device that advertises, calls attention to, or indicates the person occupying the premises on which the sign is erected or the business transacted thereon, or advertises the property itself or any part thereof as for sale or to let, and which contains no other advertising matter. The words "Accessory Sign" shall include an "on premise" sign as defined and permitted by the Zoning By-law.~~

~~Non-Accessory Sign: Any sign not an accessory sign.~~

~~"Person" and "whoever" shall include a corporation, society, association and partnership.~~

~~Public Way shall include a private way that is open to public use. Sign:~~

~~"Sign" shall mean and include any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction, or is designated to attract the eye by intermittent or repeated motion or illumination, which is on a public way or on private property within public view of a public way, public park or reservation.~~

***Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:***

i. ***Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.***
ii. ***Town of Brookline government signs, including signs permitted by the Town on Town property.***
iii. ***Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.***
iv. ***National , state or municipal flags, or the official flag of any institution.***
v. ***War Veteran markers installed within the public right of way at locations designated by the town's naming committee.***
vi. ***Holiday lights and decorations.***

Sign, Area of:

For a sign, either free-standing or attached, the area shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself.(b) For a sign painted upon or applied to a building, the area shall be considered to include all lettering, wording, and accompanying designs or symbols together with any backing of a different color than the finish material of the building face. (c) Where the sign consists of individual letters or symbols attached to or painted on a surface, building, wall or window, the areas shall be considered to be that of the smallest rectangle or other convex shape which encompasses all of the letters and symbols.

Zoning By-law: The Zoning By-law of the Town of Brookline which as from time to time is in force and effect.

SECTION 5.8.3 ~~ACCESSORY~~ SIGNS
~~Accessory signs shall be permitted as regulated and permitted by the Zoning By-law. No person shall erect, display or maintain an accessory sign except as permitted by the Zoning By-law. The Zoning By-law is incorporated herein by reference.~~

Signs shall be permitted as regulated and permitted by the Zoning By-law. No person shall erect, display or maintain a sign except as permitted by the ***Planning Board and/or Planning and Community Development Department Staff.*** The Zoning By-law is incorporated herein by reference. No person shall erect, display or maintain a sign:(a) On any premises located in a Residence District ***except*** as designated by the Zoning By-law.(b) Within any public way upon any property owned by the Town of Brookline or any other governmental body or agency.(c) Within fifty (50) feet of any public way.(d) Within three hundred (300) feet of any public park playground, or other public grounds, if within view of any portion of the same.(e) Within a radius of one hundred and fifty (150)feet from the point where the center lines of two or more
public ways intersect.(f) Upon the roof of any building.(g) Exceeding an area of three hundred (300) square feet or a height of twelve (12) feet.(h) Containing visible moving or

moveable parts or be lighted with flashing, animated, or intermittent illumination. This section shall not apply to signs exempted by M.G.L. c. 93, s. 32.

SECTION 5.8.*4* ~~NON-ACCESSORY SIGNS~~ PERTINENCE TO OTHER LAWS
~~No person shall erect, display or maintain a non-accessory sign: (a) On any premises located in a Residence District as designated by the Zoning By-law. (b) Within any public way upon any property owned by the Town of Brookline or any other governmental body or agency. (c) Within fifty (50) feet of any public way. (d) Within three hundred (300) feet of any public park playground, or other public grounds, if within view of any portion of the same. (e) Within a radius of one hundred and fifty (150) feet from the point where the center lines of two or more public ways intersect. (f) Upon the roof of any building. (g) Exceeding an area of three hundred (300) square feet or a height of twelve (12) feet. (h) Containing visible moving or moveable parts or be lighted with flashing, animated, or intermittent illumination.~~

~~This section shall not apply to signs exempted by Section 32 of Chapter 93 of the General Laws.~~

All signs shall be subject to the State Building Code and when applicable, the Town's Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way. ***This Article shall not be construed in any manner that is inconsistent with the provisions in M.G.L. c. 93, ss. 29 through 33, or M.G.L. c. 85, s. 8, or 700 CMR 3.00".*** ~~This Article shall not be construed as to be inconsistent with or in contravention to Sections twenty-nine through thirty-three inclusive of Chapter 93 or Section 8 of Chapter 85 of the General Laws, as amended.~~ Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said Board.

SECTION 5.8.*5* ~~SIGNS FOR GASOLINE SERVICE STATIONS~~ ENFORCEMENT
~~All signs that display self-service gasoline pricing, including signs attached to a building, freestanding signs and signs affixed to gasoline pumps shall clearly indicate that the price is for self-service sale of gasoline.~~

This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection, maintenance, enlargement or alteration of any sign which is not in conformance with this By-law.

SECTION 5.8.*6* ~~PERTINENCE TO OTHER LAWS~~ PENALTY FOR VIOLATION
~~All signs shall be subject to the Building Code of the Town of Brookline and when applicable, the Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way.1 The Sign By-law shall not be construed as to be inconsistent with or in contravention to Sections twentynine through thirty-three inclusive of Chapter 93 or Section 8 of Chapter 85 of the General Laws, as amended. Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said~~

~~Board.~~ Whoever violates any provision of this By-law shall be punished by a fine of not more than $100.00, and whoever after conviction of such violation unlawfully maintains such a billboard, sign or other device for twenty (20) days thereafter shall be punished by a fine of not more than $300.00.

SECTION 5.8.7 ~~NON-CONFORMING SIGNS~~ SEVERABILITY
~~Any accessory sign in any of the categories listed below which was legally erected prior to the adoption of this paragraph may continue to be maintained for a period of not longer than five years after the effective date of this paragraph:~~
~~(1) roof signs;~~

~~(2) projecting signs, unless such sign is approved by a variance subsequent to January 1, 1970; 1 See General Laws Chapter 85 Sec. 8 & 9.~~

~~(3) any other sign, including facade and free-standing signs, which exceeds by more than 50% the applicable size limitations in the Zoning By-law as of the effective date of this paragraph, unless such sign is approved by a variance subsequent to January 1, 1970.~~

~~(b) Any non-accessory sign legally erected prior to the adoption of the by-law may continue to be maintained for a period of not longer than five years after the effective date of this by-law; provided however, that during said five-year period no such sign shall be enlarged, redesigned or altered except in accordance with the provisions of this by-law and provided further that any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent of the replacement value of the sign at the time of destruction or damage, shall not be repaired or rebuilt or altered except in accordance with the provisions of this bylaw.~~

~~(c) The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) advertises or calls attention to any products, businesses or activities which are no longer carried on or sold for at least sixty (60) days; or (3) shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Building Commissioner.~~

~~(d) Nonilluminated noncommercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

The invalidity of section or provision of this By-law shall not invalidate any other section or provision thereof.

or act on anything relative thereto.

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## PETITIONER'S ARTICLE DESCRIPTION

This amendment would update the Town's General By-law pertaining to signs following the Supreme Court's decision in *Reed v. Town of Gilbert,* 135 S. Ct. 2218 (2015). The proposed amendment would update the by-laws so that signs are regulated in a content-neutral fashion consistent with the Supreme Court's decision in Reed. This amendment would update the By-law so that it only regulates government speech and signs on town property. An accompanying warrant article proposing to amend the Zoning By-Law regulating signs on private property has also been submitted.

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## SELECTMEN'S RECOMMENDATION

This General By-law amendment was submitted by the Planning and Community Development Department in response to a U.S. Supreme Court decision (Reed v. Town of Gilbert, 576 U.S. ___, 135 S. Ct. 2218 (2015), which found that a municipality may not regulate signs based on their content.

Staff from the Planning Department and Town Counsel's Office reviewed Section 5.8 of the General By-law and made several changes to bring it into compliance with the Reed decision. Staff also eliminated antiquated language that was no longer applicable and restructured the by-law so that it regulates town signs and signs on town property only.

The Board of Selectmen supports this effort to update the General By-law following the Supreme Court's decision.

Therefore, on October 18, 2016 the Board of Selectmen voted unanimously to recommend FAVORABLE ACTION on the motion of the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY: Article 13 is necessary to bring Brookline's by-laws into accord with a recent United States Supreme Court decision that ruled that it is unconstitutional to regulate the content of signs. Recognizing the importance of free speech and the need to ensure that the Town's by-laws conform to the Supreme Court's decision, the Advisory Committee has reviewed the proposed changes with the Department of Planning and Community Development and Town Counsel. The Committee's motion includes some revisions to the original language of Article 13.

The Advisory Committee by a vote of 22–0–4 recommends FAVORABLE ACTION on the motion below.

BACKGROUND:
In 1733, the newspaper publisher Peter Zenger was arrested on the orders of the royal governor of New York on the charge of libel because he had published a satiric article that was critical of the governor. The jury heard evidence that the critical statements were true, and the jurors then took 10 minutes to return a verdict of "Not Guilty." The concept that a negative but true statement is not libel reflects a concept of free speech that has been extended by the United States Supreme Court many times (although governors of New York continued to try to restrict free political speech by claiming it was libel as late as 1808).

Articles 13 and 14 come to us in the spirit of the Zenger case, and as a result of a 2015 United States Supreme Court decision, *Reed v. Town of Gilbert* (Arizona), which held that a municipality cannot regulate the content of signs. A municipality can only regulate the physical aspects of signs—design, size, illumination, etc. Brookline's current zoning provisions regarding signs include restrictions on content, so they are not in conformance with the limits established by the Supreme Court. Articles 13 and 14 would bring Brookline in to compliance.

DISCUSSION:
Article 13 would modify the Town's General By-law. It refers to signs that are on Town property or that are visible within a certain distance of Town property, such as a park or public way. Note that the Town can put what it wants on Town property, and the by-law only regulates private parties' signs.

Article 13 defines what a sign is more specifically than the current by-law and removes restrictions on content. For example, the new language includes a requirement that any sign be in conformance with the state Building Code, where applicable. It eliminates the separate reference to gas station signs, since the Town can no longer regulate content, including content based on the type of business or the purpose of the sign. For the same reason, it eliminates references to two classes of signs, non-accessory and accessory. And it sets a simpler penalty clause (Section 5.8.6).

The Advisory Committee raised some questions and concerns about the original language of the Warrant and worked with the Department of Planning and Community Development and Town Counsel to prepare the motion offered below.

RECOMMENDATION:
The Advisory Committee by a vote of 22–0–4 recommends FAVORABLE ACTION on the following motion (annotated to show the differences from the existing by-law):

VOTED: That the Town amend Article 5.8 of the Town's General By-Laws pertaining to Signs as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE 5.8
SIGN BY-LAW

SECTION 5.8.1 PURPOSE
Pursuant to the authority conferred by General Laws, Chapter 93, Section 29, and every other power and authority thereto pertaining, the Town of Brookline adopts this Bylaw for the regulation and restriction of ~~billboards~~, signs ~~and other advertising devices~~ within the Town, ***on Town property, and*** on public ways. ~~or on private property within public view of a public way, public park or reservation.~~

SECTION 5.8.2 DEFINITIONS

~~Accessory Sign: Any billboard, sign or other advertising device that advertises, calls attention to, or indicates the person occupying the premises on which the sign is erected or the business transacted thereon, or advertises the property itself or any part thereof as for sale or to let, and which contains no other advertising matter. The words "Accessory Sign" shall include an "on premise" sign as defined and permitted by the Zoning By-law.~~

~~Non-Accessory Sign: Any sign not an accessory sign.~~

~~"Person" and "whoever" shall include a corporation, society, association and partnership.~~

~~Public Way shall include a private way that is open to public use. Sign:~~

~~"Sign" shall mean and include any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction, or is designated to attract the eye by intermittent or repeated motion or illumination, which is on a public way or on private property within public view of a public way, public park or reservation.~~

***Sign:*** ***Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:***

- ***i. Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.***
- ***ii. Town of Brookline government signs, and signs permitted by the Town on Town property.***
- ***iii. Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.***
- ***iv. Flags, holiday lights and decorations.***

Sign, Area of:

(a) For a sign, either free-standing or attached, the area shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself. (b) For a sign painted upon or applied to a building, the area shall be considered to include all lettering, wording, and accompanying designs or symbols together with any backing of a different color than the finish material of the building face. (c) Where the sign consists of individual letters or symbols attached to or painted on a surface, building, wall or window, the areas shall be considered to be that of the smallest rectangle or other convex shape which encompasses all of the letters and symbols.

Zoning By-law: The Zoning By-law of the Town of Brookline which as from time to time is in force and effect.

SECTION 5.8.3 ~~ACCESSORY~~ SIGNS
~~Accessory signs shall be permitted as regulated and permitted by the Zoning By-law. No person shall erect, display or maintain an accessory sign except as permitted by the Zoning By-law. The Zoning By-law is incorporated herein by reference.~~

Signs shall be permitted as regulated and permitted by the Zoning By-law. The Zoning By-law is incorporated herein by reference.

No person shall erect, display or maintain a temporary or permanent sign upon any property owned by the Town of Brookline or upon the public way of any other governmental body.

SECTION 5.8.*4* ~~NON-ACCESSORY SIGNS~~ PERTINENCE TO OTHER LAWS
~~No person shall erect, display or maintain a non-accessory sign: (a) On any premises located in a Residence District as designated by the Zoning By-law. (b) Within any public way upon any property owned by the Town of Brookline or any other governmental body or agency. (c) Within fifty (50) feet of any public way. (d) Within three hundred (300) feet of any public park playground, or other public grounds, if within view of any portion of the same. (e) Within a radius of one hundred and fifty (150) feet from the point where the center lines of two or more public ways intersect. (f) Upon the roof of any building. (g) Exceeding an area of three hundred (300) square feet or a height of twelve (12) feet. (h) Containing visible moving or moveable parts or be lighted with flashing, animated, or intermittent illumination.~~

~~This section shall not apply to signs exempted by Section 32 of Chapter 93 of the General Laws.~~

All signs shall be subject to the State Building Code and when applicable, the Town's Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way. ***This Article shall not be construed in any manner that is inconsistent with the provisions in M.G.L. c. 93, ss. 29 through 33,***

***or M.G.L. c. 85, s. 8, or 700 CMR 3.00".*** ~~This Article shall not be construed as to be inconsistent with or in contravention to Sections twenty-nine through thirty-three inclusive of Chapter 93 or Section 8 of Chapter 85 of the General Laws, as amended.~~ Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said Board.

SECTION 5.8.*5* ~~SIGNS FOR GASOLINE SERVICE STATIONS~~ ENFORCEMENT
~~All signs that display self-service gasoline pricing, including signs attached to a building, freestanding signs and signs affixed to gasoline pumps shall clearly indicate that the price is for self-service sale of gasoline.~~

This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection, maintenance, enlargement or alteration of any sign which is not in conformance with this By-law.

SECTION 5.8.*6* ~~PERTINENCE TO OTHER LAWS~~ PENALTY FOR VIOLATION
~~All signs shall be subject to the Building Code of the Town of Brookline and when applicable, the Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way.1 The Sign By-law shall not be construed as to be inconsistent with or in contravention to Sections twentynine through thirty-three inclusive of Chapter 93 or Section 8 of Chapter 85 of the General Laws, as amended. Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said Board.~~ Whoever violates any provision of this By-law shall be punished by a fine of not more than $100.00, and whoever after conviction of such violation unlawfully maintains such a billboard, sign or other device for twenty (20) days thereafter shall be punished by a fine of not more than $300.00.

SECTION 5.8.*7* ~~NON-CONFORMING SIGNS~~ SEVERABILITY
~~Any accessory sign in any of the categories listed below which was legally erected prior to the adoption of this paragraph may continue to be maintained for a period of not longer than five years after the effective date of this paragraph:~~

~~(1) roof signs;~~

~~(2) projecting signs, unless such sign is approved by a variance subsequent to January 1, 1970; 1 See General Laws Chapter 85 Sec. 8 & 9.~~

~~(3) any other sign, including facade and free-standing signs, which exceeds by more than 50% the applicable size limitations in the Zoning By-law as of the effective date of this paragraph, unless such sign is approved by a variance subsequent to January 1, 1970.~~

~~(b) Any non-accessory sign legally erected prior to the adoption of the by-law may continue to be maintained for a period of not longer than five years after the effective date of this by-law; provided however, that during said five-year period no such sign shall be enlarged, redesigned or altered except in accordance with the provisions of this~~

~~by-law and provided further that any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent of the replacement value of the sign at the time of destruction or damage, shall not be repaired or rebuilt or altered except in accordance with the provisions of this bylaw.~~

~~(c) The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) advertises or calls attention to any products, businesses or activities which are no longer carried on or sold for at least sixty (60) days; or (3) shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Building Commissioner.~~

~~(d) Nonilluminated noncommercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

The invalidity of section or provision of this By-law shall not invalidate any other section or provision thereof.

Carried by a Unanimous Vote

XXX

# ARTICLE 14

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

The following motion is a corrected motion under Article 14 which only amends scrivener's errors on numbering in the article:

VOTED: That the Town amend Article VII of the Town's Zoning By-Laws as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE VII

SIGNS, ILLUMINATION, & REGULATED FACADE ALTERATIONS

**§7.00 - *SIGN BY-LAW***
**§7.01 - *SIGNS IN ALL DISTRICTS***
**§7.02 - *SIGNS IN S, SC, T AND F DISTRICTS***
**§7.03 - *SIGNS IN M DISTRICTS***
**§7.04 - *SIGNS IN I, G, L AND O DISTRICTS***
**§7.05 - *TEMPORARY SIGNS***
**§7.06 - *ILLUMINATION***
***§7.07- EXCEPTIONS TO THE ABOVE***
***§7.08 - DESIGN REVIEW PROCEDURES***
***§7.09 - NONCONFORMANCE OF SIGNS***

§7.00 ~~SIGNS IN ALL DISTRICTS~~ ***SIGN BY-LAW***

~~The following requirements shall apply to all signs and other advertising devices in all districts:~~

~~a. No sign or other advertising device with visible moving or moveable parts or with flashing animated or intermittent illumination shall be erected or maintained, except that a traditional rotating barber pole may be permitted by the Planning Board subject to the design review process in **§7.03, paragraph 2**.~~

~~b. No sign or other advertising device, or part thereof, shall be more than 25 feet above ground level except signs announcing the name of an individual building by special permit of the Board of Appeals.~~

~~c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, a non-combustible projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or vertical banner sign, composed of pliable fabric or similar material, may project~~

~~more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. No projecting or banner sign shall be larger than 12 square feet in area per face.~~

~~d. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of~~ **~~§7.03, paragraph 2.~~** ~~only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.~~

~~e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by~~ **~~§7.03, paragraph 1., subparagraph h.~~** ~~Except for signs regulated by paragraphs 3 and 4 below, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by~~ **~~paragraph 2~~** ~~below, any freestanding sign of more than 10 square feet in area, or more than four square feet for a nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of~~ **~~§7.03, paragraph 2.~~** ~~Except for signs regulated by paragraph 3 below, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.~~

~~f. Signs, whether temporary or permanent, on the exterior of buildings shall be made of substantial materials. A special permit of the Board of Appeals shall be required to determine the appropriateness to the building of any flags, streamers, and balloons etc. used for sign purposes. National, state and Town flags are exempted from this provision. The Building Commissioner may approve temporary banners for public events.~~

~~2. Non-illuminated non-commercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

~~3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.~~

~~4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.~~

1. ***Purpose:*** ***The purpose of this Article 7.00 is to improve pedestrian and traffic safety; to avoid the proliferation of signs; to minimize their adverse effect on nearby public and private property, to preserve the esthetic environment; to encourage the effective use of signs; and, to enable fair, consistent and content-neutral enforcement of this section.***

   ***Applicability: The following shall apply to all signs in all zoning districts.***

   ***Severability: The provisions of this By-Law shall be deemed to be severable. Should any of its provisions be held to be invalid, unenforceable or unconstitutional, the remainder of this By-Law shall continue to be in full force and effect.***

   ***Definitions: The following words and phrases used in this section shall have the meanings set forth below:***

   a. ***Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:***

      i. ***Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.***
      ii. ***Town of Brookline government signs and signs permitted by the Town on Town property.***
      iii. ***Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.***
      iv. ***Flags, holiday lights and decorations.***

   b. ***Regulated Façade Alteration: Any change intended to be permanent in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway. A regulated facade alteration shall include:***

***i. commercial building facades in all districts; and***
***ii. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.***

§7.01 SIGNS IN ~~*S, SC, T, AND F*~~ ***ALL DISTRICTS***

1. ~~In any S, SC, T, and F district,~~ ***Signs in all districts shall be subject to the following requirements:***

~~a. One sign displaying the street number or name of the occupant of the premises, or both, not exceeding one square foot in area. Such sign may include identification of a permitted accessory professional use.~~

~~b. Two bulletin or announcement boards or identification signs for a permitted principal non-residential building or use, neither of which may exceed 10 square feet in area.~~

~~c. One sign in connection with a lawfully maintained nonconforming use, not exceeding 10 square feet in area.~~

~~d. One "For Sale" or "For Rent" sign not exceeding six square feet in area, and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property, and, in any case, to remain no longer than a four month period in any calendar year, after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown.~~

~~e. One contractor's sign, not exceeding 10 square feet in area, maintained on the premises while a building is actually under construction.~~

~~f. Other temporary signs in connection with the construction or development of a building or lot, by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.~~

***a. All regulated facade alterations shall be subject to the design review process in §7.08.***

***b. Signs with visible moving or moveable parts or with flashing animated or intermittent illumination are prohibited.***

***c. Signs or parts thereof attached to a building, shall not exceed a height of 25 feet above ground level.***

*d. Projecting or banner signs attached to a building shall not be internally illuminated, shall not exceed 12 square feet in area per face and shall not extend lower than a height of 8 feet.*

*e. Signs attached to a building shall not project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached.*

*f. Signs shall not be permitted on building walls* NOT *parallel or within 45 degrees of parallel to the street.*

*g. No A-Frame or "Sandwich board" signs shall be permitted in any district.*

*h. Signs, whether attached to a building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.*

*i. The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.*

*j. All permanent free standing signs in excess of 1 square foot shall be set back one-half the depth of the required front yard setback from all street lot lines.*

*k. Permanent signs not attached to a building shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.*

*l. Temporary, non-illuminated, signs may be placed on private property in all zoning districts, provided that the signs are in fact temporary, not involving any substantial expense, and are displayed in a manner which will not deface the building facade.*

*m. Non-illuminated signs that do not exceed 1.5 square feet in area identifying allowed users of individual parking spaces may be placed in all zoning districts.*

*n. All lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.*

***o. No neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.***

***p. There shall be not more than one freestanding sign per property, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.***

***q. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.***

§7.02 - SIGNS IN ~~M~~ ***S, SC, T AND F*** DISTRICTS***:***

1. In any S, SC, T and F District, no ***permanent on-premises*** sign or other ***permanent on-premises*** advertising device shall be permitted except as follows:

~~a. As permitted in S, SC, T, and F Districts.~~

~~b. Two signs for a permitted hotel use or permitted principal non-residential use, neither of which may exceed 20 square feet in area.~~

~~c. Two signs announcing the name of an individual multiple dwelling and identifying accessory uses with an aggregate area not exceeding twenty square feet except that multiple dwellings with more than 200 units may have an additional aggregate area of five square feet per 100 units above 100 units, up to a maximum aggregate area of forty square feet. If the Planning Board determines that a central directory is not adequate for identifying an individual exterior entrance to an accessory use, the Board may approve an individual sign displaying the street number and/or name of the occupant and specialty, not exceeding two square feet in area.~~

~~d. Two signs in connection with a lawfully maintained principal nonconforming use, not exceeding a total of 20 square feet in area.~~

~~e. One sign, not exceeding 20 square feet in area, in connection with the construction, development, conversion or leasing of a new or substantially rehabilitated building.~~

~~2. All signs permitted in this section shall be subject to the design review process as regulated by **§7.03, paragraph 2**.~~

***a. One sign located in a manner intended to identify the address and/or occupant of the premises not exceeding 1 square foot in area.***

***b. Two bulletin board or announcement board signs not exceeding 10 square feet in area.***

§7.03 - SIGNS IN ~~L, G, I AND O~~ ***M DISTRICTS***

1.-In any M District, no ***permanent*** on-premises sign or other ***permanent*** on-premises advertising device shall be permitted except as follows:

~~As permitted in S, SC, T, F, and M Districts.~~

~~b. Signs or advertising devices, whether attached to the building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.~~

~~c. Signs for commercial uses on upper floors of a building may have signage additional to subparagraph b. above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in **§7.00, paragraph 1., subparagraph b.**, at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line. Signage, particularly for office and services uses, preferably should be located on windows or, if not possible, in an architectural element of the facade. In cases where an existing architectural element needs a larger sign background to fill the space, the Planning Board may allow an increase up to 25%; however, the lettering on the sign should not be increased correspondingly.~~

~~d. Signs shall not be permitted on building walls not parallel or within 45 degrees of parallel to the street, except for one directional or identification sign not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.~~

~~e. For open-lot uses, where a calculation of aggregate sign area based upon building-face dimensions would result in inequitable deprivation of identification, the Board of Appeals by special permit under **Article IX** may authorize an aggregate sign area up to but not more than one square foot for each foot of street lot line.~~

~~f. All window signs, other than temporary identification signs regulated in subparagraph g. below and non-commercial signs regulated by **§7.03, paragraph 2**, shall be subject to the design review process, except that paper or similar temporary signs may be installed in a window only if the sign advertises a particular sale or special event and is not a general identification sign for the~~

~~business or for goods sold or services rendered thereby. Such signs may be displayed in a window for no more than 30 days. The aggregate area of all signs in any window, either temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in subparagraph b. above.~~

~~g. One temporary identification sign for a property or use subject to the design review process specified in **paragraph 2** below or in **§5.09** may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeals is taken, provided that the temporary sign conforms with all dimensional regulations of this By-law, is in fact a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.~~

~~h. Freestanding signs for gasoline service stations may exceed the dimensional restrictions of **§7.00, paragraph 1, subparagraph c** by a maximum of 10 square feet in area for each face and 7 feet in height, only if the design of the sign incorporates gasoline prices. For all gasoline service stations, no additional price signs shall be displayed on the lot, except for the standard price signs typically affixed to gasoline pumps. No sandwich or cardboard signs, or the like, shall be permitted on the lot, and all temporary signs shall be confined to the windows of the building as permitted by **§7.03, paragraph 1, subparagraph c**.~~

~~i. One "For Sale" or "For Rent" or other sign required for sale or leasing of a commercial or industrial property not exceeding 20 square feet in area and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property; and, in any case, to remain no longer than a four month period in any calendar year; after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown. The sign design and location shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.~~

~~2. All signs permitted in **§§ 7.02** and **7.03**, except temporary signs or advertising devices permitted in **§7.03, paragraph 1, subparagraphs f. and g.** or signs permitted in **§7.00, paragraphs 2, 3, and 4,** shall be subject to the following design review process:~~

~~a. The applicant shall submit to the Building Commissioner an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.~~

~~b. Within five working days, the Building Commissioner shall refer the application and accompanying material to the Planning Board.~~

~~c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the Design Review requirements in **§5.09** and such design guidelines as the Planning Board may adopt.~~

~~d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.~~

~~e. If the applicant or any other interested party or any citizen of the Town of Brookline does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in **Article IX**.~~

***a. As permitted in S, SC, T and F districts.***

***b. Two signs not exceeding a total aggregate of 20 square feet in area.***

***c. Dwellings with more than 200 units may have an additional aggregate area of 5 square feet per 100 units above 100 units, up to a maximum aggregate area of 40 square feet.***

§7.04 – ~~ILLUMINATION~~ ***SIGNS IN I, G, L AND O DISTRICTS***

1. In any I, G, L and O Districts, no ***permanent*** on-premises sign or other ***permanent*** on premises advertising devises shall be permitted except as follows: ~~districts, all lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property~~.

~~2. In all districts no neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.~~

~~3. In any residence district no sign or other advertising device shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign or other advertising device shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, T, and F Districts no sign or advertising device shall be illuminated after 11 p.m. local time.~~

~~4. In an S, SC, T, F, M-0.5, M-1.0, or M-1.5 District no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities and except temporary holiday lighting in use for no longer than a four-week period in any calendar year, except that decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.~~

***a. As permitted in S, SC, T, F and M districts***

***b. Signs on upper floors of a building may have signage additional to §7.01(h), above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in §7.01(c), at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line.***

***c. One sign not parallel or within 45 degrees of parallel to a street, not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.***

§7.05 – ~~NON CONFORMANCE OF ACCESSORY SIGNS~~ ***TEMPORARY SIGNS***

1. In all districts, no ***temporary*** on-premises sign or other ***temporary*** on-premises advertising device shall be permitted except as follows: ~~Accessory signs or other advertising devices legally erected may continue to be maintained, subject to the provisions of §5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign or other advertising device shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically~~

~~changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign or other advertising device which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign or other advertising device at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this **Article VII** shall terminate with respect to any sign or other advertising device which:~~

~~1. shall have been abandoned;~~

~~2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or~~

~~3. shall not have been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.~~

***a. The design and location of all temporary signs attached to or associated with a commercial property or use shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.***

***b. Except as provided in Section 7.07 b., the Building Commissioner may approve temporary signs attached to or associated with a commercial property or use for no more than a four month period in any calendar year.***

***c. Temporary signs associated with a non-commercial property, dwelling or use not exceeding 12 square feet may be placed in all districts.***

***d. Signs related to an event on a specific date or dates shall be removed within 7 days after the event.***

§7.06 - ~~REGULATED FAÇADE ALTERATIONS~~ ***ILLUMINATION***

1. In all districts, no sign shall be illuminated except as follows: ~~A regulated facade shall include:~~

~~a. commercial building facades in all districts; and~~

~~b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, T, and F districts.~~

~~c. Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

~~2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.~~

~~3. All regulated facade alterations shall be subject to the design review process of **§7.03, paragraph 2.**~~

***a. In any residence district, no sign shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, and T Districts no sign shall be illuminated after 11 p.m.***

***b. In an S, SC, T, M-0.5, M-1.0, or M-1.5 District, no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities.***

***c. New internally illuminated signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day; internally illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.***

*§7.07 – EXCEPTIONS TO THE ABOVE*

***1. Signs in all districts shall comply with this section of the By-Law except as follows:***

***a. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of §7.01(h) only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.***

b. ***Upon the expiration of the initial four month period for a temporary sign for a commercial property or use, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.***

c. ***Additional temporary signs on a construction or development site may be allowed by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.***

d. ***Permanent decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.***

*§7.08 – DESIGN REVIEW PROCEDURES*

***All permanent signs permitted in §7.02, 7.03 and 7.04, except signs permitted in paragraph 7.02(a) shall be subject to the following design review process:***

a. ***The applicant shall submit to the*** ~~Building Commissioner~~ ***Planning Department an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.***

b. ***Within*** ~~five~~ ***10 working days, the*** ~~Building Commissioner~~ ***Planning Department shall refer the application, its recommendations and accompanying material to the Planning Board.***

c. ***After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed and/or emailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the provisions of this Section of the Zoning By-law, the community and Environmental Impact and***

***Design Standards in §5.09 and such design guidelines as the Planning Board may adopt.***

***d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.***

***e. If the applicant or other aggrieved party does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in Article IX.***

*§7.09 – NON-CONFORMANCE OF SIGNS*

***Signs legally erected may continue to be maintained, subject to the provisions of § 5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this Article VII shall terminate with respect to any sign which:***

1. ***has been abandoned;***

2. ***advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or***

3. ***has not been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.***

Passed by a ~~xxx~~ Unanimous Vote

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Article VII of the Town's Zoning By-Laws as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE VII
SIGNS, ILLUMINATION, & REGULATED FACADE ALTERATIONS

**§7.00 - *SIGN BY-LAW***
**§7.01 - *SIGNS IN ALL DISTRICTS***
**§7.02 - *SIGNS IN S, SC, T AND F DISTRICTS***
**§7.03 - *SIGNS IN M DISTRICTS***
**§7.04 - *SIGNS IN I, G, L AND O DISTRICTS***
**§7.05 - *TEMPORARY SIGNS***
**§7.06 - *ILLUMINATION***
***§7.07- EXCEPTIONS TO THE ABOVE***
***§7.08 - DESIGN REVIEW PROCEDURES***
***§7.09 - NONCONFORMANCE OF SIGNS***

§7.00 ~~SIGNS IN ALL DISTRICTS~~ ***SIGN BY-LAW***

~~The following requirements shall apply to all signs and other advertising devices in all districts:~~

~~a. No sign or other advertising device with visible moving or moveable parts or with flashing animated or intermittent illumination shall be erected or maintained, except that a traditional rotating barber pole may be permitted by the Planning Board subject to the design review process in **§7.03, paragraph 2.**~~

~~b. No sign or other advertising device, or part thereof, shall be more than 25 feet above ground level except signs announcing the name of an individual building by special permit of the Board of Appeals.~~

~~c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, a non-combustible projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the~~

~~ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. No projecting or banner sign shall be larger than 12 square feet in area per face.~~

~~d. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of **§7.03, paragraph 2.** only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.~~

~~e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by **§7.03, paragraph 1., subparagraph h.** Except for signs regulated by paragraphs 3 and 4 below, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by **paragraph 2** below, any freestanding sign of more than 10 square feet in area, or more than four square feet for a nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of **§7.03, paragraph 2**. Except for signs regulated by paragraph 3 below, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.~~

~~f. Signs, whether temporary or permanent, on the exterior of buildings shall be made of substantial materials. A special permit of the Board of Appeals shall be required to determine the appropriateness to the building of any flags, streamers, and balloons etc. used for sign purposes. National, state and Town flags are exempted from this provision. The Building Commissioner may approve temporary banners for public events.~~

~~2. Non-illuminated non-commercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

~~3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.~~

~~4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.~~

1. ***Purpose:*** ***The purpose of this Article 7.00 is to improve pedestrian and traffic safety; to avoid the proliferation of signs; to minimize their adverse effect on nearby public and private property, to preserve the esthetic environment; to encourage the effective use of signs; and, to enable fair, consistent and content-neutral enforcement of this section.***

   ***Applicability: The following shall apply to all signs in all zoning districts.***

   ***Severability: The provisions of this By-Law shall be deemed to be severable. Should any of its provisions be held to be invalid, unenforceable or unconstitutional, the remainder of this By-Law shall continue to be in full force and effect.***

   ***Definitions: The following words and phrases used in this section shall have the meanings set forth below:***

   a. ***Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:***

      i. ***Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.***
      ii. ***Town of Brookline government signs including signs permitted by the Town on Town property.***
      iii. ***Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.***
      iv. ***National , state or municipal flags, or the official flag of any institution.***
      v. ***War Veteran markers installed within the public right of way at locations designated by the town's naming committee.***
      vi. ***Holiday lights and decorations.***

   b. ***Regulated Façade Alteration: Any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway. A regulated facade alteration shall include:***

*i. commercial building facades in all districts; and*

*ii. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.*

§7.01 SIGNS IN ~~*S, SC,T, AND F*~~ *ALL DISTRICTS*

~~1. In any S, SC, T, and F district, no sign or other advertising device shall be permitted except as follows:~~

~~a. One sign displaying the street number or name of the occupant of the premises, or both, not exceeding one square foot in area. Such sign may include identification of a permitted accessory professional use.~~

~~b. Two bulletin or announcement boards or identification signs for a permitted principal non-residential building or use, neither of which may exceed 10 square feet in area.~~

~~c. One sign in connection with a lawfully maintained nonconforming use, not exceeding 10 square feet in area.~~

~~d. One "For Sale" or "For Rent" sign not exceeding six square feet in area, and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property, and, in any case, to remain no longer than a four month period in any calendar year, after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown.~~

~~e. One contractor's sign, not exceeding 10 square feet in area, maintained on the premises while a building is actually under construction.~~

~~f. Other temporary signs in connection with the construction or development of a building or lot, by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.~~

*a. All regulated facade alterations shall be subject to the design review process in §7.07.*

*b. Signs with visible moving or moveable parts or with flashing animated or intermittent illumination are prohibited.*

*c. Signs or parts thereof attached to a building, shall not exceed a height of 25 feet above ground level.*

*d. Projecting or banner signs attached to a building shall not be internally illuminated, shall not exceed 12 square feet in area per face and shall not extend lower than a height of 8 feet.*

*e. Signs attached to a building shall not project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached.*

*f. Signs shall not be permitted on building walls nor parallel or within 45 degrees of parallel to the street.*

*g. No A-Frame or "Sandwich board" signs shall be permitted in any district.*

*h. Signs, whether attached to a building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.*

*i. The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.*

*j. All free standing signs in excess of 1 square foot shall be set back one-half the depth of the required front yard setback from all street lot lines.*

*k. Signs not attached to a building shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.*

*l. Temporary, non-illuminated, signs may be placed on private property in all zoning districts. Signs related to an event on a specific date or dates shall be removed by the property owner within 7 days the event.*

*m. Non-illuminated signs that do not exceed 1.5 square feet in area identifying allowed users of individual parking spaces may be placed in all zoning districts.*

*n. All lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.*

*o. No neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.*

*p. There shall be not more than one freestanding sign per property, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more*

***than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.***

***q. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.***

§7.02 - SIGNS IN ~~M~~ ***S, SC, T AND F*** DISTRICTS***:***

~~In any M District, no on-premises sign or other on-premises advertising device shall be permitted except as follows:~~

~~a. As permitted in S, SC, T, and F Districts.~~

~~b. Two signs for a permitted hotel use or permitted principal non-residential use, neither of which may exceed 20 square feet in area.~~

~~c. Two signs announcing the name of an individual multiple dwelling and identifying accessory uses with an aggregate area not exceeding twenty square feet except that multiple dwellings with more than 200 units may have an additional aggregate area of five square feet per 100 units above 100 units, up to a maximum aggregate area of forty square feet. If the Planning Board determines that a central directory is not adequate for identifying an individual exterior entrance to an accessory use, the Board may approve an individual sign displaying the street number and/or name of the occupant and specialty, not exceeding two square feet in area.~~

~~d. Two signs in connection with a lawfully maintained principal nonconforming use, not exceeding a total of 20 square feet in area.~~

~~e. One sign, not exceeding 20 square feet in area, in connection with the construction, development, conversion or leasing of a new or substantially rehabilitated building.~~

~~2. All signs permitted in this section shall be subject to the design review process as regulated by **§7.03, paragraph 2**.~~

***a. One sign located in a manner intended to identify the address and/or occupant of the premises not exceeding 1 square foot in area.***

***b. Two bulletin board or announcement board signs not exceeding 10 square feet in area.***

§7.03 - SIGNS IN ~~L, G, I AND O~~ ***M DISTRICTS***

~~1. In any L, G, I or O District, no on-premises sign or other on-premises advertising device shall be permitted except as follows:~~

~~As permitted in S, SC, T, F, and M Districts.~~

~~b. Signs or advertising devices, whether attached to the building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of~~

~~building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.~~

~~c. Signs for commercial uses on upper floors of a building may have signage additional to subparagraph b. above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in **§7.00, paragraph 1., subparagraph b.**, at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line. Signage, particularly for office and services uses, preferably should be located on windows or, if not possible, in an architectural element of the facade. In cases where an existing architectural element needs a larger sign background to fill the space, the Planning Board may allow an increase up to 25%; however, the lettering on the sign should not be increased correspondingly.~~

~~d. Signs shall not be permitted on building walls not parallel or within 45 degrees of parallel to the street, except for one directional or identification sign not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.~~

~~e. For open-lot uses, where a calculation of aggregate sign area based upon building-face dimensions would result in inequitable deprivation of identification, the Board of Appeals by special permit under **Article IX** may authorize an aggregate sign area up to but not more than one square foot for each foot of street lot line.~~

~~f. All window signs, other than temporary identification signs regulated in subparagraph g. below and non-commercial signs regulated by **§7.03, paragraph 2**, shall be subject to the design review process, except that paper or similar temporary signs may be installed in a window only if the sign advertises a particular sale or special event and is not a general identification sign for the business or for goods sold or services rendered thereby. Such signs may be displayed in a window for no more than 30 days. The aggregate area of all signs in any window, either temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in subparagraph b. above.~~

~~g. One temporary identification sign for a property or use subject to the design review process specified in **paragraph 2** below or in **§5.09** may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeals is taken, provided that the temporary sign conforms with all dimensional regulations of this By-law, is in fact~~

~~a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.~~

~~h. Freestanding signs for gasoline service stations may exceed the dimensional restrictions of **§7.00, paragraph 1, subparagraph c** by a maximum of 10 square feet in area for each face and 7 feet in height, only if the design of the sign incorporates gasoline prices. For all gasoline service stations, no additional price signs shall be displayed on the lot, except for the standard price signs typically affixed to gasoline pumps. No sandwich or cardboard signs, or the like, shall be permitted on the lot, and all temporary signs shall be confined to the windows of the building as permitted by **§7.03, paragraph 1, subparagraph c**.~~

~~i. One "For Sale" or "For Rent" or other sign required for sale or leasing of a commercial or industrial property not exceeding 20 square feet in area and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property; and, in any case, to remain no longer than a four month period in any calendar year; after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown. The sign design and location shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.~~

~~2. All signs permitted in **§§ 7.02** and **7.03**, except temporary signs or advertising devices permitted in **§7.03, paragraph 1, subparagraphs f. and g.** or signs permitted in **§7.00, paragraphs 2, 3, and 4,** shall be subject to the following design review process:~~

~~a. The applicant shall submit to the Building Commissioner an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.~~

~~b. Within five working days, the Building Commissioner shall refer the application and accompanying material to the Planning Board.~~

~~c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and~~

~~the Building Commissioner. The recommendations shall be based on the Design Review requirements in **§5.09** and such design guidelines as the Planning Board may adopt.~~

~~d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.~~

~~e. If the applicant or any other interested party or any citizen of the Town of Brookline does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in **Article IX**.~~

***a. As permitted in S, SC, T and F districts.***

***b. Two signs not exceeding a total aggregate of 20 square feet in area.***

***c. Dwellings with more than 200 units may have an additional aggregate area of 5 square feet per 100 units above 100 units, up to a maximum aggregate area of 40 square feet.***

§7.04 – ~~ILLUMINATION~~ ***SIGNS IN I, G, L AND O DISTRICTS***

~~1. In all districts, all lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.~~

~~2. In all districts no neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.~~

~~3. In any residence district no sign or other advertising device shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign or other advertising device shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, T, and F Districts no sign or advertising device shall be illuminated after 11 p.m. local time.~~

~~4. In an S, SC, T, F, M-0.5, M-1.0, or M-1.5 District no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities and except temporary holiday lighting in use for no longer than a four-week period in any calendar year, except that decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.~~

***a. As permitted in S, SC, T, F and M districts***

b. ***Signs on upper floors of a building may have signage additional to §7.01(h), above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in §7.01(c), at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line.***

c. ***One sign not parallel or within 45 degrees of parallel to a street, not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.***

§7.05 – ~~NON CONFORMANCE OF ACCESSORY SIGNS~~ ***TEMPORARY SIGNS***

~~Accessory signs or other advertising devices legally erected may continue to be maintained, subject to the provisions of §5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign or other advertising device shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign or other advertising device which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign or other advertising device at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this **Article VII** shall terminate with respect to any sign or other advertising device which:~~

~~1. shall have been abandoned;~~

~~2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or~~

~~3. shall not have been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.~~

a. ***The design and location of all temporary signs shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.***

b. ***Except as provided in Section 7.07 b.,the Building Commissioner may approve temporary signs for no more than a four month period in any calendar year.***

c. ***One temporary sign not exceeding 10 square feet for a property or use subject to the design review process specified in paragraph §7.07 below may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeal is taken, provided that the temporary sign conforms with all dimensional regulations of this By-law, is in fact a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.***

d. ***Temporary signs shall be maintained no longer than a four month period in any calendar year***

§7.06 - ~~REGULATED FAÇADE ALTERATIONS~~ ***ILLUMINATION***

~~1. A regulated facade shall include:~~

~~a. commercial building facades in all districts; and~~

~~b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, T, and F districts.~~

~~c. Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

~~2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.~~

~~3. All regulated facade alterations shall be subject to the design review process of §7.03, paragraph 2.~~

a. ***In any residence district, no sign shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, and T Districts no sign shall be illuminated after 11 p.m.***

b. ***In an S, SC, T, M-0.5, M-1.0, or M-1.5 District, no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities.***

c. ***New signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day;***

***illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.***

## *§7.07 – EXCEPTIONS TO THE ABOVE*

a. ***In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of §7.01(h) only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.***

b. ***Upon the expiration of the initial four month period for a temporary sign, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.***

c. ***Additional temporary signs on a construction or development site may be allowed by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.***

d. ***Permanent decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.***

## *§7.08 – DESIGN REVIEW PROCEDURES*

***All signs permitted in §7.02, 7.03 and 7.04, except temporary signs permitted in paragraph 7.02(a) shall be subject to the following design review process:***

a. ***The applicant shall submit to the ~~Building Commissioner~~ Planning Department an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.***

*b. Within ~~five~~ 10 working days, the ~~Building Commissioner~~ Planning Department shall refer the application, its recommendations and accompanying material to the Planning Board.*

*c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed and/or emailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the provisions of this Section of the Zoning By-law, the community and Environmental Impact and Design Standards in §5.09 and such design guidelines as the Planning Board may adopt.*

*d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.*

*e. If the applicant or other aggrieved party does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in Article IX.*

*§7.09 – NON-CONFORMANCE OF SIGNS*

*Signs legally erected may continue to be maintained, subject to the provisions of § 5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this Article VII shall terminate with respect to any sign which:*

1. ***has been abandoned;***

2. ***advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or***

3. ***has not been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.***

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

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

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**PLANNING BOARD REPORT AND RECOMMENDATION**

This zoning amendment was submitted by the Planning and Community Development Department in response to a U.S. Supreme Court decision (Reed v. Town of Gilbert, 135S. Ct. 2218 (2015), which ruled that although a municipality may regulate the size, location, and color of a sign, it may not regulate signs based on their content. Therefore, Section 7.00, Signs, Illumination and Regulated Façade Alterations, of the Zoning By-Law was rewritten so that it is content neutral in order to comply with this decision. While drafting the changes, staff attempted to make each section clearer by eliminating redundancies and confusing language to the extent possible. In many cases, much of the existing language was retained and reformatted or restructured.

There are a few substantive changes to the by-law, including a revised definition of "sign," a paragraph describing the purpose of the by-law and a severability clause all of

which were recommended best practices following the Reed decision. One other substantive change in Warrant Article 14 related to the Illumination of Signs. More recently, the Planning Board has made an effort to regulate internally illuminated commercial signs by requiring that such signs be installed with a rheostat switch so that it may be dimmed during off hours. However, this requirement is not currently reflected in the existing by-law. The proposed amendment would limit the hours illuminated signs may be turned on and would also make the requirement for a rheostat switch more explicit. The Board would like the amendment to be modified so that the illuminate restrictions apply only to internally illuminated signs.

All of these proposed changes have been reviewed by Town Counsel's Office to confirm that the language complies with the Reed decision.

A related article XIII proposed to amend the town's general by-law regarding signs so that it is content-neutral and only regulates government signs and signs on town property.

The Planning Board supports this effort to update our zoning by-law and general by-law following the Supreme Court's decision.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article XIV with the requested medication to the section regulating illuminate as shown in bold below.

**7.06 – Illumination**

a. **All new internally illuminated** signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day; **internally** illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.

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SELECTMEN'S RECOMMENDATION

This zoning amendment was submitted by the Planning and Community Development Department in response to a U.S. Supreme Court decision (Reed v. Town of Gilbert, 576 U.S. ___, 135 S. Ct. 2218 (2015), which found that a municipality may not regulate signs based on their content. Therefore, Section 7.00, Signs, Illumination and Regulated Façade Alterations, of the Zoning By-Law was substantially modified so that it is content neutral in order to comply with the Supreme Court's decision.

There are a few substantive changes to the by-law, including a revised definition of "sign," a paragraph describing the purpose of the by-law and a severability clause all of which were recommended best practices following the Reed decision. Other substantive

changes in Warrant Article 14 relate to the illumination of signs and regulation of temporary signs. More recently, the Planning Board has made an effort to regulate internally illuminated commercial signs by requiring that such signs be installed with a rheostat switch so that it may be dimmed during off hours. However, this requirement is not currently reflected in the existing by-law. The proposed amendment would limit the hours illuminated signs may be turned on and would also make the requirement for a rheostat switch more explicit.

Related to temporary signs, additional edits to the proposed amendment were made in response to concerns raised by members of the Advisory Committee who felt that the proposed numerical limit (1) and proposed size limitation (6 SF) for temporary signs was overly restrictive. Town Counsel's Office's suggested relaxing these requirements based on a review of First Amendment case law. In turn, staff worked collaboratively with a member of the Advisory Committee to implement additional changes.

All of the changes to the article have been reviewed by Town Counsel's Office for compliance with the US Supreme Court's decision in Reed v. Gilbert.

The Board of Selectmen supports this effort to update our zoning by-law following the Supreme Court's decision.

Therefore, the Board of Selectmen voted unanimously on October 18, 2016 to recommend FAVORABLE ACTION on the motion offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 14 proposes to update Brookline's Zoning By-law pertaining to signs in light of the U.S. Supreme Court's decision in *Reed v. Town of Gilbert,* 135 S. Ct. 2218 (2015). The Article amends the by-law so that signs are regulated in a content-neutral fashion that is consistent with the Supreme Court's decision. The proposed by-law amendment addresses the regulation of signs on private property, whereas Article 13 addresses signs on Town property. The Advisory Committee has worked with Town Counsel and the Department of Planning and Community Development to revise the original language of the Warrant to ensure, for example, that the by-law does not limit the number of political signs that can be displayed.

By a vote of 22–0–4, the Advisory Committee recommends FAVORABLE ACTION on the motion below.

BACKGROUND

As noted in the background for Article 13, Article 14 is a result of a Supreme Court decision to broaden First Amendment rights regarding freedom of speech. In 2015 the

Court held that a municipality cannot regulate the content of signs. It can only regulate their physical aspects — design, size, illumination, etc. Brookline's current zoning provisions regarding signs include restrictions on content, so they are not in conformance with the limits established by the Court. Article 14 would bring Brookline's Zoning By-law into compliance.

DISCUSSION:
Article 14 applies the definition of signs to the Zoning By-law—specifically to Article VII of the by-law. Section 7.01 of the Zoning By-law covers requirements for all signs in all zoning districts. Sections 7.02 through 7.04 cover regulations specific to a zoning district or districts. Section 7.05 covers temporary signs, which would be restricted to 120 days per year—up from the current 60-day limit. Section 7.06 covers illuminated signs. Section 7.07 provides for limited exceptions to the requirements for maximum size. Section 7.08 specifies design review procedures.

As with Article 13, the changes remove references to signs for specific purposes or signs with specific content so that the entire by-law becomes content-neutral. Article 14 also provides regulations for temporary signs, i.e. signs that are erected for less than 120 days (as would be the case for signs erect in advance of an election).

In addition, the motion under Article 14 cleans up some redundancies with respect to how signs are regulated dimensionally.

Article 14 as originally submitted restricted the number of temporary signs on residential property to one sign. Some members of the Advisory Committee voiced strong opposition to this restriction on the grounds that it would severely limit the right of residential property owners to put up multiple signs during a political campaign. Although the Building Department seldom enforces the current by-law regarding such signs, the Department of Planning and Community Development agreed to revise the proposed by-law amendments and received approval from Town Counsel for the revision.

Article 14 deals with a substantial amount of complex regulation. The Department of Planning and Community Development has been meticulous in its efforts to make certain that the proposed revisions are internally consistent. Both the Department and Town Counsel's office have taken care to ensure to the best of their ability that the proposed by-law is consistent with the Supreme Court's 2015 decision.

RECOMMENDATION:
The Advisory Committee by a vote of 22– 0–4 recommends FAVORABLE ACTION on the following motion (annotated to show the differences from the existing by-law):

VOTED: That the Town amend Article VII of the Town's Zoning By-Laws as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE VII

SIGNS, ILLUMINATION, & REGULATED FACADE ALTERATIONS

**§7.00 - *SIGN BY-LAW***
**§7.01 - *SIGNS IN ALL DISTRICTS***
**§7.02 - *SIGNS IN S, SC, T AND F DISTRICTS***
**§7.03 - *SIGNS IN M DISTRICTS***
**§7.04 - *SIGNS IN I, G, L AND O DISTRICTS***
**§7.05 - *TEMPORARY SIGNS***
**§7.06 - *ILLUMINATION***
***§7.07- EXCEPTIONS TO THE ABOVE***
***§7.08 - DESIGN REVIEW PROCEDURES***
***§7.09 - NONCONFORMANCE OF SIGNS***

## §7.00 ~~SIGNS IN ALL DISTRICTS~~ *SIGN BY-LAW*

~~The following requirements shall apply to all signs and other advertising devices in all districts:~~

~~a. No sign or other advertising device with visible moving or moveable parts or with flashing animated or intermittent illumination shall be erected or maintained, except that a traditional rotating barber pole may be permitted by the Planning Board subject to the design review process in **§7.03, paragraph 2**.~~

~~b. No sign or other advertising device, or part thereof, shall be more than 25 feet above ground level except signs announcing the name of an individual building by special permit of the Board of Appeals.~~

~~c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, a non-combustible projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. No projecting or banner sign shall be larger than 12 square feet in area per face.~~

~~d. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of **§7.03, paragraph 2.** only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background~~

~~up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.~~

~~e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by **§7.03, paragraph 1., subparagraph h.** Except for signs regulated by paragraphs 3 and 4 below, all permitted signs in excess of one square foot in area shall be set back one-half the depth of the required front yard setback from all street lot lines. Except for signs regulated by **paragraph 2** below, any freestanding sign of more than 10 square feet in area, or more than four square feet for a nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of **§7.03, paragraph 2.** Except for signs regulated by paragraph 3 below, there shall be not more than one freestanding sign, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.~~

~~f. Signs, whether temporary or permanent, on the exterior of buildings shall be made of substantial materials. A special permit of the Board of Appeals shall be required to determine the appropriateness to the building of any flags, streamers, and balloons etc. used for sign purposes. National, state and Town flags are exempted from this provision. The Building Commissioner may approve temporary banners for public events.~~

~~2. Non-illuminated non-commercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

~~3. Non-illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.~~

~~4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in **§6.01,** paragraph 5 is allowed in all zoning districts.~~

2. ***Purpose: The purpose of this Article 7.00 is to improve pedestrian and traffic safety; to avoid the proliferation of signs; to minimize their adverse effect on nearby public and private property, to preserve the esthetic environment; to encourage the effective use of signs; and, to enable fair, consistent and content-neutral enforcement of this section.***

***Applicability: The following shall apply to all signs in all zoning districts.***

***Severability: The provisions of this By-Law shall be deemed to be severable. Should any of its provisions be held to be invalid, unenforceable or***

***unconstitutional, the remainder of this By-Law shall continue to be in full force and effect.***

***Definitions: The following words and phrases used in this section shall have the meanings set forth below:***

c. ***Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:***

   i. ***Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.***
   ii. ***Town of Brookline government signs and signs permitted by the Town on Town property.***
   iii. ***Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.***
   iv. ***Flags, holiday lights and decorations.***

d. ***Regulated Façade Alteration: Any change intended to be permanent in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway. A regulated facade alteration shall include:***

   iii. ***commercial building facades in all districts; and***
   iv. ***residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.***

§7.01 SIGNS IN ~~***S, SC,T, AND F***~~ ***ALL DISTRICTS***

1. ~~In any S, SC, T, and F district,~~ Signs in all districts shall be subject to the following requirements:

   ~~a. One sign displaying the street number or name of the occupant of the premises, or both, not exceeding one square foot in area. Such sign may include identification of a permitted accessory professional use.~~

   ~~b. Two bulletin or announcement boards or identification signs for a permitted principal non-residential building or use, neither of which may exceed 10 square feet in area.~~

~~c. One sign in connection with a lawfully maintained nonconforming use, not exceeding 10 square feet in area.~~

~~d. One "For Sale" or "For Rent" sign not exceeding six square feet in area, and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property, and, in any case, to remain no longer than a four month period in any calendar year, after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown.~~

~~e. One contractor's sign, not exceeding 10 square feet in area, maintained on the premises while a building is actually under construction.~~

~~f. Other temporary signs in connection with the construction or development of a building or lot, by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.~~

***r. All regulated facade alterations shall be subject to the design review process in §7.08.***

***s. Signs with visible moving or moveable parts or with flashing animated or intermittent illumination are prohibited.***

***t. Signs or parts thereof attached to a building, shall not exceed a height of 25 feet above ground level.***

***u. Projecting or banner signs attached to a building shall not be internally illuminated, shall not exceed 12 square feet in area per face and shall not extend lower than a height of 8 feet.***

***v. Signs attached to a building shall not project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached.***

***w. Signs shall not be permitted on building walls nor parallel or within 45 degrees of parallel to the street.***

***x. No A-Frame or "Sandwich board" signs shall be permitted in any district.***

***y. Signs, whether attached to a building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.***

***z. The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window, and the***

***area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.***

***aa. All permanent free standing signs in excess of 1 square foot shall be set back one-half the depth of the required front yard setback from all street lot lines.***

***bb. Permanent signs not attached to a building shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.***

***cc. Temporary, non-illuminated, signs may be placed on private property in all zoning districts, provided that the signs are in fact temporary, not involving any substantial expense, and are displayed in a manner which will not deface the building facade.***

***dd. Non-illuminated signs that do not exceed 1.5 square feet in area identifying allowed users of individual parking spaces may be placed in all zoning districts.***

***ee. All lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.***

***ff. No neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.***

***gg. There shall be not more than one freestanding sign per property, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.***

***hh. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.***

§7.02 - SIGNS IN ~~M~~ ***S, SC, T AND F*** DISTRICTS***:***

1. In any S, SC, T and F District, no **permanent** on-premises sign or other **permanent** on-premises advertising device shall be permitted except as follows:
   ~~a. As permitted in S, SC, T, and F Districts.~~
   ~~b. Two signs for a permitted hotel use or permitted principal non-residential use, neither of which may exceed 20 square feet in area.~~
   ~~c. Two signs announcing the name of an individual multiple dwelling and identifying accessory uses with an aggregate area not exceeding twenty square feet except~~

~~that multiple dwellings with more than 200 units may have an additional aggregate area of five square feet per 100 units above 100 units, up to a maximum aggregate area of forty square feet. If the Planning Board determines that a central directory is not adequate for identifying an individual exterior entrance to an accessory use, the Board may approve an individual sign displaying the street number and/or name of the occupant and specialty, not exceeding two square feet in area.~~

~~d. Two signs in connection with a lawfully maintained principal nonconforming use, not exceeding a total of 20 square feet in area.~~

~~e. One sign, not exceeding 20 square feet in area, in connection with the construction, development, conversion or leasing of a new or substantially rehabilitated building.~~

~~2. All signs permitted in this section shall be subject to the design review process as regulated by **§7.03, paragraph 2**.~~

***c. One sign located in a manner intended to identify the address and/or occupant of the premises not exceeding 1 square foot in area.***

***d. Two bulletin board or announcement board signs not exceeding 10 square feet in area.***

§7.03 - SIGNS IN ~~L, G, I AND O~~ ***M DISTRICTS***

1.-In any M District, no **permanent** on-premises sign or other **permanent** on-premises advertising device shall be permitted except as follows:

~~As permitted in S, SC, T, F, and M Districts.~~

~~b. Signs or advertising devices, whether attached to the building or free standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.~~

~~c. Signs for commercial uses on upper floors of a building may have signage additional to subparagraph b. above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in **§7.00, paragraph 1., subparagraph b.**, at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line. Signage, particularly for office and services uses, preferably should be located on windows or, if not possible, in an architectural element of the facade. In cases where an existing architectural element needs a larger sign background to fill the space, the Planning Board may allow an increase up to 25%; however, the lettering on the sign should not be increased correspondingly.~~

~~d. Signs shall not be permitted on building walls not parallel or within 45 degrees of parallel to the street, except for one directional or identification sign not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.~~

~~e. For open-lot uses, where a calculation of aggregate sign area based upon building-face dimensions would result in inequitable deprivation of identification, the Board of Appeals by special permit under **Article IX** may authorize an aggregate sign area up to but not more than one square foot for each foot of street lot line.~~

~~f. All window signs, other than temporary identification signs regulated in subparagraph g. below and non-commercial signs regulated by **§7.03, paragraph 2**, shall be subject to the design review process, except that paper or similar temporary signs may be installed in a window only if the sign advertises a particular sale or special event and is not a general identification sign for the business or for goods sold or services rendered thereby. Such signs may be displayed in a window for no more than 30 days. The aggregate area of all signs in any window, either temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in subparagraph b. above.~~

~~g. One temporary identification sign for a property or use subject to the design review process specified in **paragraph 2** below or in **§5.09** may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeals is taken, provided that the temporary sign conforms with all dimensional regulations of this By-law, is in fact a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.~~

~~h. Freestanding signs for gasoline service stations may exceed the dimensional restrictions of **§7.00, paragraph 1, subparagraph c** by a maximum of 10 square feet in area for each face and 7 feet in height, only if the design of the sign incorporates gasoline prices. For all gasoline service stations, no additional price signs shall be displayed on the lot, except for the standard price signs typically affixed to gasoline pumps. No sandwich or cardboard signs, or the like, shall be permitted on the lot, and all temporary signs shall be confined to the windows of the building as permitted by **§7.03, paragraph 1, subparagraph c**.~~

~~i. One "For Sale" or "For Rent" or other sign required for sale or leasing of a commercial or industrial property not exceeding 20 square feet in area and~~

~~advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property; and, in any case, to remain no longer than a four month period in any calendar year; after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown. The sign design and location shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.~~

~~2. All signs permitted in **§§ 7.02** and **7.03**, except temporary signs or advertising devices permitted in **§7.03, paragraph 1, subparagraphs f. and g.** or signs permitted in **§7.00, paragraphs 2, 3, and 4,** shall be subject to the following design review process:~~

~~a. The applicant shall submit to the Building Commissioner an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.~~

~~b. Within five working days, the Building Commissioner shall refer the application and accompanying material to the Planning Board.~~

~~c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the Design Review requirements in **§5.09** and such design guidelines as the Planning Board may adopt.~~

~~d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.~~

~~e. If the applicant or any other interested party or any citizen of the Town of Brookline does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in **Article IX.**~~

***d. As permitted in S, SC, T and F districts.***

*e. Two signs not exceeding a total aggregate of 20 square feet in area.*

*f. Dwellings with more than 200 units may have an additional aggregate area of 5 square feet per 100 units above 100 units, up to a maximum aggregate area of 40 square feet.*

§7.04 – ~~ILLUMINATION~~ ***SIGNS IN I, G, L AND O DISTRICTS***

1. In any I, G, L and O Districts, no **permanent** on-premises sign or other **permanent** on premises advertising devises shall be permitted except as follows: ~~districts, all lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property~~.

~~2. In all districts no neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.~~

~~3. In any residence district no sign or other advertising device shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign or other advertising device shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, T, and F Districts no sign or advertising device shall be illuminated after 11 p.m. local time.~~

~~4. In an S, SC, T, F, M-0.5, M-1.0, or M-1.5 District no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities and except temporary holiday lighting in use for no longer than a four-week period in any calendar year, except that decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.~~

*d. As permitted in S, SC, T, F and M districts*

*e. Signs on upper floors of a building may have signage additional to §7.01(h), above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in §7.01(c), at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line.*

*f. One sign not parallel or within 45 degrees of parallel to a street, not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board*

***may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.***

§7.05 – ~~NON CONFORMANCE OF ACCESSORY SIGNS~~ ***TEMPORARY SIGNS***

1. In all districts, no **temporary** on-premises sign or other **temporary** on-premises advertising device shall be permitted except as follows: ~~Accessory signs or other advertising devices legally erected may continue to be maintained, subject to the provisions of §5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign or other advertising device shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign or other advertising device which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign or other advertising device at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this **Article VII** shall terminate with respect to any sign or other advertising device which:~~

~~1. shall have been abandoned;~~

~~2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or~~

~~3. shall not have been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.~~

*e.* ***The design and location of all temporary signs attached to or associated with a commercial property or use shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.***

*f.* ***Except as provided in Section 7.07 b., the Building Commissioner may approve temporary signs attached to or associated with a commercial property or use for no more than a four month period in any calendar year.***

*g.* ***Temporary signs associated with a non-commercial property, dwelling or use not exceeding 12 square feet may be placed in all districts.***

*h.* ***Signs related to an event on a specific date or dates shall be removed within 7 days after the event.***

§7.06 - ~~REGULATED FAÇADE ALTERATIONS~~ ***ILLUMINATION***

1. In all districts, no sign shall be illuminated except as follows: ~~A regulated facade shall include:~~

~~a. commercial building facades in all districts; and~~

~~b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, T, and F districts.~~

~~c. Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

~~2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.~~

~~3. All regulated facade alterations shall be subject to the design review process of §7.03, paragraph 2.~~

***d. In any residence district, no sign shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, and T Districts no sign shall be illuminated after 11 p.m.***

***e. In an S, SC, T, M-0.5, M-1.0, or M-1.5 District, no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities.***

***f. New internally illuminated signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day; internally illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.***

## *§7.07 – EXCEPTIONS TO THE ABOVE*

***1. Signs in all districts shall comply with this section of the By-Law except as follows:***

***e. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of §7.01(h) only if such an***

*increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.*

*f. Upon the expiration of the initial four month period for a temporary sign for a commercial property or use, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.*

*g. Additional temporary signs on a construction or development site may be allowed by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.*

*h. Permanent decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.*

*§7.08 – DESIGN REVIEW PROCEDURES*

*All permanent signs permitted in §7.02, 7.03 and 7.04, except signs permitted in paragraph 7.02(a) shall be subject to the following design review process:*

*a. The applicant shall submit to the ~~Building Commissioner~~ Planning Department an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.*

*b. Within ~~five~~ 10 working days, the ~~Building Commissioner~~ Planning Department shall refer the application, its recommendations and accompanying material to the Planning Board.*

*c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed and/or emailed to those individuals*

*whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the provisions of this Section of the Zoning By-law, the community and Environmental Impact and Design Standards in §5.09 and such design guidelines as the Planning Board may adopt.*

*d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.*

*e. If the applicant or other aggrieved party does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in Article IX.*

*§7.09 – NON-CONFORMANCE OF SIGNS*

*Signs legally erected may continue to be maintained, subject to the provisions of § 5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this Article VII shall terminate with respect to any sign which:*

1. *has been abandoned;*

2. *advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or*

3. *has not been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.*

## ARTICLE 15

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

On November 1, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

## ARTICLE 15

### FIFTEENTH ARTICLE

Submitted by: Police Department

To see if the Town will amend the General By-Laws, Article 8.20, Soliciting Money, as follows (the proposed deletion appears in stricken bold text):

**ARTICLE 8.20**
**SOLICITING ~~MONEY~~**

No person shall, on any street or other public place, ~~**solicit money, or**~~ sell or offer for sale any tag, badge or other article of any intrinsic value for the purpose of obtaining money, without having obtained permission to do so from the Chief of Police.

or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

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

Several subsequent lower court decisions have struck down panhandling-related local regulations on the basis of *Reed. See Norton v. City of Springfield, Illinois*, 806 F.3d 411 (7th Cir. 2015); *McLaughlin v. City of Lowell,* --- F. Supp. 3d --- [2015 WL 6453144] at *4 (D. Mass. Oct. 23, 2015); *Thayer v. City of Worcester,* --- F. Supp. 3d --- [2015 WL 6872450] (D. Mass. 2015); *Browne v. City of Grand Junction, Colo.,* --- F. Supp. 3d --- [2015 WL 5728755]. In addition, an older decision from the Massachusetts Supreme Judicial struck down a restriction on peaceful panhandling. *See, e.g., Benefit v. City of Cambridge,* 424 Mass. 918 (1997).

Article 8.20 singles out non-commercial speech as requiring Police Chief approval when it requests money.[1] This could be problematic under the court decisions cited above. Accordingly, this warrant article proposes to delete that language from Article 8.20.

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SELECTMEN'S RECOMMENDATION

Article 15 is a proposed amendment to the Town's General By-Laws. This recommendation is being made by the Police Chief based on a recent U.S. Supreme Court ruling, Reed v. Town of Gilbert, which is related to sign regulations but has been interpreted by courts since then to limit municipal regulation of speech commonly referred to as "panhandling". Courts have found that peaceful solicitation on the public way that does not cause a disturbance is constitutionally-protected speech. This article seeks to delete language that, if enforced, could intrude on free speech rights. The Board noted that charitable solicitations fall under a separate set of guidelines and are not related to this article.

The Board agrees that the By-Law should be corrected to comply with the recent rulings, and on September 13, 2016 by a vote of 5-0 this Board recommended FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the General By-Laws, Article 8.20, Soliciting Money, as follows (the proposed deletion appears in stricken bold text):

**ARTICLE 8.20**
**SOLICITING ~~MONEY~~**

No person shall, on any street or other public place, **~~solicit money, or~~** sell or offer for sale any tag, badge or other article of any intrinsic value for the purpose of obtaining money, without having obtained permission to do so from the Chief of Police.

Note: The only difference between the Board and Advisory Committee vote is the title of the By-Law. It is anticipated the Board will adopt the Advisory Committee motion at their next meeting.

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[1] Commercial speech regulation is subject to a more relaxed legal standard.

## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 15, submitted by the Police Department, would amend Article 8.20 of the Town's General By-Laws, Soliciting Money, by eliminating the requirement that solicitation of money in a public place requires permission from the Police Chief. It also would change the title of Article 8.20 to "Soliciting"—a change that the Advisory Committee thought was somewhat misleading. Article 15 is being proposed to ensure that Brookline law is in compliance with the holdings of the 2015 United States Supreme Court decision in *Reed v. Town of Gilbert* and lower court decisions following from *Reed.*

The Advisory Committee believes the by-law amendment is necessary in light of the Supreme Court's decision. By a vote of 21–1–4, the Advisory Committee recommends FAVORABLE ACTION on a motion that includes a "housekeeping" change to the title of Article 8.20 as it appeared in the original language of Warrant Article 15.

BACKGROUND:
The Supreme Court decision in the *Reed* case addressed the constitutionality of a municipality's regulation of signage in public places. (See also the reports on Articles 13 and 14.) According to the regulations in the town of Gilbert, Arizona, most signage in public places required a permit. Several categories of signs were exempt, but subject to specific restrictions based on their category, including those that were political, ideological, or temporary directional signs to non-profit events. The Court held that the regulation's distinctions were "content-based" and therefore subject to strict scrutiny, allowable only if there is a compelling reason to justify such restrictions.
The *Reed* holding is a much more expansive interpretation of when laws that regulate speech are "content-based" and thus regulate "protected speech." Such laws must be analyzed with "strict scrutiny" to determine their constitutionality under the First Amendment. In the past, such regulations were deemed "content-based" if distinctions in treatment could be viewed as derived from a government motive to either support or suppress certain kinds of speech. Under the new standard, any law addressing "speech" that makes distinctions by content "on its face," regardless of how benign the purpose, is to be evaluated for constitutionality using strict scrutiny, which generally will result in the disallowance of the law. According to the holding in *Reed*, even if a law does not explicitly address speech, it must be assessed for constitutionality with strict scrutiny if the law can only be justified *with reference to* a particular type of speech.

Given the newly expanded interpretation of "protected speech," many municipal regulations that had been viewed as constitutional are now being reexamined to determine their ongoing constitutionality. Panhandling regulations have been some of the first to be contested under the *Reed* doctrine. In *Thayer v. Worcester*, for example, the U.S. District Court and the First Circuit Court of Appeals previously had upheld Worcester's panhandling laws on the grounds that the Worcester was trying to address threatening behavior by panhandlers and to improve public safety by limiting the locations where panhandlers could solicit money. Instructed to review the case in light of

the higher standard under *Reed*, the lower courts have now held that the regulations are unconstitutional—even the provision that prohibited standing on traffic islands without any mention of speech, because the intent was to prevent panhandling in those locations. In *McLaughlin v. City of Lowell,* the federal court also found that city's panhandling law to be unconstitutional.

DISCUSSION:

Since *Reed* significantly expands the types of municipal regulations that could be found unconstitutional, Town staff reviewed the Town's By-Laws to determine which of Brookline's current laws could be affected. Warrant Articles 13 and 14 update the Town's By-Laws regarding signage, which was the specific topic of *Reed.* Article 15 eliminates the requirement in Article 8.20 of the By-Laws that "solicitation of money" requires permission from the Police Chief. This requirement has been used to limit aggressive panhandling in Brookline.

By striking "solicitation of money" from By-Law 8.20, any solicitation for funds in public areas, including panhandling, will no longer require police permission. The police therefore will no longer be able to use the By-Law to deal with overly aggressive panhandling, but other Town and State laws can be used for that purpose, including trespass, assault and battery, and disorderly conduct laws.

Passage of Article 15 would not affect the Town's regulation of door-to-door solicitations for money on private property, which is governed by Article 8.21. As the Town continues to review its By-Laws in light of *Reed*, it is likely that this By-Law, as well as others, may require modification or deletion.

Because the proposed change in Article 8.20 deletes "solicitations" from its purview and restricts that Article to sales of various objects in public, the Advisory Committee recommends changing the By-Law's title to "Sales in Public Places," instead of "Soliciting," which would have become the title in the original language of Warrant Article 15 after deletion of "Money" from the title. The Advisory Committee recognized that "Soliciting" could cause confusion if it became the title of Article 8.20.

RECOMMENDATION:

By a vote of 21–1–4, the Advisory Committee recommends FAVORABLE ACTION on the following amended motion under Article 15 as follows (addition in bold, deletion underlined):

VOTED: That the Town amend the General By-Laws, Article 8.20, Soliciting Money, as follows:

> ARTICLE 8.20 **SALES IN PUBLIC PLACES** ~~SOLICITING MONEY~~
> No person shall, on any street or other public place~~, solicit money, or~~ sell or offer for sale any tag, badge or other article of any intrinsic value for the purpose of obtaining money, without having obtained permission to do so from the Chief of Police.

Passed by a XXX unanimous Vote

## ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: C. Scott Ananian, TMM10

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

To see if the Town will adopt the following Resolution:

Whereas, greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined;

Whereas, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

Whereas, the Town installed electric vehicle charging stations in 2011 that are currently hooded and inactive;

Now, therefore, be it hereby Resolved that the Town shall designate responsibility for the town-owned electric vehicle charging stations and annually appropriate funding as needed.

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

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

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### PETITIONER'S REVISED EXPLANATION

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

currently hooded and inactive. This resolution encourages the Town executive to remedy this situation.

Since this article was filed, the Board of Selectmen, Department of Public Works, and Town Administrator have worked to remedy the situation described, and I am informed that the current plan is to have the two chargers described "up and running before Town Meeting".

As such, it is my intention to offer no motion on this article at Town Meeting. I hope this will save some time in an especially crowded meeting.

## SELECTMEN'S RECOMMENDATION

Article 16 is a petitioned resolution that asks the Town to designate responsibility for maintaining the Town-owned electric vehicle charging stations and allocate funding, as needed.

Since the filing of this warrant article the Department of Public Works has indicated that they would take over the EV Charging Stations previously funded by a grant secured by the Department of Planning and Community Development. The DPW will now be 100% responsible for monitoring and maintenance for the machines located at the Babcock Street and Town Hall lots. Replacement machines have been ordered and a five year warranty has been secured.

We also note that the Town was not charging for use of the charging stations when they were first installed because the law did not allow the Town to recover its costs. The Department of Public Utilities has since provided a ruling that will allow the Town to charge for use of the stations. The Town will be studying how to implement an equitable rate structure within existing legal restrictions.

Given this progress the petitioner has indicated that he will not move the article, and this unanimous Board's previous motion of NO ACTION taken on October 4, 2016 stands.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 16 is a resolution encouraging Town officials to reactivate two existing but currently non-functioning charging stations—one in the Town Hall parking lot and one in the Babcock Street parking lot—installed in 2011. The Advisory Committee supported this idea, and also felt that that a fee should be charged for the use of the charging stations. On October 13, by a vote of 16–0–0, the Advisory Committee recommended Favorable Action on an amended resolution.

On October 26, the petitioner informed the Committee that he had decided not to make a motion under Article 16. The Town already has taken steps to reactivate the charging stations. Based on this information, the Advisory Committee reconsidered its original position and consequently has no recommendation on Article 16.

BACKGROUND:
The cost of purchasing/operating the charging stations in the Town Hall and Babcock Street parking lots was underwritten by a grant sought by the Department of Planning and Community Development in 2011. Funds covered the cost of installation, maintenance, and an ongoing annual service contract to monitor usage. Last year's attempt to repair the stations totaled $1,470. The service contract fee was $560.00. No information is available as to how often the stations were used or how much electricity was consumed. Neither station is currently functional.

The Department of Public Works (DPW) has recently agreed to assume the responsibility for resuscitating/replacing the Town's two charging stations, using some of the Eversource rebate money from the Light-Emitting-Diode (LED) streetlight installation initially intended in install LED lights in Brookline parks. The cost of the two new stations, including installation, ChargePoint extended warranty, and Cloud-based network services for five years is $25,200. There was a $6,205 credit (in this instance only), so the net cost is $18,995.

DISCUSSION:
It was noted that there are a number of public charging facilities within two or three miles of the Town including 375 Longwood Avenue, Whole Foods Market (in Jamaica Plain), 333 Longwood Avenue, ECO (Brainerd Road in Allston), 401 Park Drive, Herb Chambers BMW on Commonwealth Avenue, the Trilogy and Van Ness buildings on Boylston Street in Boston, the Shops at Chestnut Hill (subscription required), and Brigham Circle. (A complete list can be found at http://nstar.plugmyride.org.) Nevertheless, in order to make recharging an electric vehicle as convenient as refueling a gas-powered one, creating public charging facilities throughout Brookline is important.

Imposing a fee for Town-owned charging stations received strong support from Advisory Committee members. Neighboring Cambridge charges $1.25 per hour for the use of its stations. This amount is intended to cover the cost of electricity and the administrative fees associated with offering EV charging station services, and to keep the cost per mile for electricity lower than the cost per mile for gas. The method of payment in Cambridge is either a credit card with a radio-frequency identification (RFID) chip or a ChargePoint America RFID card. The Board of Selectmen has the authority to establish a similar fee at any time.

Regarding the phrase "and annually appropriate funding as needed", the Committee was of the opinion that it would be more appropriate to hold discussions of funding the operation and maintenance of the stations during the development of future DPW budgets and after usage of and revenue from the charging stations could be determined.

*Initial Recommendation*

By a vote of 16–0–0, the Advisory Committee initially recommended Favorable Action on the following motion under Article 16:

VOTED: that the Town adopt the following resolution:

WHEREAS, greenhouse gas pollution from cars accounts for more emissions than from industries like iron, steel, cement and chemicals combined;

WHEREAS, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

WHEREAS, the Town installed electric vehicle charging stations in 2011 that are currently hooded and inactive;

NOW, THEREFORE, BE IT RESOLVED that the Town shall maintain responsibility for the town-owned electric vehicle charging stations and

BE IT FURTHER RESOLVED that the Town shall charge a reasonable fee for the use of these facilities.

*Reconsideration*

At its October 27 meeting, the Advisory Committee learned that the petitioner had decided not to move Article 16 because of the considerable progress of the Department of Public Works in reactivating the charging stations in the Town Hall and Babcock Street parking lots. Therefore the Advisory Committee voted to reconsider its original position and subsequently has no recommendation on Article 16.

RECOMMENDATION:
The Advisory Committee has been informed that no motion will be offered under Article 16. The Advisory Committee therefore makes no recommendation on this Warrant Article.

XXX

No Action Was Taken

ARTICLE 17

**REVISED PETITIONER MOTION**

VOTED: That the Town amend Section 6.04 of the Zoning By-law as follows:

Section 6.04.15 – ELECTRIC VEHICLES

15. At least 2% of parking spaces, and not less than a single parking space, must be equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section may be approved by the Board of Appeals for an individual building by special permit.

# TOWN OF BROOKLINE
Massachusetts

**SELECTMEN'S CLIMATE ACTION COMMITTEE**

NANCY HELLER, Co-Chair
WERNER LOHE, Co-Chair

TOWN HALL
333 Washington Street
Brookline MA 02445
www.brooklinema.gov
617-730-2130

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To: Board of Selectmen
From: Nancy Heller and Werner Lohe, Co-Chairs
Date: November 7, 2016
Re: Articles 17 and 18 / Committee Recommendations

On October 24 the Selectmen's Climate Action Committee held a public hearing on Articles 17 and 18 at which the petitioner, Scott Ananian, presented his proposals requiring the installation of electric-vehicle charging stations or 50-amp receptacles in parking areas and 50-amp outlets in residential garages. Although the Committee is supportive of the goal of the articles to reduce greenhouse gas emissions, it voted to recommend that both articles be referred to a Selectmen-appointed committee for further study and analysis in time for Spring Town Meeting. Because renovations and rewiring work could trigger these requirements, the impact on homeowners and small businesses could outweigh the practical benefits of the bylaws. The Committee feels strongly that for sustainability initiatives to be implemented successfully and to maximize public support, regulations cannot be so onerous that they negatively impact stakeholders.

Below is a summary of the concerns that the Committee raised in its discussion with the petitioner.

**Article 17**

- As written, the article pertains to simply "parking spaces," which is not precisely defined and therefore would affect almost every category of end users. According to Article 2 of the zoning bylaw, a Parking Area (Residential; Non-residential) is defined as a building, structure, lot or part of a lot. For example, this could pertain to a garage (attached, detached, or below grade) serving an apartment building or a two-family home, or a lot with four parking spaces serving a daycare or 100-space lot serving a supermarket. (Because the parking areas could mean garages, this article is inconsistent with Article 18, which pertains to specifically to garages.)

- According to the Building Commissioner, triggers would include any change, alteration, or expansion of an existing parking lot or garage, and any new wiring or parking area lighting where none existed before.

- Costs estimated by the petitioner should be verified, as they appear low.

- An applicant would need to ensure that power is available at the location of the parking area. If the infrastructure is not available, installation could be expensive.

- The device would ideally need to be located close to the power source. If this is not possible, installation could be costly.

- The device would need to be located so that it is accessible to handicapped accessible spaces (according to the state's Architectural Access Board, it does not need be installed in handicapped accessible parking space as long it is accessible to that space).

- A separate branch circuit would be required. In addition, overall electrical load for the parking area would need to be calculated before a device or receptacle could be supported.

- Level 2 or 3 chargers need to be maintained. DPW has received an estimate for two Level 2 charging stations (with a total of four hoses), including installation, and a five-year maintenance plan for $21,000, even though power is already available at the two public lots.

- The petitioner explains that the article is intended for new construction or change in use, but this is not explicitly stated in the article. In addition, the bylaw cannot treat existing properties and new construction differently.

- Even with the recommendation to exclude single-family homes from the requirement, two- and three-family homes would still be affected.

- Permittable work triggering this requirement could affect small businesses in a way that creates financial hardships. The special permit provisions in the proposal would also add legal costs and could burden the appeals case workload.

**Article 18**

- The article refers to dwelling units, but does not specify attached, detached, or multifamily residential buildings; therefore, the article is not consistent with Article 17.

- It is not clear if Town Counsel has determined that the Town can petition the state for a more restrictive code requirement under the provision of the cited State law.

- According to the Building Commissioner, triggers would include any renovated or altered attached/detached garages; any attached/detached garages with new electrical wiring when none existed before; any attached/detached garage when electrical upgrades are performed; substantially renovated dwelling unit (complete gut rehab).

- The costs estimated by the petitioner should be verified. The total electrical load on a single-family home would need to be calculated. To support a 50-amp receptacle in a garage, the wiring in some older houses would need to be upgraded. This is not an insignificant expense, especially if the homeowner does not own or intend to own an electric vehicle.

The Committee suggests consideration of practical applications for proposed projects for which square footage exceeds a certain threshold or uses where cars can be charged for longer periods of time; for example, large multifamily complexes, hotels, or workplace garages. Further study should include further analysis of the impact on homeowners and small businesses.

**The Committee encourages the Board of Selectmen and Town Meeting Members to refer these articles for further study so that the Town can devise regulations that effectively support climate action goals and can be applied fairly among stakeholders, without incurring unnecessarily burdens that could undermine these goals.**

## ARTICLE 17

### SEVENTEENTH ARTICLE

Submitted by: C. Scott Ananian, TMM10

To see if the Town will amend Section 6.04 of the Zoning By-law ("Design of All Off-Street Parking Facilities") by adding a new paragraph, to read:

§6.04.15 - ELECTRIC VEHICLES

15. At least 2% of parking spaces, and not less than a single parking space, must equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section, consistent with the intent of encouraging electric vehicle adoption, may be approved by the Board of Appeals for an individual building by special permit.

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

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

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

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

This would not create new charging facilities overnight, but as off-street parking facilities are constructed or renovated we would gradually create an infrastructure to support electric vehicles in our town, and studies have shown that visible charging stations make people much more likely to consider buying a plug-in car for themselves.

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## MOTION TO BE OFFERED BY THE PETITIONER

That the Town amend Section 6.04 of the Zoning By-law as follows:

Section 6.04.15 – ELECTRIC VEHICLES
15. At least 2% of parking spaces, and not less than a single parking space, must be equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section, consistent with the intent of encouraging electric vehicle adoption, may be approved by the Board of Appeals for an individual building by special permit.

## ADDITIONAL EXPLANATION OFFERED BY THE PETITIONER

We live on a small fragile planet. Everything we need to live and breathe exists in a thin fuzzy line between the earth and space, and we've been filling that thin shell with exhaust and carbon dioxide. Our transportation infrastructure is overwhelmingly fueled by oil, and the pollution from burning oil is known to be harmful to human health and a leading contributor to climate change, in addition to costing drivers billions of dollars in fuel costs. Greenhouse gas pollution from cars accounts for more emissions than from industries like iron, steel, cement and chemicals combined. We need to accelerate the transition away from fossil fuels, for the sake of our children, our climate, and our planet.

We have an excellent opportunity to further this transition by encouraging our residents to adopt electric vehicles, both pure electric vehicles and plug-in hybrids. Studies have shown that electric vehicle adoption is viral, and can be jump started by the presence of visible charging infrastructure ("It's not just Solar Panels. Electric cars can be contagious, too." Brad Palmer, *Vox*, Aug 29, 2016). In a *Wall Street Journal* article on Aug 26, 2016 ("Why Electric Cars Will Be Here Sooner Than You Think"), Christopher Mims wrote, "When a workplace installs a charging station, employees are 20 times as likely to buy a vehicle with a plug, according to a survey from the U.S. Department of Energy." Charging infrastructure at homes can be an equally compelling encouragement toward electric vehicle adoption.

This article aims to encourage electric vehicle adoption in our town, in order to lower greenhouse gases, save our residents money, and secure our future, by increasing access to the infrastructure required to charge electric vehicles. It ensures that future adopters of

electric vehicles will have ready access to charging outlets in off-street parking facilities. By targeting new construction, we can construct this infrastructure at the lowest possible cost.

According to the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and Department of Energy Resources (DOER) ("EV-Ready FAQ"):

> When EV readiness is considered in the design of a building, decisions about the lowest cost layout can be made, allowing building owners and operators to reduce the financial burden of modifying or upgrading electrical systems later as well as avoid the construction costs and mess of trenching or boring to lay conduit for EVSE installation. The costs associated with installing an EVSE vary widely, depending on the site location and available electrical capacity. **What is certain is that it is significantly less expensive to prepare for charging EVs as buildings are designed and constructed.**
>
> - The U.S. Department of Energy reports installation costs that range from $600 - $12,700. The study mentions that special work such as trenching or boring were about 25% more costly than sites that did not need special work. Of the commercial installations studied, 72% required work on the electrical panel due to insufficient capacity. (http://www.afdc.energy.gov/uploads/publication/evse_cost_report_2015.pdf)
> - The California Air Resources Board finds that EV-ready codes avoid $3,750 to $6,975 per parking space in later retrofit costs. (http://www.documents.dgs.ca.gov/bsc/2015TriCycle/CAC/GREEN/Exhibit-B-CARB-Cost-Analysis-and-Technical-Report.pdf)
> - System installers in MA report an average commercial retrofit cost of around $7,000 but for new construction, the price drops to an estimated average of $1,000 (varying from $700-$1,200/space).

Adding proper electric infrastructure at construction time also provides increased public safety by ensuring adequate electricity supply and proper construction.

This warrant article sets a minimum power to be supplied, roughly equivalent with "Level 2" charging. This increases overall energy efficiency, and ensures that an hour of drive time requires less than an hour of charge time. We allow a low-cost NEMA 14-50 outlet to be installed, instead of a full charger. The NEMA 14-50 outlet is commonly used in homes for electric ranges, and you might have seen it at campgrounds as the standard outlet for recreational vehicles. This ensures that the outlet is immediately practically useful, for guests or other uses, while allowing easy upgrade to the latest "smart charger" later if necessary. The charging equipped spaces are not dedicated spaces, they need only be located near an appropriate outlet. By concentrating on the provision of adequate electric power, we lock in the cost and safety benefits while allowing for future technological developments.

Since this is Brookline's first step into electric vehicle support, we set an extremely modest goal: 2% of parking spaces, with a minimum of one. Many other places around

the state, country, and world are passing similar "EV-ready building" regulations, and most of them go further. Next door, Boston requires EV charging for developments with a Transportation Access Plan or a Parking Freeze Permit; their requirement is 5% of total parking spaces with sufficient electrical capacity in reserve for an eventual expansion to 15% of the spaces. The state DOER/EEA is working to amend the building code state-wide; they are proposing 1 space with sufficient electrical capacity for 4% of the spaces. Washington state requires 5% EV readiness in multifamily units and some commercial buildings. In the most direct analog to this measure, New York City requires full charger installation (not just an outlet or "EV-ready" junction box) at 20% of new and expanded spaces for off-street parking. (Source for the previous figures: EEA/DOER "EV-ready FAQ".) Indeed, there is a draft directive in the European Union, due to be released by the end of the year, that calls for *every* new or refurbished house in Europe to be equipped with EV charger by 2019 and 10% of all parking spaces by 2023. In comparison, we feel the requirements in this article are extremely modest and reasonable.

This is the right time to adopt these bylaws and kickstart electric vehicle adoption in our town. Electric vehicle sales are soaring—over 45,000 EVs were sold in the third quarter of 2016, up more than 60 percent from the same time a year ago, despite continued lower-than-average oil prices and uneven effort from manufacturers in bringing EVs to market. In fact, the month of September 2016 also set a record for US EV sales in a single month, with almost 17,000 sold. The increases are driven by plummeting battery prices, which were $1,000/kWh in 2010, $350/kWh in 2015, and are expected to fall below $100/kWh in next decade. (Source: Union of Concerned Scientists.) This is an excellent opportunity to seed our town with infrastructure and let the neighbor-to-neighbor "contagion" multiply the effects over the next decade.

The impact will be modest, on a year-to-year basis. Approximate figures provided by Daniel Bennett, Building Commissioner for the Town of Brookline show that in 2014, the permits affected by this by-law would have included only 15 single-family homes, 3 parking areas, and 12 garages. In 2015, the affected permits were for 16 single-family homes, 8 parking areas, and 10 garages. The intent is not to change Brookline overnight, but to slowly and cautiously begin the process of shifting our town away from fossil fueled vehicles.

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

As a zoning amendment, state law also provides for robust protections for existing structures. As clarified by our building commissioner, Mr. Bennett:

Article 17, if passed, will require at least 2% of parking spaces be equipped for electric vehicle charging. This Article amends the provisions of the Zoning By-Law related to Design of Off-Street Parking. **This applies to Parking Areas (Parking Lots and Parking Garages) and not principal structures.** In addition changes to this Article may be approved by the Board of Appeals by special permit.

The By-Law **WOULD** be triggered by the following work:

- Any new parking lot
- Any new parking garage or portion of a building used as a garage
- Any change, alteration or expansion of an existing parking lot or garage
- Any new wiring or parking area lighting when none existed before

The By-Law **WOULD NOT** be triggered by the following work:

- Renovations to the primary structure exclusive of garage area
- Driveway repairs
- Restriping or repaving (same size)
- Ordinary repairs such as patching, excavating
- Repairs to existing parking area lighting

This article would not create new charging facilities overnight, but as off-street parking facilities are constructed or renovated we would gradually create an infrastructure to support electric vehicles in our town. As studies have shown that visible charging stations make people much more likely to consider buying a plug-in car for themselves, the way will be paved for Brookline to take a lead in securing a clean and sustainable future for our Town.

## PLANNING BOARD REPORT AND RECOMMENDATION

This zoning amendment proposes to amend Sec. 6.04, Design of All Off-Street Parking Facilities, by adding a new paragraph related to electric vehicles at the end of this section. It would require that at least 2% of parking spaces (but not less than one) must have an electrical charger or outlet to power an electric car. A special permit from the Board of Appeals could waive this requirement for a specific building if consistent with encouraging electric vehicle adoption.

The Planning Board believes it is important to reduce reliance on fossil fuels and encourage the use of electric and/or hybrid vehicles. However, the Board thinks that for now single family homes should be exempt from this requirement because the cost of installing the necessary electric capacity and outlet could prove burdensome for some single family homeowners. The Board noted that in the near future state and national regulations may require all new homes to have electric car chargers. Therefore, the Planning Board would recommend modifying the amendment by adding language as follows to the beginning of the first sentence "Except for single family homes,".

Articles XVI and XVIII are resolutions related to Article XVII. Article XVI is no longer pertinent because Public Works has assumed responsibility for the maintenance of the existing Town-owned electric vehicle charging stations. In regard to Article XVIII, the

Planning Board concurs with the opinion of the Building Department that it would be more effective to assist Mr. Ananian with his petition to amend the State Building code, rather than have the Town directly petition the State.

**Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article XVII with the modification as follows.**

§6.04.15 - ELECTRIC VEHICLES

15. **Except for single-family homes, a**t least 2% of parking spaces, and not less than a single parking space, must be equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section, consistent with the intent of encouraging electric vehicle adoption, may be approved by the Board of Appeals for an individual building by special permit.

or act on anything relative thereto.

## SELECTMEN'S RECOMMENDATION

Article 17 is a petitioned article to amend the Zoning By-Law and proposes that at least 2% of parking spaces be equipped with Level 2 or 3 charging stations or a 50-amp outlet for electric vehicles.

The Board is highly supportive of efforts to reduce our carbon footprint, and providing accessible, visible, and conveniently located electric-vehicle charging stations could encourage increased usage of energy-efficient, electric vehicles. Nonetheless, the scope of the permitting work that would trigger compliance requirements could unfairly burden homeowners, small businesses, and nonprofits to an extent that could outweigh the benefits of the regulation. The Board recommends assessing the estimated costs associated with the purchase of the device and its installation, maintenance, and siting for ADA-compliance, as well as the possible infrastructure upgrades required to meet new electrical load requirements for a parking area. In addition, as the technology for charging stations changes, the electrical specifications may change as well. Specifying requirements for amperage could eventually make the regulation inconsistent with future changes to the State electrical code. Further study is needed and the Board would like a recommendation on how this initiative could be implemented without negatively impacting homeowners, small businesses, and nonprofits.

The Board of Selectmen recommends FAVORABLE ACTION on the following motion:

VOTED: To refer Article 17 to the Climate Action Committee.

Passed by a Majority Vote

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 17 proposes to amend the Town's Zoning by-law by requiring new off-street parking facilities to provide the capacity or the mechanisms to recharge electric vehicles in at least 2% of the spaces and in any case, not less than one space. A special permit from the Board of Appeals could waive this requirement for a specific building if consistent with encouraging electric vehicle (EV) adoption. On October 13 with one amendment and by a vote of 16–0–1, the Advisory Committee, recommended Favorable Action.

On October 27, upon learning of the concerns expressed by the Selectmen's Climate Action Committee, the Advisory Committee reconsidered its initial recommendation and by a vote of 19–2–1 now recommends FAVORABLE ACTION on the referral motion offered by the Board of Selectmen.

BACKGROUND:
Article 17's goal is to encourage more people to use electric vehicles and lower greenhouse gases "by increasing access to the infrastructure required to charge electric vehicles." The article proposes to amend Section 6.04 of the Town's Zoning by-law by requiring new off-street parking facilities to provide either a Level 2 or Level 3 charger of at least 5kW capacity or electrical outlets capable of providing equivalent power. Level 2 equipment offers charging through a 240V plug. Depending on the battery technology used in an EV, Level 2 charging generally takes 4 to 6 hours to completely charge a fully depleted battery. Level 3 equipment is more powerful and in some cases, can provide an 80% charge in 30 minutes. It is not compatible with all vehicles. With both Level 2 and Level 3 equipment, charging time can increase in cold temperatures. (http://www.evtown.org/about-ev-town/ev-charging/charging-levels.html.) The electrical outlet that meets this article's stipulation, a NEMA 14-50, has a maximum voltage rating of 250V and is used in homes for electric cooking ranges and in RV parks for shore power.

DISCUSSION:
While offering support for the article, several Advisory Committee members questioned whether "the market" might not be an equally–or more effective–agent to increase infrastructure supporting EVs. For example, in the new Brookline Place garage, 14 Level 2 EV chargers will be provided. It was also noted that installing electric chargers helps to qualify projects for LEED (Leadership in Energy and Environmental Design) certification.

Some members also suggested that creating EV recharging stations might be premature, given that hydrogen fuel cell vehicles could increase in popularity since they have zero emission capability. Some researchers believe that as fueling infrastructure expands in the next decade, hydrogen fuel cell vehicles will begin to garner greater market acceptance,

resulting in faster market penetration (See, for example, "Global Market for Hydrogen Fuel Cell Vehicles," a report published by Information Trends.)

Committee members concluded, however, that the cost of installing such facilities now (estimated to be approximately $1,000 per space) would be considerably less than a retrofit which could range between $6,000 and $12,660 per space, depending on distance from the electrical panel to charging outlet location, upgrades, etc. (https://chargedevs.com/newswire/california-building-code-to-require-all-new-construction-to-be-ev-ready/). There was unanimous support for permitting a user fee to be imposed. Members also agreed with the Planning Board's recommendation to exclude single-family houses from Section 6.04.15, noting that imposing such a cost on a Brookline homeowner when the need wasn't evident seemed unfair.

*Initial Recommendation*

By a vote of 16–0—1, the Advisory Committee initially recommended Favorable Action on the following motion under Article 17:

VOTED: That the Town amend Section 6.04 of the Zoning By-law as follows:

Section 6.04.15 – ELECTRIC VEHICLES

> 15. Except for single-family homes, at least 2% of parking spaces, and not less than a single parking space, must be equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section, consistent with the intent of encouraging electric vehicle adoption, may be approved by the Board of Appeals for an individual building by special permit.

*Reconsideration*

On October 27, the Advisory Committee discussed the comments of the Climate Action Committee and the Selectmen regarding Article 17. Both bodies had concerns pertaining to 1) the type of construction or renovation work that could trigger Section 6.04.15; 2) the potentially broad application of the term "parking spaces"; and 3) the possibly high costs of compliance. This is a case in which the "devil is in the details" and it is important to avoid unintended consequences of a zoning amendment. While generally supportive of the Article's intent, nonetheless the Advisory Committee felt that further study and analysis of the article is warranted. Members have confidence that the Climate Action Committee will review the petitioner's proposals and present recommendations for how Brookline can best respond to the need for charging facilities for EVs. The Committee reconsidered its position, and by a vote of 19–2–1 now recommends Favorable Action on the vote offered by the Board of Selectmen.

RECOMMENDATION:
By a vote of 19–2–1 the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: To refer Article 17 to the Climate Action Committee.

XXX

## ARTICLE 18

### EIGHTEENTH ARTICLE

Submitted by: C. Scott Ananian, TMM10

To see if the Town will adopt the following Resolution:

Whereas, greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined;

Whereas, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

Whereas, the Town has a special interest in addressing climate change;

Whereas, Massachusetts General Laws c. 143 § 98 provides that the Board of Selectmen may recommend to the State Board of Building Regulations and Standards the adoption of more restrictive building codes for the Town;

Now, therefore, be it hereby Resolved that the Board of Selectmen should seek to further the construction of electric-vehicle-ready garages in the Town by pursuing the adoption within the Town of the following amendment to Title 527 Code Mass. Regs. §§ 12.00, the Massachusetts Electrical Code:

210.65. Add a new section numbered 210.65 to read:

> 210.65. Electric Vehicle Charging Outlet. For dwelling units, in each attached garage and in each detached garage with electric power, shall be installed either electric vehicle supply equipment meeting the requirements of article 625 and rated at least 5kW, or a 50-ampere, 125/250- volt receptacle conforming to the configuration as identified in Figure 551.46(C) and installed at a location compliant with 625.50. The electric vehicle supply equipment or receptacle shall be fed from an Electric Vehicle Branch Circuit in accordance with 210.17.

Either by recommendation to the state Board of Building Regulations and Standards under the process described in M.G.L. c. 143 § 98, or via alternate means if so advised by Town Council.

or act on anything relative thereto.

### PETITIONER'S ARTICLE DESCRIPTION

Greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined. The purpose of this article is to help get

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

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

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

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## MOTION TO BE OFFERED BY THE PETITIONER

VOTED: that the Town adopt the following resolution:

**WHEREAS**, greenhouse gas pollution from cars accounts for more emissions than from industries like iron, steel, cement and chemicals combined;

**WHEREAS**, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

**WHEREAS**, the Town has a special interest in addressing climate change;

**WHEREAS**, Massachusetts General Laws c. 143 § 98 provides that the Board of Selectmen may recommend to the State Board of Building Regulations and Standards the adoption of more restrictive building codes for the Town;

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Selectmen should seek to further the construction of electric-vehicle-ready garages in the Town by pursuing the adoption within the Town of the following amendment to Title 527 Code Mass. Regs. §§ 12.00, the Massachusetts Electrical Code:

210.65. Add a new section numbered 210.65 to read:

210.65. Electric Vehicle Charging Outlet. For dwelling units, in each attached garage and in each detached garage with electric power, shall be installed either electric vehicle supply equipment meeting the requirements of article 625 and rated at least 5kW, or a 50-ampere, 125/250- volt receptacle conforming to the configuration as identified in Figure 551.46(C) and installed at a location compliant with 625.50. The electric vehicle supply equipment or receptacle shall be fed from an Electric Vehicle Branch Circuit in accordance with 210.17.

Either by recommendation to the state Board of Building Regulations and Standards under the process described in M.G.L. c. 143 § 98, or via alternate means if so advised by Town Counsel.

## ADDITIONAL EXPLANATION PROVIDED BY THE PEITIONER

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

The provisions of this article are deliberately consistent with article 17. Article 17 affects parking areas (parking lots and parking garages) and not principal structures; this article uses a different mechanism (building code amendment) in order to extend the same provisions to home garages. Almost 90% of EV charging events happen at home at night (MA DOER/EER "EV-ready FAQ"), so this is a worthwhile focus for our effort. The reader is encouraged to peruse the petitioner's description of article 17 for additional background. Due to the change of format (building code not zoning by-law), the NEMA 14-50 outlet called out in article 17 is described as a "receptacle conforming to the configuration as identified in Figure 551.46(C)" here, but the effect is the same. Neither a charger nor a dedicated EV spot is required, just an outlet in the garage.

Building codes are state (not Town) laws, but M.G.L. c. 143 § 98 provides a means for the Board of Selectmen to petition for a more restrictive code to serve the Town's special interest in combating greenhouse emissions. Since the Massachusetts Electrical Code is

incorporated into the building code by M.G.L. c. 143 § 96 it is subject to amendment by the state Board of Building Regulations and Standards, even though it is a specialized code delegated to the Board of Fire Prevention Regulations by M.G.L. c. 143 § 3L.

In an attached letter (Exhibit A) the Board of Fire Prevention Regulations has affirmed that this M.G.L. c. 143 § 98 mechanism is appropriate for the task of this article.

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

The building code contains robust protections for existing structures. As clarified by our building commissioner, Daniel Bennett:

> Article 18, if passed, will require an electric vehicle charging outlet for dwelling units in each attached and/or detached garage with electric power.
>
> The By-Law **WOULD** be triggered by the following work:
>
> - All new attached garages
> - All new detached garages
> - All renovated or altered attached/detached garages
> - Any attached/detached garage with new electrical wiring when none existed before
> - Any attached/detached garage when electrical upgrades are performed
> - Substantially renovated dwelling unit (completed gut rehab)
>
> The By-Law **WOULD NOT** be triggered by the following work:
>
> - Minor renovation/alteration of a dwelling unit (kitchen, baths, basement, roofing, siding, windows) exclusive of garage area
> - Driveway repairs
> - Foundation/slab repairs of dwelling
> - Ordinary repairs to dwelling
> - Electrical/Wiring work exclusive of garage
> - Create additional bedroom
> - Addition other than garage

This article won't cause EV-ready garages to appear across Brookline overnight, but the hope is that the coming years will see a gradual increase in the number of homes ready to support an electric vehicle, and the network effects will multiply this into an even larger number of plug-in vehicles (electrics and hybrids) in our cleaner, quieter, town.

Exhibit A:

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Board of Fire Prevention Regulations
P.O. Box 1025 ~ State Road
Stow, Massachusetts 01775
(978) 567-3100 Fax: (978) 567-3121

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LT. GOVERNOR

DAVID J. BENNETT
SECRETARY

ANTONY CAPUTO
CHAIRMAN

October 6, 2016

Mr. C. Scott Ananian
Town Meeting Member Precinct 10
brookline@cscott.net
Brookline, MA

RE: Reply to recent letter regarding green energy amendments to the Massachusetts Electrical Code

Dear Mr. Ananian,

On behalf of the Board of Fire Prevention Regulations (BFPR), I am responding to your request for information and guidance relative to your proposed green energy amendments that you seek to promulgate as per your correspondence received via email on August 31, 2106.

At the September Board meeting, the BFPR discussed your correspondence and instructed me to respond as follows: With respect to your inquiry regarding the amendments posted on the Department of Fire Services website, it should be noted that the set of proposed amendments are to 527 CMR 1.00, The Massachusetts Comprehensive Fire Safety Code. 527 CMR 12.00, The Massachusetts Electrical Code is a separate and distinct regulation promulgated by the BFPR by means of a separate set of statutes and different process. There will be a separate promulgation and hearing process for 527 CMR 12.00 over the course of the next few months, as the Board is in the process of updating said code with the intention of having it in place for January 1, 2017.

While 527 CMR 12.00, The Massachusetts Electrical Code establishes the technical method and manner of installation of electrical components, 780 CMR Massachusetts Building Code is the appropriate code that would provide the minimum utility requirements of the building as a whole. Therefore, we believe that the provisions of M.G.L. 143 s 98 are the appropriate mechanism for your proposal to require Electric Vehicle Charging capabilities in all newly constructed residences in Brookline.

Thank you for your interest in presenting amendments to the subject Massachusetts Codes.

Sincerely,

A. P. Caputo

Anthony P. Caputo
Board of Fire Prevention Regulations

## SELECTMEN'S RECOMMENDATION

Article 18 is a resolution that proposes that the Town petition the State to approve the adoption of a regulation that would be more restrictive than the State code; namely, it would require that a 50-amp outlet be installed in attached and detached garages of dwelling units to enable electric vehicles to be charged. It is not clear that the process under M.G.L. c. 143 § 98 would apply to the purpose stated in the article.

The Board is concerned that estimated costs for possible wiring upgrades to meet additional electrical load requirements could place an unfair burden on homeowners. For example, to support a 50-amp receptacle in a garage, the wiring in an older, two-family home might need to be entirely upgraded. This could be costly and unnecessary expense, especially if the homeowner do not own or intend to own an electric vehicle.

Because the Building Commissioner has noted that the State Building Commission is addressing this issue imminently, the Board feels it may be more effective to petition the State to amend its code to avoid possible inconsistencies with local regulations.

Therefore on October 25, 2016 a unanimous Board of Selectmen recommends FAVORABLE ACTION on the following motion:

VOTED: To refer Article 18 to the Climate Action Committee.

Passed by an Electronic Roll Call Vote of 102 In Favor, 74 Opposed and 4 Abstentions

## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 18 is a resolution that urges the Board of Selectmen to stimulate the construction of electric vehicle-ready garages in Brookline by petitioning the Massachusetts Board of Regulations and Standards to allow the Town to increase the minimum utility requirements for newly-permitted garages in Brookline to include electrical outlets with the capacity to power electric vehicle (EV) chargers. On October 13, by a vote of 13–3–1, the Advisory Committee recommended Favorable Action. On October 27, upon discussion of the comments of Building Department staff and the concerns of the Board of Selectmen and Selectmen's Climate Action Committee, the Advisory Committee reconsidered its initial recommendation and by a vote 16–7–0, now recommends FAVORABLE ACTION on the referral motion offered by the Board of Selectmen.

BACKGROUND:
As is the case with Article 17, Article 18 seeks to encourage the Town to provide the infrastructure necessary to support the ownership and operation of electric vehicles. This article aims to increase the number of EV-ready garages in the town by requiring that new garages or newly converted garages have appropriate electric power capacity to

charge a vehicle at a rate faster than the rate at which the vehicle consumes the charge while driven.

Because this requirement would be part of the Building Code and because the Building Code is a state law, in order to effect this change, the Board of Selectmen would need to petition The State Board of Building Regulations and Standards, asking for a more restrictive provision for the Town.

DISCUSSION

Some Advisory Committee members questioned whether as a matter of principle, it was appropriate for the Town to impose on a property owner the cost of meeting a demand that had not yet been demonstrated. (According to the petitioner's numbers, there are only 71 electric vehicles in Brookline.) Furthermore, it was noted that the number of single-family homes with garages that are constructed every year would yield a very small number of EV-ready garages. Finally, with the likelihood in the near future of a revised State Building Code requiring all new homes to have electric car chargers, it appeared to some members that Article 18 was not necessary.

Again, as was the case with Article 17, Committee members concluded, however, the cost of installing such facilities in new construction would be considerably less than a retrofit. Along with Articles 16 and 17, Article 18 represents a step forward in helping to combat climate change and promote energy independence and serves as a reminder to residents that EVs represent an alternative to driving gas or diesel-powered vehicles and offer environmental benefits.

*Initial Recommendation*

By a vote of 13–3–1, the Advisory Committee initially recommended Favorable Action on the following motion under Article 18:

VOTED: that the Town adopt the following resolution:

WHEREAS, greenhouse gas pollution from cars accounts for more emissions than from industries like iron, steel, cement and chemicals combined;

WHEREAS, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

WHEREAS, the Town has a special interest in addressing climate change;

WHEREAS, Massachusetts General Laws c. 143 § 98 provides that the Board of Selectmen may recommend to the State Board of Building Regulations and Standards the adoption of more restrictive building codes for the Town;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Selectmen should seek to further the construction of electric-vehicle-ready garages in the Town by pursuing the adoption within the Town of the following amendment to Title 527 Code Mass. Regs. §§ 12.00, the Massachusetts Electrical Code:

210.65. Add a new section numbered 210.65 to read:

210.65. Electric Vehicle Charging Outlet. For dwelling units, in each attached garage and in each detached garage with electric power, shall be installed either electric vehicle supply equipment meeting the requirements of article 625 and rated at least 5kW, or a 50-ampere, 125/250- volt receptacle conforming to the configuration as identified in Figure 551.46(C) and installed at a location compliant with 625.50. The electric vehicle supply equipment or receptacle shall be fed from an Electric Vehicle Branch Circuit in accordance with 210.17.

Either by recommendation to the state Board of Building Regulations and Standards under the process described in M.G.L. c. 143 § 98, or via alternate means if so advised by Town Counsel.

*Reconsideration*

On October 27, the Advisory Committee discussed the comments of the Building Department staff, Climate Action Committee, and the Selectmen regarding Article 18. Concerns with the lack of consistency between Articles 17 and 18 (the former addresses "parking areas" and the latter "garages"); the circumstances triggering the application of 210.65; the unresolved question as to whether the Town can petition the state under MGL c.143, Section 98; and the potential costs of property owners adhering to proposed Massachusetts Electrical Code amendment were examined. While generally supportive of the article's intent, nonetheless the Advisory Committee felt that further study and analysis of the article is warranted. The Committee reconsidered its position, and by a vote of 16-7-0 now recommends Favorable Action on the vote offered by the Board of Selectmen.

RECOMMENDATION:
By a vote of 16–7–0 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

XXX

# ARTICLE 19

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Article 19 proposes to substantially reduce the minimum off-street parking requirements for residential housing located within half a mile of Green Line stops, the proposed "Transit Parking Overlay District" (TPOD). Under current zoning, adopted in 2000, the minimum parking requirements, applying town wide, are 2 spaces for studios, one-bedroom units and two-bedroom units, and 2.3 spaces for units with three or more bedrooms. The petitioner states that these requirements are excessive and have harmful consequences. Article 19 proposes to lower the minimum requirements to 0.5 spaces for studios, 0.8 for one-bedroom units, 1.1 for two-bedroom units, and for larger units, 1.5 if the parcel's FAR is 0.5 or higher or 1.9 for if the FAR is less than 0.5.

The amendment to Article 19 that is supported by both the Advisory Committee and Selectmen recognizes the need to adjust the minimum parking ratios to better reflect residents' needs and aspirations, but scales these reductions back to align more closely with those proposed by the Moderator's Committee on Parking, which gathered significant data on residents' parking needs and usage from 2011-2013. These ratios were considered at the 2013 Fall Town Meeting, obtaining a majority but not the required two-thirds vote. The three differences between the 2013 proposal and Article 19, as amended, are as follows:

- 1.4 spaces are proposed instead of 1.5 for one-bedroom units
- 2.0 spaces are proposed instead of 2.3 for three-bedroom units and larger
- All the reduced ratios would apply *only* within the proposed TPOD, whereas the 2013 proposal would have been applied Town-wide.

A summary of the current and proposed parking ratios is as follows for properties within the proposed TPOD:

| Unit size | Current By-Law | Fall 2013 Warrant Article | Art.19 (Petitioner) | Art.19 (BOS/AC) |
|---|---|---|---|---|
| Studio | 2.0 | 1.0 | 0.5 | 1.0 |
| 1-bed | 2.0 | 1.5 | 0.8 | 1.4 |
| 2-bed | 2.0 | 2.0 | 1.1 | 2.0 |
| 3-bed | 2.3 | 2.3 | 1.5 / 1.9 | 2.0 |

By a vote of 16–6–0, the Advisory Committee recommends FAVORABLE ACTION on Article 19 as amended by the Selectmen.

BACKGROUND:
Article 19 was submitted as a citizen petition by Scott Englander. It seeks to reduce the minimum off-street parking spaces required for new housing developments (new construction or renovations) within a half-mile radius of any MBTA Green Line stop, based on the premise that many residents that choose to live close to the T take advantage of public transportation and, as a result, are less reliant on automobiles than those that live further away.

Current off-street parking requirements were adopted in 2000 in response to the observation that residents moving into new, high-end housing owned more cars than the on-site spaces called for under previous zoning, causing a shortage of off-street parking. The current requirements pre-date the trend towards online shopping, telecommuting, Uber, Peapod, and Hubway.

DISCUSSION:
The Advisory Committee heard public comment on both sides of the issue. Residents in support of Article 19 spoke about the current requirements being excessive and out-of-date, not reflecting the trends to alternative modes of transportation and less reliance on cars, particularly with millennials. They argue that providing more parking spaces than are actually required not only raises the cost of new housing, but it also creates larger buildings (if the parking is enclosed) and less green space (if unenclosed). Residents in opposition to Article 19 noted that residents own cars for many reasons, one of which is commuting. Working couples with children routinely need two cars in order to divide up childcare drop-off and pick-up obligations, for example. Some even posited that lower residential parking requirements might even cause property owners in L and G districts to replace commercial uses with residential use, lowering property tax contributions and undercutting the Town's policy to encourage commercial development.

A majority of the Advisory Committee expressed the following concerns about Article 19 as proposed by Petitioner:

- No data about the car ownership of the affluent new residents moving into expensive new housing has been provided. Town-wide averages do not provide this relevant information. See excerpt below from the Advisory Committee report on the November 2010 parking reduction Warrant Article[1].

- No data has been provided to substantiate the claim that roughly half of the parking spaces that have been provided in housing developments since 2000 are unused.

- The Moderator's Committee on Parking found no statistically significant relationship between distance from MBTA Green Line stops and car ownership[2].

- The Moderator's Committee on Parking found that residents living near the T commuted by car less than those living further away, but residents in comparable housing owned cars at the same rates regardless of distance from the T.

- A 2010 report by Northeastern University's Dukakis Center for Urban and Regional Policy found that the gentrification often observed near transit stops was associated with increases in car ownership. See the excerpt from the report quoted below[3]. Thus in the TPOD there may actually be a need for more rather than less off-street parking.

- Maintaining our overnight parking ban serves all residents, including those without cars, by keeping Brookline streets cleaner, safer, and not clogged 24/7 with parked cars. There was concern that Article 19, as proposed by the petitioner, may unduly pressure the overnight ban by excessively increasing the demand for overnight street parking.

[1]From the Appendix to the Advisory Committee report on Article 10 at the Fall 2010 Town Meeting, pp. 10–33:

> *Residents of new construction are likely to have more vehicles than the town-wide average. New construction tends to be more expensive—not just because it has more parking, but because there is a premium for new buildings that have modern amenities and no wear and tear. Buyers tend to be more affluent and to own more vehicles than the residents of older Brookline multi-family buildings. New construction also will not include many, if any, rooming houses/single-room occupancies, affordable senior housing units, and college dormitories—categories of housing in which the residents tend to own few cars. New residential construction will probably be condominiums, not rental units, and homeowners are more likely to own cars than renters.*

[2]From the 2013 Moderator's Committee on Parking report, p. 15:

> *Using Census Block Group (CBG) data compiled by proponents of Article 10 at the November 2010 Special Town Meeting, the Committee developed a statistical regression model of the demand for off-street parking based upon three potential explanatory variables -- (1) the average unit size, (2) the percent owner-occupied units, and (3) a location designator indicating proximity to one of the three Green Line branches. ... Generally, CBGs that were located within roughly ½ mile of one of the three Green Line branches were coded as "1" (i.e., near mass transit), whereas all others were coded "0". ... The Unit Size and Ownership variables were found to be statistically significant at the 95% confidence level; proximity to the Green Line was not observed to be statistically significant at the 95% confidence level.*

[3]From the October 2010 report of Northeastern University's Dukakis Center for Urban and Regional Policy, "Maintaining Diversity in America's Transit-Rich Neighborhood," p. 24:

> *The relative reduction in the proportion of the TRN [Transit-Rich Neighborhood] households using public transit in 40 percent of the neighborhoods studied is consistent with the finding that automobile ownership increased faster in nearly three-quarters (71 percent) of these neighborhoods, with ownership of two or more autos increasing in nearly three in five (57 percent). When upper income households move into an area, they are more likely to own motor vehicles and to use them for their commute.*

Recognizing that the parking ratios in our current Zoning By-Law are almost two decades old and, therefore, deserving of reassessment in light of the concerns and developments articulated by the petitioner, the Advisory Committee considered substitute language to reduce parking requirements within the TPOD to levels proposed by the Moderator's Committee on Parking (2011–13). These ratios were considered at the 2013 Fall Town Meeting, obtaining a majority but not the required two-thirds vote: 1 space for studios, 1.5 for one-bedroom units, 2 for two-bedroom units, and 2.3 for larger units. The Advisory Committee's Planning and Regulation Subcommittee proposed a further reduction to the proposed 2013 ratios, dropping the 2.3 space requirement and requiring 2 spaces for all units with two or more bedrooms. The Selectmen adopted this approach, with one further reduction: to require 1.4 spaces instead of 1.5 for a one-bedroom unit, based on the notion that if a single one-bedroom unit was created, it would round down to 1 space rather than up to 2 spaces. After consideration, the full Advisory Committee adopted the Board of Selectmen's position.

Adopting reductions in off-street parking required by zoning constitutes an experiment whose outcome is to be determined. It is the Advisory Committee's considered view that parking requirements in the Town should be reduced, but that the Town should proceed with caution, having the opportunity to revisit these requirements in the future. The amendment supported by both the Advisory Committee and the Selectmen represents an incremental but significant reduction in parking requirements.

RECOMMENDATION:
By a vote of 16–6–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 19

**SELECTMEN'S CLIMATE ACTION COMMITTEE RECOMMENDATION**

The Selectmen's Climate Action Committee voted 8-1-0 on the following recommendation:

Because a reduction in parking requirements is consistent with the Town's Climate Action Plan, the Selectmen's Climate Action Committee supports favorable action on the petitioner's motion under Article 19 as originally proposed, and will support any amended motion that provides some reduction in the minimum residential parking requirements.

# Town of Brookline
## Massachusetts
## Department of Public Works
### Engineering & Transportation Division

TRANSPORTATION BOARD
JOSHUA SAFER, CHAIRMAN
PAMELA ZELNICK,
VICE CHAIRMAN
CHRISTOPHER DEMPSEY
GUSTAAF C.M. DRIESSEN, PE
SCOTT ENGLANDER
ALI TALI, PE

November 14, 2016

Brookline Board of Selectmen
Brookline Advisory Committee
Brookline Town Meeting

RE: Warrant Article 19 Recommendation

Per the request of the Petitioner, the Transportation Board held a public hearing on Thursday, October 27, 2016 to discuss and vote on the issuance of a letter of recommendation regarding Warrant Article 19: Amendment to the Zoning By-Law- Zoning Map -- by adding (e) a Transit Parking Overlay District, under Sec. 3.01.4, Overlay Districts; new parking requirements under Sec. 6.02, Paragraph 2; amending the last footnote under Sec. 6.02, paragraph 1, Table of Off-Street Parking Requirements; and adding a new Transit Parking Overlay District to the Zoning Map. Following the public hearing and a subsequent discussion at the November 3, 2016 meeting the Transportation Board considered the following motion:

WHEREAS The Transportation Board for the Town of Brookline, under Chapter 317 of the Acts of 1974 as amended, are charged with the *"authority to adopt, alter or repeal rules and regulations not inconsistent with general law...relative to pedestrian movement, vehicular and bicycle traffic in the streets and in the town-controlled public off-street parking areas in the town, and to the movement, stopping, standing or parking of vehicles and bicycles on, and their exclusion from, all or any streets, ways, highways, roads, parkways and public off-street parking areas under the control of the town"*;

WHEREAS The Brookline Board of Selectmen convened the Brookline Parking Committee (BPC) in 2008 "in order to maximize the effective and efficient use of Brookline's on- and off-street parking resources for the mutual benefit of local businesses, residents, and visitors. This committee was charged with conducting a comprehensive review of policies and regulations related to parking (other than the year-round ban on overnight on-street parking)." Furthermore two members of The Transportation Board were members of the Committee, including then Transportation Board Member William Schwartz who presided as Co-Chair;

*333 Washington Street ♦ Brookline, MA 02445-6863*
*Telephone: (617) 730-2177 Facsimile: (617) 264-6450*

WHEREAS the Selectmen's Parking Committee, following a study of overnight residential usage of onsite parking at 20 properties, supported "a reduction in off-street parking requirements within multi-family residential land uses, particularly near transit and in areas served by car sharing organizations, provided that neighborhood concerns are taken into account. The BPC does not recommend a specific number or ratio of parking spaces per unit";

WHEREAS the Moderator's Committee on Parking, following a study of overnight residential usage of overnight spaces, concluded "downwardly adjusting the minimums for studios and 1-bedroom units makes sense, as the Committee's survey shows that car ownership in these units is considerably less than the current minimum requirements. In addition, the Committee believes that the minimum off-street parking requirements for 2-bedroom units can be lowered slightly";

WHEREAS the Transportation Board, in response to the demands of our citizenry and in recognition that our community has both an urban and suburban mixture, has worked hard to enact regulations and support programs which lead to a strong multi-modal transportation system that encourages the use of public transportation, walking, and cycling as alternatives to single car commuting;

THEREFORE the Transportation Board, by a unanimous vote, recommends favorable action by Town Meeting on the motion offered by the Board of Selectmen to amend the Zoning Bylaw by creating a Transit Parking Overlay District and reduce the residential parking requirements within this district to 1 space for studio units, 1.4 spaces for one bedroom units, 2 spaces for two bedroom units, and 2 spaces for three bedroom units.

Sincerely (on behalf of the full Board),

Josh Safer
TMM Precinct 16 &
Chairman, Brookline Transportation Board

cc: Mel Kleckner, Town Administrator
Andrew Pappastergion, Commissioner - Department of Public Works
Peter M. Ditto, Director - DPW Engineering & Transportation Division

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## ARTICLE 19

### NINETEENTH ARTICLE

Submitted by: Scott Englander

To see if the Town will amend the Zoning By-Law by:

1. Creating a new Overlay District by adding the following language to Section 3.01(4): "e. Transit Parking Overlay District"

2. Amending the Zoning Map as shown on the following pages to add a new Transit Parking Overlay District.

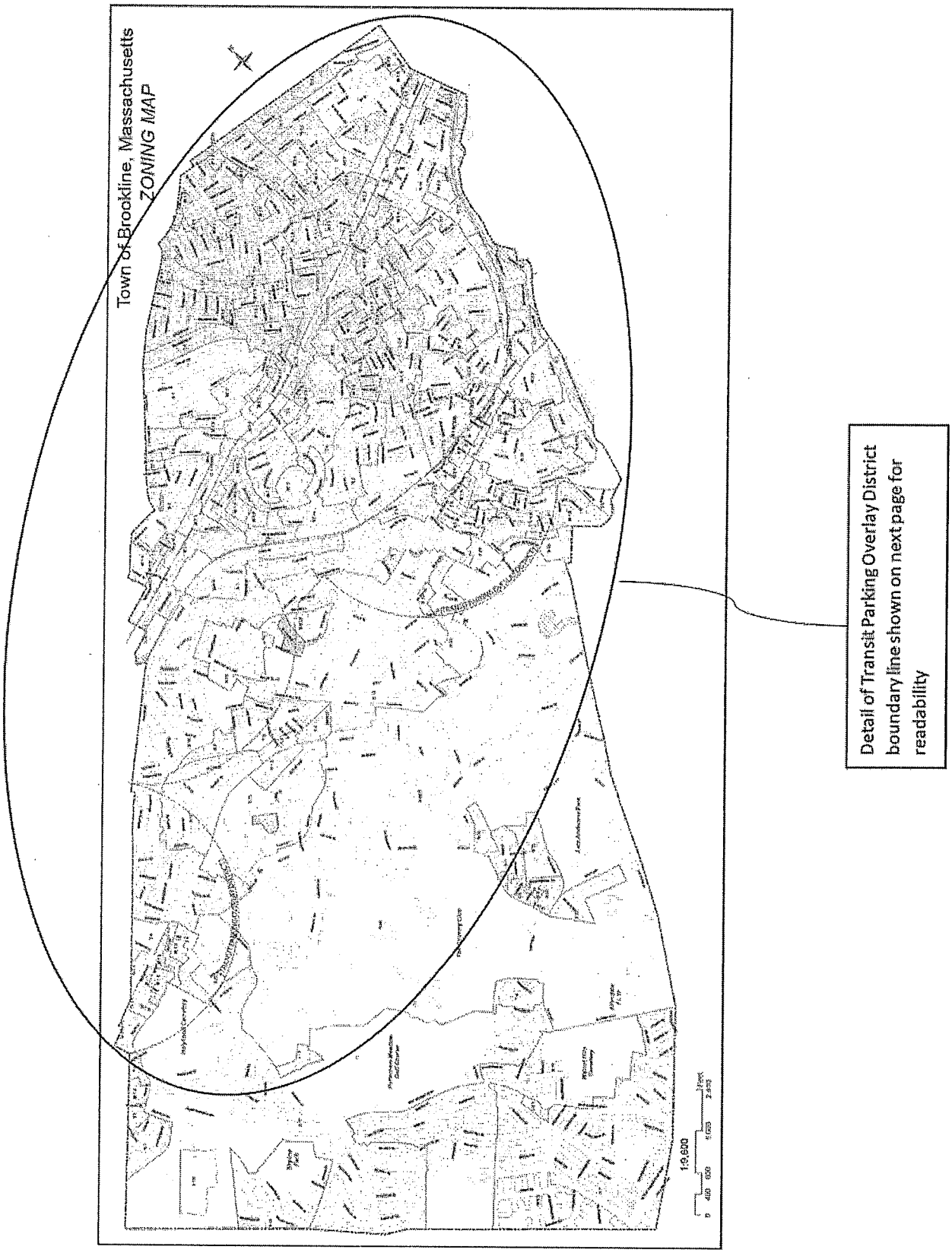

Town of Brookline, Massachusetts
ZONING MAP
1:10,800
Detail of Transit Parking Overlay District boundary line shown on next page for readability

*Figure 1.*

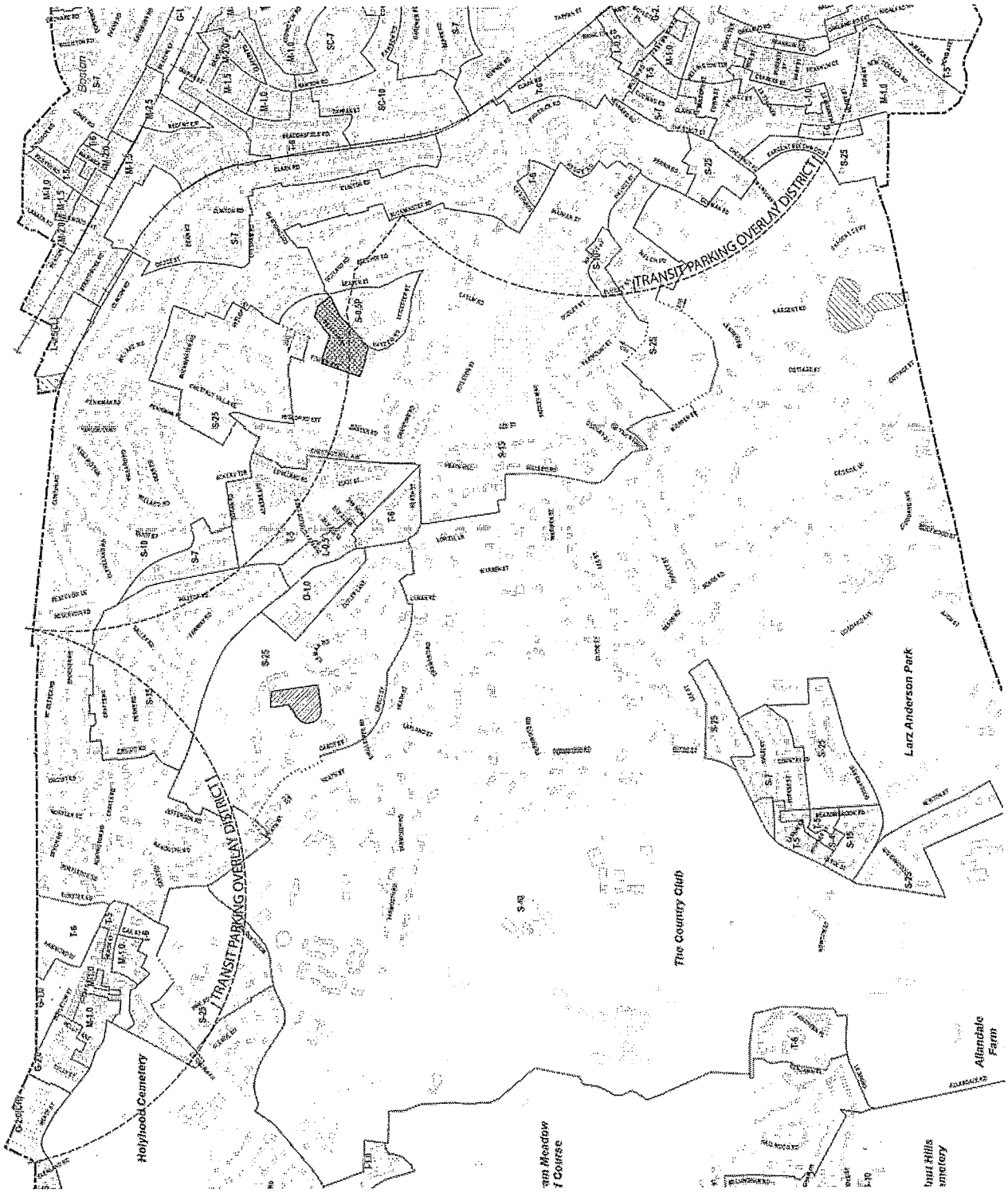



***Figure 2. Detail of Transit Parking Overlay District boundary line.*** *The Transit Parking Overlay District boundary reflects a half mile radius from the centroid of all MBTA green-line stations in or near Brookline. The centroids were taken from the Town's GIS data.*

3. Adding the following language to Section 6.02, Paragraph 2:

   "i. Residential uses on any lot for which any portion of the lot is within the Transit Parking Overlay District, notwithstanding the requirements of §3.02 paragraph 4, must provide no fewer off-street parking spaces per dwelling unit than 0.5 for studio units, 0.8 for one-bedroom units, 1.1 for two-bedroom units, 1.5 for dwelling units of three or more bedrooms in zoning districts defined by a maximum floor area ratio of 0.5 or more, and 1.9 for dwelling units of three or more bedrooms in zoning districts defined by a maximum floor area ratio of less than 0.5."

4. Amending the last footnote of Sec. 6.02, paragraph 1, Table of Off-Street Parking Space Requirements, in the Brookline Zoning By-Law, as follows: [new language in bold]

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

Or act on anything relative thereto.

## PETITIONER'S ARTICLE DESCRIPTION

*Overview*

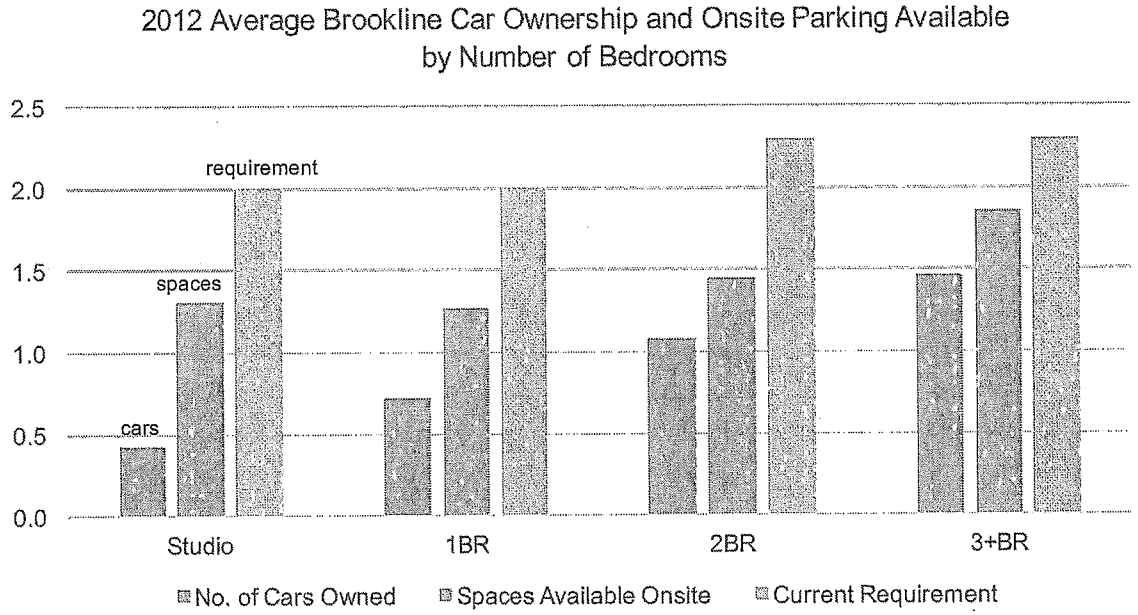
This article seeks to lower the minimum number of off-street parking spaces required for new residential development in areas of Brookline well-served by the MBTA Green Line. Residential parking requirements are applied whenever new dwelling units are created, including new construction or conversions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

It is the ultimate goal of this article to set residential parking requirements that reflect, support and protect Brookline's patterns of land use, travel behavior and vehicle ownership. The need to correct our current residential parking requirements became apparent after detailed analysis revealed that 1) our current residential parking requirements are too high, requiring more parking than residents need, and 2) requiring too much parking has serious negative consequences.

Various sources of data corroborate the fact that the amount of parking that Brookline residents currently require is considerably less than the amount available to them onsite, and the current requirements for new construction. The following figure, using data collected in a 2012 town survey,1 illustrates the magnitude of this disparity—in this case, for respondent households in non-single-family homes, for neighborhoods with good access to the MBTA Green Line. The leftmost bars for each unit type show the average

[1] Survey conducted by Moderator's Committee on Parking, with the assistance of the Town Clerk and Town Assessor, based on a survey questionnaire that was mailed out to all Town residents together with the 2012 Annual Town Census ("Town Survey").

number of cars owned per household, compared to spaces available onsite and current requirements.




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

*Figure 3. Car ownership, parking spaces, and parking requirements.*

Federal Census Bureau data show that town-wide, between 2010 and 2014, car ownership in Brookline declined, even as the number of households grew (Figure 4).[2]

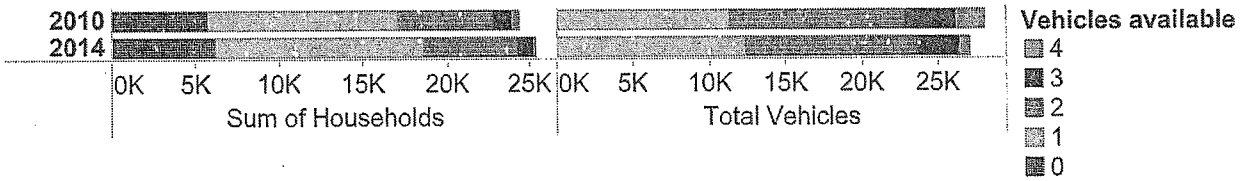



*Figure 4. Total vehicle ownership and number of households in Brookline.*

Indeed, these data show that over 28 percent of households in neighborhoods with good access to the MBTA Green Line are car-free, and that approximately 79 percent have no more than one car.[3] In 2014, only 37 percent of Brookline residents commuting to work from those neighborhoods drove alone, compared to 51 percent who took transit or walked (Figure 5).[4]

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[2] American Community Survey, U.S. Census Bureau, B08201: HOUSEHOLD SIZE BY VEHICLES AVAILABLE - Universe: Households, 2010 and 2014 five-year survey estimates for Brookline census tracts.
[3] Ibid., for 2014, excluding South Brookline census tracts 4011 and 4012.
[4] American Community Survey, U.S. Census Bureau, B08141: MEANS OF TRANSPORTATION TO WORK BY VEHICLES AVAILABLE - Universe: Workers 16 years and over in households. For 2014, excluding South Brookline census tracts 4011 and 4012.

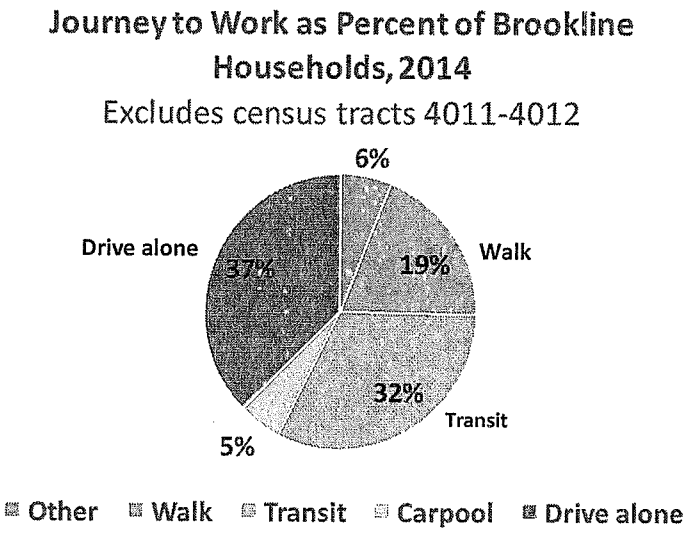
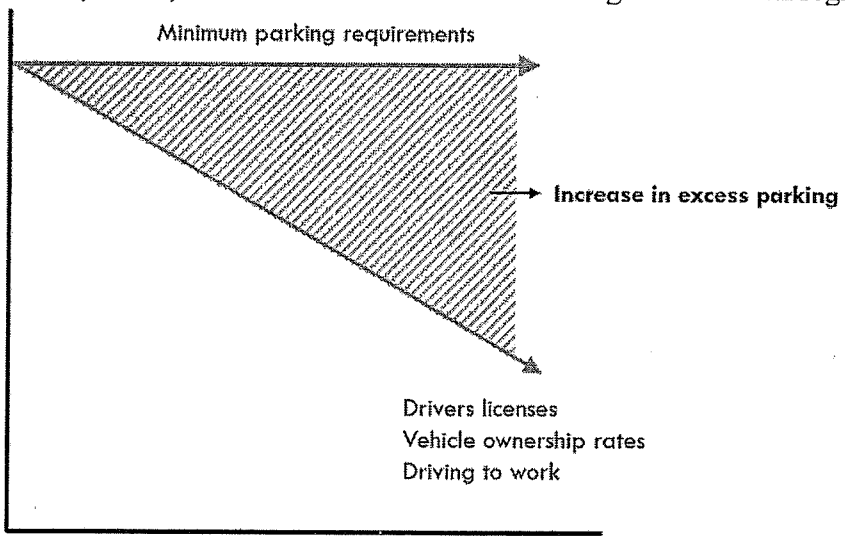



*Figure 5. In 2014, 37 percent of Brookline residents commuting to work from TPOD neighborhoods drove alone, compared to 51 percent who took transit or walked*

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



Millennials in the greater Boston area, in a recent survey, rated the following as important in choosing where to live:[5]

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

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

Under Brookline's current residential parking requirements, developers must provide at least two parking spaces per dwelling unit, no matter how small the unit, how high the cost, how small the benefit, and how negative the impacts. Minimum parking requirements raise the cost of development, creating a hidden tax that skews residential development toward larger and less-affordable multi-bedroom and luxury units. These requirements have effectively prohibited the development of more affordable studio and one-bedroom units in Brookline—units suitable for singles and couples. Moreover, they needlessly increase rents and prevent homebuyers from making rational home purchase decisions, disproportionately affecting lower-income community members. What if a prospective homebuyer could—instead of having to spend $120,000 on two underground parking spaces—use it to purchase a home of greater value? Or have a mortgage that's $120,000 smaller—which could make the difference in being able to afford a home in Brookline?[6]

When residential parking requirements were increased to their current levels, there was little thought given to the resulting spatial dilemmas. Developers in Brookline typically resolve those dilemmas by gaining relief to encroach on open space, decrease setbacks, or increase building height by putting parking on the first floor. The result? Poorly-designed and out-of-scale buildings, less open space, more paved surface, a degraded neighborhood streetscape, increased traffic[7] and the noise, congestion, pollution and greenhouse gas emissions that come with it, and more competition for curbside parking spaces during the day. Indeed, if Brookline had been built with today's residential and commercial parking requirements, it would look and feel nothing like the town we love, and would have few of its charms.

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

Brookline's minimum parking requirements, like those in other communities, have no scientific basis, but were first put in place because it was thought they would lessen

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

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

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

congestion in the streets; ironically, they have had the opposite effect. Indeed, off-street parking requirements have been likened to "a fertility drug for cars."[8] If Brookline wants to discourage appropriate housing development and increase traffic congestion, taxing housing to subsidize parking is the perfect way to do it.

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

The negative impacts of minimum parking requirements are certainly not unique to Brookline; they have been studied extensively in communities around the U.S. As renowned urban planner and Brookline resident Jeff Speck notes in his book *Walkable City*, a number of communities over the years have begun to abandon minimum parking requirements with good results, especially when parking challenges are tackled holistically: "Communities can only be their best if on-street parking, off-street parking, parking permits, and parking regulations are all managed collectively."[9] This is advice Brookline should take to heart.

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

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

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

When considering the application of a fractional parking requirement, such as 1.5 spaces per unit, to a multi-unit development project, it helps to remember that the total number

[8] Donald Shoup, *The High Cost of Free Parking*, 2011, American Planning Association, p. 8.
[9] Jeff Speck, *Walkable City: How Downtown Can Save America, One Step at at Time*. North Point Press, 2012.
[10] The Zoning By-Law requires that 10 percent of required parking spaces be set aside for such purposes in certain districts.

of spaces would simply be the sum of the requirements by unit, rounded to the nearest whole number of parking spaces.[11] For example, in a ten-unit building with 15 parking spaces (1.5 spaces per unit), five units might have access to two parking spaces each and the other five would have access to one each.

*History of Parking Requirements in Brookline*[12]

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

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

**2000 Parking Requirement Increase**

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

**Table 1.Brookline Parking Requirements, Past and Present**

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

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

[11] Brookline Zoning By-Law, section 6.02.1(a).
[12] This history is excerpted from work by Linda Olson Pehlke, prepared in 2013.

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

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

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

1) Field surveys of multi-family parking lots revealed an average 25% vacancy. Significant vacancies exist for town owned overnight rental parking. (No shortage of parking).

2) The increase in rental parking prices is consistent with cost of living increases over time. (Increased demand from additional vehicles brought by occupants of buildings with deficient parking is not necessarily driving prices up). Property owners continue to advertise existing and new parking areas for rent to off-site residents, indicating a surplus in parking supply.

3) Many new buildings with excess parking do not allow off-site residents to rent and may not be located near enough to potential renters of that parking. (Excess parking in new buildings would not alleviate perceived parking shortage).

4) Total Vehicle ownership has in fact declined slightly town-wide between 1998 and 2008. Registry of Motor Vehicles town-wide total: 1998 = 33,330, 2008 = 32,897. (Vehicle ownership has not increased while Zipcar usage has).

**Consistent Vehicle Ownership in Brookline Over Time**

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

vehicle per household ownership rate has remained relatively consistent over the last 20 years.

Moderator's Committee on Parking

November 2010 Special Town Meeting voted to refer the subject matter of Article 10, which proposed reducing the minimum off-street parking requirement, to a Moderator's Committee on Parking (the "Committee") to study the issue and prepare a report.13

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

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

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

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

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

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

2) The differential between the average cars per household and the spaces allotted was greatest for studio and one bedroom apartments, and less so for 2 and 3+ bedroom apartments in multi-unit buildings

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

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

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

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

Where Did the Proposed Rates Come From?

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

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

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

Table 2 shows the calculation used for the proposed TPOD parking requirements for zoning districts defined by a maximum floor area ratio (FAR) of 0.5 or more, and is based on data for use types excluding single family. The first column shows the unweighted car ownership ratios for all units. The starting points for the calculation are the Town Survey car ownership data in columns a and b, taken by occupancy type for the

group of survey neighborhoods corresponding most closely to the TPOD. An analysis of residential exemptions in the Assessor's Database as of August 2016 yielded the shares of units by unit type that are owner-occupied, for the set of neighborhoods corresponding most closely to the TPOD. The calculation shown produces the weights used (e and f) to adjust the Town Survey car ownership ratios so that owner- and non-owner-occupied units are represented in the same ratios as those in the Assessor's database, resulting in weighted ratios (g). The weighted ratios are generally close to the original unweighted ratios, and a similar exercise using ACS occupancy type shares did not yield materially different results. The ratios are increased by 10% (h) and rounded off to yield the final ratios.

Table 2. Calculation of Weighted Ratios, Excluding Single Family

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

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

Table 3. Calculation of Weighted Ratios, Single Family Only

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

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## PLANNING BOARD REPORT AND RECOMMENDATION

This warrant article, submitted by citizen petitioner Scott Englander, proposes to create a Transit Parking Overlay District (TPOD) of all parcels located within ½ mile of an MBTA Green Line station and to reduce the parking requirements for new residential development located within it. Parking requirements would be based on the number of bedrooms in a unit. Using empirical data and analysis collected from sources such as household surveys by the Town Assessor's Office, excise tax information and the U.S. Census numerous reports and studies give a picture of how many cars Brookline residents actually own and support lowering the parking requirement to better reflect this.

The most recent change to Brookline parking requirements was in 2000 when Town Meeting approved an increase to the parking requirements. The Planning Board was not supportive of this article. The proponents cited the shortage of parking in older buildings and hoped that the shortage could be alleviated by providing more parking spaces in new developments. The petitioners also hoped that the extra supply of parking would lower the cost of overnight rental parking in town. Following the increase in the parking requirements, numerous subsequent efforts have been made to reduce them. The Selectmen's Parking Committee, convened in August 2008, studied the topic and, in 2010, a Citizen Petition article was submitted to Town Meeting to reduce parking requirements. The result was to refer this subject to a Moderator's Committee on Parking. In 2013 the Moderator's Committee on Parking submitted an article that resulted from its research. This article proposed to reduce minimum parking requirements based on the number of bedrooms in a dwelling. Town Meeting voted No Action on this proposed amendment partly because having to provide less parking might result in an increase in the number of residential units and thus more schoolchildren.

The differences between the 2013 article and the 2016 article is that the currently proposed parking reductions are greater than those proposed in 2013 and would apply only to properties within the ½ mile buffer zone. In 2013, the reduction applied to residences in all zoning districts. Promoting growth near rapid transit is considered one of the main tenets of smart growth and the Planning Board is supportive of this. For now the parking requirements are minimums, and a developer could provide more spaces if he/she believed that the market demanded it. In the future, the Town may want to impose parking maximums.

The Planning Board believes that less parking can have important benefits – a reduction in traffic and reliance on different transportation options, including public transit, walking, biking, short term car rentals (Zipcars), and ride sharing (Uber/Lyft) and the opportunity to provide more green space. The Board notes that there is a growing trend, especially among younger adults, to be less car-dependent.

Conversely, more parking can raise the cost of development which is then passed on to purchasers and renters. The current parking requirements also serve as a disincentive to

developing studios and one-bedrooms because the same amount of parking is required for the smaller units as for the multi-bedroom units. A more varied pool of unit types has the advantage of attracting a different demographic – more singles and more empty nesters. The data also show that occupants of studios and one-bedrooms are the least likely to own cars. With the current higher parking requirements, developers must devise ways to include large amounts of parking, often more than residents will actually utilize and often resulting in buildings that are taller, have less usable open space or are not as well-designed. In a current case, high parking requirements have led to a proposal for a parking garage extending five levels underground.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article XIX.

## COMPARISON OF CURRENT RESIDENTIAL PARKING REQUIREMENTS TO 2013 AND 2016 PROPOSALS

**[Current parking is crossed out; 2013 is below it; and 2016 bolded, but applies only to lots within a ½ mile pf MBTA).]**

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

| | | RESIDENCE*** | PUBLIC ASSEMBLY *** | INSTITUTION | RETAIL & OFFICE | | | INDUSTRIAL | WAREHOUSE & OTHER |
|---|---|---|---|---|---|---|---|---|---|
| | | (Number of Spaces per dwelling unit) | (Number of seats requiring one space) | | General | | Medical & Dental | | |
| | | | | | Ground Floor | Other | | | |
| | | See ** below | | (Number of square feet of gross floor area requiring one space) | | | | | |
| ZONING DISTRICT DEFINED BY MAXIMUM FLOOR AREA RATIO | 0.15<br>0.20<br>0.25<br>0.30<br>0.35<br>0.40 | ~~2~~<br>Studio 1.0 .5<br>One Bdrm. 1.5 .8<br>Two Bdrm. 2.0 **1.1**<br>Three plus 2.0 **1.9** | 3 | 350 | 200* | 400* | 200* | 800* | 1200* |
| | 0.50<br>0.75<br>1.00 | ~~2.0/2.3**~~<br>Studio 1.0 .5<br>One Bdrm. 1.5 .8<br>Two Bdrm. 2.0 **1.1**<br>Three plus 2.3 **1.5** | 4 | 450 | 200 | 400 | 200 | 800 | 1200 |
| | 1.50<br>1.75<br>2.00<br>2.50 | ~~2.0/2.3**~~<br>Studio 1.0 .5<br>One Bdrm. 1.5 .8<br>Two Bdrm. 2.0 **1.1**<br>Three plus 2.3 **1.5** | 5 | 550 | 350 | 600 | 250 | 800* | 1200 |

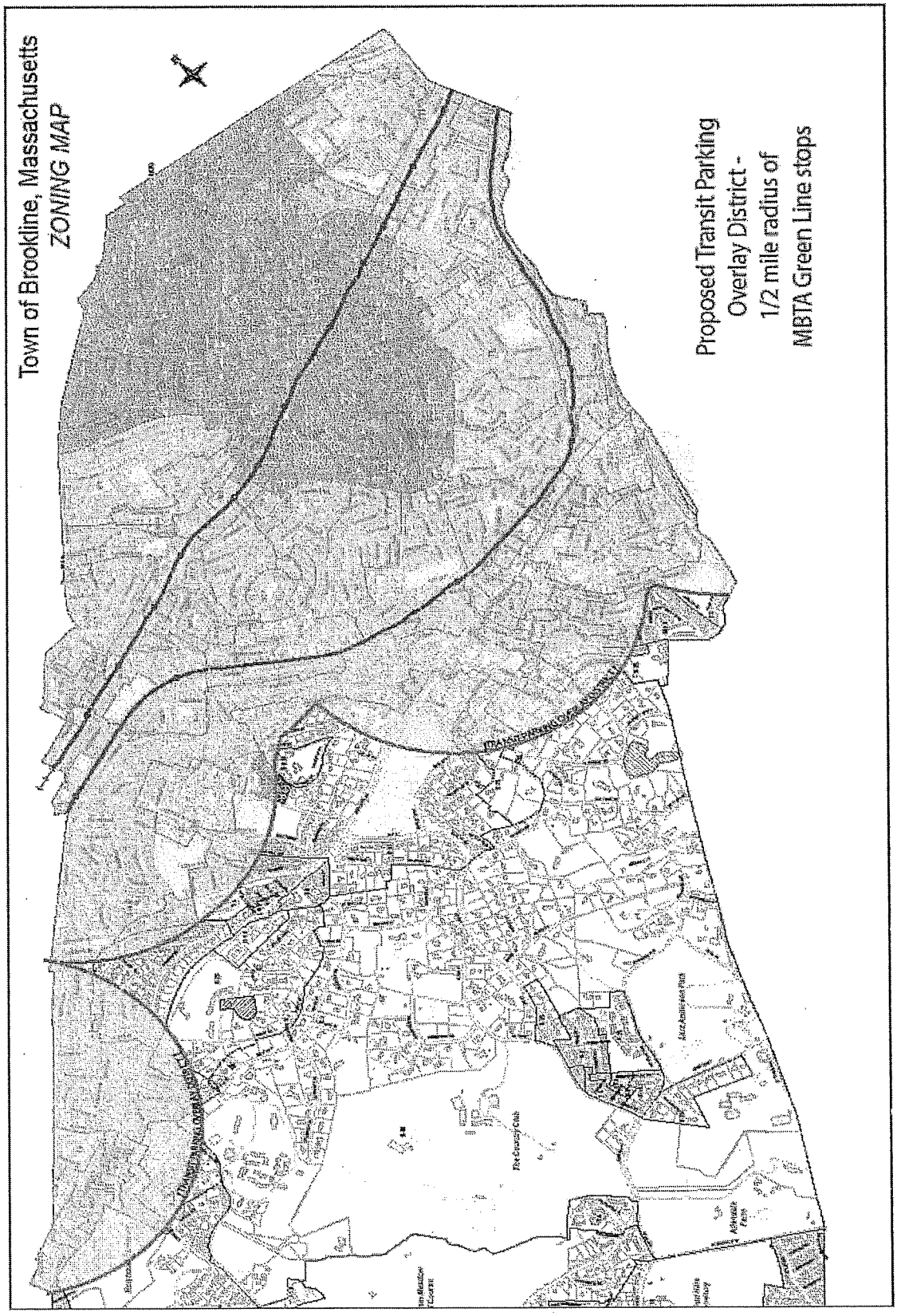
1. For the G-(DP) Special District, parking requirements shall be the same as those districts with a maximum floor area of 1.0, except as otherwise provided for in Section 5.06.4.g.

*Applicable to nonconforming uses.

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

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

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


Town of Brookline, Massachusetts
ZONING MAP
Proposed Transit Parking
Overlay District -
1/2 mile radius of
MBTA Green Line stops

## SELECTMEN'S RECOMMENDATION

This warrant article, submitted by citizen petition, proposes to decrease the parking requirements for new residential construction located within a ½ mile of an MBTA rapid transit stop. To accomplish this a Transit Parking Overlay District would be established. The reduction in off-street parking spaces for properties within that overlay district are proposed to be: 0.5 for studio units, 0.8 for one-bedroom units, 1.1 for two-bedroom units, 1.5 for dwelling units of three or more bedrooms in zoning districts defined by a maximum floor area ratio of 0.5 or more, and 1.9 for dwelling units of three or more bedrooms in zoning districts with a maximum floor area ratio of less than 0.5. The current requirements which were increased in 2010 are 2 per dwelling unit in 0.15 – .40 FAR areas, and 2/2.3 in .50 – 2.5 FAR areas. The higher value applies when a unit has more than two bedrooms or an attached single family has more than one bedroom.

Although the proposal is for parking minimums and not maximums, i.e. more parking spaces could be provided if wanted by the developer or owner, the Board of Selectmen felt that the reduction in required parking was too great and that it could result in inadequate parking being provided for new residential uses. Rather, the Board of Selectmen supported using the parking requirements proposed in 2013 by a Moderator's Committee on Parking, with two alterations proposed by the Advisory Committee's subcommittee on Planning and Regulation: the 2013 reductions would be applied only to locations within the proposed transit overlay district, not townwide, as originally proposed; and parking requirements for a two bedroom residential unit would be reduced from 1.5 to 1.4. [The rationale behind the latter change would be that a .5 parking space is required to be rounded up by the Zoning By-Law. For example, three one bedroom units at 1.5 spaces per unit would result in the requirement of five spaces (4.5), whereas 1.4 spaces per unit would result in four spaces (4.2).] Thus, the Selectmen would propose parking requirements as follows: for a **studio - 1 space**, not .5; for a **one bedroom -1.4 spaces**, not .8; for a **two bedroom, 2 spaces**, not 1.1 spaces; and for a **three bedroom, 2 spaces**, not.1.5 or 1.9 spaces.

The Moderator's Committee on Parking spent a year evaluating available data on car ownership in Brookline and its implications for the correct proportion of parking spaces per number of bedrooms in a unit. The Committee evaluated information from the Town Assessors database on auto excise revenue, a 2012 Townwide survey about vehicle ownership, Federal Census Bureau data, and requirements by other similar towns. With the two modifications described above, the Selectmen support lowering the parking requirements, but not as significantly as currently proposed in Article 19..

Therefore, on October 25, 2016 the Board of Selectmen voted unanimously to recommend **FAVORABLE ACTION** on Article nineteen, as follows.

Voted! That

~~To see if~~ the Town will amend the Zoning By-Law by:

1. Creating a new Overlay District by adding the following language to Section

3.01(4):
"e. Transit Parking Overlay District"

2. Amending the Zoning Map as shown on the following pages to add a new Transit Parking Overlay District.

Detail of Transit Parking Overlay District boundary line shown on next page for readability

*Figure 6.*

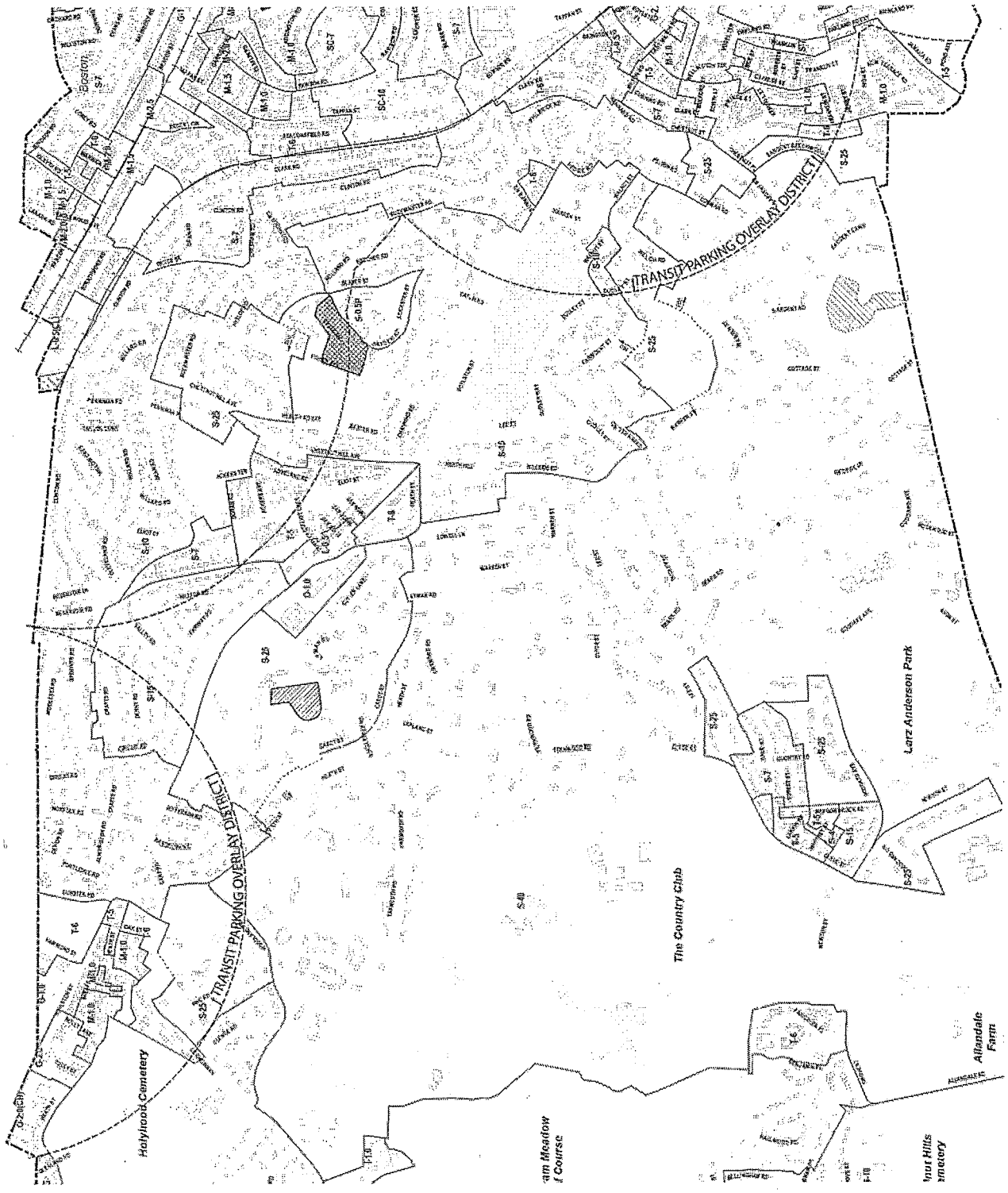



***Figure 7. Detail of Transit Parking Overlay District boundary line.*** *The Transit Parking Overlay District boundary reflects a half mile radius from the centroid of all MBTA green-line stations in or near Brookline. The centroids were taken from the Town's GIS data.*

3. Adding the following language to Section 6.02, Paragraph 2:

   "i. Residential uses on any lot for which any portion of the lot is within the Transit Parking Overlay District, notwithstanding the requirements of §3.02 paragraph 4, must provide no fewer off-street parking spaces per dwelling unit than ~~0.5~~ **1** for studio units, ~~0.8~~ **1.4** for one-bedroom units, ~~1.1~~ **2** for two-bedroom units, ~~1.5~~ **2** for dwelling units of three or more bedrooms ~~in zoning districts defined by a maximum floor area ratio of 0.5 or more, and 1.9 for dwelling units of three or more bedrooms in zoning districts defined by a maximum floor area ratio of less than 0.5~~."

4. Amending the last footnote of Sec. 6.02, paragraph 1, Table of Off-Street Parking Space Requirements, in the Brookline Zoning By-Law, as follows: [new language in bold]

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

Passed by an Electronic Recorded Vote of 146 in Favor, 49 Opposed and 6 Abstentions

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 19 will be provided in the Supplemental Mailing.

XXX

# Town of Brookline
## Massachusetts
## Department of Public Works
### Engineering & Transportation Division

**TRANSPORTATION BOARD**
JOSHUA SAFER, CHAIRMAN
PAMELA ZELNICK,
VICE CHAIRMAN
CHRISTOPHER DEMPSEY
GUSTAAF C.M. DRIESSEN, PE
SCOTT ENGLANDER
ALI TALI, PE

November 14, 2016

Brookline Board of Selectmen
Brookline Advisory Committee
Brookline Town Meeting

RE: Warrant Article 20 Recommendation

Per the request of Town Staff, the Transportation Board held a public hearing on Thursday, October 27, 2016 to discuss the issuance of a letter of recommendation regarding Warrant Article 20: Authorize Selectmen to contract with an operator for the Hubway Regional Bicycle Share Program. Following the public hearing and a subsequent discussion at the November 3, 2016 meeting the Transportation Board considered the following motion:

WHEREAS The Transportation Board for the Town of Brookline, under Chapter 317 of the Acts of 1974 as amended, are charged with the *"authority to adopt, alter or repeal rules and regulations not inconsistent with general law...relative to pedestrian movement, vehicular and bicycle traffic in the streets and in the town-controlled public off-street parking areas in the town, and to the movement, stopping, standing or parking of vehicles and bicycles on, and their exclusion from, all or any streets, ways, highways, roads, parkways and public off-street parking areas under the control of the town"*;

WHEREAS the Transportation Board, in response to the demands of our citizenry and in recognition that our community has both an urban and suburban mixture, has worked hard to enact regulations and support programs which lead to a strong multi-modal transportation system that encourages the use of public transportation, walking, and cycling as alternatives to single car commuting;

WHEREAS the Bicycle Advisory Committee, an advisory committee to the Transportation Board, has annually released and updated the Green Routes Master Network Plan since 2007 which seeks to make bicycling in Brookline a "sustainable, economical, and convenient mode of transportation for short and medium distance trips" because as a form of transportation is "is good for the environment, for public health, and for reducing traffic congestion and parking demand" and highlights the importance of the Hubway system in encouraging more residents to commute by bike;

*333 Washington Street ♦ Brookline, MA 02445-6863*
*Telephone: (617) 730-2177 Facsimile: (617) 264-6450*

WHEREAS the Brookline Hubway Advisory Committee concluded that several changes are necessary in order for Brookline to sustain its involvement in the system and made a series of recommendations largely focusing on soliciting proposals under a revenue sharing financial model that incentivizes the operator to provide a high level of service to users and where a title sponsorship funds system operations and expansion;

THEREFORE the Transportation Board, by a unanimous vote, recommends favorable action by Town Meeting on Warrant Article 20 which will allow the Board of Selectmen to enter into a long term contract which is expected to provide the Town, and the other communities in the regional Hubway system, the most operational and financial flexibility in further expanding the system.

Sincerely (on behalf of the full Board),

Josh Safer
TMM Precinct 16 &
Chairman, Brookline Transportation Board

cc: Mel Kleckner, Town Administrator
Andrew Pappastergion, Commissioner - Department of Public Works
Peter M. Ditto, Director - DPW Engineering & Transportation Division

*333 Washington Street ♦ Brookline, MA 02445-6863*
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## ARTICLE 20

### TWENTIETH ARTICLE

Submitted by: Department of Planning & Community Development

To see if the Town will authorize the Board of Selectmen to enter into a contract for the services of an operator to support the Town's participation in the Hubway regional bicycle share program for a period of up to ten (10) years, said contract term to begin in 2017.

or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

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

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

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

fees has made it impossible to add bikes and/or stations in Brookline over the past three years. Meanwhile, there is a desire to add stations in Brookline as a means of increasing and enhancing multi-modal transportation options available to residents and to enhance the interoperability of the regional Hubway network.

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

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

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

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

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

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

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

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

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

## SELECTMEN'S RECOMMENDATION

Article 20 seeks authorization that allows the Board of Selectmen to enter into a contract for the services of an operator to support the Town's participation in the Hubway regional bicycle share program for a period of up to ten (10) years, said contract term to begin in 2017. This warrant article is proposed by the Planning Department and the Hubway Advisory Committee. It seeks to continue the bicycle sharing system that has operated within Brookline and surrounding communities for the past four years.

Hubway began operation in Brookline in 2012 after the Town's Committee on Bicycle Sharing recommended that the Town join the program. All of the equipment purchased was funded by federal Congestion Air Quality Mitigation and Federal Transit Administration funds, and a one-time private contribution from Children's Hospital and Partner's Health Care. The Selectmen acknowledge that the current contract expires soon and that there is a need for the continuation of services. In addition, the other communities that were previously involved are all currently looking to extend the services. The system has grown over the years of operation, from a start of 61 stations, and is projected to continue steady growth, currently there are 169 stations.

Currently, there is a need for a regional contract to extend the life of the Hubway program. The focus is to find a committed long term partner; specifically, the Selectmen expressed interest in a contract longer than three years in order to attract an operator willing to invest in the system. In addition, there are specific parameters for each participating community. In the case of Brookline, the partner would assume the majority of the financial risk.

The Board of Selectmen agrees that the Hubway system provides a great amenity for residents, and has become an important piece of the local transportation network. Therefore on September 13, 2016 a unanimous Board of Selectmen voted FAVORABLE ACTION on the following:

> VOTED: to authorize the Board of Selectmen to enter into a contract for the services of an operator to support the Town's participation in the Hubway regional bicycle share program for a period of up to ten (10) years, said contract term to begin in 2017.

Passed by a unanimous vote

## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 20 asks Town Meeting to authorize the Board of Selectmen to enter into a long-term contract of up to ten years with a to-be-determined operator to support the Town's participation in the Hubway regional bicycle share program. Any such contract would begin in 2017 at the expiration of the current contract.

The Selectmen are seeking this authority because the ability to consummate a long-term contract is expected to provide the Town, and the other communities in the regional Hubway system, the most operational and financial flexibility in further expanding the system.

By a vote of 21–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen under Warrant Article 20.

BACKGROUND:
The Hubway system is a consortium of four municipalities (Brookline, Boston, Cambridge and Somerville) that work together in an attempt to provide a robust bicycle-sharing system in the metro-Boston area. Brookline, Cambridge and Somerville joined the consortium in 2012 after it was launched in Boston in 2011. Brookline currently owns four stations and 36 bicycles, the acquisition of which were funded by federal funds, along with one-time private contributions from Boston Children's Hospital and Partners Health Care. Post-launch, federal and private dollars and shared net profit have subsidized Brookline's operating expenses since 2012.

Although the Hubway system in general has experienced substantial growth, increasing from 61 stations and 610 bikes in 2011 to 169 stations and 1,600+ bicycles in the spring of 2016, Brookline's portion of the system has not added any new bicycles or stations since 2013. The lack of additional stations and cycles is a function of economics. A new station costs approximately $50,000 and the associated bicycles (9) cost $1,200 each. It is estimated that Brookline should have a total of 19 stations for it to become a truly viable part of the Hubway system. The capital cost of that expansion would be approximately $912,000. Unlike the other participating municipalities, Brookline has not been able to/chosen not to attract private/institutional station sponsorships, or to generate significant associated revenue, to support an investment into the system.

Further, operational analyses show that Brookline's approach to funding costs associated with the Hubway program is insufficient to support growth. While it is possible that current revenues, augmented by increased advertising/sponsorship could cover existing operating expenses, they are inadequate to fund any meaningful capital expenses.

The existing contract with the current operator, Motivate International, expires in April of 2017. Motivate acquired the original operator, Alta Bicycle Share, Inc., in 2014. During the ownership transition, all of the Hubway communities experienced a decline in service, and consortium members determined that changes to the financial and operational models were needed for the system to thrive. The expiration of the contract presents the consortium with the opportunity to try to implement desired changes.
The consortium has issued a Request for Proposals (RFP) through the Metropolitan Area Planning Council (MAPC) for a new system operator. The RFP was designed in a manner that provides for consortium members to negotiate contracts with an operator that could, and hopefully will, enable a member to, if they so choose, shift significant financial risk onto the operator. Whether any respondents to the RFP will actually entertain such an arrangement remains to be seen. Responses to the RFP were due by Friday, September 16th. (See below for an update.)

Under the relevant provisions of Massachusetts General Laws Chapter 30B, s. 12, the approval of Town Meeting is required to authorize the Town to enter into a contract of this nature for a period of greater than three years. If voted by Town Meeting, this Article will authorize the Selectmen, and give them the flexibility, to enter into a longer-term contract with the operator. It is believed that only through the availability of long-term commitments will any operator, or sponsor, be willing to seriously consider shouldering the financial risks that the consortium members are seeking to shift to the operator.

DISCUSSION:
Advisory Committee members asked questions regarding statistics on Hubway usage in Brookline, possible financial obligations for Hubway municipalities and obligations, if any, as to the minimum number of kiosks that any municipality must provide.

From the responses, the Committee learned that most Hubway bicycle trips through Brookline are inbound in the morning and outbound in the afternoon. Ridership has been increasing but would be more robust if Brookline had more stations, because Brookline's current inventory of stations and bicycles is insufficient to both create local excitement and be a viable member of the consortium. (Ideally, a community should have stations every quarter mile or 'within sight' of another station).

The Committee also heard that, to date, there has been no municipal funding required; capital costs have been covered by grants and operating expenses have been supported by outside funding. Ideally, the consortium would procure an operator to work with municipalities to do a build-out in terms of locations and permits, with capital for stations (and some operating subsidies) coming from sponsorships. Municipalities would retain control over where they put the locations. In Brookline, the Transportation Board would have the final word.

It is anticipated that bicycles and stations throughout the consortium will have logos of any sponsor. These currently exist throughout the region. Advertising panels, located at the end of each station, are under the complete control of individual municipalities and can be used for public service announcements or sold as advertising space.

As to the minimum number of kiosks, while there is no contractual obligation, there is an expectation among consortium members that each community will work to ensure the regional system is an effective one.

Subsequent to the Advisory Committee's review of Article 20, the RFP for an operator was closed and the consortium received a single response, from the existing operator. The consortium is currently negotiating with the operator for a contract that will have a term in excess of three years. A memorandum of understanding among consortium members is also being negotiated.

RECOMMENDATION:
The Advisory Committee voted 21–0–0 to recommend FAVORABLE ACTION on the motion offered by the Selectmen under Article 20.

## ARTICLE 21

## TWENTY-FIRST ARTICLE

Submitted by: Department of Planning & Community Development

To see whether the Town will amend Section 4.07 of the Town's Zoning By-law, Table of Use Regulations, to prohibit commercial and non-commercial manned aircraft landing areas in all residential districts in the Town, and to allow such landing areas in non-residential districts by Special Permit only.

or act on anything relative thereto.

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## PETITIONER'S ARTICLE DESCRIPTION

Presently, aircraft landing areas are not a permitted use under the Town's Zoning By-law. However, the Massachusetts Appeals Court recently decided that "[a]ny part of a town zoning bylaw purporting to regulate the use and operation of aircraft on an airport or restricted landing area could not take effect until submitted to and approved by the aeronautics division of the Department of Transportation." Hanlon v. Town of Sheffield, 89 Mass. App. Ct. 392 (2016). Consequently, this Warrant Article is submitted in an effort to address this decision, meet the goals of the Town's Zoning By-law, and ensure public safety.

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## PLANNING BOARD REPORT AND RECOMMENDATION

This zoning amendment submitted by the Planning and Community Development Department proposes to amend Sec. 4.07, Table of Use Regulations, in our Zoning By-Law in order to add a use category for commercial and non-commercial manned aircraft landing areas. Because the use is not specifically listed in Sec. 4.07, Table of Uses, it is assumed to be prohibited. This amendment would change that and allow aircraft landing areas in non-residential districts by special permit and prohibit them in residential districts.

This impetus for this amendment was a recent court case, Massachusetts Appeals Court, Hanlon v. Town of Sheffield decision (May 2016) that concluded that local regulations pertaining to the use and operation of aircraft must be approved by the state Aeronautics Division of the Department of Transportation (DOT). The decision was based on the Appeals Court interpretation of a State statute (MGL Chap. 90, Sec. 39B). Warrant Article 21, therefore, is being proposed in order to comply with that statute. If the amendment is approved by Town Meeting, the Town would then seek approval from the state's Aeronautics Division.

This is the first time that a Court has ruled that, to be valid, a local law relating to aircraft must be approved by the Aeronautics Division. Since the Hanlon decision was issued by

an Appeals Court, it could subsequently be overturned by another Appeals Court or the Supreme Judicial Court. Until then, all cities and towns must comply with it. So, unless the decision is overturned or the Massachusetts Legislature amends the current statute requiring the Aeronautics Division of DOT to approve local by-laws relating to landing areas, the Town must obtain approval from the DOT.

The Aeronautics Division has not yet given direction concerning what type of criteria it will use to review local bylaws. However, in Rockport, Massachusetts, the by-law banning all aircraft landings was rejected by the Aeronautics Division. The Brookline by-law would not ban landing areas outright but would allow them by special permit in non-residential areas. Under Sec. 9.05 of the Zoning By-Law, Conditions for Approval of Special Permit, the Board of Appeals would have to find that such a landing area was being proposed in an appropriate location, has no adverse impacts on the neighborhood, is not a nuisance or hazard to vehicles or pedestrian, and provides adequate facilities for proper operation.

The Planning Board recommends that this new use also be added to the Table of Uses, under Use # 50A, with the appropriate columns marked either No or SP, as proposed. Additionally, the Planning Board recommends adding "including on structures" after landing area to clarify that a landing area could be a structure or building.

**Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article XXI with the following revisions.**

> To see whether the Town will amend Section 4.07 of the Town's Zoning By-law, Table of Use Regulations, **by adding Use # 51A,** to prohibit commercial and non-commercial manned aircraft landing areas**, including on structures,** in all residential districts in the Town, and to allow such landing areas in non-residential districts by Special Permit only.

SELECTMEN'S RECOMMENDATION

Article 21 is a zoning amendment submitted by the Planning and Community Development Department proposes to amend Sec. 4.07, Table of Use Regulations, in our Zoning By-Law in order to add a use category for commercial and non-commercial manned aircraft landing areas. Because the use is not specifically listed in Sec. 4.07, Table of Uses, it is assumed to be prohibited. This amendment would change that and allow aircraft landing areas in non-residential districts by special permit and prohibit them in residential districts.

The Selectmen agree with the Planning Board's recommendation concerning Article 21. Since there is no specificity if this specific use is banned, it is necessary to get Town Meeting's approval of the by-law change. If Town Meeting approves the change, then the Town would seek approval from the state's Aeronautics Division. Per Town Counsel's advice, by prohibiting landing areas in residential areas and allowing Special Permits for non-residential areas, the Board of Appeals would be able to seek out appropriate

locations for landing areas in non-residential areas. The Selectmen also acknowledge that there are special circumstances, such as a visit by a prominent official or emergency, where the use would be allowed.

The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 18, 2016, on the motion offered by the Planning Board (changes from the original language in the Warrant are in bold):

> VOTED: That the Town amend Section 4.07 of the Town's Zoning By-law, Table of Use Regulations, **by adding Use #** ~~[illegible]~~, to prohibit commercial and non-commercial manned aircraft landing areas, **including on structures**, in all residential districts in the Town, and to allow such landing areas in non-residential districts by Special Permit only.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 21 is a zoning housekeeping measure that seeks to formalise Brookline's current ban on aircraft landing areas in order to meet the requirements of a recent court case. While aircraft landing areas are not currently allowed in town because they are not listed in the Zoning Bylaw, the warrant article would add landing areas to the Table of Use Regulations, prohibit them in residential districts, and allow the use only in non-residential districts via a Special Permit.

The Advisory Committee recommends FAVORABLE ACTION by a vote of 21 to 0, with 1 abstention.

BACKGROUND:
Brookline's current zoning code's Table of Use Regulations does not mention landing areas as a zoning use. When a use is not mentioned in the Table, the use in question, here an aircraft landing area, is deemed prohibited. Thus, aircraft are prohibited from landing anywhere in Brookline.

However, there is a quirk in the law when it comes to landing fields. There is a state statute that says that zoning bylaws regarding aircraft landing areas must be approved by the Massachusetts Department of Transportation. If the table of uses is silent, there is nothing for the Department of Transportation to approve. Thus, what happens? It turns out that the "prohibition by omission" is invalid.

This was the case in Sheffield, Massachusetts, a town of 3,200 people on the Connecticut border and one town away from the New York border. Like Brookline's, Sheffield's table of use regulations was silent regarding landing fields. A landowner wanted to build a private landing area. The town said "no," the landowner sued, and the Massachusetts Appeals Court, in Hanlon v. Town of Sheffield, 89 Mass. App. Ct. 392 (2016), ruled in

favour of the landowner. The court said that "[a]ny part of a town zoning bylaw purporting to regulate the use and operation of aircraft on an airport or restricted landing area could not take effect until submitted to and approved by the aeronautics division of the [state] Department of Transportation."

Thus, the Town of Brookline has thought it necessary to have the zoning bylaw specifically refer to landing areas, with the intention of presenting the bylaw to the Commonwealth's Department of Transportation, so that the ban on landing manned aircraft in Brookline could take effect.
Note that while the Sheffield case could be overturned by the Supreme Judicial Court or by legislative action, the town of Sheffield is not appealing the case, and no legislative action appears to be happening.

Article 21 proposes that Section 51A would be added to the zoning bylaw's Table of Use Regulations. The principal use added by 51A would cover manned aircraft landing areas. Such a use would be prohibited in residential districts. Thus, only the use of a zoning variance would override the prohibition in residential districts. In order to obtain a variance, state law, Chapter 40A, section 10, requires the zoning board must specifically find that:

(1) the variance is being requested because of some circumstance that impacts the property in question, rather than a circumstance that impacts all or most properties or structures in the zoning district;

(2) a strict application of the zoning ordinance or by-law in question would create a substantial hardship, financial or otherwise; and

(3) the variance can be granted without a substantial "detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law."

In non-residential districts, the use would be allowed via a Special Permit. In order to get such a permit, the following conditions must be met, per section 9.05 of the Brookline's Zoning Bylaw.

(1) The specific site is an appropriate location for such a use, structure, or condition.
(2) The use as developed will not adversely affect the neighborhood.
(3) There will be no nuisance or serious hazard to vehicles or pedestrians.
(4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
(5) The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

DISCUSSION:
During discussion of Article 21, the following questions were raised:

What are the "manned aircraft" to which the proposed use would apply? These would include aeroplanes, autogyros, helicopters, zeppelins, and hot-air balloons (except for

those balloons moored to the ground). Note that the Article does not address the issue of unmanned drones, a topic for another day. It also would not apply to medical evacuations.

Other than the recent court case, is anything compelling the Town to act now? Part of the impetus for the Town acting on this now is the coming of the U.S. Open golf championship in 2022. There is a fear that some might attempt to have helicopter landing areas in Brookline when this event is held at The Country Club.

What large areas of Brookline that might accommodate a landing area are zoned residential, thus being unavailable under the proposed zoning change? Both The Country Club and Longwood Cricket Club are zoned residential, so no manned aircraft could land there without a variance. The same is true of the municipal golf course and Larz Anderson Park. The Town-owned Transfer Station is not in a residential district and thus might be the only area in a non-residential district with the capacity to allow for a manned aircraft landing area, should a Special Permit be granted.

On October 18, 2016, the Advisory Committee recommended Favourable Action on the following motion by a vote of 25 to 0, with no abstentions:

> VOTED: That the Town amend Section 4.07 of the Town's Zoning By-law, Table of Use Regulations, to prohibit commercial and non-commercial manned aircraft landing areas in all residential districts in the Town, and to allow such landing areas in non-residential districts by Special Permit only.

After this vote was taken, the Planning Board recommended Favourable Action on a motion with some changes. The Planning Board added that the additional use would be 51A on the Table of Use Regulations, and explicitly stated that the prohibition on landing areas included landing areas on structures. On October 27, 2016, the Advisory Committee voted to reconsider its previous vote, and then recommended Favourable Action on the motion as recommended by the Planning Board, which is also the motion recommended by the Selectmen.

RECOMMENDATION:
By a vote of 21 to 0, with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

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# ARTICLE 22

## BOARD OF SELECTMEN REVISED SUPPLEMENTAL RECOMMENDATION

The Selectmen were presented with revised language during the Selectmen's meeting on November 15, 2016. This language split Article 22 into two separate votes. The first vote would amend the Zoning By-Law to require special permit review for the construction of newly created space that exceeds the allowed Floor Area Ratio (FAR). The second vote would eliminate the By-Law provisions that allow buildings in T, F, and M districts to exceed the allowed FAR. The first vote includes changes to the Zoning By-Law proposed by the Moderator's Committee, but it does not include changes that would eliminate the application of exemptions in T, F and M districts. The second vote would eliminate those exemptions in T, F and M districts. The Selectmen agreed with the revised votes presented by Dick Benka, because it gives them and Town Meeting the opportunity to vote on the changes to the Zoning By-Law and to address the T, F and M districts separately. The Selectmen also noted that they do not want to prevent anyone from finishing attics or basements, but they would like to add a level of design review to new properties that are looking to pursue finishing attics or basements.

The Selectmen voted FAVORABLE ACTION on the motion offered by the Petitioner provided in supplement No. 3:

FIRST VOTE: 5-0 FAVORABLE ACTION

SECOND VOTE: 5-0 FAVORABLE ACTION

## ADVISORY COMMITTEE'S REVISED SUPPLEMENTAL RECOMMENDATION

On November 15, 2016 the Advisory Committee voted 23–0–2 to reconsider its recommendation under Article 22.

The Advisory Committee reconsidered its recommendation, which had been for Favorable Action on its motion under Article 22, so that it could take separate votes on the two motions that it anticipates will be offered as a divided vote under Article 22.

In summary, the first vote would amend the Zoning By-Law to require special permit review for the construction of space that exceeds the allowed Floor Area Ratio (FAR). The second vote would eliminate the By-Law provisions that allow buildings in T, F, and M districts to exceed the allowed FAR.

The two votes are explained in detail in Article 22 – Supplement No. 3, "Petitioner's Additional Explanation and Possible Divided Vote." The overall motion remains the same as the Advisory Committee's previous motion; the only difference is that there would be separate votes on each part of that motion.

The Advisory Committee voted 26–0–2 to conduct a divided vote on Article 22, with the question to be divided as specified in Article 22 – Supplement No. 3. Each of its votes on the divided question was for Favorable Action.

RECOMMENDATION:

FIRST VOTE: By a vote of 24–0–3, the Advisory Committee recommends FAVORABLE ACTION.

SECOND VOTE: By a vote of 22–1–4, the Advisory Committee recommends FAVORABLE ACTION.

## ARTICLE 22

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

This article was submitted by the Moderator's Committee on Zoning and seeks to prevent the construction of overly large single family homes (McMansions), out-of-character with the surrounding neighborhood. Currently, unfinished basements and attics are not counted toward the FAR, but ten years after the initial construction of a home, they can be finished and made habitable up to 150% of the allowed FAR. The ten year waiting period has not deterred developers from building large basements and attics, and it has been observed that developers will tell potential buyers that the space could be illegally finished once the Building Department has inspected the finished house. An earlier zoning amendment in 2002, which also addressed the issue of McMansions, was found to violate the uniformity law by the Attorney General because it allowed finishing the basement and attics in existing homes, but not in new homes. The thought was that a ten year waiting period was a long enough that developer's would not have an incentive to construct homes with large basements and attics. Unfortunately, this was not the case, and developers have been "gaming" the system by building large basements and attics in anticipation of them being finished.

This zoning amendment would require that basements and attics that could easily be converted in the future to habitable space should be counted toward the FAR. This would result in smaller homes being built and prevent "gaming" of the system. Existing homes, or homes at least ten years old, could still seek a special permit to exceed the allowed FAR. However, this amendment would reduce the allowed floor area bonus for basements and attics from 150% of the allowed floor area to 130% of the allowed floor area. It would also eliminate the bonus for residences that are in a two family district, limiting it solely to single family zones (S and SC). Lastly, the bonus floor area currently allowed n Section 5.22.3.b.2 for additions and interior conversions for residences in T, F, and M districts would be eliminated entirely.

The Board of Selectmen is in support of this amendment. A lot of thought and hard work has gone into formulating measures to prevent detrimental impacts to the character of established neighborhoods from houses that are out of place.

Therefore, a unanimous Board of Selectmen voted on November 1, 2016 to recommend FAVORABLE ACTION on the motion offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Article 22 is the latest in a series of efforts at Town Meeting, dating back to 2002, to address the so-called "McMansion Loophole" in the Brookline Zoning By-Law. The Deputy Building Commissioner estimates that about 90% of new one- and two-family homes are currently being built with unfinished attic and/or basement spaces that are in excess of existing Floor Area Ratio (FAR) limits, in anticipation of the expansion opportunity available under Section 5.22 of the Zoning By-Law. Section 5.22 (§5.22) permits currently uninhabitable (unfinished) basement and attic space in existing one- and two-family homes to be converted as-of-right for habitable use (i.e., finished out), but not until ten years after the issuance of the Certificate of Occupancy, with the post-conversion habitable floor area not to exceed 150% of the maximum FAR applicable in the zoning district. Thus, for example, in an S-10 (minimum 10,000 square foot lot size) zoning district, the applicable FAR is 0.30. A house built on a 10,000 square foot lot could thus contain up to 3,000 square feet of "habitable space" as the term is currently defined in §5.09. However, after 10 years, the amount of "habitable space" could be increased up to a maximum of 4,500 square feet.

Article 22 had its genesis in Article 12 of the November 2015 Special Town Meeting. That Town Meeting voted to refer Article 12 to a Moderator's Committee "with the request that a preliminary report be presented at Spring 2016 Town Meeting with the goal that a new Warrant Article be presented to the Fall 2016 Town Meeting." The Moderator's Committee's report was included in the Spring 2016 Combined Reports, and contained several specific recommendations that have now been incorporated into Article 22 here. The Department of Planning and Community Development did not participate in the Committee's meetings. The purpose of Article 12 then, and Article 22 now, is to address the so-called "McMansion Loophole" in the Brookline Zoning By-Law, under which developers have been able to construct oversized homes that are not in keeping with the scale and character of neighborhoods and of other nearby structures. Town Meeting's stated intent in adopting the "50% conversion" opportunity in 2005 was to enable long-time Brookline residents to expand the living areas of their existing homes to accommodate increases in family size or other needs over time as an alternative to demolishing their home and replacing it with a larger one. But there was an unintended consequence of that accommodation: Developers have been "gaming" the by-law by designing houses with large amounts of initially unfinished spaces with the intent of ultimately finishing them out either following the ten-year waiting period or (illegally) sooner than that. Article 12 form the November 2015 Town Meeting proposed to address this problem by modifying the definition of "habitable space" to include any areas capable of being readily finished out and converted to habitable use, and prohibiting any construction, including such areas, in excess of FAR.

Article 22, in contrast, would not redefine "habitable space" nor would it prohibit outright any structure that, with the inclusion of certain initially unfinished spaces, would exceed FAR. Instead, it replaces the current "as-of-right" conversions with a requirement for a Special Permit in all situations in which the finished area together with any (initially) unfinished space that can be readily converted for habitable use exceeds the allowable FAR. Additionally, Article 22 provides specific guidelines to the Zoning Board of Appeals (ZBA) *and to developers* with respect to the ZBA's consideration and approval of such applications for a Special Permit. Article 22 also includes a provision, initially proposed by the Planning Department, that would reduce the "bonus" amount of additional finished area in basements and attics from 50% to 30%.

The Advisory Committee, by a vote of 18–0–2, recommends FAVORABLE ACTION on a slightly amended motion under Article 22.

BACKGROUND:
The Brookline Zoning By-Law contains various provisions whose purpose and effect is to restrict the overall size of a building on a lot. Principal among these are Gross Floor Area (GFA) and Floor Area Ratio (FAR) limits, along with minimum setbacks, height limits, and usable open space requirements. In November 2002, Town Meeting voted to amend §5.22 of the Town's Zoning By-Law to limit the size of *new* houses to the FAR specified in the by-law, while still permitting the finished (habitable) area of *existing* single- and two-family homes to exceed FAR limits by up to 50%. A stated objective of the 2002 amendment was "[t]o be an incentive to retain existing structures that fit the scale of the neighborhood and minimize the demolition of existing homes and the building of new larger homes that are out-of-scale with the neighborhood."[1] However, the Massachusetts Attorney General rejected the differential treatment of "new" vs. "preexisting" structures contemplated in the 2002 amendment. In response to the Attorney General's action, Town Meeting in 2005 adopted a further amendment allowing such conversions to occur as-of-right after a period of 10 years following the date of issuance of the original Certificate of Occupancy. The initially unfinished space, because it is unfinished, is not included within the definition of GFA for purposes of computing FAR.

As the Advisory Committee's Recommendation on the 2005 Article had noted, "… what has resulted from the AG's editing of the original article is that there is now an enormous loophole in Brookline's zoning by-law. Developers can and are building homes that are ready for build outs. The petitioner referred to this as a 'McMansion' loophole. The petitioner by submitting this article is trying to prohibit builders from building oversized buildings and then immediately converting the attics and basements to habitable space. It is thought that if this additional attic or basement space has to be left vacant for ten years, it will be a disincentive to overbuild additional space."[2]

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[1] November 12, 2002 Special Town Meeting, Article 10 – Planning Board Recommendation on Warrant Article 10, Combined Reports, at p. 10□5.
[2] May 24, 2005 Town Meeting, Article 11 – Advisory Committee Recommendation on Article 11, Combined Reports at pp.11□5 – 11□6.

Developers have been allowed, and are continuing, to take advantage of this loophole in the Zoning By-Law by building new houses to the maximum allowable FAR and also building in additional space under the guise of non-habitable space to take advantage of the 50% bonus under §5.22. In some cases, this additional unfinished space is actually being marketed to potential home buyers as readily usable space. The petitioner of Article 12 in November 2015 had cited several examples of realtor listings in which the advertised floor areas of new homes were well in excess of the allowed FAR. The effect of the current language is to unnecessarily increase the bulk of new houses. The petitioners of Article 22 for the current Town Meeting have noted that "the 10-year waiting period has not proven to be the disincentive that was intended. It has failed to close the 'McMansion loophole' or otherwise achieve its stated goals of preventing the demolition of smaller, affordable homes or the construction of new out-of-scale homes that are ready for interior buildouts. 'Square footage sells,' and the Deputy Building Commissioner estimates that about 90% of new one- and two-family homes are therefore built with unfinished 'attic' and/or 'basement' spaces that could take advantage of the 50% basement/attic expansion, either legally after 10 years or illegally prior to that time."

The issue was highlighted in the case of 71 Spooner Road, which was the subject of extensive and protracted litigation involving the Town and was ultimately decided by the Supreme Judicial Court. [3] The case affirmed the decision of the Brookline ZBA in its finding that the developer had exceeded the maximum allowable FAR, based in part upon the Land Court's determination that certain space that had been characterized by the developer as "uninhabitable" was actually "*intended*" for habitable use, and upheld the Town's order that the house be demolished. Article 22 provides specific guidelines to the ZBA as to the need for that Board to exercise judgment with respect to the potential for space ultimately to be converted for habitable use, thus directly tracking the holding of the courts in the 71 Spooner Road case that common sense be used when determining GFA and its conformity with the allowed FAR.

Under the approach used by Article 12 in November 2015, the definition of "Habitable Space" would have been broadened to include certain unfinished attic and basement spaces that could be easily built-out and made habitable, such as by putting drywall on studs or by putting in a drop ceiling. Any space, finished or unfinished, that met state building code requirements for habitability would have been included within GFA, and any structure with a GFA in excess of FAR would not have been allowed as-of-right. In its report on the November 2015 Article 12, the Planning Board recognized that "large areas of unfinished space can be concerning for neighbors who are impacted by the size of new home" and that such structures can be "too large for the neighborhood." Town Meeting determined in November 2015 that referral would enable certain technical concerns that had been identified by the Planning Board to be addressed and incorporated

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[3] *81 Spooner Road, LLC v. Town of Brookline*, Mass. Land Ct. Misc. Case No. 315944 (CWT), *Decision Denying Developer Spooner Road, LLC's Motion for Summary Judgment and Allowing the Town of Brookline's Cross Motion for Summary Judgment*, Aug. 29, 2007; Aff'd, 78 Mass. App. Ct. 233; SJC, 461 Mass. 692 (Dec. 8, 2011–Mar. 20, 2012).

into a revised Warrant Article for consideration at the November 2016 Special Town Meeting.

DISCUSSION:

*The Moderator's Committee Approach*

In formulating Article 22, the Moderator's Committee has addressed and responded to specific concerns that had been raised with respect to Article 12. Article 22 does not modify the definition of "habitable space" nor does it impose an absolute limit on GFA at FAR. Instead, it simply requires that the developer obtain a Special Permit where the sum of habitable space and any unfinished spaces that could readily be finished out and made habitable exceeds the allowed FAR, as set out at a new § 5.09.2 (n):

> any construction of newly created[4] space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01.

The new section also provides specific guidelines for the ZBA to apply in considering any application for a Special Permit under this circumstance:

> In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood.

Finally, applicants for a Special Permit under 5.09.2(n) will be required to adhere to representations they make to the ZBA regarding future conversions of unfinished spaces for habitable use, whether immediately or following the 10-year waiting period:

> In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to

[4] The Advisory Committee inserted the words "newly created" to make it clear that the intent of Article 22 is to impose the Special Permit requirement only where a permit to construct new space, either as an entirely new structure or as a significant modification to an existing structure, is being sought. The Special Permit requirement obviously could not apply where a permit had already been issued.

habitable space no greater than the applicant's representation of the intended amount of future conversion.

Thus, if a developer is proposing to construct additional full-height basement and/or attic spaces that can be readily converted for habitable use at some point, the Special Permit could also make clear the restrictions of the ten-year waiting period and the By-Law Limits on the amount of GFA that can be added through conversions. Because Special Permits are recorded before building permits are issued, this information would protect future buyers.

The requirement for a Special Permit where the total potential amount of habitable space exceeds FAR will result in abutters receiving notification of such plans prior to the issuance of a Building Permit, and allow their views to be heard and considered by the ZBA before construction can be authorized, with findings designed to protect abutters and the neighborhood. The goal here is to create a level of transparency that does not presently exist–developers will not be permitted "as-of-right" to proceed with the construction of oversized houses before their plans are fully disclosed and fully vetted by the ZBA.

*The Risk of No Action*

The Advisory Committee believes that the Planning Board's current recommendation for further referral should not be followed. The Board has raised issues that are either inapposite or unwarranted. The Planning Board objects to the inclusion of the phrase "substantially satisfies" in the proposed amendment. According to the Board, "[t]he language 'substantially satisfies' is hard to quantify and is therefore especially difficult. It requires a subjective judgment by the Building Department that will need to interpret each proposal on a case by case basis." Difficult or not, a court that heard the *Spooner Road* case specifically determined that the developer "had designed and built the unfinished second-floor space *with the intention of using it as living quarters*. What was 'readily apparent' to the board members, who heard this matter, was that the disputed space was not only 'accessible' by a stairwell that provided code compliant access to other space on the home's second floor, but also that the disputed space *had more than the minimum ceiling height to be suitable for human occupancy*."[5] Difficult or not, the *Spooner Road* ruling requires that professional judgment be exercised when granting a building permit. Strict adherence to fixed dimensions would enable developers to again "game" the by-law, e.g., by setting the ceiling height at 6 feet 11-1/2 inches instead of the 7 feet specified in the state building code, or by building a basement with a 10-foot ceiling and initially installing a 4-foot removable sub-floor above the base of the foundation, with the ultimate intention to remove the sub-floor to create additional habitable space in the future. Indeed, the inclusion of the word "substantially" should itself discourage gaming of the sort that has gone on.

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[5] *81 Spooner Road, LLC v. Zoning Board of Appeals of Brookline and others*, 78 Mass. App. Ct. 233, 244-246,
notes and citations omitted, emphasis supplied.

Richard Benka, chair of the Moderator's Committee, explained that the Committee's proposal does what Town Meeting, the Board of Selectmen, the Advisory Committee and this Planning Board wanted it to do–it addresses "gaming" and the McMansion loophole without raising the concerns voiced by the Planning Board about the November 2015 Article 12:

- It doesn't change the definition of "habitable space," so it doesn't make any existing home with an unfinished basement or attic nonconforming;

- Because it doesn't include unfinished basement and attic space in Gross Floor Area, it doesn't prevent the construction of new homes with unfinished basement or attics;

- It doesn't prevent the expansion of existing homes;

- It also doesn't discriminate between new houses and existing homes–it applies to any construction that creates unfinished space over the allowable FAR, whether it's a new home with unfinished basement and attic space, or a large attic that would exceed FAR being added to an existing home;

- The special permit process also adopts the Deputy Building Commissioner's thinking–he had advised the Moderator's Committee that developers want to avoid the need for special permits, so just having the special permit process in place should reduce gaming.

The Deputy Building Commissioner estimated that 10 to 15 new single-family homes are built in Brookline each year, and that some 90% of these involve large build-outs of putatively "unfinished" space that substantially conforms to State Building Code requirements for habitable use with minimum exterior modification. The Advisory Committee does not believe that the Planning Board has offered sufficient justification for further delay, and that affected abutters and neighbors of these projects are entitled to the protections that Town Meeting has sought to provide as far back as 2002 and that Article 22, which has been carefully and thoughtfully structured by the Moderator's Committee, would now address. Appended to this Advisory Committee report is a memorandum from Richard Benka to the Advisory Committee's Planning and Regulation Subcommittee addressing the concerns raised by the Planning Board with respect to Article 22.

Additionally, while the "McMansion Loophole" has affected every zoning district, it is of particular concern in "T" (two-family), F (three-family) and M (multi-family) districts. These zoning districts have smaller minimum lot sizes than S districts, and have higher FARs. T-5 districts, for example, require a minimum 5,000 square foot lot, and have an FAR of 1.0. Thus, with the existing 50% "bonus" and as-of-right treatment, the potential exists for 7,500 square foot structures to be built on such properties. The petitioners have

provided an analysis (at p. 22-11 of their Explanation in these Combined Reports) showing that well over half (697) of the 1179 properties in T-5 districts are single-family homes, and that more than 90% of these are currently under the allowed FAR. Only 30 out of the 482 two-family houses in T-5 districts currently exceed FAR. Under the existing by-law, these houses could be demolished and replaced with new structures nearly double in size. Several instances of such redevelopment have already occurred, to the consternation of abutters and neighbors.[6] The same basic concern also arises in T-6 districts, although the FAR there is 0.75. Nearly half of all properties in T-6 zones are single-family, thus making them ripe for similar demolition/redevelopment activity. F and M districts raise similar issues, though the numbers are much smaller. Article 22 would make the FAR exemptions inapplicable in T, F and M districts.

Recent legislation that has already been adopted by the Massachusetts Senate (Senate Bill 2311) would invalidate any local zoning prohibition against the creation of an "Auxiliary Dwelling Unit" in single-family zones. Were this legislation to become law, it could provide owners of single-family houses with a strong financial incentive to expand their homes so as to create an income-producing rental unit. Article 22 would address this concern by continuing the existing prohibition on using the additional habitable space created under the exemptions of Section 5.22 for an additional dwelling unit and, should the Town's existing prohibition on additional dwelling units be deemed invalid (as a result of the legislation), Article 22 provides that "§ 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22." Failure to adopt Article 22 *now* could result in the *de facto* creation of two-family houses in single-family zones.

The Advisory Committee felt that the terms "footprint" and "siting" in the proposed revision to Section 5.09.4.c (Design Review Standards, Relation to Streetscape) were redundant and unnecessary because these issues were fully addressed by the other attributes included in Section 5.09.4.c —scale, massing, height, yard setbacks, and architecture, and agreed that references to "footprint" and "siting" should be deleted. The phrase "concurrently or subsequently" in Section 5.22.1.a (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) was also deleted as unnecessary, since the provision without the phrase ("[a]ny expanded unit

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[6] For example, residents of the Buttonwood Village Neighborhood in South Brookline submitted Article 21 for the May 2014 Annual Town Meeting seeking to reduce the minimum lot size for S- districts to 4,000 square feet and, in so doing, to reclassify certain properties in T- zones to single-family. In their explanation, the petitioners state that "[o]ver the last decade, developers have been transforming our neighborhood, demolishing the original modest homes and shoehorning into their place luxury condos and 2 family dwellings. The new construction has been completely out of character with respect to the size, scale and density that is prevalent in the rest of the neighborhood. This originally started encroaching towards Meadowbrook Road contiguously from the denser housing stock along Clyde Street, but the most recent development of 4 units at 28/32 Meadowbrook resulted in 2 enormous, unsightly 2 family condos smack dab in the middle of our neighborhood, surrounded by single family houses on both sides and across the street." Warrant Article Explanations, May 27, 2014 Annual Town Meeting, at p. 18. In order to preserve the character of their neighborhood, the petitioners were proposing to voluntarily have their properties rezoned from two-family to one-family districts.

(individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be divided") would cover all situations in any event.

Warrant Article 22 as submitted would amend Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) to provide that "[a]ny increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than 130% of the total permitted in Table 5.01 (the "permitted gross floor area")." At present, the allowed increase is 150%. The petitioners have described the pros and cons associated with this particular revision as follows:

> The … change, initially proposed by the Department of Planning and Economic Development, would limit the bulk of single-family and two-family houses after basement and attic conversions under Section 5.22.2 to 130% of allowable FAR (rather than its current 150%). On the one hand, the change to 130% would conform to the 130% allowed for other interior conversions under Section 5.22.3. Moreover, some members of the Committee believed that this change would restrain the bulk of new construction, since developers and potential buyers would know that any "unfinished" space over 130% of FAR could not legally be converted to habitable space. On the other hand, other members were concerned about the change potentially creating zoning nonconformities for existing houses.[7]

Richard Benka noted that only about 313 out of 5066 single- and two-family houses in S, SC and T districts, i.e., only about 6% of those houses, would potentially be made nonconforming if the change to 130% were adopted. He also explained that under two recent Appeals Court rulings, making these 313 existing houses nonconforming would have little or no practical impact on those homeowners, since under these rulings they would be permitted to extend the nonconformity, perhaps even in excess of the existing 150% limit. Lee Selwyn noted that when the 50% "bonus" was created in the 2005 warrant article, it was focused upon the preexisting housing stock; the ten-year waiting period was expressly intended to discourage developers from building new homes out to the 150% level. The legislative history of the 2005 by-law supports this interpretation–that intention is expressly stated in the Advisory Committee's recommendation in the Combined Reports for the May 2005 Town Meeting. The ten-year delay was a means of getting around the Attorney General's rejection; there was never any intention to create an as-of-right *de facto* across-the-board increase in FAR by 50%. But that was the unintended consequence of the 2005 by-law, and is what Article 22 now seeks to correct. The requirement for a Special Permit is intended as yet another means for discouraging the construction of oversized houses. Whether or not it will succeed will depend on how the ZBA treats these applications. Up to now, the ZBA seems to have largely ignored the Supreme Judicial Court's ruling in the Spooner Road case. The 33 Sargent Beechwood case is a particularly good example. Adopting a 130% of FAR limit will have virtually no

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[7] *Id.*

adverse effect upon existing houses, since only about 313 houses out of the 5000+ in S, SC and T districts would become nonconforming. And, as a result of the two recent Court of Appeals cases, the ability of those homeowners to increase the amount of finished spaces in excess of 130% would not be constrained. Adopting a 130% cap would absolutely reduce the potential for developer gaming, and will help to avoid controversial cases in the first place. It was noted that a developer who had appeared before the Planning Board in opposition to Article 22 had stated that three of her projects would be adversely affected by this Article. Claire Stampfer, who spoke at the Planning and Regulation Subcommittee's October 25 public hearing on Article 22 described an oversized house that this same developer had built at 33 Sargent Beechwood. She explained that a number of abutters and neighbors had gone to the ZBA to oppose the size and scale of the house, but in the end the project was allowed to go forward with only minor modifications by the ZBA. The Advisory Committee agreed that leaving the limit at its present 150% could largely defeat the purpose and intent of Warrant Article 22.

RECOMMENDATION:
By a vote of 18–0–2, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 22. Additions and deletions to the existing Zoning By-Law as contained in Article 22 as submitted by the petitioners are shown in bold type (underlined for additions, strike-through for deletions). The modifications to Article 22 as adopted by the Advisory Committee are shown in italics and with double strikethroughs.

VOTED: That the Town amend Sections 5.09, 5.22 and 7.06 of the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strikethroughs):

**A. By amending Section 5.09.2 (Design Review, Scope) as follows:**

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....

j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

.....

**n. any construction of *newly created* space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.**

**B. By amending Section 5.09.3.c.4 (Procedure, Photographs) as follows:**

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations**, modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

**C. By amending Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:**

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height,** ~~*footprint, siting,*~~ yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area**, including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood**. The Board of Appeals may require modification in massing**, scale, height,** ~~*footprint, siting,*~~ **setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale,** ~~*siting, footprint,*~~ **setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape**, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a.

of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

**D. By amending Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:**

a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be ~~*concurrently or subsequently*~~ divided into multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**

b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.**

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, "substantial demolition" shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and

void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

**E. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:**

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as-of-right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw~~. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the "permitted gross floor area").

**F. By amending Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:**

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §**§9.03 to** 9.05, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in ~~a d~~**an S or SC D**istrict ~~with a permitted maximum floor area ratio no greater than 1.5~~.

2) The existing building contains at least one residential unit but no more than ~~four~~ **two** total units. For the purpose of this paragraph 3,

subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

**G. By amending Section 5.22.3.b.2 as follows:**

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

**H. By amending Section 7.06.1.c (Regulated Façade Alterations) as follows:**

~~Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

MEMORANDUM

TO: Board of Selectmen; Planning and Regulation Subcommittee of the Advisory Committee

FROM: Dick Benka

DATE: October 24, 2016

RE: Article 22

The Planning Board, in a report drafted by the Planning Department, has recommended referral of Article 22 back to the Moderator's Committee on Zoning FAR, making a few comments and criticizing "the length and complexity" of the article.

The Article was carefully drafted by the Moderator's Committee to address issues within its charge; the Planning Department did not participate in the Committee's meetings. As a result, many, if not all, of the Planning Department's comments have already been considered by the Moderator's Committee. Particularly because the Planning Department offers no substantive changes that would improve the article, referral would serve no purpose given the substantial time and thought that has already been put into the article. Referral would simply allow the "McMansion Loophole," which has been festering for more than a decade, to fester even longer.

Nevertheless, in order to address the Planning Board's expressed concerns about "length" and "complexity," this memorandum divides Article 22 into discrete issues, with an explanation of the manner in which the Committee decided to address each of those issues. An appendix to this memorandum presents the article in its entirety with brief flagged "comments." While this memorandum divides issues to address the "complexity" criticism, the sections of Article 22 are interrelated and it is therefore my hope that the Subcommittee and the Board in their October 25 meetings will recommend FAVORABLE ACTION on Article 22 as a whole, subject only to any amendments deemed necessary, with this memorandum serving as a road map to guide the Selectmen's and the Subcommittee's consideration.

## 1. Preventing Construction of Unreviewed Bloated Spaces and "McMansions."

Under our existing Zoning By-Law, "unfinished" attics and basements – no matter how large, no matter by how much they would exceed the allowable Floor Area Ratio (FAR) for the property, no matter how serious their impact on abutters and the neighborhood – can be constructed without any review by the Planning Board or ZBA and without any right for abutters and Town Meeting Members to receive notice and to object. The reason is that "unfinished" attics and basements are treated for FAR purposes as if they don't exist, despite the bulk that they can impose on abutters and neighborhoods.

The spaces can then legally be finished after 10 years, or can be illegally finished before that time. The Planning Board, the Advisory Committee and the Board of Selectmen have all recognized this "McMansion Loophole" and its potential adverse impact on neighborhoods, and as a result the November 2015 Town Meeting created the Moderator's Committee to address it. According to the Deputy Building Commissioner, 90% of buildings are constructed with attics and basements exceeding the allowable FAR. New homes are offered for sale with advertised

floor areas well above what is legally allowable; Town Meeting Members reported a developer with wallboard already pre-cut and a promise to "finish" the attic after the Building Department's inspection; and during the Planning Board's October 13 hearing a developer acknowledged that attics and basements are illegally "finished" (though not by her) before the waiting period has run.

The Moderator's Committee thus recommends requiring a special permit before houses are constructed where the "unfinished" spaces, if finished, would push the building over the allowable FAR. The goal is to "catch" the excess spaces before they are constructed, to provide notice to abutters, and to review the compatibility of the building with the neighborhood, thus ensuring that oversized "McMansions" that are out-of-scale with the neighborhood are noticed to abutters and reviewed before they are built and become a *fait accompli*.

The inclusion of Section 5.09.2.n ("Paragraph 'n'") would require a special permit and therefore design review when unfinished spaces, if finished, would result in a building exceeding the allowable FAR. The design review standards are modified in Section 5.09.4.c to incorporate consistency in massing, siting, setbacks, and so on, with existing buildings in the neighborhood. The amendments would not prohibit large houses in a neighborhood of similar houses; they would, however, ensure design review and notice to abutters of houses with potential bulk exceeding the allowable FAR. They would set standards of review to be met.

The Planning Board's comments are briefly addressed here.

The Planning Board suggests design review for homes "over a certain size." This, however, would ignore the context of construction and would "sell out" areas of Town with smaller lots. For example, if the "cutoff" size were 6,000 square feet, a 5,000 square foot building in a neighborhood of 2,000 square foot houses would not even be reviewed, despite the potential neighborhood impact, while a 6,000 square foot house on a one-acre lot would be reviewed, even if it were well within the allowable FAR and setbacks. Moreover, the Planning Board's suggestion does nothing to address the key fact that "unfinished" basements and attics would remain totally unreviewable, regardless of their bulk.

The Planning Board asserts that the question of whether State habitability standards are "substantially satisfied" is "hard to quantify." The Committee discussed the "substantially" language in depth and included it in order to reduce "gaming" of the system. For example, a former Building Inspector advised developers that space would not be considered habitable if ceilings were 6'11" rather than 7 feet high, even though difference in the building's bulk would be imperceptible. During the Planning Board hearings, the Deputy Building Commissioner reported plans for a 10-foot-high "basement" ceiling with a four-foot-high dummy "subfloor" reducing the nominal ceiling height to 6 feet, with the "subfloor" obviously designed for removal. He also reported rafters in attics that reduced ceiling clearance to 6 feet, but these again could easily be removed. In the *81 Spooner Road LLC* cases, the courts affirmed the ZBA's use of its informed judgment in determining whether or not space should be deemed an "attic." The "substantially" language simply requires the same sort of common-sense professional judgment. One could, of course, eliminate the word "substantially" from paragraph "n," but doing so would open the door to "gaming" and abuse by developers.

The Planning Board suggests that including limits on the future conversions of attics and basements might violate the "uniformity" requirements of Article 40A, Section 6. The provision, in the last sentence of Paragraph "n," does not impose different zoning on similar properties; it merely incorporates the standard practice of including conditions where a special permit has been requested and granted. The inclusion of relevant conditions in a special permit – for example, that "unfinished" space cannot be finished within 10 years, that only *x* square feet of "unfinished" space may be finished without exceeding 150% of FAR or violating representations made when the special permit was granted – would be recorded under General Laws Chapter 40A, Section 11 and thus become part of the chain of title and put subsequent purchasers and real estate agents on notice. This should discourage efforts to flout the Zoning By-Law and encourage self-enforcement.

Finally, the Planning Board comments that requiring a special permit would result in "added costs" for new homes and "possibly" the need for additional Town staff. The Building Department has reported that there are only between 10 and 15 new single-family homes constructed each year and that 75% of these are being built by developers, and further estimates that 75% of developers would want to avoid filing plans that trigger the special permit process, so that the Moderator's Committee proposal would reduce gaming and "bloated" construction even without additional staff time. It could also actually **reduce** staff time by reducing demands for Neighborhood Conservation Districts or further zoning changes and, as noted above, by encouraging self-enforcement. Even if a handful of cases were added, they would be only a marginal addition to the current docket, which the Planning Department estimates at 70 to 75 per year, and would be a small price to pay to protect abutters and neighborhoods and to ensure confidence in the fair application of our by-laws. The "added costs" to builders is a red herring – a developer touted her "$5 million" houses during the Planning Board's hearing on October 13th. Given the amounts involved and potential profits to be made, the "added cost" of special permit review is insignificant, particularly where the special permit applies **only** to houses with the potential to exceed FAR.

## 2. Requiring a Special Permit When the Conversion of Basement or Attic Space Requires Exterior Modifications

The Planning Board states that a special permit should be required "for <u>any</u> requested bonus floor area" but then states that it "remain[s] uncertain what the appropriate percentage bonus should be for the conversion of basements and/or attics to habitable space." The Board notes that before the current Zoning By-Law language took effect, all basement and attic conversions were limited to 130% of FAR and all had to be by special permit.

In response to comments from the public, the Moderator's Committee decided to require a special permit in Section 5.22.2.a for basement and attic conversions **only** when exterior modifications were necessary, not for "any" bonus basement-attic floor area. The concern was that requiring a special permit for conversions involving purely interior work would have an adverse impact on existing homeowners without any substantial offsetting benefits.

This special permit requirement replaces the "façade and sign design review process" of Section 7.06.1 that is now in place, but which does not guarantee the right of abutters to receive notice, the right of abutters to comment or object, or the right to written reviewable findings in accordance with the explicit standards set forth in Article 22. These changes should be read in

the context of the changes to Section 5.09.4.c (discussed above), which would set standards for such special permit review, both in the case of oversized construction and in the case of conversions in excess of allowable FAR.

The question of "treating basements and attics differently" has, in fact, already been considered by both this Moderator's Committee and earlier committees. The problem is that "basements" in Brookline can in fact add substantially to the height and bulk of buildings because our Zoning By-Law defines a "basement" as that portion of a building which is even "partly … below grade." Thus, our By-Law allows "walk-out" "basements" with 8 or 10 foot ceilings, full-height windows, and formal entryways, as already pointed out in the Committee's submissions to Town Meeting.

The Committee also in Section 5.22.2.b offers the option of reducing the maximum FAR exemption for basements and attics from 150% to 130%, as suggested by the Planning Board. The change from 150% to 130% could be adopted to reduce the potential for basement and attic conversions. It would presumably lead to smaller structures but, as noted in the Committee's report, could also create some zoning non-conformities.

While the Moderator's Committee did not unanimously endorse the Planning Board's suggested FAR reduction from 150% to 130%, there is no disagreement that the By-Law should at least be changed to incorporate the Moderator's Committee's proposal requiring a special permit for exterior modifications connected with basement and attic conversions.

### 3. Reducing the Potential Increases in Density in T and F Districts

The Planning Board report states that it "had hoped the Moderator's Committee would look at … the allowed FAR in T districts." It asserts that "most of the cases where neighbors have been concerned about the size of the project have been in T zones" and this is "a larger problem" facing the Town.

First, as a factual matter, while some large single-family homes may sit on large lots and not impinge on neighbors, many of the abuses identified by the Moderator's Committee actually occurred in S (Single-Family) zones. These include the examples of the attic and basement "storage" spaces with 8-foot-high ceilings, full-height windows, a fireplace and a formal entry; new houses offered for sale with floor area well above the allowed limit; the developer pre-cutting wallboard to "finish" the attic immediately after the Building Department inspection; the litigation that twice went to the State Supreme Judicial Court; the demolition of a property to its foundations with the claim that the 10-year waiting period was satisfied (see below), and so on.

Second, the Committee did in fact address T Districts in its proposal. The incursions of incompatible buildings in T Districts have in recent years led to proposals for downzoning and for Neighborhood Conservation Districts. Volunteer neighborhood residents have had to lead these efforts. In fact, it was the volunteer Moderator's Committee that assembled the first database showing the potential build-out in T Districts and reported those results to the Spring 2016 Town Meeting. The charge of the *ad hoc* Moderator's Committee did not extend to rezoning the Town, and therefore in the Spring the Moderator's Committee recommended that the Department of Planning and Community Department and/or the Zoning By-Law Committee tackle the problem. That has not happened.

Given this, the Moderator's Committee has, in Sections 5.22.2 and 5.22.3, offered By-Law changes that are within the scope of its charge to address the potential abuse of FAR exemptions. The Moderator's Committee proposal would eliminate the application of those exemptions in T and F Districts, limiting them to S and SC Districts (the attached annotated article offers the option of language that would also retain FAR exemptions for one- to four-unit structures in M Districts, if the decision were made to eliminate FAR exemptions only in T and F Districts). Although the base FAR in those T and F Districts would remain the same until rezoned, the potential to exceed that FAR by 20%, 30% or even 50% would be eliminated. Without the changes, the density for properties in T Districts could, for example, potentially increase to 200% or 250% of the current density.

**4. Cleaning Up Language**

The Moderator's Committee proposal adds the word "modifications" in several sections, including those dealing with special permits, to be consistent with the terminology used in Section 5.22.2.a.

The proposal, in Section 5.22.1.a, includes language designed to continue the existing ban on the FAR exemptions being used to create additional units; in the event of a challenge to that ban under state law, exemptions would be put on hold.

Section 5.22.1.b includes language addressing certain recent state court decisions under General Laws Chapter 40A, Section 6 that allow zoning non-conformities to be extended for single- and two-family homes if the Zoning Board of Appeals finds that the extension is not "substantially more detrimental" to the neighborhood. Because Town Meeting already allows exemptions to FAR and has set limitations in the By-Law that already balance the rights of property owners and of neighbors, the language states that Town Meeting's By-Law limitations should guide the Zoning Board of Appeals in determining what would and what would not be "substantially more detrimental" to the neighborhood.

Finally, Section 5.22.1.c addresses an issue identified by the Building Department, making explicitly clear the Building Department's existing policy that the clock for the "ten-year waiting period" for FAR exemptions under Section 5.22 resets when the number of units are increased or a building is substantially demolished. A developer, for example, argued that he could demolish a house to its foundations and build a much larger structure because the Certificate of Occupancy for the original construction was more than ten years old. The Moderator's Committee language incorporates language from the Town's Demolition Delay By-Law, so the Building Department will not be forced to apply two sets of standards.

ARTICLE 22

## PETITIONER'S ADDITIONAL EXPLANATION AND POSSIBLE DIVIDED VOTE

This submission includes the option of a divided vote on Article 22, providing a format for a separate vote by Town Meeting on the question of whether the exemptions in Section 5.22 of the Zoning By-Law (allowing FAR to be exceeded) should apply in T, F and M Districts, where the base FAR (even without the exemptions) is already high.
The **First Vote** includes changes to the Zoning By-Law proposed by the Moderator's Committee to address core issues, including abuse of the By-Law through the construction of "unfinished" spaces in "basements" and "attics" that add to bulk without being subject to any abutter notice or design review. The First Vote would thus introduce special permit review, including notice to abutters and the requirement of consistency with the scale of the neighborhood, for the construction of space that exceeds the otherwise-allowable FAR. This would effectively treat the construction of both "finished" and "unfinished" spaces uniformly, in recognition of the fact that both types of spaces contribute equally to building bulk, and also treat uniformly all such construction and additions to new and existing buildings. The First Vote would also introduce a special permit requirement for exterior modifications in connection with basement and attic conversions, again assuring notice to abutters and consistency with the neighborhood, and treating basement and attic conversions consistently with other conversions and additions, which already require a special permit. It includes the Planning Department's recommendation that all conversions result in no more than 130% of FAR, and includes changes assuring consistency of language within the By-Law. (See Petitioner's Explanation).

What the **First Vote** does **not** include is By-Law changes that would eliminate the application of the Section 5.22 exemptions (which allow buildings at 120%, 130% or, now, even 150% of the otherwise-allowable FAR) in T, F and M districts. The **Second Vote**, if approved, would eliminate those Section 5.22 exemptions in T, F and M districts. The divided vote poses the issue if Town Meeting wishes to address the T, F and M issue separately.

On the one hand, as set forth in the report of the Moderator's Committee to the May 2016 Town Meeting, the base FAR in T, F and M Districts is already high, and, for example, the Section 5.22 exemptions would potentially allow the density of properties in T Districts to increase even more, to 200% or 250% of the current density, with corresponding impacts on population, school population, congestion, and so on. The actual incursions of incompatible buildings in T Districts have in recent years led to proposals for downzoning and for Neighborhood Conservation Districts. Although the base FAR in those districts would remain the same until rezoned, the potential to significantly exceed that FAR would be eliminated by the Second Vote.

On the other hand, the Moderator's Committee recognized that elimination of the Section 5.22 exemptions did not address the very high base FAR limits in T, F and M districts, and that eliminating the exemptions would potentially make some homes non-conforming and affect some individuals seeking to expand their homes. Since Article 22 was filed, several existing homes in T Districts that have applied for building permits for conversions would be affected by the elimination of the Section 5.22 exemptions. Therefore, a **divided vote is attached**. If only the First Vote is passed, the Section 5.22 exemptions would continue for homeowners in T, F and M District exemptions but there could be substantial increases in density in those districts. If the Second Vote is also passed, the exemptions would be eliminated in T, F and M districts, reducing the potential increases in density, but existing homeowners would not be able to utilize Section 5.22. The decision is ultimately for Town Meeting, and this submission is an effort to facilitate that decision.

**FIRST VOTE –**

VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs):

**A. By amending Section 5.09.2 (Design Review, Scope) as follows:**

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....

j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

.....

**n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In**

**granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.**

**B. By amending Section 5.09.3.c.4 (Procedure, Photographs) as follows:**

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations**, modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

**C. By amending Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:**

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height,** yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area**, including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood**. The Board of Appeals may require modification in massing**, scale, height, setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale, setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape**, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

**D. By amending Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:**

a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be ~~subsequently~~ divided into

multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**

b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.**

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, "substantial demolition" shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

**E. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:**

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~, provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in**

**§5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw~~. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the "permitted gross floor area").

**F. By amending Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:**

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §**§9.03 to** 9.05, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in a district with a permitted maximum floor area ratio no greater than 1.5.

2) The existing building contains at least one residential unit but no more than ~~four~~ **two** total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

**G. By amending Section 7.06.1.c (Regulated Façade Alterations) as follows:**

~~Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

Passed by an Electronic Roll Call Vote of 170 in favor, 18 opposed, 13 abstentions

**SECOND VOTE --**
VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs; changes from First Vote are shaded):

**H. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:**

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

**I. By amending Sections 5.22.3.a.1 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:**

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §**9.03 to** 9.05, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in ~~a d~~**an S or SC D**istrict ~~with a permitted maximum floor area ratio no greater than 1.5~~.

**J. By amending Section 5.22.3.b.2 as follows:**

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

Passed by an Electronic Recorded Vote of 159 Yes, 26 Opposed and 19 Abstentions

ARTICLE 22

TWENTY-SECOND ARTICLE

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

To see if the Town will amend Sections 5.09, 5.22 and 7.06 of the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs):

**A. To amend Section 5.09.2 (Design Review, Scope) as follows:**

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....

j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

.....

**n. any construction of space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.**

**B. To amend Section 5.09.3.c.4 (Procedure, Photographs) as follows:**

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations**, modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

**C. To amend Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:**

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height, footprint, siting,** yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area**, including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood**. The Board of Appeals may require modification in massing**, scale, height, footprint, siting, setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale, siting, footprint, setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape**, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

**D. To amend Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:**

a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be **concurrently or** subsequently divided into multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**

b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is**

**substantially more detrimental to the neighborhood than an existing nonconforming use.**

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, "substantial demolition" shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

**E. To amend Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:**

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as-of-right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw~~. No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the "permitted gross floor area").

**F. To amend Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 as follows:**

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, §**§9.03 to** 9.05, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in ~~a d~~**an S or SC D**istrict ~~with a permitted maximum floor area ratio no greater than 1.5~~.

2) The existing building contains at least one residential unit but no more than ~~four~~ **two** total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

**G. To delete Section 5.22.3.b.2 as follows:**

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

**H. To delete Section 7.06.1.c as follows:**

~~Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

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

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

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

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

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

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

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

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

**Section 5.22.3** allows FAR to rise to 130% of the otherwise-allowable FAR through exterior additions or interior conversions; this section requires a **special permit** and thus requires **both notice to abutters and approval by the Zoning Board of Appeals.** Among other provisions, the special permit process requires that "the impact ... on

abutting properties" be considered, that additional GFA be "located and designed so as to minimize the adverse impact on abutting properties and ways," and that the ZBA find that the "specific site is an appropriate location for such a ... structure" and that the "use as developed will not adversely affect the neighborhood." *See* Zoning By-Law §§ 5.22, 9.05.

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

The potential impact of Section 5.22.2 is exacerbated by the fact that a "basement" under the Brookline Zoning By-Law, contrary to the State Building Code, is defined as any "portion of a building which is partly or completely below grade." Zoning By-Law § 2.02.1.[1] Thus, even if the vast majority of the "basement" is well above grade with windows and ground level access, it is still considered a "basement." In addition, there is no limit on the bulk of an "attic," which is simply defined as the "[s]pace between the ceiling beams, or similar structural elements, of the top story of a building and the roof rafters." *Id.* § 2.01.3. Thus, an "attic" or "basement" under the Zoning By-Law could have such elements as eight-foot ceiling heights, full windows, full stairway access, and, in the case of a "basement," ground level access. Examples of the potential for abuse are discussed below.

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

In an effort to deal with this potential "McMansion loophole," Section 5.22 as initially adopted in 2002 originally included language that limited the basement-and-attic exemption to existing properties. That language was, unfortunately, struck down by the Attorney General as violating the "uniformity" provision of Ch. 40A, §4 of the General Laws by impermissibly distinguishing between new and existing structures. In 2005, Town Meeting responded by adding a provision allowing FAR exemptions only when ten

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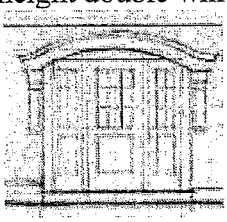
[1] In contrast, the State Building Code states that a basement is considered a "story above grade plane" if, for example, the floor above the "basement" is more than 6 feet above "grade plane" (basically, the average finished ground level adjoining the building's exterior walls), more than 12 feet above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

years had elapsed since the issuance of the original Certificate of Occupancy for a property. It was thought that if attic or basement space exceeding the allowable FAR had to be left vacant for ten years, there would be no incentive for developers of new homes to overbuild additional space. This 10-year waiting period was approved by the Attorney General.

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

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



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

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

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

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

The Committee thus recommends **that a special permit be required for the construction of unfinished basement and attic space** that substantially meets State Building Code standards for habitability and **that, if finished or converted to habitable space, would cause the space to exceed the otherwise permissible FAR for the** building. If an "unfinished" space would, for example, merely require the addition of windows or doors to become habitable in excess of FAR limits, it would require a special permit at the time of original construction, since even without windows or doors the original construction would create oversized bulk. The proposed test of whether the State Building Code would "substantially" be met is designed to preclude, for example, the ploy used in the past of constructing attic or basement spaces which, though able to be used for occupancy, are 6 feet 11 inches in height rather than 7 feet as set forth in the Building Code. There would necessarily have to be some judgment exercised by the Building Department, Planning Board and Board of Appeals. The article also contemplates that an applicant for a special permit be held to representations about the amount of "unfinished" space that will ultimately be converted to finished, habitable space. Boards should be guided by the intent of §5.22 to stabilize neighborhoods by

accommodating families who find that they need additional space, rather than destabilizing neighborhoods by creating incentives for teardowns. Because, under Ch. 40A, §11, Board of Appeals special permit decisions must be recorded before a Certificate of Occupancy is issued, any conditions imposed by the Board would be in the chain of title and provide notice to subsequent purchasers. These changes are found in Paragraph A of the warrant article, in proposed §5.09.2.n of the Zoning By-Law.

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

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

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

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

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

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

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

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

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

*FAR for Converted 1-family detached dwellings

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

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

As noted in the Committee's Spring 2016 report, there are hundreds of single-family houses in these zones that could potentially become two-family buildings, either by conversion or by replacement. There is also very substantial potential for additional bulk to be added to buildings now or in the future. As seen in the preceding table, the base T-District FAR (1.0 in T-5 Districts, 0.75 in T-6 Districts) is significantly higher than the allowable density in other single- and two-family zoning districts in the Town, and most existing dwellings are well under the allowable base FAR. Moreover, the exemptions in Section 5.22 of the Zoning By-Law raise the allowable FAR substantially higher than the base FAR of Zoning By-Law Table 5.01.

Some members of the Committee therefore believe that potential overbuilding in T Districts (and F and M districts, which also have high base FARs) could be restrained by

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

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

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## PLANNING BOARD REPORT AND RECOMMENDATION

This article is related to modifying numerous sections of the Zoning By-Law, including Sec. 5.09 (Design Review), Sec. 5.22 (Exceptions to FAR), and Sec.7.06 (Façade Alterations). All of the proposed changes relate to allowed floor area ratio (FAR) of residential units and is being submitted by the Moderator's Committee on Zoning. The proposed article aims to restrict new construction of overly large homes or "McMansions" that are out of scale with abutting properties and the surrounding neighborhood. It also attempts to eliminate loop-holes which contribute to the "gaming" of the By-Law by developers who construct homes with large basements and attics expecting that they will be converted to habitable space after the ten year waiting period or be finished illegally immediately after an occupancy permit is issued.

The Planning Board supports a zoning amendment which would address curbing the construction of overly large homes that are not in scale with the surrounding neighborhood and acknowledges how much time and effort the Moderator's Committee has put into considering solutions to this problem. However, the complications are many, including avoiding making existing homes non-conforming; clearly defining what counts as habitable space, or could be converted to habitable space; allowing flexibility for growing families to stay in their homes; and conforming to the state law that prohibits distinguishing between existing and new homes in the same zoning district. The Board expressed concern that there would be added costs related to requiring relief for new homes where before it was not needed, costs not only to the homeowner, but possibly to the Town for additional staff.

The Deputy Building Commissioner expressed his concern with being able to consistently and fairly define habitable space, or future habitable space, under the new zoning proposed in paragraph n. which would require a special permit under Design Review, Sec. 5.09 for: *"any construction of space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to* ***substantially*** *meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01."* The language "substantially satisfies" is hard to quantify and is therefore especially difficult. It requires a subjective judgment by the Building Department that will need to interpret each proposal on a case by case basis. Also, limits to the future use of attics and basements by the Board of Appeals might be considered arbitrary and thus violate the uniformity requirement.

In general, the Planning Board agreed with requiring a special permit for any requested bonus floor area but remained uncertain what the appropriate percentage bonus should be for the conversion of basements and/or attics to habitable space. One member felt that graphics showing different percentages for different attic and basement expansions of space in a house would be helpful, not only to the Boards, but also to Town Meeting members. Also raised was the issue of treating basements and attics differently, since basement conversions usually do not add to the height of a building or impact abutters.

Alternative ways to limit FAR and address overly large homes could also be explored, such as requiring design review for all homes over a certain size, but home owners who do not otherwise need zoning relief might object to this. Another issue that the Planning Board had hoped the Moderator's Committee would look at is the allowed FAR in T districts. Most of the cases where neighbors have been concerned about the size of a project have been in T zones where many of the homes could legally be doubled in size or converted to two-families due to the allowed high maximum floor area which has not already been used. The Planning Board believes this is a larger problem facing the Town because site visits to recently built single family homes by members of the Moderator's Committee did not substantiate the original concern. Another option for the Committee to consider is that before the language allowing conversions of basement and attics up to 150% by-right was added to the zoning, the By-law allowed interior conversions up to 130% with a special permit, and this included conversions of basements and attics.

Because of the length of this article and its complexity, the Planning Board recommends that it be referred back to a Moderator's Committee on Zoning to provide an amendment for Spring Town Meeting that is less complex, more easily implemented and enforced, and has language that is less arbitrary and more easily interpreted by the Board of Appeals. Many of the other proposals contained in this warrant article also need more consideration.

Therefore, the Planning Board recommends NO ACTION on Article 22 as submitted and referral to the Moderator's Committee on Zoning for a modified zoning amendment submittal to Spring 2017 Town Meeting.

## SELECTMEN'S RECOMMENDATION

A report and recommendation by the Board of Selectmen under Article 22 will be provided in the Supplemental Mailing.

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## ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 22 will be provided in the Supplemental Mailing.

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# ARTICLE 23

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
Warrant Article 23 proposes to amend Article 8.15 (Noise Control) and Article 8.31 (Leaf Blowers) of the Town's by-laws and consolidate them into a single article: Article 8.31 (Leaf Blower Control). Under Article 23, as originally amended by the Advisory Committee, the property owner/property manager as well as the leaf blower user would each be liable for the full amount of a fine for second, third, and all subsequent violations of the by-law. Other amendments to the original article included removing a self-identification requirement for a complainant, increasing the size of land parcels exempted from leaf blower regulations from two to five acres of open space, and restricting such exemption eligibility to only properties in nonresidential use. On October 20th, by a vote of 21–3–0, the Advisory Committee recommended Favorable Action on an Article containing the foregoing provisions.

On November 3rd, upon learning that the penalty provision adopted by the Committee was ruled to be beyond the scope of the original Warrant Article and the existing by-law, the Advisory Committee reconsidered its recommendation relative to penalties and subsequently voted to equally divide the fines (up to the allowable maximum total of $300) between the property owner/manager and the leaf blower user. By a vote of 21–0–1, the Advisory Committee now recommends FAVORABLE ACTION on the amended motion found at the end of this report.

BACKGROUND:
Article 23 and its companion, Article 24, are the result of the research and deliberations of a committee appointed by the Moderator in response to the referral vote on Article 10 at the 2015 Special Town Meeting. The Committee's charge was to review and evaluate the provisions with respect to Leaf Blowers of Article 8.15 (Noise Control) and Article 8.31 (Leaf Blowers). Additionally, it was to consider the Selectman's Noise By-Law Committee report, leaf blower abuses, inappropriate uses, best practices, provisions used in other towns, property owners' responsibilities, landscaping service provider responsibilities, Town responsibilities, enforcement issues, and other relevant matters.

*Research of Moderator's Committee*

As of October 5th, the Committee had met 16 times. The agendas and minutes from their meetings are posted on the Town's website: (http://www.brooklinema.gov/AgendaCenter/Moderators-Committee-On-Leaf-Blowers-96)

The Committee's initial tasks included review of the findings of the Selectmen's Noise By-Law Committee and review of the two by-laws that currently govern the use of leaf blowers in the Town. In addition, the Committee conducted an online survey, gathering information from Brookline residents. This "non-scientific" survey was intended to gauge public opinion regarding both the positive and negative impact of leaf blowers on individual citizens. There were 1,312 responses with over 3,600 comments. IP addresses of survey participants were reviewed and the vast majority were found to be legitimate Brookline IP addresses. Although the responses were not regarded as opinions encompassing all Brookline residents, they nonetheless provided a starting point for the work of the Committee.

Replies indicated that:

- A large percentage of the survey respondents (who were presumably informed about this issue and self-selecting) reported being aware of the existing restrictions on leaf blowers in the Town;
- A majority of respondents were in their home more than 4 hours a day;
- Noise was considered as having the largest impact on respondents;
- A majority of survey respondents thought that an education campaign would improve the situation;
- A majority of respondents were not in favor of a gas-powered leaf blower ban.
- Over 40% of respondents thought there should be no exemptions to the regulations;
- About half of the respondents were satisfied with the current regulations and about half were dissatisfied;
- A majority of respondents were not in favor of additional restrictions on leaf blowers.

Moreover, the Committee evaluated various gas and electric leaf blowers (for noise and efficiency), studied a Town map showing the distribution of leaf blower noise complaints, researched leaf blower regulations of multiple municipalities, and met with Town officials to discuss leaf blower operations, enforcement, health issues, and the legal aspects of current and proposed regulations.

*Committee Observations*

Based on information gathered, the Committee observed the following:

- Many believe that leaf blowers are needed to adequately address huge leaf drops in the fall as well as outside clean-up in the spring;
- Many believe that the noise from leaf blowers disrupts their quality of life;
- Both the Advisory Council on Public Health as well as Health Department staff do not believe that the use of leaf blowers constitutes a public health threat;
- Varying lot sizes, numbers of deciduous trees, and building density in various neighborhoods prevent one-size-fits-all regulations;

- Education over time of landscapers and other leaf blower users holds promise for eventual greater noise relief;
- The involvement of property owners in encouraging compliance with regulations has the potential to encourage both dialogue and the development of "on the ground" mitigation/solutions;
- Often Town residents hesitate to contact the Police regarding violations of the by-law, resulting in under-reporting.

*Recommendations of Moderator's Committee*

- Combine the leaf blower regulations found in Article 8.15 (Noise Control) and Article 8.31 (Leaf Blowers) into one Article (8.31) and delete the language regarding leaf blowers from Article 8.15;
- Make property owners responsible for by-law compliance and fineable for violations. A warning would be required for the first violation, followed by fines of $100, $200, and $300 (increased from the existing $50, $100, and $100) for subsequent violations;
- Change the usage period for gas-powered blowers from the existing September 15th to December 15th to October 1st to December 31st;
- Change the time of weekend and holiday use from 9 am to 8 pm to 9 am to 6 pm.
- Incorporate the exemption process currently found in the Noise Control By-law (Section 8.15.7);
- Exempt leaf blower use on land parcels with open space greater than two acres.
- Limit the simultaneous operation of leaf blowers to two on parcels of 7500 square feet or less;
- Require complainants to provide name and contact information as well as the address of the alleged violation;
- Authorize the Police, Building, Public Works, and Health Departments to enforce Article 8.31;
- Retain 67dBa as the permissible noise level for gas and electric leaf blowers;
- Retain the Town exemption from the By-law.

DISCUSSION:
Members of the Advisory Committee are greatly appreciative of the work and diligence of the Moderator's Committee. Members of the Moderator's Committee as well as at least one resident reported that by-law abuses had declined during last summer, likely the result of a Committee member acting as a de facto code enforcement officer, speaking to landscape contractors and distributing a brochure (in three languages) describing "best practices" for leaf blower use. Although this perceived improvement may not have taken place throughout the Town, it does indicate that one-on-one, non-confrontational conversations may, in the long run, produce positive change.

Advisory Committee members supported the process for seeking an exemption from leaf blower regulations; the changes in hours of permitted operation on weekends and legal

holidays from 9 a.m. – 8 p.m. to 9 a.m. – 6 p.m.; and the change in use during the fall from September 15–December 15 to October 1–December 31. (The permissible period during the spring remains March 15–May 15.) They also agreed with continuing the authority of the Commissioner of Public Works to temporarily waive any of the restrictions in order to aid in emergency operations and clean-up associated with severe storms, and with restricting to two the number of leaf blowers that can be used simultaneously on properties of 7,500 square feet or less.

The Advisory Committee, however, amended several of the other provisions in proposed by-law. First, the Committee increased the size of a property qualified for exemption from seasonal restrictions from two to five acres, believing that the former size was too small and therefore too many properties would be eligible. While it was noted that the goal of using the two acre criterion was to give all private school properties equal status with public school grounds, a thorough examination of the size of properties owned by private schools led to the conclusion that five acres could achieve the same goal. A second, related change by the Advisory Committee was to require that these larger properties had to be nonresidential in use.

A third Advisory Committee amendment was to eliminate the requirement that complainants identify themselves while registering a complaint. This provision had been included in the original article to (1) assist with initiating negotiations between the complainant and the alleged offender; and (2) minimize instances of personal grudge complaints. However, the majority of Advisory Committee members found this requirement to be a potentially significant deterrent to filing a complaint; it has, therefore, been deleted from the amended Article.

The greatest amount of discussion was generated by the Moderator's Committee's recommendation to fine the property owner or manager, rather than the contractor or user. The argument behind this measure is that the property owner has control over the landscape contractor because of their financial relationship. Being subject to a fine would encourage the property owner to be more alert to whether his/her landscape contractor was using a leaf blower that exceeded the permissible noise level or was being used during prohibited hours or in the off season. In addition, being the party notified of possible violations would increase the owner's awareness to the noise concerns of neighbors.

Some Advisory Committee members disagreed, asserting that such an arrangement absolved the leaf blower user of any responsibility of violating the by-law. They also questioned how a property owner could be notified of a complaint if he/she were not home during the day or were on vacation. In response to the first point, it was noted that in most cases, the leaf blower user is merely following orders to complete his/her job quickly and efficiently. As to the second point, notice of a complaint would be either handed to the property owner or manager if available, or left at the front door, as is the case with warnings about putting trash out too early.

*Initial Recommendation*

By a vote of 21–3–0, the Advisory Committee recommended Favorable Action on a motion that among other provisions, imposed the full amount of the fines (up to the maximum allowable total of $300) on both the property owner/manager and the leaf blower user in the penalty provision under Section 8.31.8 b.

*Reconsideration*

On November 3, upon learning that the penalty provision adopted by the Committee was found to be beyond the scope of the original Article and the existing by-law, and that Town Counsel recommended a small number of clarifications in language in the proposed by-law, the Advisory Committee reconsidered its position and equally divided the fines between the property owner/manager and the user for the second, third, and subsequent offenses.

RECOMMENDATION:
By a vote of 21–0–1 the Advisory Committee now recommends FAVORABLE ACTION on the following motion, in which for Part 2, additions to the original article as published in the Warrant appear as underlined bold text and deletions from the original article as published in the Warrant appear with strikethroughs:

VOTED:

1) That Article 8.15 (Noise Control) be amended by

   a) Adding the following to Section 8.15.2 (b):
      4. Noise regulations concerning Leaf Blowers are found in Article 8.31.

   b) Deleting references to leaf blowers in Section 8.15.6 (c) - Maximum Noise Level Chart; and

   c) Deleting the text of Section 8.15.6 (f) and replacing it with the words "Text Deleted";

and

1) That the current Article 8.31 (Leaf Blowers) be replaced with the following:

Article 8.31
Leaf Blowers **Control**

SECTION 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels and reducing carbon

emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this By-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

SECTION 8.31.2: DEFINITIONS

a. "Leaf Blowers" governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

b. "Property Owner" as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor's records.

c. "Property Manager" shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.

d. "User" means the person or entity using the Leaf Blower at the time of the violation.

SECTION 8.31.3: LIMITATIONS ON USE

a. No Property Owner or **Property** Manager shall authorize **or permit** the operation of leaf blowers on property under their control, **or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower,** except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to **nonresidential property owners but only with respect to** parcels of land that contain at least ~~two~~ **five** acres of open space.

b. No Property Owner or **Property** Manager shall authorize **or permit** the operation of leaf blowers on property under their control**, or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower,** except between the hours of 8 (eight) A.M. to 8(eight) P.M.

Monday through Friday, and from 9 (nine) A.M. to 6(six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or **Property** Manager **or User** shall **operate or** authorize the operation of more than 2 (two) leaf blowers **on such property** simultaneously. This limitation shall **also** apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any **leaf blower and no person shall operate a** leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower 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) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, 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 leaf blower(s) that have been modified or damaged, as 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 or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such 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. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non- refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

SECTION 8.31.4: REGULATIONS

a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Board of Selectmen.

b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

SECTION 8.31.5: DUTIES AND RESPONSIBLITIES 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 objectives of this By- law.

b. Departmental Compliance with Other Laws

All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

c. Town Exemption

The Department of Public Works shall be exempt for day
and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law.

d. Town Leaf Blower Equipment

Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Board of Selectmen, or its designee, may grant a special permit to a Property Owner or **Property** Manager:

(i) for any activity otherwise prohibited under 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,

(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 Property Owner or Manager ~~or~~ seeking such a permit should make a written application to the Board of Selectmen, or its designee. The Town will make 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 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 use.

(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.

(6) If the Board of Selectmen, or its 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 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

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**, if any,** issued by the Board of Selectmen, or designee.

SECTION 8.31.8: ENFORCEMENT AND PENALTIES

a. This By-law may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

~~b. The Property Owner and/or Manager of any real property upon which a Leaf Blower is operated in violation of this By-law, or upon any abutting sidewalk or way in connection with such operation, shall be liable for all violations of this By-law. Any User in violation of this By-law other than the Property Owner or Manager shall be issued a written notice, whenever practical, notifying the User of the enforcement action to be taken against the Property Owner or Manager for the violation.~~

**b. Violations of this By-law shall be subject to the following penalties:**

**1)** For the first violation in each calendar year a written warning will be issued ~~to the Property Owner or Manager~~.

**2) For** second and subsequent violations ~~occurring on the same property under the same ownership or management Property shall be issued to~~ **in each calendar year, both** the Property Owner or **Property** Manager **and the User shall be fined** according to the ~~following schedule~~ **table below**:

~~1. $100.00 for the second offense;~~
~~2. $200.00 for the third offense;~~
~~3. $300.00 for the each subsequent offense;~~
~~4. plus~~

| | **Property Owner or Property Manager** | **User, if other than Property Owner or Property Manager** |
|---|---|---|
| **First Offense** | **Written Warning** | **Written Warning** |
| **Second Offense** | **$50.00** | **$50.00** |
| **Third Offense** | **$100.00** | **$100.00** |
| **Each Subsequent Offense** | **$150.00** | **$150.00** |

**3) Applicable** court costs for any enforcement action taken.

SECTION 8.31.9: ~~ENFORCEMENT~~

~~The Health, Building, Police and Public Works Departments shall have enforcement authority for this By-law. On complaint by any individual not an employee or agent of the Town, complainant is required at a minimum to provide her/his name and contact information as well as address of alleged violation for the complaint.~~

~~SECTION 8.31.10:~~ EFFECTIVE DATE

The provisions of this By-law shall be effective as provided in M.G.L. c. 40, s.32.

Passed by an Electronic Recorded Vote of 114 In Favor, 68 Opposed and 3 Abstentions

## ARTICLE 23

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

On November 9, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

## ARTICLE 23

## TWENTY-THIRD ARTICLE

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

To see if the Town will amend the General By-Laws by amending Article 8.15 - Noise Control and Article 8.31 – Leaf Blowers as follows, to: Consolidate leaf blower regulations into a single By-law (i.e. Article 8.31);

1. Accordingly, delete references to leaf blower regulations from Article 8.15 (i.e. the noise control By-law);
2. Modify leaf blower regulations as follows:
   - Make changes to dates and times of permitted leaf blower operation;
   - Limit the number of simultaneous leaf blowers permitted on lots of 7,500 square feet or less;
   - Exempt properties with at least 2 acres of open space;
   - Add an exemption process provision;
   - Change the responsibility for By-law compliance to the real property owner (in similar fashion to the current nuisance control By-law);
   - Provide for a mandatory warning in lieu of fine for first violations;
   - Otherwise increase fines for second and subsequent violations;
   - Provide for enforcement by code enforcing Town Departments as well as the Police Department;
   - Add a requirement that complainants identify themselves when reporting violations;

Article 8.31 has been substantially rewritten and the original Article 8.31 has been included for comparison.

Committee proposed new Article 8.31 below:

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**Article 8.31**
**Leaf Blowers**

Section 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this By-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.31.2: DEFINITIONS

a. "Leaf Blowers" governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

b. "Property Owner" as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor's records.

c. "Property Manager" shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.

d. "User" means the person or entity using the Leaf Blower at the time of the violation.

Section 8.31.3: LIMITATIONS ON USE

a. No Property Owner or Manager shall authorize the operation of leaf blowers on property under their control except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to parcels of land that contain at least two acres of open space.

b. No Property Owner or Manager shall authorize the operation of leaf blowers on property under their control except between the hours of 8 (eight) A.M. to 8(eight) P.M.

Monday through Friday, and from 9 (nine) A.M. to 6(six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or Manager shall authorize the operation of more than 2 (two) leaf blowers simultaneously. This limitation shall apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower 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) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, 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 leaf blower(s) that have been modified or damaged, as 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 or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such 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. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non-refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

Section 8.31.4: REGULATIONS

a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Board of Selectmen.

b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

SECTION 8.31.5: DUTIES AND RESPONSIBLITIES 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 objectives of this By-law.

b. Departmental Compliance with Other Laws

All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

c. Town Exemption

The Department of Public Works shall be exempt for day and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law.

d. Town Leaf Blower Equipment

Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Board of Selectmen, or its designee, may grant a special permit to a Property Owner or Manager:
(i) for any activity otherwise prohibited under 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,
(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 Property Owner or Manager ~~or~~ seeking such a permit should make a written application to the Board of Selectmen, or its designee. The Town will make 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 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 use.
(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.
(6) If the Board of Selectmen, or its 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 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

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 8.31.8: ENFORCEMENT AND PENALTIES

a. This By-law may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. The Property Owner and/or Manager of any real property upon which a Leaf Blower is operated in violation of this By-law, or upon any abutting sidewalk or way in connection with such operation, shall be liable for all violations of this By-law. Any User in violation of this By-law other than the Property Owner or Manager shall be issued a written notice, whenever practical, notifying the User of the enforcement action to be taken against the Property Owner or Manager for the violation.

For the first violation in each calendar year a written warning will be issued to the Property Owner or Manager.

Second and subsequent violations occurring on the same property under the same ownership or management Property shall be issued to the Property Owner or Manager according to the following schedule:

1. $100.00 for the second offense;
2. $200.00 for the third offense;
3. $300.00 for the each subsequent offense;
4. plus court costs for any enforcement action taken.

SECTION 8.31.9: ENFORCEMENT

The Health, Building, Police and Public Works Departments shall have enforcement authority for this By-law. On

complaint by any individual not an employee or agent of the Town, complainant is required at a minimum to provide her/his name and contact information as well as address of alleged violation for the complaint.

SECTION 8.31.10: EFFECTIVE DATE

The provisions of this By-law shall be effective as provided in M.G.L. c. 40, s.32.

**The current Article 8.31:**

## Article 8.31
## Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

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 resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.31.2: USE REGULATIONS

1. Leaf Blowers.
Leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.
a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and December 15 in each year. The Commissioner of Public Works shall have the authority to temporarily waive the limitations on the use of leaf blowers set forth in this section in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

3. *Regulations.*

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. For the purposes of this section "person" shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

(a) a warning or $50.00 for the first offense;
(b) $100.00 for the second offense;
(c) $200.00 for the third offense;
(d) $200.00 for successive violations, plus
(e) court costs for any enforcement action.

*5. Effective Date.*

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

**The Committee proposed new Article 8.15, additions are indicated by underlining, and deletions are indicated by strike-out below:**

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# 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 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.

4. Noise regulations concerning Leaf blowers are found in Article 8.31

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.

(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 hand-held or backpack machine 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
– 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) 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, 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 RESPONSIBLITIES 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 andregulations 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 Limit | Speed Limit35 mph or less | Speed mph 35-45 |
|---|---|---|---|
| All vehicles over 10,000 lbs. 83 87 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 | ~~Leafblowers~~ | ~~67~~ |

(c) 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

(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) 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 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 or town label. Any portable Leaf Blower(s) must comply with the labeling provisions of this By-law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI 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).

(k) 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 isin violation of the provisions of this By-law.

(b) 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 adverseeffects 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 APPEALS

**[Disapproved and deleted by the Attorney General on May 14, 2009.]**

SECTION 8.15.10 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) **[Disapproved and deleted by the Attorney General on May 14, 2009.]**

(d) 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 8.15.11 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.

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PETITIONER'S ARTICLE DESCRIPTION

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

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

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

3. Reviewed the Selectman's Leaf Blower By-law Committee's report and findings; Reviewed current noise control and leaf blower regulations (i.e. Articles 8.15 and 8.31);
4. Held a public hearing on the subject matter of Article 10, current Noise and leaf blower by-laws, and related matters; Examined leaf blower complaint data and complaint "hot spots";
5. Conducted and reviewed the results of an online survey, with some 1,300 responses and over 3,600 comments;
6. Discussed the leaf blower regulations of more than 20 other municipalities;
7. Evaluated noise levels and leaf clearing efficiency of different machines (both gas and electric) in a live trial conducted by the Parks & Recreation Department;
8. Learned about future technology developments for noise and battery improvements from a manufacturer;Met with various Town departmental officials to discuss leaf blower operations, enforcement, health issues related to leaf blower operations, and the legal aspects of current and proposed regulations;Considered a variety of solutions for leaf blower noise mitigation;
9. Prepared two warrant articles (i.e., By-Law amendment and a resolution related to mitigation and enforcement) for Town Meeting consideration.

***Committee Findings***

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

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

Harmful emissions from leaf blowers was found to be negligible compared to other sources of similar emissions. Both the Town's Public Health Department and the

Advisory Committee on Public Health, informed the Committee that there was no compelling public health threat from leaf blower use.

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

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

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

***Proposed Changes***

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

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

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

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

Article 8.31, as proposed, would make the homeowner/property owner liable for by-law violations by their agent or contractor, and would provide for warnings and fines on the

property owner. A mandatory first warning is recommended, with subsequent violation fines increased, from $50, $100, and $200 for subsequent offenses, to $100, $200 and $300 for subsequent offenses.

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

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

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

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

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

Submitted by the Moderator's Committee on Leaf Blowers:

John Doggett, Chair, TMM P13
Dennis Doughty, Secretary, TMM P3
Jonathan Margolis TMM P7
Maura Toomey, TMM P8
Benedict Hallowell TMM P15

Neil Gordon, TMM P1
Faith Michaels, TMM P5

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SELECTMEN'S RECOMMENDATION

Article 23 is a proposed amendment to Article 8.31 of the Town's By-Laws submitted by the Moderator's Committee on Leaf Blowers. The November 2015 Special Town Meeting considered Warrant Article 10 ("Article 10"), which proposed banning operation of all leaf blowers in Brookline. The subject matter of Article 10 was referred to a Moderator's Committee, which was organized in December 2015. The charge of the committee was:

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

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

The Selectmen have heard extensively about the issues surrounding leaf blowers; from individual complaints, to the decibel levels, to future technology, and potential mitigation. There is a clear need for the consolidation of the regulations concerning leaf blowers in the Town's By-Laws. There was discussion of owner versus contractor responsibilities and the changes that occurred in the summer of 2016.

Due to the comments made during the public hearing, the Selectmen amended Article 8.31 to remove the last sentence of Section 8.31.9 removed. That sentence read: **On complaint by any individual not an employee or agent of the Town, complainant is required at a minimum to provide her/his name and contact information as well as address of alleged violation for the complaint.**

The Board of Selectmen voted 4-0 FAVORABLE ACTION on the following:

VOTED: Amend the General By-Laws by amending Article 8.15 - Noise Control to add a fourth bullet to Section 8.15.2 b that reads "Noise regulations concerning Leaf blowers are found in Article 8.31" and delete the remaining references to leaf blower regulations from Article 8.15. And amend Article 8.31 so that it reads as follows:

**Article 8.31**
**Leaf Blowers**

Section 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this By-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.31.2: DEFINITIONS

a. "Leaf Blowers" governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

b. "Property Owner" as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor's records.

c. "Property Manager" shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.

d. "User" means the person or entity using the Leaf Blower at the time of the violation.

Section 8.31.3: LIMITATIONS ON USE

a. No Property Owner or Manager shall authorize the operation of leaf blowers on property under their control except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to parcels of land that contain at least two acres of open space.

b. No Property Owner or Manager shall authorize the operation of leaf blowers on property under their control except between the hours of 8 (eight) A.M. to 8(eight) P.M.

Monday through Friday, and from 9 (nine) A.M. to 6(six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or Manager shall authorize the operation of more than 2 (two) leaf blowers simultaneously. This limitation shall apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower 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) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, 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 leaf blower(s) that have been modified or damaged, as 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 or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such 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. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non-refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

Section 8.31.4: REGULATIONS

a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Board of Selectmen.

b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

SECTION 8.31.5: DUTIES AND RESPONSIBLITIES 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 objectives of this By-law.

b. Departmental Compliance with Other Laws

All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

c. Town Exemption

The Department of Public Works shall be exempt for day and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law.

d. Town Leaf Blower Equipment

Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Board of Selectmen, or its designee, may grant a special permit to a Property Owner or Manager:
(i) for any activity otherwise prohibited under 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,
(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 Property Owner or Manager ~~or~~ seeking such a permit should make a written application to the Board of Selectmen, or its designee. The Town will make 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 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 use.
(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.
(6) If the Board of Selectmen, or its 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 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

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 8.31.8: ENFORCEMENT AND PENALTIES

a. This By-law may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. The Property Owner and/or Manager of any real property upon which a Leaf Blower is operated in violation of this By-law, or upon any abutting sidewalk or way in connection with such operation, shall be liable for all violations of this By-law. Any User in violation of this By-law other than the Property Owner or Manager shall be issued a written notice, whenever practical, notifying the User of the enforcement action to be taken against the Property Owner or Manager for the violation.

For the first violation in each calendar year a written warning will be issued to the Property Owner or Manager.

Second and subsequent violations occurring on the same property under the same ownership or management Property shall be issued to the Property Owner or Manager according to the following schedule:

1. $100.00 for the second offense;
2. $200.00 for the third offense;
3. $300.00 for the each subsequent offense;
4. plus court costs for any enforcement action taken.

SECTION 8.31.9: ENFORCEMENT

The Health, Building, Police and Public Works Departments shall have enforcement authority for this By-law.

SECTION 8.31.10: EFFECTIVE DATE

The provisions of this By-law shall be effective as provided in M.G.L. c. 40, s.32.

**ROLL CALL VOTE:**

| Favorable Action | Absent |
|---|---|
| Wishinsky | Heller |
| Daly | |
| Franco | |
| Greene | |

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ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 23 will be provided in the Supplemental Mailing.

XXX

# ARTICLE 24

## ADVISORY COMMITTEE'S SUPPLEMENTAL REPORT

SUMMARY:
As originally proposed, Article 24 asked the Selectmen to appoint a Leaf Blower Code Enforcement Officer, or the equivalent, to address issues that arise with the use of leaf blowers in Brookline and, along with the Police Department, to enforce the Leaf Blower Control By-law.

Article 24, as recommended by the Advisory Committee, urges the Selectmen to consider assigning additional duties to the Department of Public Works (DPW) relating to the use of leaf blowers in Brookline, including investigating and attempting to resolve complaints with the parties involved and, along with the Police Department, enforcing the Leaf Blower Control By-law. By a vote of 21–1–0, the Advisory Committee recommends FAVORABLE ACTION on the motion found at the end of this report.

BACKGROUND:

1. *Moderator's Committee on Leaf Blowers*

Article 24, along with Article 23, is the result of the research and deliberations of a committee appointed by the Moderator in response to the referral vote on Article 10 at the 2015 Special Town Meeting. The Committee's charge was to review and evaluate the provisions of the Town's By-laws, Article 8.15 - Noise Control (with respect to Leaf Blowers), and Article 8.31 - Leaf Blowers. Its charge also included reviewing the Selectman's Noise By-Law Committee report, leaf blower abuses, inappropriate uses, best practices, provisions used in other towns, property owners' responsibilities, landscaping service provider responsibilities, Town responsibilities, enforcement issues, and other relevant matters.

In addition to reviewing relevant by-laws and reports and leaf blower regulations of multiple municipalities, the Committee studied a Town map showing the distribution of leaf blower noise complaints and met with Town officials to discuss leaf blower operations, enforcement, health issues and the legal aspects of current and proposed regulations.

Moreover, the Committee conducted an online survey, gathering information from Brookline residents. This "non-scientific" survey was intended to gauge public opinion regarding both the positive and negative impact of leaf blowers on individual citizens.
There were 1,312 responses with over 3,600 comments. IP addresses of survey participants were reviewed and the vast majority of these addresses were found to be legitimate Brookline IP addresses. Although the responses were not regarded as opinions

for all Brookline residents, they nonetheless provided a starting point for the work of the Committee.

2. *Moderator's Committee Observations*

Based on information gathered, the Committee's observations relevant to Article 24 were:

- Many respondents believe that leaf blowers are needed to adequately address huge leaf drops in the fall as well as outside clean-up in the spring;
- Many believe that the noise from leaf blowers disrupts their quality of life;
- Education over time of landscapers and other leaf blower users holds promise for eventual greater noise relief;
- The involvement of property owners in encouraging compliance with regulations has the potential to encourage both dialogue and the development of "on the ground" mitigation/solutions;
- Often Town residents hesitate to contact the Police regarding violations of the By-law, resulting in under-reporting.

3. *Code Enforcement Officer*

Article 24, as published in the Warrant, envisioned the creation of a position of Code Enforcement Officer. This suggestion was predicated on the belief that awareness, education, and dialogue are, in the long run, more effective approaches to reducing leaf blower noise than fining violators. Changing behaviors and attitudes, the long-term and longer lasting solution to reducing excessive use and noise, is more likely to take place by working and negotiating with all parties–complainants, property owners, and leaf blower users.

Members of the Advisory Committee's Ad Hoc Subcommittee on Articles 23 and 24 had a number of objections and questions regarding the creation of a new position of Code Enforcement Officer, including the cost of creating a new position, whether it should be part-time or full time, and in which Town department the position would reside.

In response to these concerns, two representatives from the Moderator's Committee on Leaf Blowers held meetings with the Town Administrator and other Town Hall staff, including the Commissioner of Public Works, to discuss the intent of Article 24. Participants discussed reservations about the potential cost of the position and the ability of an individual to meet the expectations outlined in the original resolution. As a result, the possibility of upgrading an existing but currently unfilled position in the Sanitation Division of the Department of Public Works and assigning that position with some of the responsibilities originally envisioned for the Code Enforcement Officer was explored. A preliminary estimate of the cost of such an upgrade was under $10,000.

In order to further pursue this option, the Moderator's Committee proposed an amended version of Article 24, which the Ad Hoc Subcommittee presented to the full Advisory Committee on November 3rd. The amended resolution asks that the Selectmen consider expanding the responsibilities assigned to an existing position in the Sanitation Division of the Department of Public Works, rather than creating an entirely new position.

DISCUSSION:

Advisory Committee members raised a number of questions, including why another person is needed to enforce the By-law; how Brookline residents would find out about the new compliance/enforcement structure; and what coordination between the Police and the DPW staff member would look like.

In response to the first question, it was stated that six communities currently have code enforcement positions and that their experiences indicate that the position encourages negotiations with property owners, leaf blower users and complainants that ultimately result in greater compliance. In some instances, it may take up to a month to resolve the issue. It was further stated that the Moderator's Committee's research revealed that some residents are reluctant to call the Police about a leaf blower, believing that the Police Department should be dealing with the paramount issue of public safety. Contacting a civilian to file a complaint will likely be far less intimidating. Finally, the Committee believes that the use of exclusively Police Officers to enforce leaf blower restrictions has had limited success.

It was emphasized, however, that in no way would the creation of this position result in the elimination of the Police Department's enforcement role. It is essential that the Police would be called in if and when situations became excessively confrontational and negotiations proved fruitless.

As for spreading the word about the new Leaf Blower By-law and compliance efforts, a description of the DPW position and the option of calling the DPW instead of the Police with a complaint about leaf blowers, as well as recently approved changes in the Leaf Blower By-law, could be publicized on the Town's website and in the DPW's annual Public Works Information Guide and could be included in an enclosure in property owners' Water and Sewer bills.

Coordination details, including how calls will be routed, will be determined by the two departments, both of which have indicated support for the proposal. It should be underscored that the DPW position is not intended to replace a Police Officer in terms of By-law enforcement, but the emphasis of the work of the former will be on effective compliance, including education, communication, and follow-up with homeowners and landscape companies. It is the belief of an overwhelming majority of Advisory Committee members that the DPW position will enhance the efforts to increase

compliance with the Leaf Blower By-law, thereby reducing the number of violations and the noise from leaf blowers in the Town.

RECOMMENDATION:
By a vote of 21–1–0, the Advisory Committee recommends FAVORABLE ACTION on the following motion, with bold underlined text indicating additions to the original article and strikethroughs indicating deletions:

VOTED: That the Town adopt the following Resolution:

Resolution ~~to Appoint a Leaf Blower Code Enforcement Officer~~ **With Respect to Administration of the Leaf Blower By-Law**

WHEREAS the Police Department is currently the ~~sole~~ **primary** enforcer of the Leaf Blower By- laws and is using valuable resources that do not directly concern public safety;

WHEREAS many Town residents have expressed concern about calling the Police to report violations of the Leaf Blower By-Law;

WHEREAS, accordingly, there are believed to be~~, apparently,~~ many current leaf blower by-law violations that are not reported and therefore not resolved;

~~WHEREAS noise deemed excessive and/or annoying which is within the legal scope of the current and proposed By-law could be reduced through negotiation with the parties involved;~~

~~WHEREAS the Police Department estimates that about 30% of noise complaints involved exempt Town operations and 50% of leaf blower complaints originate from a small number of "hot spots" around Town, a more systemic approach working with Town Departmental managers, residents, and landscape contractors might be more successful in reducing noise overall;~~

~~WHEREAS negotiating with neighbors and/or landscape service providers with a focus on education and best practices is likely to be productive in reducing noise pollution;~~

~~WHEREAS the Town and its contractors performing Town work are exempt from Leaf Blower By-laws;~~

WHEREAS the Department of Public Works has an environmental enforcement program, pursuant to which it is already enforcing other By-laws; **and**

WHEREAS a modest added expense may be required in order for the Department of Public Works to handle additional duties to administer the Leaf Blower By-law; ~~now, therefore, be it~~

**THEREFORE, be it** ~~RESOLVED~~ resolved, that **Town Meeting urges** ~~T~~ the Board of Selectmen ~~appoint a Leaf Blower Code Enforcement Officer, or equivalent officer, who should not be part of the Police Department, who reports to the Board of Selectmen or its designee, and whose duties~~ to consider assigning additional duties to the Department of Public Works that would include:

1. ~~Take~~ **Taking** calls during Town Hall business hours;
2. ~~Investigate~~ **Investigating** and ~~attempt~~ **attempting** to resolve complaints with the parties involved;
3. ~~Work~~ **Working** with the landscape service provider community to build awareness of the leaf blower noise concerns, help further the use of best practices and promote use of protective equipment for operators;
4. ~~Liaise~~ **Working** with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. ~~Issue~~ **Issuing** warnings and citations as appropriate;
6. ~~Call~~ **Calling** on the Police Department for support and/or enforcement, as appropriate;
7. ~~Track~~ **Tracking**, ~~monitor~~ **monitoring** and ~~report~~ **reporting** ~~periodically to the Board of Selectmen~~ on complaint statistics and resolutions;
8. ~~Communicate~~ **Communicating** and ~~educate~~ **educating** Town residents as to their responsibilities to reduce leaf blower noise; **and**
9. Recommend**ing** regulation changes as appropriate.

~~And be it further:~~

~~RESOLVED that:~~
~~The Department of Public Works work closely with the Leaf Blower Code Enforcement Officer or equivalent officer to adopt practices and equipment standards that adhere as near as practical to the Leaf Blower By-Laws.~~

Passed by an Electronic Recorded Vote of 115 In Favor, 65 Opposed and 5 Abstentions

## ARTICLE 24

## BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

As indicated in the previous report of the Selectmen on this article, ongoing discussion on the wording of this Resolution has transpired. After considering other versions of the Resolution that would meet the intent of the Committee but not be overly prescriptive, the Board of Selectmen reconsidered its prior recommendation of No Action and on November 9, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ARTICLE 24

TWENTY-FOUTH ARTICLE

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

**To see if the Town will adopt the following Resolution:**

**Resolution to Appoint a Leaf Blower Code Enforcement Officer**

WHEREAS the Police Department is currently the sole enforcer of the Leaf Blower By-laws and is using valuable resources that do not directly concern public safety;

WHEREAS many Town residents have expressed concern about calling the Police to report violations of the Leaf Blower By-Law;

WHEREAS, accordingly, there are, apparently, many current leaf blower by-law violations that are not reported and therefore not resolved;

WHEREAS noise deemed excessive and/or annoying which is within the legal scope of the current and proposed By-law could be reduced through negotiation with the parties involved;

WHEREAS the Police Department estimates that about 30% of noise complaints involved exempt Town operations and 50% of leaf blower complaints originate from a small number of "hot spots" around Town, a more systemic approach working with Town Departmental managers, residents, and landscape contractors might be more successful in reducing noise overall;

WHEREAS negotiating with neighbors and/or landscape service providers with a focus on education and best practices is likely to be productive in reducing noise pollution;

WHEREAS the Town and its contractors performing Town work are exempt from Leaf Blower By-laws; now, therefore, be it

RESOLVED that:

The Board of Selectmen appoint a Leaf Blower Code Enforcement Officer, or equivalent officer, who should not be part of the Police Department, who reports to the Board of Selectmen or its designee, and whose duties include:

1. Take calls during Town Hall business hours;
2. Investigate and attempt to resolve complaints with the parties involved;
3. Work with the landscape service provider community to build awareness of the noise concerns, help further the use of best practices and promote

use of protective equipment for operators;

4. Liaise with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. Issue warnings and citations as appropriate;
6. Call on the Police Department for support and/or enforcement, as appropriate;
7. Track, monitor and report periodically to the Board of Selectmen on complaint statistics and resolutions;
8. Communicate and educate Town residents as to their responsibilities to reduce noise;
9. Recommend regulation changes as appropriate;

And be it further:

RESOLVED that:

The Department of Public Works work closely with the Leaf Blower Code Enforcement Officer or equivalent officer to adopt practices and equipment standards that adhere as near as practical to the Leaf Blower By-Laws.

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PETITIONER'S ARTICLE DESCRIPTION

***Background***

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

***Committee Approach***

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

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

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

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

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

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

Submitted by the Moderator's Committee on Leaf Blowers:

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

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## SELECTMEN'S RECOMMENDATION

Article 24 is a non-binding Resolution that requests the Board of Selectmen to appoint a Leaf Blower Code Enforcement Officer, or equivalent officer, who should not be part of the Police Department and prescribes a set of duties for this officer.

While the Board of Selectmen sincerely appreciates the good faith effort of the Committee to make the current by-law more effective and practical, it is their current position that the resources necessary to meet these expectations are not available in Fiscal Year 2017. Accordingly, the Board voted unanimously to recommend NO ACTION.

The Moderator's Committee has been working with the Town Administrator and the Commissioner of Public Works on a plan that will address the intent of the warrant article in a way that will allow a request for resources, if needed, during the FY2018 budget cycle. The Board looks forward to reviewing this new language and will likely have a revised recommendation in the supplement mailing.

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## ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 24 will be provided in the Supplemental Mailing.

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## ARTICLE 25

## TWENTY-FIFTH ARTICLE

Submitted by: Harry Friedman, TMM12

To see if the Town will amend the General by-laws by making the current section 8.16.3 into section 8.16.3(a), and adding the following as section 8.16.3(b):

(b) Notwithstanding the powers of the Board of Selectmen outlined above in Section 8.16.3(a), any adoption of a "Pay As You Throw" system of waste removal, defined as a variable rate pricing system under which those owners and occupants of residential units whose waste is collected as a town service are charged a rate based on how much waste they present for collection, shall not be effective without the express prior approval of Town Meeting.

or act on anything relative thereto.

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## PETITIONER'S ARTICLE DESCRIPTION

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

A brief chronology of the issue follows:

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

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

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

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

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

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

SECTION 8.16.1 PURPOSE

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

SECTION 8.16.2 SCOPE

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

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

SECTION 8.16.3 RULES AND REGULATIONS

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

(b) Notwithstanding the powers of the Board of Selectmen outlined above in Section 8.16.3(a), any adoption of a "Pay As You Throw" system of waste removal, defined as a variable rate pricing system under which those owners and occupants of residential units whose waste is collected as a town service are charged a rate based on how much waste they present for collection, shall not be effective without the express prior approval of Town Meeting.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

In order to implement recycling in conjunction with the Town's solid waste collection programs, owners, residents, and occupants of every household, residential unit,

commercial facility or other building, whose waste is collected as a Town service or by a permitted hauler, shall separate for collection, in the manner set forth in this By-Law and the regulations adopted hereunder, the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations.

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

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

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

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

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

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

separated for recycling and removed by the town or a permitted hauler. The owner, manager or occupants of the Property responsible for any one or more of the conditions described in (a) or (b) or (c) above, shall be subject to the enforcement provisions in Article 10.2 and the noncriminal disposition provisions in Article 10.3. Each day any one the conditions described in (a) or (b) or (c) continues shall constitute a separate violation.

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

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SELECTMEN'S RECOMMENDATION

Article 25 is a petitioned article that seeks to have Town Meeting assume approval authority over any PAYT system adopted by the Board of Selectmen. The legal structure of town government in Massachusetts vests the executive authority with the Board of Selectmen. In Brookline, this executive authority is supported by special legislative acts creating the responsibility and authority of the Town Administrator and various departments. The Town Meeting maintains appropriation authority and the enactment of local by-laws that guide the major policies and priorities of the Town. It is the view of the Board of Selectmen that Article 25 would create an unreasonable exercise of legislative authority. While solid waste collection is an important public service that affects the entire community, it is the Board of Selectmen that is elected and has the appropriate perspective to make such decisions.

Last spring, the Town Meeting considered a non-binding Resolution that sought to clarify the waiver provisions of using wheeled carts for a PAYT system. The Board of Selectmen and staff took this matter seriously and worked diligently to support a version of the Resolution that passed. In addition to clarifying the nature of a waiver system, the Resolution required the Board of Selectmen to convene a public hearing before adopting an official waiver system. Having concluded Town Meeting in May of 2016, it would not have been prudent or reasonable to conduct a public hearing on this matter during the summer vacation period, so the Board was disappointed to see this warrant article filed before they had the opportunity to realistically comply with the resolution. This Board and the DPW are serious about proposing a waiver system. The Commissioner provided a memo that also addresses the fact that the Town has made good faith and significant investment of time and funding for a PAYT system. PAYT and automation are best practices in municipal solid waste collection that combine environmental benefits with a fair, cost effective, and convenient public service.

This Board asks that Town Meeting give this Board the opportunity to comply with the resolution from the Annual Town Meeting.

A unanimous Board of Selectmen voted NO ACTION on September 27, 2016.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 25 would amend 8.16.3 of the Brookline's General By-Laws to require approval of Town Meeting before a Pay As You Throw (PAYT) system could be implemented. A substantial majority of the Advisory Committee agreed that trash collection is an important municipal service and that Town Meeting should vote on a significant policy change, such as adopting PAYT, related to this service.

By a vote of 18–4–1, the Advisory Committee recommends FAVORABLE ACTION on the by-law amendment in Article 25.

BACKGROUND:
Article 25 should be viewed in the context of an ongoing discussion on how trash should be collected in Brookline and how the Town should charge residents a fee for this service. In recent year, this discussion has involved (1) how to implement a mechanized trash collection system, and (2) whether residents should be charged a flat refuse collection fee or a fee that varies depending on the volume of trash that is collected from their household.

The by-law on trash collection can be found in section 8.16 of the Town By-Laws (Collection and Recycling of Waste Materials).

Additional information on the subject of mechanized trash collection and PAYT can be found in the Advisory Committee's report on Article 17 in the 2016 Annual Town Meeting Combined Reports:
http://www.brooklinema.gov/DocumentCenter/Home/View/9619

A PowerPoint presentation on the hybrid PAYT that has proposed can be found here:
http://www.brooklinema.gov/documentcenter/view/9569

The Moderator's Committee report released in 2013 can be found at the end of the 2013 Annual Town Meeting Combined Reports here:
http://brooklinema.gov/DocumentCenter/Home/View/4609

Article 25 does not take a position on automated collection or PAYT. The main focus of this Article centers on whether Town Meeting should have a say the implementation of a new program that will affect thousands of residents in town.

Town Meeting has been discussing recycling and trash disposal for more than 30 years, most recently in the 2016 Annual Town Meeting (Article 17). That Article was a resolution asking the Town to enact an exemption system to the Town's proposed hybrid PAYT system, which would require residents to place their trash in toters (wheeled carts) for collection. Article 17 was based on the belief that some residents would find it difficult to comply with the requirement that they use a toter for refuse disposal and should be exempt from that requirement.

Previous attempts at adopting a PAYT system—without mechanized trash collection—either were withdrawn or sent to committees for further study. The Advisory Committee's report on Article 17 in the 2016 Annual Town Meeting Combined Reports provides some background:

> A PAYT system was proposed to Town Meeting in the 1990s but was withdrawn prior to a vote due to apparent lack of support. In 2008, the Selectmen formed a committee to reconsider PAYT as a means to reduce solid waste. The committee recommended a bag system that was rejected by Town Meeting in 2009. A Moderator's Committee on Waste Disposal was formed at that time to again reassess PAYT options. In 2013 that committee proposed a semi-automated collection system in which trucks with mechanical arms would pick up solid waste from variable sized wheeled carts (toters), much as similar trucks now collect recycling from the blue toters."

The current trash fee (now $200 per year) dates from 1992, when the Selectmen asked Town Meeting to approve it, promising it was for only one year.

Trash collection actually has been a subject of controversy in Brookline for generations. In 1895, a report by the Special Committee on Disposal of Waste Material (formed in 1892) wrote:

> A radical change from the present system of disposal of our garbage [is] becoming more imperative every year by reason of the abolition of hog farms in neighboring towns....At present our swill is collected by a contractor who removes it to out of town farms where it is fed to hogs. Under the contract...the garbage to be collected daily, except Sundays and legal holidays, from May 1st to November 1st, and three times weekly the remainder of the year...

In 1906, the Board of Health reported:

> By far the most expensive part of the work of the Board is the removal of ashes and rubbish...The alternative is to erect an attractive looking building with a furnace using modern smoke consuming devices. It will take time for people to learn that this can be done in an unobjectionable manner, and meanwhile strong objection will be made to any site that may be proposed for the purpose.

Brookline's Town Meeting that year approved a contract for removing garbage, stating that, "It is hoped that this work will be carried on with as few disagreeable features as its nature permits."

Commissioner of Public Works Andrew Pappastergion has made great strides in coming up with a hybrid system that he believes would work in Brookline. Doubts and unanswered questions about PAYT have doomed past attempts to create a system. Most of these issues have been addressed due to the hard work he and his department have done. There are still challenges that face the Town in regards to PAYT and recycling, such as illegal dumping, a stagnant recycling rate (34%), and the collapse of the recycling market. The ability of residents to store and move the toters is one of the last major obstacles. The efficiencies cited by the Town with a PAYT program are unclear given the unknown numbers of exemptions that will be required. Town Meeting has already appropriated funds for automated trucks, and is arranging for the purchase of toter bins of various sizes. The petitioner pointed out that there is a distinction between mechanization and PAYT.

DISCUSSION:
The Advisory Committee was disappointed that nobody representing the Selectmen or DPW attended the subcommittee hearing on Article 25 or the meeting of the full Advisory Committee. A lack of communication and transparency are two of the driving forces that the petitioner cited as reasons for submitting article 25. The discussion at the Advisory Committee's public meeting on this Article focused mainly on the Selectmen's executive power and Town Meeting's legislative roles and responsibilities. The Moderator's report from 2013 was never vetted by Town Meeting, and many residents have not had an opportunity to learn details of the current proposal for a hybrid PAYT system. Repeated efforts of Town Meeting Members to find out details have not yielded an answer as to when the criteria for exemptions will be ready. The Selectmen intend to begin the PAYT program on May 1, 2017, so Town Meeting will not have another chance to weigh in on it before it is too late to vet the still uncompleted plan.

Since last spring's vote on the Article 17 resolution, details about the exemption criteria that Town Meeting requested be created under Article 17 have not been forthcoming. A memo sent by Commissioner Pappastergion to Town Administrator Mel Kleckner on September 23, 2016 stated that, "The issue of the ability to store a wheeled cart within the property was determined to be too subjective to be considered a valid consideration for exemption but would be considered in extreme cases." This statement goes against the intent of Article 17 which passed overwhelmingly last spring at the 2016 Annual Town Meeting. It's not clear how many people will need to apply for an exemption. The number of people as well as the criteria should be known well in advance of implementation.

The petitioner reiterated that article 25 is neither pro nor con PAYT. It is rather about the role of Town Meeting regarding policy-making in this town. At the Advisory Committee's public meeting on Article 25, members expressed the following views. One member commented that Town Meeting does not derive its authority from the Selectmen and believes Article 25 is a valid approach. Another said it was expected that after the

Moderator's Committee report was released in 2013 that the subject would come back to Town Meeting, and it was not made clear to Town Meeting that the Town's acquisition of new garbage trucks was linked to PAYT. Another believes that basic public services should be under democratic control, i.e. Town Meeting.

Town Administrator Mel Kleckner sent a memorandum to the Selectmen on September 26, 2016 in which he argued that the Board of Selectmen, as the executive branch, has jurisdiction in setting Town policy. He called article 25 "an unreasonable exercise of legislative authority." He wrote that the Selectmen have the "appropriate perspective to make such decisions." However, he also wrote in the same memorandum that, "The Town Meeting maintains appropriation authority and the *enactment of local By-Laws that guide major policies and priorities of the Town*" (emphasis added).

Every Town Meeting makes policy for the Town. Whether it is a resolution stating that it is the policy of the Town to be against the TransPacific Partnership, to oppose the Cuban embargo, or to support regulating tobacco products, to use three examples from the Spring 2016 Town Meeting, that is making policy. Town Meeting in voting appropriations is also voting policy. PAYT has a lot of positive aspects, and there will be cost savings in the efficiencies of mechanized collection, nut Town Meeting has always had a say in making policy. The Advisory Committee believes Town Meeting should be the one to make the decision when implementing a major change of Town services.

Since PAYT has come before Town Meeting numerous times before, and since our recycling program is based on a by-law passed by Town Meeting, it makes sense to also have PAYT authorized by Town Meeting according to Article 25's proposed by-law. The Advisory Committee subcommittee that reviewed Article 25 found it significant that the 2016 Annual Town Meeting voted 192–7 in favor of Article 17, indicating a strong desire of Town Meeting members to weigh in. Since the PAYT program is not expected to start until May 2017, having a positive vote of Town Meeting will not significantly delay implementation.

RECOMMENDATION:
By a vote of 18–4–1, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town amend 8.16.3 of the General By-Laws, making section 8.16.3 into 8.16.3(a), and add the following as section 8.16.3(b):

(b) Notwithstanding the powers of the Board of Selectmen outlined above in section 8.16.3(a), any adoption of a "Pay As You Throw" system of waste removal, defined as a variable rate pricing system under which those owners and occupants of residential units whose waste is collected as a town service are charged a rate based on how much waste they present for collection, shall not be effective without the express prior approval of Town Meeting.

Defeated by an Electronic Recorded Vote of 136 in favor, 147 Opposed and 9 abstentions

## ARTICLE 26

## TWENTY-SIXTH ARTICLE

Submitted by: Harry Friedman, TMM12

To see if the Town will amend the General by-laws by making the current section 8.16.3 into section 8.16.3(a), and adding the following as section 8.16.3(b):

(b) Notwithstanding the rules and regulations promulgated pursuant to this Bylaw regarding the collection of waste or recyclable materials, owners and occupants of residential units whose waste or recycling is collected as a town service, cannot be required as a condition of the town service to utilize wheeled receptacles that weigh more than ten pounds, or any other receptacles that weigh more than ten pounds. With regard to receptacles used for recycling, this subsection shall only take effect once the contract with the Town's current recycling hauler ends, or two years from enactment of this subsection, whichever occurs first.

or act on anything relative thereto.

## PETITIONER'S ARTICLE DESCRIPTION

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

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

To date, no such exemption system has been instituted. In light of that, and in light of the fact that Town Meeting is not scheduled to meet again prior to the introduction of PAYT and mechanization, this article amends the current bylaw to give residents on town trash service the option of using containers other than Toters for both trash and recycling. Recycling Toters are included here because the same characteristics that make trash Toters a hardship for some residents equally apply to the recycling Toters.

However, unlike trash, recycling collection is currently under contract to a private hauler. The current contract was based on the fact that Toters would be used for recycling. Therefore, the provisions of the warrant article regarding recycling Toters would not take effect until the earlier of two years or the end of the current contract with the private hauler.

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

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

SECTION 8.16.1 PURPOSE

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

SECTION 8.16.2 SCOPE

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

SECTION 8.16.3 RULES AND REGULATIONS

(a) The Board of Selectmen may adopt regulations governing the
collection, storage, transportation and removal of solid waste and shall adopt regulations to implement a recycling program in the Town. The regulations adopted by the Board may be amended, from time to time, and may add other

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

(b) Notwithstanding the rules and regulations promulgated pursuant to this Bylaw regarding the collection of waste or recyclable materials, owners and occupants of residential units whose waste or recycling is collected as a town service, cannot be required as a condition of the town service to utilize wheeled receptacles that weigh more than ten pounds, or any other receptacles that weigh more than ten pounds. With regard to receptacles used for recycling, this subsection shall only take effect once the contract with the Town's current recycling hauler ends, or two years from enactment of this subsection, whichever occurs first.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

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

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

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

accordance with the regulations adopted hereunder.

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

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

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

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

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

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## SELECTMEN'S RECOMMENDATION

Article 26 is a petitioned article which seeks to amend Article 8.16 of the Town's General By-Laws by enacting a 10 pound limit on the weight of empty trash or recycling containers used for collection. The Town currently requires the use of wheeled containers for weekly recycling collection. These containers are 64 gallon capacity, which weigh approximately 28 pounds empty. However, the ergonomic design of the container, using wheels and a strategically placed handle, allow a user to tilt and roll the unit in a manner that distributes the weight and reduces friction. In addition to the convenience and ease for residents, the shape and construction of the units allow for automated collection using a mechanized packer truck. This automation saves money, time and reduces work injuries. In addition to the convenience and practicality of wheeled carts, the Town has a contractual relationship with its recycling vendor that requires their use.

The Board is concerned about the impact of this proposal on both the current recycling contract and on the anticipated Pay-As-You-Throw program. The DPW Commissioner believes that this warrant article would make the proposed automated collection system and the efficiencies inherent in that program unachievable. The article might also place the Town in the position of being in default of its current recycling contract.

On September 27, 2016 a unanimous Board of Selectmen voted NO ACTION on Article 26.

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## ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
The Advisory Committee has been informed by the petitioner that no motion will be offered under Article 26. The Advisory Committee therefore makes no recommendation on this Warrant Article.

XXX

No Action Was taken

## ARTICLE 27

### TWENTY-SEVENTH ARTICLE

Submitted by: Fred Lebow on behalf of the Naming Committee

To see if the Town will approve the name of a square at utility pole 44/16A, near the northeast corner of Cypress and Boylston Streets, as Walter F. Brookings Square, or act on anything relative thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

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

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

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

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### SELECTMEN'S RECOMMENDATION

Article 27 would name a square at the intersection of Cypress Street and Brington Road in honor of World War II veteran Walter F. Brookings. Lieutenant Brookings grew up in Brookline and is the definition of a true war hero. He died in service over France on March 19, 1944 at the age of 24 and was awarded the Air Medal with Oak Leaf Clusters and the Purple Heart.

The Board thanks our Veteran's agent Bill McGroarty for working with Lieutenant Brookings' granddaughter and the Naming Committee to honor Lieutenant Brookings in this manner. It should be noted that this is the first military personnel to be honored since the Naming Committee started 10 years ago.

The Selectmen unanimously recommend FAVORABLE ACTION, by a vote of 5-0 taken on September 20, 2016, on the Advisory Committee's motion.

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## ADVISORY COMMITTEE'S RECOMMENDATION

**Walter Francis Brookings**
January 9, 1920–March 19, 1944

SUMMARY:
The Naming Committee, at the request of Brookline's Director of Veterans' Services Bill McGroarty, proposes to name a square after Lieutenant Walter Brookings, who served in World War II in the U.S. Army Air Forces 545 Bomber Squadron. The square would be close to the house Lieutenant Brookings grew up in at 126 Cypress Street.

The Advisory Committee recommends FAVORABLE ACTION with a unanimous vote

BACKGROUND:
In May of 2005, Town Meeting added Section 6.8.2 to the Town By-Laws, establishing a Selectmen-appointed committee to review all proposals for naming public facilities, with the exception of rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees.

It also authorized the committee to report on its recommendations and, from time to time, initiate its own proposals for naming public facilities. All recommendations are subject to criteria that are established by the committee, approved by the Board of Selectmen, and amended as the Brookline Naming Committee finds necessary. The ultimate authority over the naming of public facilities continues to rest with Town Meeting.

The Veterans Office is responsible for ceremonies on Memorial Day, Veterans Day, as well as the Adopt-a-Pole Program and Memorial Square dedications.

Director of Veterans' Services McGroarty recently received a letter from Donna Wolfe, granddaughter of Walter F. Brookings. She was moved to see her grandfather's name on Brookline's World War II Memorial and inquired about the possibility of naming a square after him.

Walter F. Brookings grew up in Brookline at 126 Cypress Street (currently the site of the Mobil gas station). Mr. Brookings enlisted in the Air Force and began active duty on May 18, 1942. He was second lieutenant in the U.S. Army Air Forces 545 Bomber Squadron, 384th Bomber Group. He died in service over France on March 19, 1944 at the age of 24. He co-piloted a B-17 Bomber, named Lovell's Hovel, when the plane was shot down by flak and crashed. The pilots were able to keep the plane aloft long enough to enable four soldiers to exit the plane; both pilots and three crewmembers died in the crash. Lieutenant Brookings left behind his wife and two-year-old son. He was awarded the Air Medal with Oak Leaf Clusters and a Purple Heart. The final mission of Lieutenant Brookings took place three months before the D-Day invasion of occupied France.

DISCUSSION:
The sacrifice Lieutenant Brookings and his family made are recognized by the Advisory Committee, are much appreciated, and deserve attention.

As part of next May's Memorial Day program the Walter Francis Brookings Square will be dedicated. The Advisory Committee agreed that it was important to gather more information about Walter Brookings so that he can be properly memorialized before the ceremony in May 2017. The websites listed below include photographs and a cache of handwritten documentation, including eyewitness accounts of the heroism and fate of the crew: "From the 384th Bomber Group: 19 Mar1944- Lovell's Hovel (42-31926) hit by flak immediately after bombs away; later observed spiraling down with flames pouring from all parts of aircraft; four chutes emerged, with one on fire; crashed near Wavrans-sur-Ternoise, a very small village, near a larger town called St Pol-sur-Ternoise, France. MACR." Out of the ten crew members only four were saved and became prisoners of war. It is believed that the actions of the pilot and co-pilot enabled these four crew members to survive.

**Walter Francis Brookings**

1/9/1920–3/19/1944
He was the 4th child of
Joseph and Lucy (Kelley) Brookings.
Born and raised in Brookline Massachusetts. He graduated from Brookline High School, class of 1939. (Photo shown at the beginning of this report is from his high school yearbook.)

Walter entered the military during World War II in 1942 having never laid eyes on his only child, Ronald. Lt. Walter F. Brookings was part of the US 8th Army Air Force; 384th Bomb Group, 545th Bomb Squad. He was a co-pilot in several B-17 bombers.

Photograph of Lovell, Brookings and crew
http://www.findagrave.com/cgi-bin/fg.cgi?page=pv&GRid=140345676&PIpi=137097218

Photograph of plane: "Lovell's Hovel"
http://www.384thbombgroup.com/piwigo_384th_gallery/picture.php?/35406

Another photograph of the plane
http://www.findagrave.com/cgi-bin/fg.cgi?page=pv&GRid=53853961&PIpi=121619638

Photograph of Brookings
http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=106447011

The fate of the crew
http://www.findagrave.com/cgi-bin/fg.cgi?page=pv&GRid=53853961&PIpi=121619251

Full Department of War report on the crash, contains fascinating eyewitness accounts of

survivors, and includes a page on Brookings
http://384thbombgroup.com/_content/MACRs/MACR3242.pdf

List of all the plane's missions (13)
http://384thbombgroup.com/_content/_pages/One384thAircraft.php?AircraftKey=42-31926

The Advisory Committee made a minor amendment to the original language of the Warrant Article to change the location where the plaque actually might be placed. Placement of a plaque on pole 44/16 at the exact corner of Cypress and route 9 (a state highway) may not be the best location. There are three additional poles in the area: two on the Mobil Station side and one on the corner of Brington Road and Cypress Street. The Advisory Committee, Naming Committee and Department of Veterans' Services generally agree that the plaque for a square named after Walter F. Brookings is best placed on the pole at the corner of Brington and Cypress.

RECOMMENDATION:

The Advisory Committee unanimously recommends the following motion under Article 27:

VOTED: That the Town approve the naming of a square at the intersection of Cypress Street and Brington Road with a plaque at the northwest corner of Cypress Street and Brington Road as Walter F. Brookings Square.

XXX

Passed by a Unanimous Vote

# ARTICLE 28

## ADVISORY COMMITTEE'S REVISED SUPPLEMENTAL RECOMMENDATION

On November 15, 2016 the Advisory Committee voted 17–0–8 to reconsider its recommendation under Article 28.

The petitioner, Ernest Frey (TMM, Precinct 7), and Samuel Batchelder, vice chair of the Commission on Diversity, Inclusion and Community Relations, informed the Advisory Committee that they prefer the language of the Board of Selectmen's motion on the appointment and reappointment of members of the Commission. They pointed out that the Advisory Committee language might be problematic in the (probably) rare situation in which the Selectmen belatedly denied a Commissioner's application for reappointment.

Under the previous Advisory Committee motion, which is included in the Combined Reports (p. 28-44) a Commissioner's term might expire on August 31, and the Board of Selectmen might not act on that Commissioner's application for reappointment until weeks or months later. In the interim, the Commissioner would continue to serve and would most likely be regarded as part of a quorum and participate in votes. If the Selectmen then decided to deny the Commissioner's application for reappointment, would such a Commissioner's actions after his or term had expired on August 31 be regarded as valid, given that the Board of Selectmen had subsequently denied that Commissioner's renewal application? Commission Vice Chair Samuel Batchelder wondered if such Commissioners would be regarded as "ghost" Commissioners.

The language of the Selectmen's motion addresses these concerns in two ways. First, the terms of Commissioners who applied for renewal by the August 1 deadline would automatically be extended until a Commissioner received notification that his or her application for renewal had been acted upon. Second, if a Commissioner's application for reappointment is denied, that Commissioner's term would expire five days after receipt of the denial letter. The specific language used in the Selectmen's motion ensures that there would be no question that a Commissioner was still on the Commission while the Selectmen were considering his or her renewal application, even if the Selectmen subsequently denied that application.

The Advisory Committee's previous recommendation had been based on the implicit assumption that the Board of Selectmen would issue any denial letters prior to the expiration of a Commissioner's term.

The Advisory Committee noted that the Board of Selectmen and the Commission are the two bodies with the greatest direct interest in the operation of the by-law. The Selectman

and the Commission would be the primary participants in the appointment and reappointment process and therefore need to have language that addresses their concerns.

RECOMMENDATION:
By a vote of 22–0–4 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 28

TWENTY-EIGTH ARTICLE

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

To see if the Town will amend Articles 3.14, 3.15, 5.5 and 10.2 of the General By-laws as follows
(language **to be ~~deleted is shown as stricken~~, and new language is underlined**):

**ARTICLE 3.14**
**COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**
**~~COMMISSION~~ AND OFFICE**
**OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This ~~by-law~~**By-law** establishes the **Commission for** Diversity, Inclusion, and Community Relations ~~Commission~~ (~~the~~ "Commission" **or "CDICR"**) and the Office of Diversity, Inclusion, and Community **Relations** ~~Department~~ (~~the~~ "Office" **or "ODICR"**).

Valuing diversity and inclusion in and for the Brookline community, the Commission, in coordination with the Office, aims to support a welcoming environment by encouraging cooperation, tolerance, and respect among and by all persons who come in contact with the Town of Brookline ("~~the~~ Town"), including residents, visitors, persons passing through the Town, employers, employees, and job applicants, and by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The Purpose of the Commission and the goal of the Town shall be to strive for a community characterized by the values of inclusion. The Town believes that inclusion will provide opportunities and incentives to all who touch Brookline to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, including town government; and that inclusion is, therefore, a critically important government interest of the Town.

Inclusion is defined as actively pursuing goals of including, integrating, engaging, and welcoming into the community all persons who come in contact with the Town regardless of their race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin, military or veteran status, genetic information, marital status, receipt of public

benefits (including housing subsidies), or family status (e.g., because one has or doesn't have children) (herein, "Brookline Protected Classes").

In striving to achieve the goal of inclusion, the Commission shall be guided by the following general principles: (1) the foundation of community is strong and positive community relations among and between all groups and individuals in the community, regardless of their membership in a Brookline Protected Class; (2) ~~that~~ the substance of community is the recognition of human rights principles as applicable to all persons who come in contact with the Town; (3) ~~that~~ justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons who come in contact with the Town; and (4) ~~that~~ the commitment of the Town to these principles requires vigorous affirmative steps to carry out the word and spirit of the foregoing.

The Commission shall consist of fifteen (15) residents of the ~~Town who~~**Town, who** shall be called Commissioners.

Commissioners shall be appointed by the Board of Selectmen (~~the~~ "BoS") and shall hold office for a period of **approximately** three (3) years**,** ~~except that of the fifteen (15) Commissioners first appointed; five or 1/3 of the total shall be appointed for one (1) year, five or 1/3 of the total shall be appointed for two (2) years, and five or 1/3 of the total shall be appointed for three (3) years. The~~ **with** terms of office ~~of the Commissioners shall expire~~ **expiring** on August 31of the appropriate year **in a staggered manner so that approximately one-third (1/3) of the Commissioners are appointed or reappointed each year**. **In the event that a Commissioner whose term is expiring has submitted their renewal application to the BoS in a timely manner, and has not yet been notified by the Town Administrator that their term has been renewed, the term of that Commissioner shall be extended by sixty days to permit the BoS to complete that process.** The ~~BOS~~**BoS** may appoint additional non-voting associate ~~(bylaw §3.1.5)~~ members **(Section 3.1.5)** as it determines to be necessary, which may include youth or persons who do not reside in Brookline~~,~~ but have a substantial connection to Brookline~~,~~ or **to** the Brookline Public Schools. The ~~BOS~~**BoS** shall select one of its members to serve *ex officio* as a non-voting member of the Commission. A quorum of the Commission shall consist of a majority of the serving members on the Commission, with a minimum of six.

The ~~BOS~~**BoS** shall seek a diverse and inclusive group of candidates for the Commission, which may include youth. Candidates for Commissioner shall be qualified for such appointment by virtue of demonstrated relevant and significant knowledge, life experience, or training. The composition of the Commission shall include persons with the types of such knowledge, experience, or training ~~as is~~ necessary to enable the Commission to perform the duties assigned to it by this By-law. All Commissioners shall serve without compensation.

In the event of ~~the~~ discontinuance of the service of a Commissioner due to death or resignation, such Commissioner's successor shall be appointed to serve the unexpired period of the term of said Commissioner. The Commission may recommend to the ~~BOS~~BoS candidates to fill such vacancies. ~~The current Human Relations/Youth Resources Commission shall be dissolved at the time that appointments are made for the Commission established by this Bylaw. However, the current Human Relations/Youth Resources Commissioners may be considered for appointment to the new Commission.~~

SECTION 3.14.2 APPOINTMENT, ROLES AND RESPONSIBILITIES OF THE DIRECTOR AND CHIEF DIVERSITY OFFICER

There shall be ~~a~~**an Office of** Diversity, Inclusion and Community Relations ~~Office~~ (~~the~~ "Office"), which shall be a unit of the Selectmen's Office**, and led by** ~~. The Town Administrator, after consultation with the Commission, shall recommend to the BOS for appointment~~ a professional in the field of human relations or similar relevant field of knowledge, who shall be known as the Director of the **Office of** Diversity, Inclusion and Community Relations ~~Office~~ (~~the~~ "Director"), and ~~and~~ that person shall also serve as the Chief Diversity Officer ("CDO") for the Town. **In the event of a vacancy in the position of Director, the Town Administrator, after consultation with the Commission, shall recommend to the BoS a replacement with appropriate qualifications.**

The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this By-law or any other By-law giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out ~~that person's~~**the Director's** duties. The Office shall be physically situated in whatever department the Town Administrator determines would ~~be easiest to~~**most easily** provide the Director any such assistance.

The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. The Director/CDO may bring a matter directly to the attention of the ~~BOS~~BoS in the event that person believes, in their professional judgment, that a particular situation so warrants. The CDO ~~may attend meetings held by the Town Administrator with Department Heads and~~ shall work with the Human Resources Office to promote diversity and inclusion.

The CDO shall serve in the role of ombudsperson to provide information and guidance and dispute resolution services to all persons who come in contact with the Town who feel that they have been discriminated against or treated unfairly due to their membership in a Brookline Protected Class, **or** in relation to Fair Housing or Contracting issues, interactions with businesses or institutions in the Town, or interactions with the Town and/or employees of the Town.

The CDO shall be responsible, with the advice and counsel of the Commission, the Human Resources Director, and the Human Resources Board, for the preparation and submission to the ~~BOS~~**BoS** of a recommended diversity and inclusion policy for the Town, including equal employment opportunity and affirmative action, and recommended implementation procedures. The diversity and inclusion policy shall address hiring, retention~~,~~ and promotion, and steps to ensure a work environment that is friendly to
diversity and inclusion.

The CDO shall respect the rights to privacy and confidentiality of all individuals to the fullest extent required by law. The CDO may attempt to mediate disputes/complaints and/or to refer such complainants to the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, or such other body as the CDO deems appropriate. The Director/CDO ~~will~~**shall** report on these incidents to the Commission in terms of issues and trends but shall show full respect for the rights to privacy and confidentiality of the individuals involved to the fullest extent required by law. In the event that a person who come**s** in contact with the Town, except for employees of the Town, chooses to bring a complaint to the Commission after ~~having sought~~**seeking** the services of the CDO in said officer's role as an ombudsperson, the Director/CDO may discuss the case in general terms with the Commission (see ~~section~~**Section** 3.14.3(A)(v)).

The CDO shall also serve as an ombudsperson for employees of the Town if they feel they have been discriminated against or treated unfairly on the basis of membership in a Brookline Protected Class. The CDO may attempt to mediate such disputes or refer such employees to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall hold all such Town/employee matters in confidence and shall respect the privacy rights of any such individuals but may discuss **with the Commission**, in general terms, the problems or issues that such individual cases suggest ~~with the Commission~~, provided, however, that ~~there is no ongoing or threatened litigation concerning the matter, and~~ doing so does not violate any person's rights to privacy.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

(A) To implement the Mission of the Commission and the Office, the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

(i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the capacity of public and private institutions to respond to discrimination against individuals in the Town based on their membership in a Brookline Protected Class;

(ii)__Enhance communications across and among the community to promote awareness, understanding and the value of cultural differences, and create common ground for efforts toward
public order and social justice;

(iii)_Work with the ~~BOS~~BoS, the Town's Human Resources Office, the School Committee, and other Town departments, commissions, boards, and committees to develop commitments and meaningful steps to increase diversity and inclusion, and awareness~~,~~ of and sensitivity to civil and human rights in all departments and agencies of Town government;

(iv)__Provide advice and counsel to the CDO on the preparation of a diversity and inclusion policy for recommendation to the ~~BOS~~BoS, including equal employment opportunity and affirmative action procedures, or amendments or revisions thereto~~;~~, and make suggestions~~,~~ through the CDO to the Human Resources Director, the Human Resources Board, and the School Committee on the
implementation of the diversity and inclusion policy;

(v) Receive Complaints Against the Town~~: Receive complaints~~, directly or through the CDO, against the Town, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Town, except Town employees (see ~~section~~Section 3.14.2), and after notifying the Town Administrator, review and summarize the complaint ~~as well as any~~and issues of concern to the Commission, without investigating or making determinations of fact, or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any Town agency, Town official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the Town Administrator and the ~~BOS~~BoS for consideration of further action and/or (2) provide the complainant with information on ~~their~~complainant's options to bring proceedings at the Massachusetts Commission ~~on~~Against Discrimination or other appropriate federal, state, or local agencies. This ~~bylaw~~By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's Citizen Complaint Procedure or the Human Resources Office's procedures;

(vi) Receive Complaints Against the Public Schools of Brookline~~: Receive complaints~~, directly or through the CDO, against the Public Schools of Brookline, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Schools, except school employees, and, after notifying the Superintendent of Schools, the Assistant Superintendent for Human Resources, and/or the School Committee of the complaint, review and

summarize the complaint ~~as well as~~**and** any issues of concern to the Commission, without investigating or making determinations of fact or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any School official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the School Superintendent and/or the School Committee for consideration of further action and/or (2) provide the complainant with information on ~~their~~**complainant's** options regarding dispute resolution and the boards, agencies, or courts to which the complainant may file a complaint. The Public Schools of Brookline are encouraged to engage the expertise and/or resources of the CDO/Commission when pursuing resolution of any such complaints and/or when revising policies and procedures relative to diversity and inclusion.

(vii) **Receive** Other Complaints~~: Receive complaints~~, according to procedures developed by the Commission and ~~as~~ approved by the ~~BOS~~**BoS**, and initiate preliminary review of the facts, without drawing any legal conclusions, from any person who comes in contact with the Town, concerning allegations of discrimination or bias against a member of a Brookline Protected Class. The Commission shall also have the authority, in its discretion, to take one or more of the following actions:

(1) Provide the complainant with information about ~~their~~**complainant's** options to bring proceedings at the Massachusetts Commission ~~on~~**Against** Discrimination or other appropriate federal, state, or local agency;

(2) Refer the complainant and any other parties to the complaint to the CDO acting as ombudsperson or to a local or regional mediation service;

(3) Present any results of preliminary review of the alleged facts to the Town Administrator and/or the ~~BOS~~**BoS**, in an appropriate case, for action;

(viii) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v)**, (vi)** and (vi**i**) above, provided that such publication contains public record information only and does not violate anyone's right to privacy, and the Commission shall compile and maintain statistical records regarding the nature of complaints, types of incidents, number and types of complaints, and other pertinent information, without identifying specific individuals, and include such information in the ~~A~~annual ~~R~~report filed with the Board pursuant to Section ~~3.14.4~~**3.14.6** of this By-law.

(ix) Develop official forms for the filing of complaints under paragraphs (v) and (vi) above and also procedures for the receipt **of such complaints** and follow-up by the Commission ~~of such complaints~~;

(x) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this ~~Bylaw~~**By-law** in relation to **its** Fair Housing responsibilities, as authorized by law, under ~~By-Law~~**By-law** 5.5;

(xi) With respect to any complaints or patterns of complaints involving the civil or human rights of any persons who come in contact with the Town, work with the CDO, in such officer's role as ombudsperson**,** to facilitate ~~necessary~~ changes that will reduce and eliminate violations of rights;

(xii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xiii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity and inclusion, and encourage public and private agencies to respond to those youth needs.

(B) To carry out the foregoing responsibilities, the Commission is authorized to work with community organizations, government and nonprofit agencies, educational institutions, persons with relevant expertise, and others to:

(i) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity and inclusion, eliminate discrimination, and ensure that the human and civil rights of all persons are protected and assist in the development of educational programs to further community relations and understanding among all people, including employees of all departments and agencies within the Town;

(ii) Conduct or receive research in the field of human relations and issue reports and publications on its findings or, where appropriate, submit local or state-wide proposed legislation, after approval by the ~~BOS~~**BoS** and review by Town Counsel, to further human and civil rights of all persons who come in contact with the Town, provided that the Commission shall evaluate all such research conducted or received for its relevance~~y~~ and validity and for its openness to diverse viewpoints and perspectives;

(iii) Receive and review information on trends and developments in youth research, services, and programs, both generally and as they relate to youth who are members of a Brookline Protected Class, and consider the applicability of such research, services, or programs to Brookline,

provided that the Commission shall evaluate all such research conducted or received for its relevanc~~y~~e and validity and for its openness to diverse viewpoints and perspectives;

(iv) Do anything else deemed appropriate in the furtherance of its general duties and that are not inconsistent with its Mission, the State Constitution and laws, or the Town By-laws.

(C) ~~On a bi-annual basis~~**At least every two years**, prepare written organizational goals for the Commission (~~the~~ "Commission's Goals") that are (i) specific, (ii) measurable, (iii) attainable with the resources and personnel of the Commission, (iv) relevant to the mission of the Commission, (v) ~~time bound~~**designated** as either short term or long term, and (vi) capable of being evaluated on a continuing basis and at the next goal setting point. The Commission's Goals shall be submitted to the ~~BOS~~**BoS** at a public meeting and posted on the Town's website. The Commission shall receive and consider the comments of the ~~BOS~~**BoS** at the public meeting and shall also receive and consider written comments from the community on the Commission's Goals.

SECTION 3.14.4 RULES AND REGULATIONS

In order to carry out the purposes and provisions of this ~~Bylaw~~**By-law**, the Commission, with the approval of the ~~BOS~~**BoS**, after review by the Town Counsel, shall adopt procedural rules and regulations as necessary to guide it in carrying out its responsibilities. Such rules and regulations shall require that actions by the Commission be taken by a quorum or larger vote of the Commissioners and shall include procedures for holding regular public meetings, including at least one public hearing annually to apprise the public on the status of civil rights, diversity, inclusion and community relations in the Town and to hear the concerns of the public on those issues~~; and~~**. The Commission may also** establish procedures and rules and regulations to carry out its responsibilities with respect to Fair Housing**, with the approval of the BOS, after review by Town Counsel**. Such rules and regulations may ~~also~~**further** provide for the governance of the Commission with respect to matters such as the appointment~~s~~ of ~~sub~~committees as necessary to deal with specific community issues or concerns.

SECTION 3.14.5 INFORMATION, COOPERATION, AND DIALOGUE

The **Commission shall notify the** Town Administrator ~~shall be notified~~ of all complaints ~~that the Commission receives~~**it records**. In the event that such complaints fall within the purview of the Superintendent of Schools, the Superintendent shall also be notified. All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning such complaints and when appropriate engage with the Commission in a dialogue on them. All such requests and dialogue shall respect and protect, to the fullest extent possible, the privacy of all involved and shall comply with all local, state and federal laws.

The Director of Human Resources shall annually present a report to the Commission concerning the Town's statistics on employment diversity in Town departments and staff, as well as the efforts of the Town to increase the employment diversity of Town departments and staff. The School Superintendent and the Library Director, or their designees, shall annually provide a report to the Commission on their statistics on employment diversity, including but not limited to the most recently completed EEO-5 form. The Police Chief shall **annually** present a report to the Commission on other police matters that touch on the Commission's mission. The Commission may respond to such reports through dialogue and/or through written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission as it reasonably requests.

SECTION 3.14.6 REPORT

**With the assistance of the Director, the** ~~The~~ Commission shall submit an annual report to the ~~BOS~~**BoS**, the School Committee, and the Board of Library Trustees~~,~~ detailing its activities and the results thereof. ~~The Annual Report~~**This report** shall include (i) a review of the implementation of the diversity and inclusion policy by the Town, (ii) the Commission's Goals and a report on the extent to which the goals have been achieved to that point, (iii) a review of reports received by the Commission from the Director of Human Resources, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the **implementation and** achievement of the Commission's Goals and ~~the implementation of the~~**its** diversity and inclusion policy, and (v) recommendations of ways that such impediments could be removed. A synopsis of such report shall be published as part of the Annual Report of the Town.

SECTION 3.14.7 FIVE YEAR REVIEW

Beginning no later than July 1, 2019 and at least every five years thereafter, the Commission shall review this ~~Bylaw~~**By-law** and any other related Town by-laws, in consultation with other pertinent departments, and ~~suggest~~**propose** changes if necessary**, by preparation of appropriate Warrant Articles for consideration by Town Meeting**.

SECTION 3.14.8 SEVERABILITY

The provisions of this ~~Bylaw~~**By-law** shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder ~~of this Bylaw~~ shall continue to be in full force and effect.

SECTION 3.14.9 RESOLUTION OF CONFLICTING PROVISIONS

~~References in Bylaws adopted prior to May 2014 to the Human Relations/Youth Resources Commission and the Human Relations/Youth Resources Department henceforth shall be interpreted as referring to the Diversity, Inclusion and Community Relations Commission and Office, respectively.~~ In case of any conflict between this ~~Bylaw~~**By-law** and other ~~Bylaws~~**By-laws**, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.10 APPLICATION OF THIS ~~BYLAW~~**BY-LAW**

~~To the extent that~~**Should** any remedies in this ~~Bylaw~~**By-law** conflict with grievance or dispute resolution procedures in collective bargaining agreements with ~~Town employees~~**the Town's unions**, the provisions of the collective bargaining agreements shall apply **so long as all members of Brookline Protected Classes are protected**.

**ARTICLE 3.15**
**HUMAN RESOURCES PROGRAM, BOARD AND OFFICE**

SECTION 3.15.1 PURPOSE AND INTENT

The purpose of this bylaw is to ensure the establishment of fair and equitable Human Resources policies for the Town of Brookline and its employees; and to provide a system of Human Resources administration that is uniform, fair, and efficient and which represents the mutual interests of the citizens of the Town and the employees of the Town.

SECTION 3.15.2 HUMAN RESOURCES PROGRAM TO BE CONSISTENT WITH ACCEPTED MERIT PRINCIPLES AND APPLICABLE STATE AND FEDERAL LAWS

The Town of Brookline Human Resources program shall be consistent with all applicable State and Federal Laws and with well accepted merit principles, which include, but are not limited to:

[ … ]

(g) In cooperation with the ~~Department of Human Relations- Youth Resources~~**Office of Diversity, Inclusion and Community Relations, and the Commission for Diversity, Inclusion and Community Relations**, striving for diversity in the Town workforce by, among other things, adhering to the Town's affirmative action guidelines, and generally assuring an environment throughout Town government that fosters community relations, mutual respect, understanding and tolerance.

**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 **("Town")** 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~~**all members of Brookline Protected Classes, as defined in Section 3.14.1 of this By-law,** 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~~**persons** in the Town by the elimination of prejudice and discrimination in the area of housing.

SECTION 5.5.2 EXERCISE OF POLICE POWER

This ~~by-law~~**By-law** shall be deemed an exercise of the police power of ~~said~~**the** Town for the protection of **the** public welfare, prosperity, health and peace of its people.

SECTION 5.5.3 DEFINITION OF TERMS

"Commission" means the Town**'s** ~~of Brookline Human Relations Youth Resources~~**Commission for Diversity, Inclusion and Community Relations** ~~Commission~~, its agents and employees.

To "discriminate" ~~includes~~**means** to design, promote, implement or carry out any policy, practice or act which by design or effect segregates, separates, distinguishes or has a 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~~**on one or more members of Brookline Protected Classes.**

"Person" ~~includes~~**means** one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the Town of Brookline and all boards, commissions, offices, and agencies thereof.

"Housing Accommodation" ~~includes~~**means** any building or structure or portion thereof or any parcel of land, developed or undeveloped, which is occupied or to be developed for occupancy as the home~~,~~ or residence for one or more persons.

~~"Handicap" means any condition or characteristic that renders a person an individual with handicaps as defined in Title 24, Part 8.3 of the Code of Federal Regulations (53 FR 20233, June 2, 1988) as follows:~~ **"Disability", which includes the term "Handicap", is** any **person's** physical or mental impairment that substantially limits one or more major life activities**, or is regarded as having such an effect or having had such an effect.** ~~..the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in~~

~~the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.~~

"Age" includes any duration of time since an individual's birth of greater than 40 years.

SECTION 5.5.4 UNLAWFUL HOUSING PRACTICES

It shall be an unlawful housing practice:

(a) for any owner, lessee, sub-lessee, assignee, managing agent, real estate agent, or other person having the right to sell, rent, lease, or manage a housing accommodation or an agent of any of those:

1. to discriminate or 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~~**membership in a Brookline Protected Class** 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~~**person**~~,~~ 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~~**membership in a Brookline Protected Class**;

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 or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~ **because of membership in a Brookline Protected Class**;

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~~**membership in a Brookline**

**Protected Class** 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) for any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured:

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~~**membership in a Brookline Protected Class** of any ~~individual~~**person** 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~~**membership in a Brookline Protected Class**;

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~~**membership in a Brookline Protected Class**.

(c) for any person, agent, firm, corporation or association whether or not acting for monetary gain, to directly or indirectly induce, attempt to induce, prevent or attempt to prevent the sale, purchase, rental, or letting of any housing accommodation by:

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~~ **a member or members of a Brookline Protected Class;**~~.~~

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~~**membership in a Brookline Protected Class**.

(d) except where based on a valid affirmative action program~~s~~ or record keeping or reporting requirement approved by ~~the state or federal~~**any** government or adopted pursuant to a court decree~~:~~**,**

~~1.~~ for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential~~,~~**:**

**1.** 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~~**membership in a Brookline Protected Class**;

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~~**membership in a Brookline Protected Class**;

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

(e) for any person to discriminate in any manner against any ~~individual~~**person** or to otherwise deny or to withhold from such ~~individual~~**person** housing accommodations because ~~he or she~~**said person** has opposed any practice forbidden by this ~~by-law~~**By-law** or ~~he or she~~ has made a charge, testified, or

assisted in any manner in any investigation or proceedings under this ~~by-law~~**By-law**;

(f) for any person, whether or not acting for monetary gain, to aid, abet, incite, compel or coerce the ~~doing~~**performance** of any act declared by this ~~by-law~~**By-law** to be an unlawful housing practice, or to obstruct or prevent any person from complying with the provisions of this ~~by-law~~**By-law** or any regulations or orders issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful housing practice.

SECTION 5.5.5 EXERCISE OF PRIVILEGE – EXEMPTIONS

Notwithstanding anything herein contained, the following specific actions shall not be violations of this ~~by-law~~**By-law**:

1. for a religious organization or institution to restrict any of its housing accommodations which are operated as a direct part of religious activities to persons of the denomination involved;

2. for the owner of a housing facility devoted entirely to the housing of individuals of one ~~sex~~ **gender**~~,~~ to restrict occupancy and use on the basis of ~~sex~~**that gender or gender identity**;

3. the operation or establishment of housing facilities designed for the exclusive use of ~~the handicapped~~**persons with disabilities** and/or ~~elder~~**seniors** or the establishment of programs designed to meet the needs or circumstances of ~~handicapped~~**persons with disabilities** and/or ~~elder~~**seniors,** or self-contained retirement communities **of at least twenty acres in size with**~~constructed expressly for use by the elderly which are at least twenty acres in size and have~~ a minimum age requirement for residency of at least fifty-five years;

4. the operation or establishment of housing facilities owned by an educational institution and designed and used for the exclusive use of students of that particular institution.

SECTION 5.5.6 ~~HUMAN RELATIONS-YOUTH RESOURCES~~ COMMISSION **FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**

This ~~by-law~~**By-law** shall be ~~enforced~~**administered** by the ~~Human Relations-Youth Resources~~ Commission **for Diversity, Inclusion and Community Relations**. The Commission shall have all powers given to it under ~~the by-laws of the Town of Brookline, including the additional powers~~**other Town By-laws, as well as those** given to it by this ~~by-law~~**By-law**.

SECTION 5.5.7 FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION

~~(a) Whenever the Commission receives a complaint that is or appears to be within the jurisdiction of the Massachusetts Commission Against Discrimination hereinafter "MCAD", the Commission shall inform the complainant of his/her right to file a complaint at the MCAD with the Commission's assistance. At the complaint's discretion, the Commission shall either:~~

~~1. take the action required by the provisions of subsection (b) below; and~~

~~2. prepare an MCAD complaint in the form and manner prescribed by MCAD and have such complaint signed under oath by the complainant and transmit such MCAD complaint to MCAD for filing without delay.~~

~~(b) Whenever the Commission receives a complaint that is not within the jurisdiction of MCAD, or is referred to the Commission by the MCAD, or over which the Commission retains jurisdiction under Section A above, the Commission shall:~~

~~1. prepare a complaint in the form and manner prescribed by the Commission;~~

~~2. investigate such complaint. In connection with any investigation, the Commission may hold hearings, summon witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the protection of any evidence relating to any matter in question or under investigation by the Commission. The power to summon witnesses as defined herein shall be limited to those powers and procedures set forth in G.L. Chapter 233 Section 8. At any hearing before the Commission, or any committee thereof, a witness shall have the right to be advised and represented by counsel. However, unavailability of counsel is not an adequate basis for requiring a delay of any hearing or proceeding;~~

~~3. attempt by mediation to resolve such complaint and recommend to all appropriate governmental agencies, federal, state or local, such action as it feels will resolve such complaint;~~

~~4. after completion of the investigation of any such complaint not resolved by mediation, make a written report of its findings and recommendations (including, where appropriate, the seeking of equitable relief, or fines, or money damages) to the Board of~~

~~Selectmen and to any governmental agency having jurisdiction of the matter in question and, in all cases, urge and use its best efforts to bring about compliance with its recommendations.~~

**(a) All persons who wish to file complaints for violations of this Article 5.5 shall be strongly encouraged to refer their complaints to the Chief Diversity Officer for assistance in resolving the complaint. If for good cause shown to the CDO or to the Commission's Complaint Screening Committee, the complainant does not wish to refer the complaint to the CDO, or if the CDO requests recusal, the complaint shall then be handled according to the procedures developed under Section 3.14.3(A) and approved by the full Commission, with the approval of the BoS, after review by Town Counsel. Complaints against the Town or its employees shall follow the procedures developed for 3.14.3(A)(v) – Complaints Against the Town; complaints against other persons, groups, entities or businesses in the Town shall follow the procedures developed for 3.14.3(A)(vii) – Other Complaints.**

(~~e~~**b**) In addition to the aforementioned complaint-processing responsibilities, the Commission shall have the following additional functions, powers and duties:

1. to make studies and survey and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing **against** ~~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~~**persons who are members of a Brookline Protected Class**.

2. to develop courses of instruction for presentation in public and private schools, public libraries and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination in housing and showing the need for mutual respect and the achievement of harmonious relations among various groups in the Town of Brookline.

3. to render each year to the ~~Board of Selectmen,~~**BoS** a full ~~written~~ report of all the Commission's activities and recommendations regarding this ~~by-law~~**By-law**;

4. to create such ~~sub~~committees from the members of the ~~c~~**C**ommission as, in the ~~c~~**C**ommission's judgment, will best aid in effectuating the policy of this ~~by-law~~**By-law**;

5. to enter into cooperative working agreements with federal, state and ~~city~~**other municipal** agencies, and to enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations and

other groups in order to effectuate the policy of this ~~by-law~~**By-law with respect to Brookline Protected Classes**.

SECTION 5.5.8 RULES, REGULATIONS AND PROCEDURES OF COMMISSION

The Commission may adopt rules and regulations consistent with this ~~by-law~~**By-law** and the laws of the Commonwealth to carry out the policy and provisions of this ~~by-law~~**By-law** and the powers and duties of the Commission. ~~The Commission shall adopt rules of procedure for the conduct of its investigations. Said rules shall ensure the due process rights of all persons involved in the investigations.~~

Any charge filed under this ~~by-law~~**By-law** must be filed within 180 days of the alleged act of discrimination.

All Commission records shall be public except those that are necessary to insure privacy rights under other local, state or federal laws and those records that must be kept confidential in compliance with laws and rules of evidence.

SECTION 5.5.9 SEVERABILITY

If any provision or section of this ~~by-law~~**By-law** shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this ~~by-law~~**By-law**, which shall remain in full force and effect.

**ARTICLE 10.2**
**PROSECUTIONS AND ENFORCEMENT**

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following by-laws and articles shall be by the following department heads or ~~his or her~~**their** designees:

| DEPARTMENT HEAD | ARTICLE |
|---|---|
| BUILDING COMMISSIONER | |
| Part V-Private Property | Articles 5.2, 5.3, 5.4, |
| Part VI-Public Property | Articles 6.1, 6.5, 6.9, 6.10 |
| Part VII-Streets & Ways | Articles 7.3, 7.5, 7.7, 7.8, 7.9 |
| Part VIII-Public Health & Safety | Articles 8.3, 8.6, 8.7, |

| | | |
|---|---|---|
| | | 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16, |
| COMMISSIONER OF PUBLIC WORKS | | |
| Part VI-Public Property | Articles | 5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9 |
| Part VII-Streets & Ways | Articles | 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10,7.11 |
| Part VIII-Public Health & Safety | Articles | 8.2,8.8, 8.14, 8.15,8.16, 8.18,8.24, 8.25,8.26 |
| DIRECTOR OF HEALTH & HUMAN SERVICES | | |
| Part V-Private Property | Articles | 5.1, 5.2, 5.4, 5.5, 5.7 |
| Part VI-Public Property | Articles | 6.2, 6.6 |
| Part VII-Streets & Ways | Articles | 7.1, 7.5, 7.7 |
| Part VIII-Public Health & Safety | Articles | 8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12,8.13, 8.14, 8.15, 8.16, 8.22, 8.23, 8.32, 8.35 |
| PRESERVATION COMMISSION | | |
| Part V-Private Property | Articles | 5.3, 5.6 |

~~HUMAN RELATIONS-YOUTH RESOURCES~~
COMMISSION **FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**

| | | |
|---|---|---|
| Part V-Private Property | Article | 5.5 |

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

Warrant Article 10 of the 2014 Annual Town Meeting created the Diversity, Inclusion and Community Relations Department and Commission through a complete rewrite of Article 3.14 of the Town By-laws. It was noted by many departments and individuals reviewing that 2014 Warrant Article that Article 5.5,

the Fair Housing By-law, and perhaps others would also need to be revised. This Warrant Article is intended to meet that need.

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

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

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

1. Change all mentions of 'Human Relations-Youth Resources Commission' to 'Commission for Diversity, Inclusion and Community Relations'.

2. Incorporate the following definition of "Brookline Protected Classes," which appears in Article 3.14:

   > [race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin, military or veteran status, genetic information, marital status, receipt of public benefits (including housing subsidies), or family status (e.g. because one has or doesn't have children) (herein, "Brookline Protected Classes")],

   into numerous paragraphs of Article 5.5 to improve readability.

3. Revise Article 3.14 to remove obsolete establishing language for the Commission regarding the term limits of the members appointed in the first two years of its existence, and to remove the likewise obsolete section explaining conflicts between the prior and current Commission names.

4. Rewrite Section 5.5.7 - Functions, Powers and Duties of the Commission - to incorporate the procedures developed by the Commission's Complaint Process Working Group and approved by the full Commission.

5. Address typographical and grammatical errors, improve clarity and modify language felt not to be politically correct.

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SELECTMEN'S RECOMMENDATION

Article 28 is a proposed amendment to provisions of the General By-Laws that address the Town's Diversity and Inclusion program. In 2014, Town Meeting adopted a new by-law that replaced the former Human Relations/Youth Resources Commission with an Office and Commission for Diversity, Inclusion and Community Relations. At the time, it was understood that other provisions of the Town By-Laws that reference the former Commission needed to be updated. Article 28 was submitted by Ernest Frey on behalf of the Commission on Diversity, Inclusion and Community Relations in order to address this need.

Specifically, this article updates references to the former Commission whenever it appears in the By-Laws, eliminates and/or updates by-law provisions to make them consistent with the new by-law adopted in 2014 and clarifies a provision that governs the reappointment of Commissioners.

With respect to modifying substantive provisions of the By-Laws to ensure consistency with the new Diversity and Inclusion by-law, Article 28 would; 1.) Eliminate the Commission's investigatory powers under the Fair Housing By-law, and 2.) Modify the complaint procedures under the Fair Housing By-Law.

The Board of Selectmen support Article 28 with the exception of the provision addressing the reappointment of Commission members. At their meeting on October 25, 2016, the Board voted unanimously to recommend favorable action on Article 28 with the following difference from the original article;

> Commissioners shall be appointed by the Board of Selectmen ("BOS") and shall hold office for a period of approximately not more than three (3) years with terms of office expiring on August 31 of the appropriate year in a staggered manner so that approximately one-third (1/3) of the Commissioners expire each year. A Commissioner whose term is expiring is expected to submit their renewal application to the BOS not later than August 1 of the expiration year. The term of a Commissioner who does not submit a renewal application in a timely manner shall expire on August 31 of that year. The term of a Commissioner who submits a timely renewal application shall then be extended until notified by the Town Administrator that the renewal application has been acted upon. If the application is denied, the term of that Commissioner shall expire five

days after the date of the denial letter. If the application is approved, the term shall expire on August 31 of the year specified in the approval letter.

Please note that the above amendment differs from an amendment that the Advisory Committee shall propose. See the Advisory Committee report under this Article for a clear explanation of the differences.

A unanimous Board of Selectmen voted FAVORABLE ACTION on the following motion:

VOTED: That the Town amend Articles 3.14, 3.15, 5.5 and 10.2 of the General By-laws as follows
(language **to be ~~deleted is shown as stricken~~, and <u>new language is underlined</u>**):

**ARTICLE 3.14**
**<u>COMMISSION FOR</u> DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**
**~~COMMISSION~~ AND OFFICE**
**OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This ~~by-law~~<u>By-law</u> establishes the <u>Commission for</u> Diversity, Inclusion, and Community Relations ~~Commission~~ (~~the~~ "Commission" <u>or "CDICR"</u>) and the Office of Diversity, Inclusion, and Community <u>Relations</u> ~~Department~~ (~~the~~ "Office" <u>or "ODICR"</u>).

Valuing diversity and inclusion in and for the Brookline community, the Commission, in coordination with the Office, aims to support a welcoming environment by encouraging cooperation, tolerance, and respect among and by all persons who come in contact with the Town of Brookline ("~~the~~ Town"), including residents, visitors, persons passing through the Town, employers, employees, and job applicants, and by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The Purpose of the Commission and the goal of the Town shall be to strive for a community characterized by the values of inclusion. The Town believes that inclusion will provide opportunities and incentives to all who touch Brookline to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, including town government; and that inclusion is, therefore, a critically important government interest of the Town.

Inclusion is defined as actively pursuing goals of including, integrating, engaging, and welcoming into the community all persons who come in contact with the Town regardless of their race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin,

military or veteran status, genetic information, marital status, receipt of public benefits (including housing subsidies), or family status (e.g., because one has or doesn't have children) (herein, "Brookline Protected Classes").

In striving to achieve the goal of inclusion, the Commission shall be guided by the following general principles: (1) the foundation of community is strong and positive community relations among and between all groups and individuals in the community, regardless of their membership in a Brookline Protected Class; (2) ~~that~~ the substance of community is the recognition of human rights principles as applicable to all persons who come in contact with the Town; (3) ~~that~~ justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons who come in contact with the Town; and (4) ~~that~~ the commitment of the Town to these principles requires vigorous affirmative steps to carry out the word and spirit of the foregoing.

The Commission shall consist of fifteen (15) residents of the ~~Town – who~~**Town, who** shall be called Commissioners.

Commissioners shall be appointed by the Board of Selectmen (~~the~~ "~~BOS~~**BoS**") and shall hold office for a period of **not more than** three (3) years ~~except that of the fifteen (15) Commissioners first appointed; five or 1/3 of the total shall be appointed for one (1) year, five or 1/3 of the total shall be appointed for two (2) years, and five or 1/3 of the total shall be appointed for three (3) years. The~~ **with** terms of office ~~of the Commissioners shall expire~~ **expiring** on August 31 of ~~the~~**an** appropriate year **in a staggered manner so that approximately one-third (1/3) of the terms of the Commissioners will expire each year. A Commissioner whose term is expiring is expected to submit their renewal application to the BoS not later than August 1 of the expiration year. The term of a Commissioner who does not submit a renewal application in a timely manner shall expire on August 31 of that year. The term of a Commissioner who submits a timely renewal application shall then be extended until notified by the Town Administrator that the renewal application has been acted upon. If the application is denied, the term of that Commissioner shall expire five days after the date of the denial letter. If the application is approved, the term shall expire on August 31 of the year specified in the approval letter.** The ~~BOS~~BoS may appoint additional non-voting associate ~~(bylaw §3.1.5)~~ members **(Section 3.1.5)** as it determines to be necessary, which may include youth or persons who do not reside in Brookline~~,~~ but have a substantial connection to Brookline~~,~~ or **to** the Brookline Public Schools. The ~~BOS~~BoS shall select one of its members to serve *ex officio* as a nonvoting member of the Commission. A quorum of the Commission shall consist of a majority of the serving members on the Commission, with a minimum of six.

The ~~BOS~~BoS shall seek a diverse and inclusive group of candidates for the Commission, which may include youth. Candidates for Commissioner shall be qualified for such appointment by virtue of demonstrated relevant and significant knowledge, life experience, or training. The composition of the Commission shall include persons with the types of such knowledge, experience, or training ~~as is~~ necessary to enable the Commission to perform the duties assigned to it by this By-law. All Commissioners shall serve without compensation.

In the event of ~~the~~ discontinuance of the service of a Commissioner due to death or resignation, such Commissioner's successor shall be appointed to serve the unexpired period of the term of said Commissioner. The Commission may recommend to the ~~BOS~~BoS candidates to fill such vacancies. ~~The current Human Relations/Youth Resources Commission shall be dissolved at the time that appointments are made for the Commission established by this Bylaw. However, the current Human Relations/Youth Resources Commissioners may be considered for appointment to the new Commission.~~

SECTION 3.14.2 APPOINTMENT, ROLES AND RESPONSIBILITIES OF THE DIRECTOR AND CHIEF DIVERSITY OFFICER

There shall be ~~a~~**an Office of** Diversity, Inclusion and Community Relations ~~Office~~ (~~the~~ "Office"), which shall be a unit of the Selectmen's Office**, and led by** ~~. The Town Administrator, after consultation with the Commission, shall recommend to the BOS for appointment~~ a professional in the field of human relations or similar relevant field of knowledge, who shall be known as the Director of the **Office of** Diversity, Inclusion and Community Relations ~~Office~~ (~~the~~ "Director"), and ~~and~~ that person shall also serve as the Chief Diversity Officer ("CDO") for the Town. **In the event of a vacancy in the position of Director, the Town Administrator, after consultation with the Commission, shall recommend to the BoS a replacement with appropriate qualifications.**

The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this By-law or any other By-law giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out ~~that person's~~**the Director's** duties. The Office shall be physically situated in whatever department the Town Administrator determines would ~~be easiest to~~**most easily** provide the Director any such assistance.

The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. The Director/CDO may bring a matter directly to the attention of the ~~BOS~~BoS in the event that person believes, in their professional judgment, that a particular situation so warrants. The CDO ~~may attend meetings held by the Town Administrator with Department Heads and~~ shall work with the Human Resources Office to promote diversity and inclusion.

The CDO shall serve in the role of ombudsperson to provide information and guidance and dispute resolution services to all persons who come in contact with the Town who feel that they have been discriminated against or treated unfairly due to their membership in a Brookline Protected Class, **or** in relation to Fair Housing or Contracting issues, interactions with businesses or institutions in the Town, or interactions with the Town and/or employees of the Town.

The CDO shall be responsible, with the advice and counsel of the Commission, the Human Resources Director, and the Human Resources Board, for the preparation and submission to the ~~BOS~~**BoS** of a recommended diversity and inclusion policy for the Town, including equal employment opportunity and affirmative action, and recommended implementation procedures. The diversity and inclusion policy shall address hiring, retention~~,~~ and promotion, and steps to ensure a work environment that is friendly to
diversity and inclusion.

The CDO shall respect the rights to privacy and confidentiality of all individuals to the fullest extent required by law. The CDO may attempt to mediate disputes/complaints and/or to refer such complainants to the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, or such other body as the CDO deems appropriate. The Director/CDO ~~will~~**shall** report on these incidents to the Commission in terms of issues and trends but shall show full respect for the rights to privacy and confidentiality of the individuals involved to the fullest extent required by law. In the event that a person who comes in contact with the Town, except for employees of the Town, chooses to bring a complaint to the Commission after ~~having sought~~**seeking** the services of the CDO in said officer's role as an ombudsperson, the Director/CDO may discuss the case in general terms with the Commission (see ~~section~~**Section** 3.14.3(A)(v)).

The CDO shall also serve as an ombudsperson for employees of the Town if they feel they have been discriminated against or treated unfairly on the basis of membership in a Brookline Protected Class. The CDO may attempt to mediate such disputes or refer such employees to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall hold all such Town/employee matters in confidence and shall respect the privacy rights of any such individuals but may discuss **with the Commission**, in general terms, the problems or issues that such individual cases suggest ~~with the Commission~~, provided, however, that ~~there is no ongoing or threatened litigation concerning the matter, and~~ doing so does not violate any person's rights to privacy.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

(A) To implement the Mission of the Commission and the Office, the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

(i)_ Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the capacity of public and private institutions to respond to discrimination against individuals in the Town based on their membership in a Brookline Protected Class;

(ii)__Enhance communications across and among the community to promote awareness, understanding and the value of cultural differences, and create common ground for efforts toward public order and social justice;

(iii)_Work with the ~~BOS~~**BoS**, the Town's Human Resources Office, the School Committee, and other Town departments, commissions, boards, and committees to develop commitments and meaningful steps to increase diversity and inclusion, **and** awareness~~,~~ **of** and sensitivity to civil and human rights in all departments and agencies of Town government;

(iv)__Provide advice and counsel to the CDO on the preparation of a diversity and inclusion policy for recommendation to the ~~BOS~~**BoS**, including equal employment opportunity and affirmative action procedures, or amendments or revisions thereto~~;~~**, and** make suggestions~~,~~ through the CDO to the Human Resources Director, the Human Resources Board, and the School Committee on the implementation of the diversity and inclusion policy;

(v) **Receive** Complaints Against the Town~~: Receive complaints~~, directly or through the CDO, against the Town, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Town, except Town employees (see ~~section~~**Section** 3.14.2), and after notifying the Town Administrator, review and summarize the complaint ~~as well as any~~**and** issues of concern to the Commission, without investigating or making determinations of fact, or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any Town agency, Town official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the Town Administrator and the ~~BOS~~**BoS** for consideration of further action and/or (2) provide the complainant with information on ~~their~~**complainant's** options to bring proceedings at the Massachusetts Commission ~~on~~**Against** Discrimination or other appropriate federal, state, or local agencies. This ~~bylaw~~**By-law** does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police

Department's Citizen Complaint Procedure or the Human Resources Office's procedures;

(vi) **Receive** Complaints Against the Public Schools of Brookline~~: Receive complaints~~, directly or through the CDO, against the Public Schools of Brookline, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Schools, except school employees, and, after notifying the Superintendent of Schools, the Assistant Superintendent for Human Resources, and/or the School Committee of the complaint, review and summarize the complaint ~~as well as~~**and** any issues of concern to the Commission, without investigating or making determinations of fact or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any School official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the School Superintendent and/or the School Committee for consideration of further action and/or (2) provide the complainant with information on ~~their~~**complainant's** options regarding dispute resolution and the boards, agencies, or courts to which the complainant may file a complaint. The Public Schools of Brookline are encouraged to engage the expertise and/or resources of the CDO/Commission when pursuing resolution of any such complaints and/or when revising policies and procedures relative to diversity and inclusion.

(vii) **Receive** Other Complaints~~: Receive complaints~~, according to procedures developed by the Commission and ~~as~~ approved by the ~~BOS~~**BoS**, and initiate preliminary review of the facts, without drawing any legal conclusions, from any person who comes in contact with the Town, concerning allegations of discrimination or bias against a member of a Brookline Protected Class. The Commission shall also have the authority, in its discretion, to take one or more of the following actions:

(1) Provide the complainant with information about ~~their~~**complainant's** options to bring proceedings at the Massachusetts Commission ~~on~~**Against** Discrimination or other appropriate federal, state, or local agency;

(2) Refer the complainant and any other parties to the complaint to the CDO acting as ombudsperson or to a local or regional mediation service;

(3) Present any results of preliminary review of the alleged facts to the Town Administrator and/or the ~~BOS~~**BoS**, in an appropriate case, for action;

(viii) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v)**, (vi)** and (vi**i**) above, provided that such publication contains public record information only and does not violate anyone's right to privacy, and the Commission shall compile and maintain statistical records regarding the nature of complaints, types of incidents, number and types of complaints, and other pertinent information, without identifying specific individuals, and include such information in the ~~A~~annual ~~R~~report filed with the Board pursuant to Section ~~3.14.4~~**3.14.6** of this By-law.

(ix) Develop official forms for the filing of complaints under paragraphs (v) and (vi) above and also procedures for the receipt **of such complaints** and follow-up by the Commission~~ of such complaints~~;

(x) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this ~~Bylaw~~**By-law** in relation to **its** Fair Housing responsibilities, as authorized by law, under ~~By-Law~~**By-law** 5.5;

(xi) With respect to any complaints or patterns of complaints involving the civil or human rights of any persons who come in contact with the Town, work with the CDO, in such officer's role as ombudsperson**,** to facilitate~~ necessary~~ changes that will reduce and eliminate violations of rights;

(xii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xiii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity and inclusion, and encourage public and private agencies to respond to those youth needs.

(B) To carry out the foregoing responsibilities, the Commission is authorized to work with community organizations, government and nonprofit agencies, educational institutions, persons with relevant expertise, and others to:

(i) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity and inclusion, eliminate discrimination, and ensure that the human and civil rights of all persons are protected and assist in the development of educational programs to further community relations and understanding among all people, including employees of all departments and agencies within the Town;

(ii) Conduct or receive research in the field of human relations and issue reports and publications on its findings or, where appropriate, submit local

or state-wide proposed legislation, after approval by the ~~BOS~~BoS and review by Town Counsel, to further human and civil rights of all persons who come in contact with the Town, provided that the Commission shall evaluate all such research conducted or received for its relevance~~y~~ and validity and for its openness to diverse viewpoints and perspectives;

(iii) Receive and review information on trends and developments in youth research, services, and programs, both generally and as they relate to youth who are members of a Brookline Protected Class, and consider the applicability of such research, services, or programs to Brookline, provided that the Commission shall evaluate all such research conducted or received for its relevance~~y~~ and validity and for its openness to diverse viewpoints and perspectives;

(iv) Do anything else deemed appropriate in the furtherance of its general duties and that are not inconsistent with its Mission, the State Constitution and laws, or the Town By-laws.

(C) ~~On a bi-annual basis~~At least every two years, prepare written organizational goals for the Commission (~~the~~ "Commission's Goals") that are (i) specific, (ii) measurable, (iii) attainable with the resources and personnel of the Commission, (iv) relevant to the mission of the Commission, (v) ~~time bounddesignated~~ as either short term or long term, and (vi) capable of being evaluated on a continuing basis and at the next goal setting point. The Commission's Goals shall be submitted to the ~~BOS~~BoS at a public meeting and posted on the Town's website. The Commission shall receive and consider the comments of the ~~BOS~~BoS at the public meeting and shall also receive and consider written comments from the community on the Commission's Goals.

SECTION 3.14.4 RULES AND REGULATIONS

In order to carry out the purposes and provisions of this ~~Bylaw~~By-law, the Commission, with the approval of the ~~BOS~~BoS, after review by the Town Counsel, shall adopt procedural rules and regulations as necessary to guide it in carrying out its responsibilities. Such rules and regulations shall require that actions by the Commission be taken by a quorum or larger vote of the Commissioners and shall include procedures for holding regular public meetings, including at least one public hearing annually to apprise the public on the status of civil rights, diversity, inclusion and community relations in the Town and to hear the concerns of the public on those issues~~; and~~. The Commission may also establish procedures and rules and regulations to carry out its responsibilities with respect to Fair Housing, with the approval of the BOS, after review by Town Counsel. Such rules and regulations may ~~also~~further provide for the governance of the Commission with respect to matters such as the appointment~~s~~ of ~~sub~~committees as necessary to deal with specific community issues or concerns.

SECTION 3.14.5 INFORMATION, COOPERATION, AND DIALOGUE

The **Commission shall notify the** Town Administrator ~~shall be notified~~ of all complaints ~~that the Commission receives~~**it records**. In the event that such complaints fall within the purview of the Superintendent of Schools, the Superintendent shall also be notified. All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning such complaints and when appropriate engage with the Commission in a dialogue on them. All such requests and dialogue shall respect and protect, to the fullest extent possible, the privacy of all involved and shall comply with all local, state and federal laws.

The Director of Human Resources shall annually present a report to the Commission concerning the Town's statistics on employment diversity in Town departments and staff, as well as the efforts of the Town to increase the employment diversity of Town departments and staff. The School Superintendent and the Library Director, or their designees, shall annually provide a report to the Commission on their statistics on employment diversity, including but not limited to the most recently completed EEO-5 form. The Police Chief shall **annually** present a report to the Commission on other police matters that touch on the Commission's mission. The Commission may respond to such reports through dialogue and/or through written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission as it reasonably requests.

SECTION 3.14.6 REPORT

**With the assistance of the Director, the** ~~The~~ Commission shall submit an annual report to the ~~BOS~~**BoS**, the School Committee, and the Board of Library Trustees~~,~~ detailing its activities and the results thereof. ~~The Annual Report~~**This report** shall include (i) a review of the implementation of the diversity and inclusion policy by the Town, (ii) the Commission's Goals and a report on the extent to which the goals have been achieved to that point, (iii) a review of reports received by the Commission from the Director of Human Resources, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the **implementation and** achievement of the Commission's Goals and ~~the implementation of the~~**its** diversity and inclusion policy, and (v) recommendations of ways that such impediments could be removed. A synopsis of such report shall be published as part of the Annual Report of the Town.

SECTION 3.14.7 FIVE YEAR REVIEW

Beginning no later than July 1, 2019 and at least every five years thereafter, the Commission shall review this ~~Bylaw~~**By-law** and any other related Town by-laws, in consultation with other pertinent departments, and ~~suggest~~**propose** changes if necessary**, by preparation of appropriate Warrant Articles for consideration by Town Meeting**.

SECTION 3.14.8 SEVERABILITY

The provisions of this ~~Bylaw~~By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder ~~of this Bylaw~~ shall continue to be in full force and effect.

SECTION 3.14.9 RESOLUTION OF CONFLICTING PROVISIONS

~~References in Bylaws adopted prior to May 2014 to the Human Relations/Youth Resources Commission and the Human Relations/Youth Resources Department henceforth shall be interpreted as referring to the Diversity, Inclusion and Community Relations Commission and Office, respectively.~~ In case of any conflict between this ~~Bylaw~~By-law and other ~~Bylaws~~By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.10 APPLICATION OF THIS ~~BYLAW~~BY-LAW

~~To the extent that~~**Should** any remedies in this ~~Bylaw~~By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with ~~Town employees~~**the Town's unions**, the provisions of the collective bargaining agreements shall apply **so long as all members of Brookline Protected Classes are protected**.

**ARTICLE 3.15**
**HUMAN RESOURCES PROGRAM, BOARD AND OFFICE**

SECTION 3.15.1 PURPOSE AND INTENT

The purpose of this bylaw is to ensure the establishment of fair and equitable Human Resources policies for the Town of Brookline and its employees; and to provide a system of Human Resources administration that is uniform, fair, and efficient and which represents the mutual interests of the citizens of the Town and the employees of the Town.

SECTION 3.15.2 HUMAN RESOURCES PROGRAM TO BE CONSISTENT WITH ACCEPTED MERIT PRINCIPLES AND APPLICABLE STATE AND FEDERAL LAWS

The Town of Brookline Human Resources program shall be consistent with all applicable State and Federal Laws and with well accepted merit principles, which include, but are not limited to:

[ … ]

(g) In cooperation with the ~~Department of Human Relations- Youth Resources~~**Office of Diversity, Inclusion and Community Relations, and the Commission for Diversity, Inclusion and Community**

**Relations**, striving for diversity in the Town workforce by, among other things, adhering to the Town's affirmative action guidelines, and generally assuring an environment throughout Town government that fosters community relations, mutual respect, understanding and tolerance.

**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 **("Town")** 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**~~**all members of Brookline Protected Classes, as defined in Section 3.14.1 of this By-law,** 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**~~**persons** in the Town by the elimination of prejudice and discrimination in the area of housing.

SECTION 5.5.2 EXERCISE OF POLICE POWER

This ~~**by-law**~~**By-law** shall be deemed an exercise of the police power of ~~**said**~~**the** Town for the protection of **the** public welfare, prosperity, health and peace of its people.

SECTION 5.5.3 DEFINITION OF TERMS

"Commission" means the Town**'s** ~~**of Brookline Human Relations Youth Resources**~~**Commission for Diversity, Inclusion and Community Relations** ~~**Commission**~~, its agents and employees.

To "discriminate" ~~**includes**~~**means** to design, promote, implement or carry out any policy, practice or act which by design or effect segregates, separates, distinguishes or has a 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**~~**on one or more members of Brookline Protected Classes.**

"Person" ~~**includes**~~**means** one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the Town of Brookline and all boards, commissions, offices, and agencies thereof.

"Housing Accommodation" ~~**includes**~~**means** any building or structure or portion thereof or any parcel of land, developed or undeveloped, which is occupied or to be developed for occupancy as the home~~,~~ or residence for one or more persons.

~~"Handicap" means any condition or characteristic that renders a person an individual with handicaps as defined in Title 24, Part 8.3 of the Code of Federal Regulations (53 FR 20233, June 2, 1988) as follows:~~ **"Disability", which includes the term "Handicap", is** any **person's** physical or mental impairment that substantially limits one or more major life activities**, or is regarded as having such an effect or having had such an effect.** ~~..the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.~~

"Age" includes any duration of time since an individual's birth of greater than 40 years.

SECTION 5.5.4 UNLAWFUL HOUSING PRACTICES

It shall be an unlawful housing practice:

(a) for any owner, lessee, sub-lessee, assignee, managing agent, real estate agent, or other person having the right to sell, rent, lease, or manage a housing accommodation or an agent of any of those:

1. to discriminate or 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~~**membership in a Brookline Protected Class** 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~~**person**~~,~~ 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~~**membership in a Brookline Protected Class**;

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 or other public~~

~~assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~ **because of membership in a Brookline Protected Class**;

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~~**membership in a Brookline Protected Class** 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) for any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured:

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~~**membership in a Brookline Protected Class** of any ~~individual~~**person** 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~~**membership in a Brookline Protected Class**;

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~~**membership in a Brookline Protected Class**.

(c) for any person, agent, firm, corporation or association whether or not acting for monetary gain, to directly or indirectly induce, attempt to induce, prevent or attempt to prevent the sale, purchase, rental, or letting of any housing accommodation by:

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~~ **a member or members of a Brookline Protected Class;**~~.~~

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~~**membership in a Brookline Protected Class**.

(d) except where based on a valid affirmative action program~~s~~ or record keeping or reporting requirement approved by ~~the state or federal~~**any** government or adopted pursuant to a court decree~~:~~**,**

~~1.~~ for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential~~,~~**:**

**1.** 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~~**membership in a Brookline Protected Class**;

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~~**membership in a Brookline Protected Class**;

3. to establish, announce or follow a pattern, practice, or policy of denying, excluding or limiting ~~by any means whatsoever~~ housing accommodations **by any means whatsoever** because of ~~race, color,~~

~~creed, religion, sex, handicap, children, marital status, sexual orientation, age, ancestry gender identity or gender expression, and/or national origin~~**membership in a Brookline Protected Class**.

(e) for any person to discriminate in any manner against any ~~individual~~**person** or to otherwise deny or to withhold from such ~~individual~~**person** housing accommodations because ~~he or she~~**said person** has opposed any practice forbidden by this ~~by-law~~**By-law** or ~~he or she~~ has made a charge, testified, or assisted in any manner in any investigation or proceedings under this ~~by-law~~**By-law**;

(f) for any person, whether or not acting for monetary gain, to aid, abet, incite, compel or coerce the ~~doing~~**performance** of any act declared by this ~~by-law~~**By-law** to be an unlawful housing practice, or to obstruct or prevent any person from complying with the provisions of this ~~by-law~~**By-law** or any regulations or orders issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful housing practice.

SECTION 5.5.5 EXERCISE OF PRIVILEGE – EXEMPTIONS

Notwithstanding anything herein contained, the following specific actions shall not be violations of this ~~by-law~~**By-law**:

1. for a religious organization or institution to restrict any of its housing accommodations which are operated as a direct part of religious activities to persons of the denomination involved;

2. for the owner of a housing facility devoted entirely to the housing of individuals of one ~~sex~~ **gender**~~,~~ to restrict occupancy and use on the basis of ~~sex~~**that gender or gender identity**;

3. the operation or establishment of housing facilities designed for the exclusive use of ~~the handicapped~~**persons with disabilities** and/or ~~elder~~**seniors** or the establishment of programs designed to meet the needs or circumstances of ~~handicapped~~**persons with disabilities** and/or ~~elder~~**seniors,** or self-contained retirement communities **of at least twenty acres in size with**~~constructed expressly for use by the elderly which are at least twenty acres in size and have~~ a minimum age requirement for residency of at least fifty-five years;

4. the operation or establishment of housing facilities owned by an educational institution and designed and used for the exclusive use of students of that particular institution.

SECTION 5.5.6 ~~HUMAN RELATIONS-YOUTH RESOURCES~~ COMMISSION **FOR**

## DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

This ~~by-law~~By-law shall be ~~enforced~~administered by the ~~Human Relations-Youth Resources~~ Commission for Diversity, Inclusion and Community Relations. The Commission shall have all powers given to it under ~~the by-laws of the Town of Brookline, including the additional powers~~other Town By-laws, as well as those given to it by this ~~by-law~~By-law.

SECTION 5.5.7 FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION

Add to Mayor page as subsection (b)

~~(a) Whenever the Commission receives a complaint that is or appears to be within the jurisdiction of the Massachusetts Commission Against Discrimination hereinafter "MCAD", the Commission shall inform the complainant of his/her right to file a complaint at the MCAD with the Commission's assistance. At the complaint's discretion, the Commission shall either:~~

~~1. take the action required by the provisions of subsection (b) below; and~~

~~2. prepare an MCAD complaint in the form and manner prescribed by MCAD and have such complaint signed under oath by the complainant and transmit such MCAD complaint to MCAD for filing without delay.~~

~~(b) Whenever the Commission receives a complaint that is not within the jurisdiction of MCAD, or is referred to the Commission by the MCAD, or over which the Commission retains jurisdiction under Section A above, the Commission shall:~~

~~1. prepare a complaint in the form and manner prescribed by the Commission;~~

~~2. investigate such complaint. In connection with any investigation, the Commission may hold hearings, summon witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the protection of any evidence relating to any matter in question or under investigation by the Commission. The power to summon witnesses as defined herein shall be limited to those powers and procedures set forth in G.L. Chapter 233 Section 8. At any hearing before the Commission, or any committee thereof, a witness shall have the right to be advised and represented by counsel. However, unavailability of counsel is not an adequate basis for requiring a delay of any hearing or proceeding;~~

~~3. attempt by mediation to resolve such complaint and recommend to all appropriate governmental agencies, federal, state or local, such action as it feels will resolve such complaint;~~

~~4. after completion of the investigation of any such complaint not resolved by mediation, make a written report of its findings and recommendations (including, where appropriate, the seeking of equitable relief, or fines, or money damages) to the Board of Selectmen and to any governmental agency having jurisdiction of the matter in question and, in all cases, urge and use its best efforts to bring about compliance with its recommendations.~~

**(a) All persons who wish to file complaints for violations of this Article 5.5 shall be strongly encouraged to refer their complaints to the Chief Diversity Officer for assistance in resolving the complaint. If for good cause shown to the CDO or to the Commission's Complaint Screening Committee, the complainant does not wish to refer the complaint to the CDO, or if the CDO requests recusal, the complaint shall then be handled according to the procedures developed under Section 3.14.3(A) and approved by the full Commission, with the approval of the BoS, after review by Town Counsel. Complaints against the Town or its employees shall follow the procedures developed for 3.14.3(A)(v) – Complaints Against the Town; complaints against other persons, groups, entities or businesses in the Town shall follow the procedures developed for 3.14.3(A)(vii) – Other Complaints.**

(b) ~~(ab)~~ In addition to the aforementioned complaint-processing responsibilities, the Commission shall have the following additional functions, powers and duties:

1. to make studies and survey and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing **against** ~~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~~**persons who are members of a Brookline Protected Class**.

2. to develop courses of instruction for presentation in public and private schools, public libraries and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination in housing and showing the need for mutual respect and the achievement of harmonious relations among various groups in the Town of Brookline.

3. to render each year to the ~~Board of Selectmen,~~**BoS** a full ~~written~~ report of all the Commission's activities and recommendations regarding this ~~by-law~~**By-law**;

4. to create such ~~sub~~committees from the members of the ~~c~~Commission as, in the ~~c~~Commission's judgment, will best aid in effectuating the policy of this ~~by-law~~By-law;

5. to enter into cooperative working agreements with federal, state and ~~city~~other municipal agencies, and to enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations and other groups in order to effectuate the policy of this ~~by-law~~By-law with respect to Brookline Protected Classes.

SECTION 5.5.8 RULES, REGULATIONS AND PROCEDURES OF COMMISSION

The Commission may adopt rules and regulations consistent with this ~~by-law~~By-law and the laws of the Commonwealth to carry out the policy and provisions of this ~~by-law~~By-law and the powers and duties of the Commission. ~~The Commission shall adopt rules of procedure for the conduct of its investigations. Said rules shall ensure the due process rights of all persons involved in the investigations.~~

Any charge filed under this ~~by-law~~By-law must be filed within 180 days of the alleged act of discrimination.

All Commission records shall be public except those that are necessary to insure privacy rights under other local, state or federal laws and those records that must be kept confidential in compliance with laws and rules of evidence.

SECTION 5.5.9 SEVERABILITY

If any provision or section of this ~~by-law~~By-law shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this ~~by-law~~By-law, which shall remain in full force and effect.

**ARTICLE 10.2**
**PROSECUTIONS AND ENFORCEMENT**

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following by-laws and articles shall be by the following department heads or ~~his or her~~their designees:

| DEPARTMENT HEAD | ARTICLE | |
|---|---|---|
| BUILDING COMMISSIONER | | |
| Part V-Private Property | Articles | 5.2, 5.3, 5.4, |

| | | |
|---|---|---|
| Part VI-Public Property | Articles | 6.1, 6.5, 6.9, 6.10 |
| Part VII-Streets & Ways | Articles | 7.3, 7.5, 7.7, 7.8, 7.9 |
| Part VIII-Public Health & Safety | Articles | 8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16, |

COMMISSIONER OF PUBLIC WORKS

| | | |
|---|---|---|
| Part VI-Public Property | Articles | 5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9 |
| Part VII-Streets & Ways | Articles | 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10,7.11 |
| Part VIII-Public Health & Safety | Articles | 8.2,8.8, 8.14, 8.15,8.16, 8.18,8.24, 8.25,8.26 |

DIRECTOR OF HEALTH & HUMAN SERVICES

| | | |
|---|---|---|
| Part V-Private Property | Articles | 5.1, 5.2, 5.4, 5.5, 5.7 |
| Part VI-Public Property | Articles | 6.2, 6.6 |
| Part VII-Streets & Ways | Articles | 7.1, 7.5, 7.7 |
| Part VIII-Public Health & Safety | Articles | 8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12,8.13, 8.14, 8.15, 8.16, 8.22, 8.23, 8.32, 8.35 |

PRESERVATION COMMISSION

| | | |
|---|---|---|
| Part V-Private Property | Articles | 5.3, 5.6 |

~~HUMAN RELATIONS-YOUTH RESOURCES~~
COMMISSION **FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS**

| | | |
|---|---|---|
| Part V-Private Property | Article | 5.5 |

Passed by a Counted Vote of 174 for and 1 Opposed

## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 28 brings Brookline's Fair Housing By-law, General By-law Section 5.5, into conformity with the changes made to Section 3.14 of the By-law by Warrant Article 10 of the 2014 Annual Town Meeting, replacing the Human Relations Youth Resources Commission with the Diversity, Inclusion, and Community Relations Commission (the "Commission"). This Warrant Article also makes several non-substantive clean-up changes to the language of both sections of the By-law.

The Advisory Committee recommends FAVORABLE ACTION on Article 28 by a vote of 19–0–5. The Committee's motion is the same as the motion offered by the Selectmen, with the exception of the paragraph regarding the terms and appointment of members of the Commission.

BACKGROUND:
Warrant Article 10 of the 2014 Annual Town Meeting replaced the Human Relations Youth Resources Commission with the Diversity, Inclusion and Community Relations Department and Commission through a complete rewrite of Section 3.14 of the Brookline General By-laws. Conforming changes to related By-laws, such as Section 5.5, the Fair Housing By-law, were not made at that time, but should be to make the By-laws internally consistent.

Three substantive changes are made by this Warrant Article:

1. **Investigative Powers:** Powers that were permitted under Section 5.5.7(b)(2), such as the ability to independently investigate fair housing complaints, collect evidence, summon witnesses, compel testimony under oath, and the right to counsel for witnesses are eliminated as those powers were removed from the Commission in Section 3.14 of the By-law when it was revised in 2014.

2. **Complaint Procedures:** Article 5.5.7, Functions, Powers and Duties of the Commission, is rewritten to replace the statutorily provided procedural framework, which can be only be modified by a vote of Town Meeting, with administrative procedures, which can be modified by approval by the Commission and Board of Selectmen after review by Town Counsel.

3. **Reappointment of Commissioners:** In the situation where the Board of Selectmen fails to act in a timely manner on a Commissioner's request for reappointment, a mechanism for an automatic term extension is provided.

The proposed language changes in Section 3.14, 3.15, 5.5 and 10.2 of the By-law make the following non-substantive changes:

1. Changes all mentions of "Human Relations-Youth Resources Commission" to "Commission for Diversity, Inclusion and Community Relations".

2. Incorporates the following definition of "Brookline Protected Classes," which appears in Article 3.14: [race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin, military or veteran status, genetic information, marital status, receipt of public benefits (including housing subsidies), or family status (e.g. because one has or doesn't have children) (herein, "Brookline Protected Classes")], into numerous paragraphs of Article 5.5 to improve readability.

3. Revises Article 3.14 to remove obsolete establishing language for the Commission regarding the term limits of the members appointed in the first two years of its existence, and to remove the likewise obsolete section explaining conflicts between the prior and current Commission names.

4. Address typographical and grammatical errors, to improve clarity and modify language felt not to be politically correct.

DISCUSSION:
Discrimination in housing accommodations in Brookline due to status as a member of a protected class is prohibited by Section 5.5 of the By-law. The current wording of the Fair Housing By-law assigns responsibility of enforcement to the Human Relations Youth Resources Commission. Changes to conform Section 5.5 to the changes made in 2014 to Section 3.14 are made by this Article.

**Investigative Powers:**
The biggest substantive change made to the Housing By-law relates to the power of the Commission. Prior to this Warrant Article, Section 5.5.7(b)(2) provided that the Commission had the power to independently investigate complaints of housing discrimination in Brookline, including the power to summon witnesses, compel testimony under oath, and collect evidence. Witnesses had a right to be advised and represented by legal counsel.

At the Advisory Committee discussion, the Petitioners stated that they proposed that these powers be removed from the Commission in Section 5.5 because the intent of the changes to Section 3.14 was to strip the Commission of all power, and retaining these investigative powers under the Fair Housing By-law would be inconsistent with that goal. They are not currently staffed for such inquiries. A member of the Advisory Committee disputed the characterization that the Commission was powerless, but nevertheless, there was no objection to these investigative powers being removed.

**Complaint Procedures:**
Prior to this Warrant Article, Section 5.5.7, statutorily laid out the procedures to be followed by the Commission when it received a complaint of Housing discrimination.

In this Warrant Article, the Petitioners remove these procedures from the By-law, and replace it with a reference to procedures developed by the Commission, which are

approved by the Commission and the Board of Selectmen, after approval of Town Counsel.

The difference between law provided by statute and law provided by a regulatory administration is a question of who has the power to modify the law. A statutory law can only be modified by the legislative branch, which is Town Meeting. A regulatory law can be modified by the executive branch, which in this case is the Commission and Board of Selectmen after review by Town Counsel. Statutory law is typically harder to change and stands higher in legal hierarchy.

In reviewing the procedures laid out in the existing Section 5.5.7, the Advisory Committee felt that the duty of the Commission to inform the complainant of the complainant's right to file complaint at the Massachusetts Commission Against Discrimination was important enough to remain enshrined in the statute. This was accomplished by retaining the first sentence of original section 5.5.7(a) as the new 5.5.7(b).

**Reappointment of Commissioners:**
The original language of the Warrant Article provided that,

"In the event that a Commissioner whose term is expiring has submitted their renewal application to the BoS in a timely manner, and has not yet been notified by the Town Administrator that their term has been renewed, the term of that Commissioner shall be extended by sixty days to permit the BoS to complete that process."

Upon initial consideration, the Advisory Committee provided some minor changes to clean up the original language.

The Board of Selectman subsequently rewrote the paragraph in question. The language recommended by the Board of Selectmen specifies that "in a timely manner" means not later than August 1 of the expiration year. It extended the renewal until the Commissioner is "notified by the Town Administrator that the renewal application has been acted upon." It further provides that upon denial, "the term of the Commissioner shall expire five days after the date of the denial letter."

Upon reconsideration, the Advisory Committee preferred its original language, although it removed the 60 day limit to the extension to conform to the Board of Selectmen's motion.

| | Original Warrant | Board of Selectmen | Advisory Committee |
|---|---|---|---|
| **Submission of Renewal Application by Commissioner** | In a timely manner | Not later than August 1 | In a timely manner |
| **Consequence of Lack of Action by Board of Selectmen** | Term extended 60 days to permit the BoS to complete the review process. . | Term extended until notified by the Town Administrator that the renewal application has been acted upon. | Term extended to permit the BoS to complete the review process. |
| **Consequence of Denial of Application** | Term expires August 31 | Term expires five days after the date of the denial letter. | Term expires August 31 |

**Procedural History**
The original Warrant article language, with some minor changes to reappointment language and reinstatement of Section 5.5.7(a) as the new 5.5.7(b), was approved by the Advisory Committee 9–1–4. After the Board of Selectmen voted to recommend different reappointment language, the Advisory Committee voted to reconsider by a vote of 13–5–6. Upon reconsideration, the Advisory Committee voted to recommend favorable action on a version of Article 28 which substituted its own reappointment language by a vote of 19–0–5.

RECOMMENDATION:
By a vote of 19–0–5, the Advisory Committee recommends FAVORABLE ACTION on the Board of Selectmen's motion under Article 28, with the following changes to the reappointment language under section 3.14.1 of the By-law:

**Marked to show changes**:
Commissioners shall be appointed by the Board of Selectmen ("BoS") and shall hold office for a period of not more than three (3) years with terms of office expiring on August 31 of an appropriate year in a staggered manner so that **the terms of** approximately one-third (1/3) of the Commissioners ~~will~~ expire each year. ~~**A Commissioner whose term is expiring is expected to submit their renewal application to the BoS not later than August 1 of the expiration year. The term of a Commissioner who does not submit a renewal application in a timely manner shall expire on August 31 of that year. The term of a Commissioner who submits a timely renewal application shall then be extended until notified by the Town Administrator that the renewal application has been acted upon. If the application is denied, the term of that Commissioner shall expire five days after the date of the denial letter. If the application is approved, the term shall expire on August 31 of the year specified**~~

~~in the approval letter.~~ **In the event that a Commissioner whose term is expiring has submitted their renewal application to the BoS in a timely manner, and has not yet been notified by the Town Administrator that their term has been renewed or terminated, the term of that Commissioner shall be extended to permit the BoS to complete that process.**

**Clean version:**
Commissioners shall be appointed by the Board of Selectmen ("BoS") and shall hold office for a period of not more than three (3) years with terms of office expiring on August 31 of an appropriate year in a staggered manner so that the terms of approximately one-third (1/3) of the Commissioners expire each year. In the event that a Commissioner whose term is expiring has submitted their renewal application to the BoS in a timely manner, and has not yet been notified by the Town Administrator that their term has been renewed or terminated, the term of that Commissioner shall be extended to permit the BoS to complete that process.

XXX

## ARTICLE 29

### TWENTY-NINETH ARTICLE

Submitted by: Gary Jones

This article makes it clear it's the police officer's duty to protect the public from a dangerous dog or animal.

The Brookline Police Department shall train each police officer in the proper handling of dangerous, violent dog and other animal attacks. Such training shall teach each officer it's their responsibility in the event of such an attack to secure the dangerous dog or animal. The public expects the officers to ensure their public safety. They cannot expect the public to protect themselves from dangerous dogs and animals. Public safety is a police function.

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### PETITIONER'S ARTICLE DESCRIPTION

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

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### SELECTMEN'S RECOMMENDATION

Article 29 is a petition which seeks to mandate training for police officers in the proper handling of dangerous dogs and other animals. The petition was drafted in response to a violent dog attack in the petitioner's neighborhood where he did not feel that the Police Department's response was appropriate. While the Board is sympathetic to all parties involved in this incident the Board felt that more study was needed to take a more holistic approach to the issue.

The Board unanimously voted FAVORABLE ACTION on October 13, 2016 on the motion offered by the Advisory Committee.

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### ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
The petitioner, Gary Jones, filed two Warrant Articles (29 and 30) in response to neighborhood concerns following a May 2016 violent dog attack in which both a woman and her dog were mauled by a very large dog that had gotten away from its dog walker. Article 29, as originally filed, sought to require the Brookline Police Department to train

every police officer in the correct handling of dangerous, violent dog and other animal attacks, including the securing of the dangerous dog or animal to protect the public safety. Following review of the original Warrant Article the petitioner is offering instead a referral motion to a committee to study the training of animal control officers and police officers concerning handling attacks by dogs and other animals, including additions to such training, to improve public safety.

The Advisory Committee by a vote of 19–0–1 recommends FAVORABLE ACTION on referral to a Selectmen's committee.

BACKGROUND:
On May 19th 2016 a woman walking her small dog in her neighborhood was violently attacked by a very large dog that had broken free of its collar and leash from its dog walker, a teenage boy. Her screams brought neighbors to her aid and the police were called. One neighbor hit the attacking dog with a shovel to subdue the dog while another neighbor was able to free the woman so she could run to safety. A neighbor fashioned a makeshift restraint for the dog from a belt. The woman sustained serious injuries and was taken by ambulance to Beth Israel Deaconess Hospital, where she received emergency treatment. Her dog, which also was mauled, was taken by a neighbor to the Boston Veterinary Hospital for care. When the police officer who responded to the call for assistance arrived on the scene, the dog was being restrained by the neighbor and was no longer acting in a way that posed an immediate danger. The dog's owners were called and they took the dog away. The police officer urged the neighbors to return to their homes. The officer filed a redacted police report regarding the incident and the incident was referred to the Animal Control Officer (ACO), who was not on duty at the time, for follow-up. On June 6th, following the ACO's investigation, the ACO issued an order that the dog be muzzled for 180 days.

DISCUSSION:
There is unanimous agreement that the dog attack was violent and the injuries were horrific. The victim of the attack suffered more than eleven bites as she attempted to fend off the vicious attack. She has described this attack as traumatizing and life-altering. She felt unsafe walking in her neighborhood and could not go outside without a bat and pepper spray for protection. The victim expressed that her emotional scars linger, even though the physical scars are healing. The screams of the woman, who was unable on her own to stop the dog from attacking, brought neighbors onto to the scene to try to help, and many witnessed the bloody physical injuries caused by the attack. These witnesses to the attack also expressed feeling traumatized by the event, which caused them to worry about their own safety and the safety of their families.

The police officer who responded to the emergency call was not the Animal Control Officer, who was not available at the time of the attack. The ACO is a patrol officer who has special training for dealing with these incidents, as well as access to a specially-outfitted van and equipment to deal with dangerous dogs and other animals.

The neighbors expected the patrol officer to take charge of the dog, which they felt was a public safety threat, and take it out of the neighborhood. Instead, the officer observed that

the dog was being effectively restrained by the neighbor, that the woman who was attacked was being taken by ambulance to the hospital, and that the dog walker was crying that he didn't want to go to jail. The officer thus made the decision to release the dog back into the care of its owners until the ACO could make an assessment of next steps. He also asked the neighbors to disperse. The officer failed to address the immediate and palpable distress of those who were at the scene, and this Warrant Article was filed to bring attention to the need for all officers to be trained in protocols for dealing with dangerous dog and other animal attacks–beyond the information that is in the Town's Dog Control By-law (Section 8.6.).

Residents of the neighborhood further expected that the police officer would handle the dog, impound it, and take it to the police station. Some residents felt that the attack warranted a more serious decision and even asked whether the dog should be put down. According to the Town's by-law Section 8.6 (Dog Control), the Town can impound the dog if the police officer witnesses it either not under control or actively attacking, neither of which was the situation in this case. The responding police officer exercised his discretion to allow the owners to take the dog. In other cases, police officers have impounded dangerous dogs and taken them to the animal hospital. After investigations were completed, citations were issued to the both the owner of the dog and the dog walker, and a 180-day muzzle order was put into effect.

The neighbors were distressed by what they felt was an inadequate response to the incident by the Police Department, and did not realize that they needed to file a complaint in order to get a hearing. Once this information was conveyed, in September five citizen complaints were filed, triggering the setting of a hearing date. According to the State's "dangerous dog" statute, the hearing officer can be a member of the Board of Selectmen, the Police Chief, or the Police Chief's designee, or the ACO. Chief O'Leary has designated Director of Health and Human Services Alan Balsam to be the hearing officer. The hearing officer then has the authority to order one or more of seven options, from the least severe "that the dog be humanely restrained," to the most severe, "that the dog be humanely euthanized." After the hearing officer makes a determination, the owner of the dog may appeal the decision.

In addition, Chief O'Leary has written a special order (currently in draft form) to provide police officers with procedures to follow when responding to dangerous dog attacks and complaints. If the ACO is unavailable, officers on the scene may request assistance from ACOs in neighboring communities, the Animal Rescue League or the MSPCA. The responding officer will also be required to provide information to the victim on filing a written complaint for a hearing, which is pursuant to M.G.L. c.140 sec.157.

In reviewing this Article several points of information came to light:

- The police officer, who arrived on the scene without back-up, could have called a sergeant, who would have helped to attend to the concerns of distressed neighbors who remained at the site of the attack;
- The officer could have contacted, for example, the MSPCA for assistance in removing the dog and placing it in their temporary care;

- At one time the Town had three ACOs, providing the Town with 24-hour coverage, but now the Town only has one trained ACO. However, another officer could have used the ACO vehicle with the proper equipment to impound the dog and take it to the Brookline Animal Hospital for temporary care.

From the testimony the Advisory Committee received and discussions with Chief O'Leary and Town Counsel, there is general agreement that this incident could have been handled with greater community sensitivity and that more can be done. The petitioner has raised some of the neighborhood's concerns about the way in which serious dog attacks are handled, and the Town would benefit from further study of these issues.

RECOMMENDATION:
The Advisory Committee agrees with the petitioner and recommends FAVORABLE ACTION by a vote of 19–0–1 on the following referral motion under Article 29:

VOTED: To refer the subject matter of Article 29 to a committee consisting of the following: the Director of Public Health or his designee; the Brookline Chief of Police or his designee; a member of the Brookline Board of Selectmen or their designee; two Town Meeting Members and three Non-Town Meeting Members. Members to be appointed by the Selectmen.

The committee shall conduct a study of the training of animal control officers and police officers concerning handling attacks on citizens by dogs and other animals, including possible enhancements to current training of this type, if any is provided, to improve public safety.

The Committee shall present a report of its findings, if possible, to the 2017 Annual Town Meeting. Its recommendation may include a proposed amendment to the town by-laws or as practicable thereafter suggested action by the Board of Selectmen or the Police Department.

XXX

Passed by a Counted Vote
173 In favor and 3
Opposed

## ARTICLE 30

### THIRTHIETH ARTICLE

Submitted by: Gary Jones

This article shall require the Brookline Police Department to post every police report on line on the town website within forty eight hours of the incident.

The Brookline Police Department shall create a link on the town web site which shall list all police incident reports by the date of their occurrences. Each report shall have a title which accurately reflects said occurrence. Full and accurate reports shall be filed on line no later than forty-eight hours after the event. If the incident is under investigation a descriptive title of the event shall be posted. At the conclusion of the investigation the full police report shall be filed on line with the date the investigation was completed and posted on line.

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### PETITIONER'S ARTICLE DESCRIPTION

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

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### SELECTMEN'S RECOMMENDATION

Article 30 is a petition that seeks to compel the Police Department to post police reports online within 48 hours. After hearing from the Police Chief the Board agrees that this is more complicated that it appears. There is a lot of sensitive information contained in a police report and a lot of redactions would need to be made in order to make the report suitable for publishing. With an average of 6,500 reports filed in a year this would be a major burden for the Police Department.

While the Board appreciates the petitioner's request for additional transparency the request warrants further study. On October 13, 2016 the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 30 was initially filed to require that the Brookline Police Department post online on the Town's website every police report within 48 hours of an incident. The petitioner, Gary Jones, filed this article to achieve what he and his neighbors feel is a need for increased transparency in the reporting of public safety incidents. In the Advisory Committee's review process, the legal complexities involved in the public reporting of such data, as well as a need to explore best practices for the police department to follow, became apparent. The petitioner is now offering a motion to refer the subject matter of Article 30 to a Moderator's committee.

The Advisory Committee, by a vote of 18–0–1 recommends FAVORABLE ACTION on the motion to refer to a Moderator's committee.

BACKGROUND:
The horrific dog attack incident described in the Advisory Committee's report on Article 29 also led to the filing of Article 30. Neighbors who witnessed the attack were distressed that there was no media coverage of the attack in the *Brookline TAB* so that the entire neighborhood would be made aware of the problem. They were also concerned that there was no police report posted online.

DISCUSSION:
The Commonwealth of Massachusetts requires that all police departments keep a log of incidents, and that police log be open to the public. In Brookline, that incident log is available by coming to the Police Department and requesting that information. The petitioner reported that other communities, such as Newton, put their incident reports online, but Brookline does not. A review of the City of Newton Police Department website confirmed that the police log is online and easy to locate under the tab "Records," which is on the department's home webpage. There is a link within Records that when clicked shows the incident log for 2016, which includes the following information: date, address, type of incident, and the reporting officer's name. However, the Newton Police Department does not put the actual police reports online.

Chief O'Leary noted that the Brookline Police department averages approximately 6,500 police reports filed each year, and the sheer number alone would make it difficult to post all of the reports. He stated that *TAB* reporters come to the station to look at the logs each week and select what they choose to put into the paper. Given the sheer volume of incidents in the log, putting the log online would not serve the purposes for which the petitioner filed Article 30, i.e., to notify specific neighborhoods of a public safety issue that residents of that neighborhood should be aware of. There may, however, be alternative ways that neighborhoods could be notified of issues of particular relevance, and a study committee could investigate those alternatives.

Town Counsel further stated that Criminal Offender Record Information (CORI) regulations prohibit reports involving criminal investigations from being made public.

The Police Department is required under state law to keep a police log, and could only have reported the nature of the call and the result without further detail.

With reference to the specific incident that triggered this Warrant Article, Chief O'Leary stated that a redacted police report was filed by the police officer who was there. State law prevents certain reports from being made public; these include reports of domestic violence, rape, and juvenile offenders. There is in the current legislative session at the State House a bill to further refine that law. Bill H.2151, currently in Committee, would require police departments to notify victims of any requests for said victim's report.

Given the legal requirements and constraints to posting incident reports, and the vast number of incidents reported in the police log, the petitioner is asking and that a committee be formed to study the feasibility and desirability of posting Brookline police incident reports online, and to report its recommendations, including potential amendments to the Town's by-laws to the Fall 2017 Special Town Meeting. That study committee should consist of the Chief of Police (or his designee), a member of the Board of Selectmen (or their designee), Town Meeting Members, and non-Town Meeting Members.

RECOMMENDATION:
The Advisory Committee by a vote of 18-0-1 recommends FAVORABLE ACTION on the following referral motion:

VOTED: To refer the subject matter of Article 30 to a committee consisting of the following: the Chief of Police or his designee; a member of the Board of Selectmen or their designee; and two Town Meeting Members and three non-Town Meeting Members, to be appointed by the Moderator.

The committee shall conduct a study of the desirability and feasibility of posting Brookline police incident reports on the Town website. The committee shall investigate how other communities publicize their police reports and determine appropriate criteria for posting such reports online.

The committee shall present a report of its findings to the 2017 Fall Special Town Meeting. Its recommendations may include a proposed amendment to the Town by-laws or suggested action by the Board of Selectmen or the Police Department.

Passed by a ~~xx~~ majority Vote

# ARTICLE 31

## ADVISORY COMMITTEE'S REVISED SUPPLEMENTAL RECOMMENDATION

SUMMARY:
This report is a supplement to the Advisory Committee Recommendation published in the Combined Reports, October 27, 2016.

On November 3, 2016 the Advisory Committee heard a presentation and a request from the petitioner to reconsider the Committee's vote to recommend Favorable Action on an amended version of Article 31 as originally submitted. The petitioner is submitting a new motion under Article 31. The petitioner's new motion includes a revised version of the enforcement provision that would be included in the new by-law proposed in Article 31.

The motion that the Advisory Committee reconsider Article 31 was defeated by a vote of 4 in favor, 15 opposed and 4 abstentions. The Advisory Committee's recommendation to Town Meeting regarding Article 31 stands, as included in the Combined Reports (p. 31-7).

DISCUSSION:
During the course of a ten-minute presentation and ensuing questions and discussion, the petitioner presented information on several factual questions related to Article 31.

The petitioner originally reported that the Massachusetts Attorney General's office told her that compliance with the Open Meeting Law would not be required even if a committee of Town Meeting included outside members (a "hybrid" committee). In contrast, Town Counsel reported that she had been advised by the Attorney General's office that a "hybrid" committee was a public body, and that it would therefore be required to comply with the Open Meeting Law. The petitioner sought clarification from the Attorney General's office. She informed the Advisory Committee that the Attorney General's office had taken the stance that the Division of Open Government would not review complaints of non-compliance or enforce compliance, even if the offending body were a "hybrid" committee. Therefore, whenever Town Meeting has voted to create such a committee in order to carry out municipal duties it would be exempt from the Open Meeting Law, regardless of its composition. However, the Advisory Committee remained uncertain on the details of this point, as the petitioner declined to provide a copy of her email correspondence with the Attorney General's office.

At the Advisory Committee meeting of Nov. 3, the petitioner also addressed the relevance of Section 2.1.12, Para. 3 of the General By-Law (reproduced in its entirety as an appendix, below):

> Neither the Board of Selectmen nor any other elected board shall utilize the

> services of Town Counsel for the purposes of challenging an action taken by Town Meeting. Town Counsel shall use his or her best efforts to defend the action taken by the Town Meeting upon receipt of notice under this by-law.

The petitioner reported that she discussed the origin of this provision of Brookline's by-law with the person who drafted it some 20-plus years ago and learned that the purpose of the provision was not related to the circumstances Article 31 is meant to address. Nonetheless, the language of 2.1.12 is open to the interpretation that Town Counsel is restricted from challenging the actions of a Town Meeting committee. In addition, the previous reports on Article 31 from the Advisory Committee and the Selectmen raise questions about whether it would be appropriate or feasible for Town Counsel to play an enforcement role, regardless of how Section 2.1.12of the General By-Law Article 31 is interpreted. (See p. 31-5 and p. 31-6 of the Combined Reports.)

**Appendix**

Text of Section 2.1.12 of the General By-Law:

SECTION 2.1.12 CHALLENGE TO THE VALIDITY OF AN ACTION TAKEN BY TOWN MEETING

Neither the Board of Selectmen, nor any department or agency which reports to the Board of Selectmen, shall file any petition or other document with the Attorney General or commence any legal proceeding contending that any action taken by Town Meeting is invalid, unless the following conditions have been complied with:

(a) Such petition or other document or the commencement of such legal proceeding shall have been authorized by the Board of Selectmen; and

(b) Subsequent to such authorization, the Town Moderator and Town Counsel shall have been notified in writing of such action, and provided with copies of such petition or document or the documents prepared for the purpose of such court action at least seven days before any such document is filed with the Attorney General or any court.

No other elected Town board, nor any department or agency which reports to any such other elected Town board, shall file any petition or other document with the Attorney General or commence any legal proceeding contending that

any action taken by Town Meeting is invalid, unless such Town board first authorizes such action and complies with the conditions described in sub-paragraphs (a) and (b), above.

Neither the Board of Selectmen nor any other elected board shall utilize the services of Town Counsel for the purposes of challenging an action taken by Town Meeting. Town Counsel shall use his or her best efforts to defend the action taken by the Town Meeting upon receipt of notice under this by-law. In the event that Town Counsel is unable for any reason to defend such action, including without limitation that Town Counsel has expressed the opinion that such action is illegal, the Moderator shall take such action as he or she deems necessary in order to present such defense, and Town Counsel may then represent the challenger on the Town Meeting action in controversy.

Nothing in this Article shall be construed to prohibit any employee or elected official of the Town, acting in his or her individual capacity, from communicating with the Attorney General, filing a petition or other document with the Attorney General, or commencing legal proceedings, contending that any action taken by Town Meeting is invalid.

## ARTICLE 31

### THIRTY-FIRST ARTICLE

Submitted by: Regina Millette Frawley, TMM16

To see if the Town will amend Article 2.1 of the Town's General Bylaws –Town Meetings, by adding a new Section, as follows:

Town Meeting Committees. Any committee established by Town Meeting shall be considered a committee to which all provisions of the Open Meeting Law shall apply. Such Town Meeting-created committees shall be supported by non-voting staff assigned by the Board of Selectmen to assist in OML compliance and efficient functioning of such committees.

**Enforcement:** Town Counsel shall enforce the OML of such committees and shall assess penalties and fines for repeated violations, which fines will be placed in the General Fund, after at least one valid complaint was received by Town Counsel, and/or if a violation occurs after an advisory by Town Counsel to the Committee citing any previous violation, or if Town Counsel deemed a violation was committed in "bad faith", whether the violation was committed by the committee or its members, and whether such members constituted a quorum, or should reasonably expect the deliberation could result in a "serial" quorum.

No fine shall exceed an amount authorized under the Open Meeting Law and enforced by the Attorney General for comparable violations assessed by the Attorney General's office.

Town Counsel may recommend other penalties, not excluding replacement of any committee member by the appointing authority, which/who may deliberate in Executive Session on any such removal of a committee member and is empowered under this Bylaw to remove such a committee member.

Nothing in this Bylaw shall preclude or deny the rights of residents to pursue judicial remedies.

Town Counsel's office will be the repository of all complaints, findings and actions, available for review by the public upon request. Complaints must be investigated within ten days of receipt of a complaint. Town Counsel's methodology, findings and determinations must be recorded in the public log within ten days post-investigation.
Or act on anything thereto.

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### PETITIONER'S ARTICLE DESCRIPTION

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

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

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

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

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

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

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

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

The AG's reasoning is as follows: Town Meeting is the town's "legislature" and, since the OML exempts the states' legislature, Town Meeting is also thus not subject to the OML. While this was once **not** interpreted as exempting Town Meeting-created committees, and as the AG acknowledges, may not be deemed an exemption by a future Attorney General (and thus, potentially re-interpreted *ad infinitum*), it is Town Meeting's continued duty to protect the right of the public to witness deliberations by ***all*** its elected

or appointed committees and officials when deliberating on a matter before its committee, and when not exempted by rules governing Executive Sessions.

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

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

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

Let us not wait for a future Attorney General's re-interpretation of the OML. This proposed Warrant Article will not compromise any future interpretations of the state's OML, and is in fact consistent with all pre-2010 understandings, interpretations and enforcements and will offer a "seamless flow" should any state or county office either through revised OML law or neo-interpretation of the existing law, deem TM-created committees as a function of its office.

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

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**MOTION TO BE OFFERED BY THE PETITIONER**

VOTED: that the Town will amend Article 2.1 of the Town's By-Laws-Town Meetings, by adding a new Section 2.1.15, as follows:

2.1.15 Town Meeting Committees

a. **Purpose**

The purpose of this by-law is to require committees that are established or recommended by Town Meeting and are not considered "Public Bodies" by the Attorney General under the Open Meeting Law, G.L. c.30A, s 18-25 (the "OML"), to conduct their meetings in a manner that is consistent with all provisions of the OML, adjusted to conform with Brookline by-laws.

b. **Committees Established by Town Meeting**

Any Committee that is established, or recommended, by Town Meeting shall be considered a committee to which the provisions of this Section 2.1.15 shall apply.

Such committees may be supported, as needed, by non-voting staff assigned by the Town Administrator.

c. **Investigation and Enforcement**

Town Counsel shall enforce the provisions of this by-law. All written complaints shall be investigated by Town Counsel or Town Counsel's designee within ten (10) business days of receiving the complaint and concluded no later than twenty (20) days of receipt of the complaint. Should Town Counsel find that a violation of this by-law occurred, Town Counsel shall recommend appropriate remedies. Upon repeated violation(s), or if Town Counsel's recommendations are not enacted, Town Counsel may take appropriate action(s) under Town by-laws, including, but a recommendation for removal of any committee member(s) by the committee's appointing authority or authorities.

Nothing in this by-law shall deny the rights of residents to pursue judicial remedies permitted by law.

d. **Records**

The Office of Town Counsel shall be the repository of all complaints. All findings and records of recommendations and enforcement actions, reflecting conformity with the OML and Public Records Law provisions, shall be made available for public review. Such records shall be recorded in a log, and available for public review within ten (10) days of the conclusion of the investigation. Attorney-Client Privilege shall not be asserted when investigating an allegation of a violation of this by-law.

All investigative and enforcement communications, whether written, oral, or electronic, shall be public documents, subject to public review upon request. Fees for hard copies may be waived or produced at no more than twenty-five cents per page.

## SELECTMEN'S RECOMMENDATION

Article 31 is a petitioned article that would amend Article 2.1 of the Town's By-Laws-Town Meetings by adding a new Section 2.1.15. The purpose of this by-law is to require committees that are established by Town Meeting, and are not considered "Public Bodies", as interpreted by the current Attorney General, under the Open Meeting law to conduct their meetings in a manner consistent with the provisions of the Open Meeting law. The article also vests Town Counsel with enforcement, including the imposition of monetary penalties for violations.

The Board agrees with the petitioner's intent that all committees established by Town Meeting should operate under the provisions of the Open Meeting law. However, the Board believes that the petitioner's proposed solution is overly proscriptive, presents an impractical enforcement scheme which includes potential fines on volunteer committee members.

The Board is also concerned about the staff time that would have to be allocated to the enforcement of the by-law change; specifically, the additional workload that would be presented to the Town Counsel's office. There were concerns about committees that do not have staff assignments, where the Town may not have the resources to be able to offer staff assistance to a committee to ensure compliance with the Open Meeting law. There is also a significant burden that would be placed on the Town's volunteer committee members, including potential fines against them. The Selectmen believe that most Town committees, including Committees created by Town Meeting, operate under the premise of following Open Meeting Law. Out of the thousands of volunteer hours served by volunteer committees there have been only a few instances where complaints were made. The Board's experience on all committees that they have served on has been that they have attempted to comply with the open meeting law.

The Board favored the language presented by Town Counsel, which the Advisory Committee also supported, and is an acceptable way to set the expectation for transparency. The Board feels that this language addresses the intent of the warrant article without imposing any cumbersome and unnecessary burdens.

A unanimous Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on October 25, 2016, on the Advisory Committee motion.

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## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 31 is a petitioned Article that would apply the Commonwealth's Open Meeting Law to committees (e.g., Moderator's Committees) that are created at the request of Town Meeting. Although Town Meeting itself is exempt from the Open Meeting Law, the petitioner believes that Town Meeting committees should follow the Open Meeting Law. The Advisory Committee agreed, but did not believe that the Article's provisions for enforcement and penalties should be incorporated into the Town's by-laws

By a vote of 21–1–1, the Advisory Committee thus recommends FAVORABLE ACTION on a motion to amend the Town's by-laws only to require that Town Meeting committees "shall conduct their meetings in a manner that is consistent with the provisions and intent of the Open Meeting Law."

BACKGROUND:

Section 3.20 of Brookline's by-laws require that all "Elected and Appointed Officials" take a course given by Town Counsel that explains the Massachusetts Open Meeting and Conflict of Interest Laws. One might expect that all of the actions of elected and appointed officials are subject to the Open Meeting Law, but the current Massachusetts Attorney General has ruled that since the state legislature exempted itself from Open Meeting Law, any legislative body—including representative town meetings—is similarly exempt. Therefore, Town Meeting committees, which are normally Moderator's Committees created at the request of Town Meeting, are exempt. Under the Attorney General's rules, such a committee does not have to provide notice, handicap accessibility, posting of an agenda, or minutes, and no quorum is required. These exemptions would apply even if the committee was making a recommendation to Town Meeting on a Warrant Article.

Although the Town Moderator instructs the committees he appoints to adhere to the Open Meeting Law, he does not act as the enforcement agency if a Moderator's committee fails to follow his instructions.

There was some question in the Advisory Committee of how the Attorney General's ruling would be applied. Town Counsel was advised by the Attorney General's office that a committee of Town Meeting that includes members who are not Town Meeting members is a "hybrid" committee and must to adhere to the Open Meeting Law. The petitioner reported that she was advised by the Attorney General's office that hybrid committees are *not* subject to the Open Meeting Law.

The proposed amendment to Section 2.1 of the General By-Law seeks to close this gap for all committees of Town Meeting, whether hybrid or not.

DISCUSSION:
The article as submitted included a provision requiring that Town Counsel enforce the by-law and be given the power to assess a substantial fine for violations. Ordinarily, the Open Meeting Law is enforced by the Attorney General's office, but given her reported ruling on the matter, the Attorney General will not do so in the case of Town Meeting committees.

Town Counsel characterized the intent of the proposed by-law as admirable, but she was uncomfortable with the section requiring that her office to be the enforcement agency. This concern was shared by members of the Advisory Committee, since Town Meeting is the legislative branch of Town government and Town Counsel is appointed by the executive branch. Advisory Committee members were also unhappy with the details of the enforcement process as originally proposed, including the absence of any appeals mechanism in the event of a fine. Members also questioned the necessity and cost of the proposed requirement that staff support be provided to Town Meeting committees.

Following the initial hearing by a subcommittee of the Advisory Committee, the petitioner agreed to redraft the article and consider changes that Town Counsel offered to compose, but ultimately there was no apparent way for the Advisory Committee to reconcile what turned out to be conflicting approaches. Furthermore, members of the

Advisory Committee continued to be concerned about Town Counsel's office being given authority to enforce a by-law that would apply to a creation of Town Meeting.

Therefore, the Advisory Committee voted to remove the enforcement section and rely for compliance on:

1. The willingness of appointees to Town Meeting committees to follow the instructions of the Moderator;

2. The fact that most such committees are "hybrid" committees because they include members who are not Town Meeting members and are therefore currently covered by the Open Meeting Law;

3. The fact that Moderator's committees deal with matters that the public follows closely, so committees attempting to do their work in an inappropriate way would be exposed to the public's disapproval.

RECOMMENDATION:
The Advisory Committee by a vote of 21–1–1 recommends FAVORABLE ACTION on the following motion.

VOTED: That the Town amend Article 2.1 of the Town's By-Laws—Town Meetings, by adding a new Section 2.1.15, as follows:

2.1.15 Town Meeting Committees

Committees that are established pursuant to a vote of Town Meeting and ~~therefore~~ are not considered by the Attorney General to be "Public Bodies" under the Open Meeting Law shall conduct their meetings in a manner that is consistent with the provisions and intent of the Open Meeting Law.

XXX

(1.) Passed as a Substitute Main Motion by a Counted Vote of 165 In favor, 12 Opposed and 3 Abstentions

(2.) Passed by a Majority Vote

## ARTICLE 32

## THIRTY SECOND ARTICLE

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

To See if the Town Will Adopt the Following Resolution:

**Whereas**, the Town of Brookline supports the provision of affordable housing and has expended significant resources to expand housing opportunities for vulnerable populations, through the Brookline Housing Authority public housing, the Affordable Housing Trust Fund, the Community Development Block Grants, and the Inclusionary Zoning By-Law;

**Whereas**, M.G.L. Chapter 40B mandates specific levels of affordable housing in Massachusetts cities and towns. Municipalities deemed deficient in such housing are subject to penalties, which can be remedied by public or private measures;

**Whereas**, M.G.L. Chapter 40B enables Applicants for construction or conversion of housing with at least 20% affordable units to request waivers of the Town's Zoning By-Laws, by applying for a Comprehensive Permit;

**Whereas**, four Comprehensive Permit applications, proposing a total of 352 housing units, were submitted to the Zoning Board of Appeals in April and May 2016;

**Whereas**, three additional Comprehensive Permit applications, proposing a total of 269 housing units, are anticipated by the Zoning Board of Appeals before October 2016;

**Whereas**, the unprecedented number of recent Comprehensive Permit applications and the unprecedented scale of most proposed developments come as the Town approaches it state-mandated level of affordable units;

**Whereas**,the sheer number of recent Comprehensive Permit applications threatens to overwhelm the Town's resources;

**Whereas**, we commend the Planning Department, Zoning Board of Appeals and other Town Boards and Departments for their extraordinary efforts in reviewing these current and anticipated applications;

**Whereas**, the Zoning Board of Appeals is mandated to review each Comprehensive Permit Application within 180 days, a period whose brevity often aborts the Board's success in mitigating all of its Local Concerns: environment, health, safety, open space, planning and design;

**Whereas**, the Zoning Board of Appeals attempts to protect Local Concerns by imposing conditions on Comprehensive Permits;

**Whereas**, Applicants' legal appeals to the Massachusetts Housing Appeals Committee can blunt or negate these conditions on Comprehensive Permits;

**Whereas**, the Housing Appeals Committee hearing process is time-sensitive and the issues complex;

**Whereas**, the Town now faces up to seven simultaneous appeals, whose demands can easily overwhelm the intellectual and budgetary resources of Town Counsel;

**Whereas**, it is Town Meeting's duty to represent and sustain the best interests of the Town's citizens and the Town in its entirety;

**Whereas**, Town Meeting necessarily expects the Town to support the Zoning Board of Appeals in its decisions and conditions on Comprehensive Permits;

**Now, therefore, be it hereby Resolved**, that Town Meeting supports Town Counsel's future funding requests to defend the Town's planning interests before the Housing Appeals Committee and other appeals courts.

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

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

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

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

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

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

> *"The new building's massing and scale are radically and abruptly at variance with the surrounding context, both along Harvard and Fuller Streets. It is likely that the building if constructed as currently proposed would be the tallest structure anywhere on Harvard Street, all along its run through Brookline. It is the opinion of this reviewer that the height of the building (almost 64 feet to the main roof), as well as its unbroken length along Fuller Street, combined with zero front and side setbacks, puts it significantly outside of existing development patterns over the entire distance along Harvard Street/Avenue from Brookline Village to Cambridge Street in Boston.*
>
> *While the site is arguably generally appropriate for residential development, the scale, massing, setbacks (and perhaps facade design) create a typology wholly outside of existing fabric. The impact of the streetscape will be significant, as will the degradation of privacy and access to natural light to the immediate neighbor on Fuller Street."*
>
> *- Cliff Boehmer, Davis Square Architects in August 29, 2016 report to the ZBA*

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

Developers seem intent on running out the clock in this 180-day review process or choosing to appeal ZBA decisions to the Massachusetts Housing Appeals Committee (HAC) or to appeals courts. The HAC has established major precedents: it has, for example, defined the nature of Local Concerns such as fire truck access[2] vehicular "stopping sight" distances[3], parking[4], and master planning[5]. Notably, the litigation process has often been more successful at extracting concessions from developers. A 2008 study by Citizens' Housing and Planning Association examined 22 appeals filed between 2000 and 2007:

> *"In 10 of the 22 cases, developers agreed to reduce the size of their project, with the reductions ranging from 1 to 90 units (1% to 50%} and an average reduction of 19%. In five of these cases, developers agreed to these reductions even though the lower courts had upheld the zoning approval."*[6]

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

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

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

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[2] Simon Hill, LLC v Norwell Zoning Board of Appeals, HAC No. 09-07, p. 16-22
[3] *White Barn Lane, LLC v Norwell Zoning Board of Appeals,* HAC No. 08-05, p. 30-31
[4] *100 Burrill Street, LLC v Swampscott Zoning Board of Appeals,* HAC No. 05-21, p. 9-13
[5] *28 Clay Street Middleborough, LLC v Middleborough Zoning Board of Appeals,* HAC No 08-06, p. 14-21
[6] Citizens' Housing and Planning Association (2008). *Zoning Litigation and Affordable Housing Production in Massachusetts,* page 14. https://www.chapa.org/sites/default/files/qeert_11.pdf

## SELECTMEN'S RECOMMENDATION

Article 32 is a petitioned resolution that asks the Town to express its support for funding requests of Town Counsel in the defense of cases that come before the Housing Appeals Committee. The Town has experienced a large number of Chapter 40B applications driven by the region's robust economy and the Town's proximity to the safe harbor of 10% subsidized housing inventory. The petitioners believe that developers are attempting to inundate the Town Counsel's office with additional workload that may affect the ability to respond timely. Ultimately, the purpose of the resolution is for Town Meeting to support Town Counsel's funding requests pertaining to the defense of the Town's planning interests.

The Selectmen are well aware of the impact that Chapter 40B projects have on neighborhoods when feedback provided by citizens, Town staff and peer reviewers is not incorporated into final design. The Board appreciates the motives behind this resolution, but believes blanket support for funding would be unwise. The Board believes that after the comprehensive permit process, in each case, the Town will make a judgement whether or not to go to the Housing Appeals Committee or another court, and will fund it accordingly. The normal budget process allows for department heads to advocate for their specific funding needs. The Board believes that this process allows for Town Counsel's budget needs to be addressed. In the event that Town Counsel's office is appealing a 40B application internal staff resources would be used initially, thereby eliminating the need for additional funding. If the Town Counsel's office is stretched thin, then outside counsel would be secured, if necessary, and paid for with an already funded outside counsel appropriation.

The Town will evaluate each case individually within the framework presented by the 40B law assessing the risks and likely outcomes of potential litigation. If after a decision is made to engage in litigation is made and Town Counsel's budget is insufficient to support the litigation, a request for a Reserve Fund Transfer can be made to the Advisory Committee.

The Board felt that revised language that allowed the Town to express its support for the defense of the Town's planning interests was appropriate and therefore, on October 25, 2016 unanimously voted FAVORABLE ACTION on the following resolution:

**Whereas**, the Town of Brookline supports the provision of affordable housing and has expended significant resources to expand housing opportunities for vulnerable populations, through the Brookline Housing Authority public housing, the Affordable Housing Trust Fund, the Community Development Block Grants, and the Inclusionary Zoning By-Law;

**Whereas**, M.G.L. Chapter 40B mandates specific levels of affordable housing in Massachusetts cities and towns. Municipalities deemed deficient in such housing are subject to penalties, which can be remedied by public or private measures;

**Whereas**, M.G.L. Chapter 40B enables Applicants for construction or conversion of housing with at least 20% affordable units to request waivers of the Town's Zoning By-Laws, by applying for a Comprehensive Permit;

**Whereas**, four Comprehensive Permit applications, proposing a total of 352 housing units, were submitted to the Zoning Board of Appeals in April and May 2016;

**Whereas**, three additional Comprehensive Permit applications, proposing a total of 269 housing units, are anticipated by the Zoning Board of Appeals before October 2016;

**Whereas**, the unprecedented number of recent Comprehensive Permit applications and the unprecedented scale of most proposed developments come as the Town approaches it state-mandated level of affordable units;

**Whereas**,the sheer number of recent Comprehensive Permit applications threatens to overwhelm the Town's resources;

**Whereas**, we commend the Planning Department, Zoning Board of Appeals and other Town Boards and Departments for their extraordinary efforts in reviewing these current and anticipated applications;

**Whereas**, the Zoning Board of Appeals is mandated to review each Comprehensive Permit Application within 180 days, a period whose brevity often aborts the Board's success in mitigating all of its Local Concerns: environment, health, safety, open space, planning and design;

**Whereas**, the Zoning Board of Appeals attempts to protect Local Concerns by imposing conditions on Comprehensive Permits;

**Whereas**, Applicants' legal appeals to the Massachusetts Housing Appeals Committee can blunt or negate these conditions on Comprehensive Permits;

**Whereas**, the Housing Appeals Committee hearing process is time-sensitive and the issues complex;

**Whereas**, the Town now faces up to seven simultaneous appeals, whose demands can easily overwhelm the intellectual and budgetary resources of Town Counsel;

**Whereas**, it is Town Meeting's duty to represent and sustain the best interests of the Town's citizens and the Town in its entirety;

**Whereas**, Town Meeting necessarily expects the Town to support the Zoning Board of Appeals in its decisions and conditions on Comprehensive Permits;

BOS Amdt.

**Now, therefore, be it hereby Resolved**, that Town Meeting supports Town Counsel's efforts to defend diligently the Town's interests before the Housing Appeals Committee or other forums to ensure that 40B housing developments are appropriate to the local community and the Town.

Defeated by an Electronic Recorded Vote of 20 In Favor, 154 Opposed, and 9 Abstentions

## ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 32 is a citizen's petition resolution urging Town Meeting to "support" funding requests from Town Counsel to defend the Town's "planning interests." The resolution focuses on the need to fund the Town's response to proposed 40B developments.

By a vote of 15–4–2, the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 32 as amended. In the Advisory Committee's opinion, the amendments are necessary to avoid open-ended and unspecified requests for funding and to clarify Town Meeting's concerns regarding 40B developments.

BACKGROUND:
There are currently seven concurrent 40B applications on file with the Town, which may impact the resources of Town Counsel. Most of these are aggressive expansions compared to the current structure on the various sites; some would be by far the tallest structures on their respective streets.

The petitioners draw the reasonable conclusion that, because of community opposition and the "out-of-character" nature of these applications, it is likely that several of these 40B applications will result in appeals to the Massachusetts Housing Appeals Committee, which would likely result in significant additional demands on Town Counsel.

Neighborhoods feel overwhelmed by many of these proposals and, while not necessarily opposed to 40B housing, want to have the opportunity to be negotiated. In addition, these proposed developments could result in additional costs to the Town if allowed to proceed as proposed. Thus it is paramount that the Town be able to defend its interests to the fullest. The petitioners presented ample examples of legal action resulting in measurable improvements to development plans, such as compatibility with neighborhood, reduction in scale, and the like.

DISCUSSION:
The Advisory Committee is well aware of the large influx of 40B applications as the Town approaches the number of affordable housing units needed to achieve "Safe Harbor" status. Town Counsel reports that the Zoning Board of Appeals is hearing at least one 40B case per week, sometimes two, and on rare occasions, three.

The Advisory Committee is supportive of the objectives of Warrant Article 32 but had several concerns. As originally written, Article 32 could be read as asking Town Meeting to support all future funding requests from the Town Counsel, or to support Reserve Fund transfers for Town Counsel. Because this is what the budgetary process is for, the Advisory Committee feels strongly that the budgetary process is the proper way to ensure that Town Counsel has sufficient funding for its efforts in this area. Town Counsel additionally noted that her office has received additional appropriations in the past (e.g., for outside counsel) when needed. With that said, the Advisory Committee does recognize the extraordinary nature of the current set of development proposals facing the

Town and the need to devote significant resources to protect the Town's interests. The Advisory Committee agrees that a vote for this resolution affirms this recognition and puts 40B developers on notice that they will face a Town that is prepared to litigate, when warranted. The Advisory Committee supports the more narrowly focused amended resolution, which both recognizes the urgency of the current circumstances, and which respects the primacy of the budgeting process.

RECOMMENDATION:
By a vote of 15 in favor, 4 opposed, and 2 abstaining, the Advisory Committee recommends FAVORABLE ACTION on Article 32 as amended (see **bold** language):

VOTED: That the Town of Brookline adopt the following Resolution:

WHEREAS, the Town of Brookline supports the provision of affordable housing and has expended significant resources to expand housing opportunities for vulnerable populations, through the Brookline Housing Authority public housing, the Affordable Housing Trust Fund, the Community Development Block Grants, and the Inclusionary Zoning By-Law;

WHEREAS, M.G.L. Chapter 40B mandates specific levels of affordable housing in Massachusetts cities and towns. Municipalities deemed deficient in such housing are subject to penalties, which can be remedied by public or private measures;

WHEREAS, M.G.L. Chapter 40B enables Applicants for construction or conversion of housing with at least 20% affordable units to request waivers of the Town's Zoning By-Laws, by applying for a Comprehensive Permit;

WHEREAS, four Comprehensive Permit applications, proposing a total of 352 housing units, were submitted to the Zoning Board of Appeals in April and May 2016;

WHEREAS, three additional Comprehensive Permit applications, proposing a total of 269 housing units, are anticipated by the Zoning Board of Appeals before October 2016;

WHEREAS, the unprecedented number of recent Comprehensive Permit applications and the unprecedented scale of most proposed developments come as the Town approaches it state-mandated level of affordable units;

WHEREAS, the sheer number of recent Comprehensive Permit applications threatens to overwhelm the Town's resources;

WHEREAS, we commend the Planning Department, Zoning Board of Appeals and other Town Boards and Departments for their extraordinary efforts in reviewing these current and anticipated applications;

WHEREAS, the Zoning Board of Appeals is mandated to review each Comprehensive Permit Application within 180 days, a period whose brevity often aborts the Board's

success in mitigating all of its Local Concerns: environment, health, safety, open space, planning and design;

WHEREAS, the Zoning Board of Appeals attempts to protect Local Concerns by imposing conditions on Comprehensive Permits;

WHEREAS, Applicants' legal appeals to the Massachusetts Housing Appeals Committee can blunt or negate these conditions on Comprehensive Permits;

WHEREAS, the Housing Appeals Committee hearing process is time-sensitive and the issues complex;

WHEREAS, the Town now faces up to seven simultaneous appeals, whose demands can easily overwhelm the intellectual and budgetary resources of Town Counsel;

WHEREAS, it is Town Meeting's duty to represent and sustain the best interests of the Town's citizens and the Town in its entirety;

WHEREAS, Town Meeting necessarily expects the Town to support the Zoning Board of Appeals in its decisions and conditions on Comprehensive Permits;

NOW, THEREFORE, BE IT HEREBY RESOLVED that Town Meeting **requests that Town Counsel defend the Town's planning interests before the Housing Appeals Committee and other appeals courts regarding 40B applications**.

**BE IT FURTHER RESOLVED that appropriate funding be made available within the FY17 budget, and that future budgets consider the funding requirements of such activities.**

Passed by an Electronic Recorded Vote
By 159 In Favor, 18 Opposed and
9 Abstentions

XXX

# ARTICLE 33

## ADVISORY COMMITTEE'S REVISED SUPPLEMENTAL RECOMMENDATION

On November 15, 2016 the Advisory Committee voted 17–2–1 to reconsider its recommendation under Article 33.

The Advisory Committee and the Selectmen had offered almost identical motions under Article 33. The only difference was that in the first "Whereas" clause, the Selectmen used the phrase "who are visually impaired or have other disabilities" as opposed to "with blindness and other disabilities" in the Advisory Committee's recommended motion.

The Advisory Committee approved of the language in the motion offered by the Selectmen and therefore voted to recommend Favorable Action.

RECOMMENDATION:

By a vote of 21–0–0 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Selectmen.

ARTICLE 33

THIRTY-THIRD ARTICLE

Submitted by: Susan Granoff, TMM7

**A Resolution to Urge the Board of Selectmen to Establish a Committee to Study Enhanced Brookline Tax Relief for Senior Homeowners with Modest Incomes**

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

Whereas addressing the needs of Brookline's growing school population has resulted in one tax overide within the last two years and may well result in two to three additional tax overrides during the next ten years;

Whereas Brookline's rapidly increasing property taxes are creating growing hardships for hundreds of Brookline's seniors with modest incomes who have owned and lived in their Brookline home for decades;

Whereas many of Brookline's senior homeowners with modest incomes no longer qualify for the Massachusetts Circuit Breaker Income Tax Credit because of Brookline's escalating residential real estate values during recent years and the declining residential real estate values in the western part of Massachusetts during the same time period;

Whereas Brookline's existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline's senior homeowners with modest incomes;

Whereas certain neighboring communities such as Sudbury and Newton currently offer innovative and more generous programs to their senior homeowners with modest incomes than does Brookline;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities (including but not limited to Sudbury and Newton) offer to senior homeowners with modest incomes, and to make policy recommendations and propose warrant articles for comparable new programs for Brookline and improvements to Brookline's existing senior homeowner property tax relief programs; and

Be it further resolved that said committee will first convene not later than February 1, 2017 and provide to the Board of Selectmen not later than August 15, 2017 a report, policy recommendations, and proposed warrant articles for consideration by the November 2017 Town Meeting;

Or act on anything relative thereto.

## PETITIONER'S ARTICLE DESCRIPTION

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

## EXPLANATION

### BACKGROUND

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

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

age,[1] one would have expected the number of Brookline seniors using the CB Tax Credit to have increased since 2009; instead, it has decreased by about 7% since 2009. See the following table for a year-by-year breakdown of the use of the CB Tax Credit by Brookline seniors:

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

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

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

| | | |
|---|---|---|
| 2015 | $693,000 | $57,000 |
| $85,000 | | |

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

Other neighboring communities in recent years have sought to provide additional help to their senior homeowners with modest incomes to supplement the CB Tax Credit. Sudbury, in particular, has come up with an innovative and successful program called the "Means Tested Senior Tax Exemption." It was approved by the Massachusetts State Legislature in 2012 and implemented for a three-year trial period starting in 2014. On March 28, 2016, Sudbury's residents voted in favor of extending the program by a vote of 1,517 yes to 321 no.

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

To qualify, a homeowner must:

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

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

According to two published progress reports, Sudbury's program, which began in 2014, has been generally successful, and in March 2016 the town's residents voted overwhelmingly to extend the program past its initial three-year trial period. In its first year, 118 Sudbury seniors were granted an exemption. The average benefit was $2,450 and ranged from $17 to $6,100. The median age of the recipient was 80+ (ranging from

66 to 95), the median years lived in Sudbury was 30+, and the median qualifying income was $37,200. In its second year, 124 seniors were approved. The average benefit was $2,664 and ranged from $23 to $6,140. The average annual residential tax increase to fund this program was $45 in the first year and $60 in the second year.

Newton is another community which has been providing more generous property tax relief to its senior homeowners than Brookline currently does. Both Brookline and Newton offer tax deferral programs to seniors, but Brookline charges an interest rate of 5.0%, while Newton, which ties its rate to the Federal Reserve Discount Rate, has charged its seniors 0.75% for the past few years. For fiscal year 2017, this rate will increase to 1%. Newton's income qualifier ceiling for participation in this program is less than $60,000 a year, while Brookline's is less than $55,000 a year. Newton currently has 56 seniors participating in this program, whereas Brookline currently has only 7. Additionally, in order to participate in a tax deferral program, which requires that the town place a first tax lien on the senior's home, any current mortgage company that has a mortgage on the home must agree to subordinate its loan to the town's; if their current mortgage lender doesn't agree, a senior is unable to participate in a tax deferral program. Finally, it is unknown to what extent having a municipal tax lien agreement on a home negatively impacts a senior's credit score or the senior's ability to get further credit.

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

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

DISCUSSION

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

place. These are some of the reasons that Brookline has been designated as an internationally recognized "age-friendly" community.

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

This is often a hidden problem. Many of our senior neighbors may already be struggling with paying Brookline's rising property taxes, and yet they are too embarrassed to discuss this openly. To pay for this growing expense, they may have been putting off needed home repairs or living very bare-boned lives. However, the problems they face are real and will only get worse if, as it appears likely, Brookline votes in favor of two to three additional tax overrides during the next ten years to meet the educational needs of our expanding school-age population. Other Massachusetts towns have already begun addressing property tax payment concerns related to their senior homeowners with modest incomes, but, because of past and likely future overrides, the problem that Brookline faces is perhaps even more urgent.

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

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## SELECTMEN'S RECOMMENDATION

Article 33 is a resolution to urge the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities offer to seniors homeowners with modest income. The petitioner explained that she felt it was necessary because Brookline homeowners are facing a rapidly growing property tax burden due to recent and likely future tax overrides intended to finance the school construction needs of Brookline's growing student population. This is happening at the same time that many of Brookline's senior homeowners with modest incomes are no longer able to qualify for the Massachusetts Circuit Breaker Income Tax Credit that they were able to qualify for in the past.

The Senior Tax Work-off Exemption Program, championed by our Chief Assessor is an example of opportunities to provide relief. The Council on Aging and Board of Assessors both support the resolution. The Selectmen understand that any relief that would be provided would then shift the tax burden to another group; potentially shifting from seniors to struggling young families. There is a need for further study, which the Selectmen acknowledge and support, and the committee could look for modest relief that doesn't present a significant burden to another group of taxpayers.

The Selectmen support the study of this issue and look forward to gaining more knowledge on what tools available and what other communities are doing to support this vulnerable population.

Therefore the Board of Selectmen voted FAVORABLE ACTION on October 25, 2016 on the following motion:

VOTED: THAT THE TOWN ADOPT THE FOLLOWING RESOLVE:

Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including but not limited to our veterans, our residents who are visually impaired or have other disabilities, our children, and our seniors;

Whereas addressing the needs of Brookline's growing school population has resulted in one tax override within the last two years and may well result in two to three additional tax overrides during the next ten years;

Whereas Brookline's rapidly increasing property taxes are creating growing hardships for hundreds of Brookline's seniors with modest incomes who have owned and lived in their Brookline home for decades;

Whereas many of Brookline's senior homeowners with modest incomes no longer qualify for the Massachusetts Circuit Breaker Income Tax Credit because of Brookline's escalating residential real estate values during recent years and the declining residential real estate values in the western part of Massachusetts during the same time period;

Whereas Brookline's existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline's senior homeowners with modest incomes;

Whereas certain neighboring communities such as Sudbury and Newton currently offer innovative and more generous programs to their senior homeowners with modest incomes than does Brookline;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities (including but not limited to Sudbury and Newton) offer to senior homeowners with modest incomes, and to make policy recommendations and propose warrant articles for comparable new programs for Brookline and improvements to Brookline's existing senior homeowner property tax relief programs; and

Be it further resolved that said committee will first convene not later than February 1, 2017 and provide to the Board of Selectmen not later than August 15, 2017 a report, policy recommendations, and proposed warrant articles for consideration by the November 2017 Town Meeting;

Note: the Board vote differs from the current AC motion in the first whereas clause (bold and underlined)

Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including but not limited to our veterans, our residents **who are visually impaired or have other disabilities**, our children, and our seniors;

Passed by a Committee Vote of 16-3 in favor

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 33 is a resolution that urges the Selectmen to establish a committee to study ways of enhancing tax relief for Brookline senior homeowners with modest incomes. Rising Brookline property values make it harder for Brookline seniors to qualify for the Massachusetts Circuit Breaker Income Tax Credit. Some of Brookline's current programs for senior tax relief may need to be changed so that they provide relief to those who need it. These issues and programs should be studied further.

The Advisory Committee voted 21–0–6 to recommend FAVORABLE ACTION on an amended Article 33 motion that includes a new initial "Whereas" clause.

BACKGROUND:
The petitioner of Article 33 became very concerned about the impact of the May 2015 override, which funded public schools, on seniors with modest incomes. In addition to supporting the override campaign, she also started to think of ways to enhance tax relief for Brookline seniors, especially since more overrides will almost certainly be needed. The petitioner focused on the Massachusetts Circuit Breaker (CB) Income Tax Credit, created in 1999, which supports seniors 65 and older. As of 2015 CB tax credits provide up to $1,070 based on income (up to $57,000 for singles and up to $85,000 for a couple); and property value ($693,000—based on the state-wide average—and below). Property values statewide are significantly lower than they were in 2008, mostly due to declining property values in western Massachusetts. In Brookline, however, property values have continued to increase. This creates a particularly difficult situation for Brookline seniors: as Brookline's property values continue to increase—often above $693,000—fewer Brookline seniors are now eligible for CB tax credits. In 2009 a peak of 360 Brookline seniors qualified. In 2014, however, only 335 participated in the CB tax credit program—a decrease of 7%. The average support ranged from $902 to $1,050. The petitioner reached out to the State House, Brookline's Assessor, and the Council on Aging, and also examined tax relief programs in Newton and Sudbury to see if Brookline can expand additional tax relief for seniors with modest incomes. The Board of Assessors, Brookline

Community Aging Network (BCAN), and the Advisory Council of the Council of Aging support a study of additional tax relief for seniors.

DISCUSSION:
The Advisory Committee is concerned about the financial needs of older people and their ability to pay property taxes. Brookline has some programs in place to address these concerns, and Town Meeting is consistently supportive of annual proposed tax relief credits for certain classes. It is a puzzle that all 30 Property Tax Work Off slots are consistently filled, but we see a decrease in participation in Circuit Breaker Tax Credits. Some seniors who are eligible may not be participating, but it is also possible that fewer seniors are eligible. Tax relief programs are often modest and very restrictive. It will be very worthwhile to have a committee studying tax relief for seniors and participation rates of various programs.

One option would be to consider changes to the relatively high (5%) interest rate that Brookline charges seniors who participate in the Town's tax deferral program. Newton, which ties the interest rate for similar programs to the Federal Reserve Discount Rate, will only charge 1% in FY2017. In addition, in Newton seniors qualify if their income is less than $60,000 a year, whereas in Brookline the cut-off is set at $55,000.

It also would be worthwhile to study other aspects of Brookline's senior tax deferral program, including the requirement that the holder of any mortgage on a senior's residence subordinate its loan to the lien that the Town imposes as part of its senior tax deferral program.

Other options might include studying Brookline's current residential tax and fee exemptions to identify additional possibilities to provide relief to seniors. Brookline, for example, offers moderate-income seniors a 20% discount on their water and sewer bills, but many condominium residents do not qualify because they do not have separate water meters. Other seniors do not qualify because their incomes and assets are higher than the limits established by the program. Newton has a similar program, but the discount is 30%.

Programs in other communities also may be worth studying. Sudbury, for example, has piloted a "Means Tested Senior Tax Exemption," and Sudbury Town Meeting just voted to continue this program. This program looks at town-wide property values, rather than state-wide averages. Sudbury's program caps property tax payments for qualifying seniors at 10% of their total income.

Currently there is no process to identify necessary changes in tax relief programs, except when a specific Warrant Article comes before Town Meeting. Each of our tax relief programs is more complex than it initially appears. We often do not know who participates (or doesn't) in existing programs—and why they participate.

The Advisory Committee is confident that a study committee will give us more knowledge about who participates in Brookline's senior tax relief programs and the possibilities for improving or expanding those programs. The Advisory Committee also

recognizes that the Assessor's Office has much expertise on questions related to senior tax relief and could offer invaluable support to the study committee.

RECOMMENDATION:

The Advisory Committee by a vote of 21–0–6 recommends FAVORABLE ACTION on the following motion (an amendment to the original language of the Warrant appears in **bold**):

VOTED: That the Town adopt the following resolution:

**Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including, but not limited to, our veterans, our residents with blindness and other disabilities, our children, and our seniors;**

Whereas addressing the needs of Brookline's growing school population has resulted in one tax override within the last two years and may well result in two to three additional tax overrides during the next ten years;

Whereas Brookline's rapidly increasing property taxes are creating growing hardships for hundreds of Brookline's seniors with modest incomes who have owned and lived in their Brookline home for decades;

Whereas many of Brookline's senior homeowners with modest incomes no longer qualify for the Massachusetts Circuit Breaker Income Tax Credit because of Brookline's escalating residential real estate values during recent years and the declining residential real estate values in the western part of Massachusetts during the same time period;

Whereas Brookline's existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline's senior homeowners with modest incomes;
Whereas certain neighboring communities such as Sudbury and Newton currently offer innovative and more generous programs to their senior homeowners with modest incomes than does Brookline;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities (including but not limited to Sudbury and Newton) offer to senior homeowners with modest incomes, and to make policy recommendations and propose warrant articles for comparable new programs for Brookline and improvements to Brookline's existing senior homeowner property tax relief programs; and
Be it further resolved that said committee will first convene not later than February 1, 2017 and provide to the Board of Selectmen not later than August 15, 2017 a report, policy recommendations, and proposed warrant articles for consideration by the November 2017 Town Meeting;

(The Advisory Committee is aware that the Selectmen are offering a motion with a brief addition to the first "Whereas" clause of the resolution. Prior to Town Meeting's consideration of Article 33, the Advisory Committee may reconsider its recommendation in order to vote on including the language added by the Selectmen.)

XXX

## ARTICLE 34

34 ARTICLE

Submitted by: Henry Winkelman, Kenneth Goldstein

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

*Whereas,* the Town of Brookline has committed to taking meaningful actions toward becoming a more age-friendly community;

*Whereas,* the aging of the baby boom population cohort has created a need for a substantial expansion of Brookline's supply of housing for seniors;

*Whereas,* Brookline's need for more affordable housing for seniors with low and moderate incomes is already acute;

*Whereas,* senior citizens benefit from living within walking distance of public transit, services, shopping, and cultural resources;

*Whereas,* Brookline Village is a pedestrian friendly location that meets the living needs of seniors, including those who do not own an automobile;

*Whereas,* the Town's municipally-owned parking lots offer an opportunity for attractive air rights development of senior housing, including for low and moderate income households; and

*Whereas,* the public process leading to the Town's Housing Production Plan identified Town-owned municipal parking lots, including the Town-owned site situated between Station and Kent Streets in Brookline Village as a suitable location for affordable senior housing development;

*THEREFORE,* be it resolved, that Town Meeting urges the Board of Selectmen, the Planning Board and the Housing Advisory Board to pursue a suitable air rights development of age-restricted affordable, mixed-income housing over the existing Town-owned parking lot in Brookline Village situated between Kent and Station Streets across from the Brookline Village MBTA station (Parcel No. 140-05-00);

And act on anything relative thereto.

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## PETITIONER'S ARTICLE DESCRIPTION

Article 34 is a non-binding Resolution submitted by petition that asks the Board of Selectmen, the Planning Board and the Housing Advisory Board to pursue the required steps to pursue on behalf of the Town an appropriate development of affordable or

mixed-income senior housing. This development will utilize the available air rights over the existing Town-owned Kent-Station Street parking lot. The development will front onto Kent Street and Station Streets, opposite the Brookline Village MBTA station.

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

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

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

The Kent-Station Street location, with its proximity to public transit, shopping, eating facilities, and Town government offices was identified as a good example of locations having a positive potential for the creation of more age-restricted housing, including affordable rental housing units.

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## SELECTMEN'S RECOMMENDATION

Article 34 is a non-binding Resolution submitted by petition that seeks to compel the Board of Selectmen, Planning Board and the Housing Advisory Board to pursue the development of a senior citizen restricted affordable housing project over the current Town owned parking lot at Kent and Station Streets. The proposal would retain the existing municipal parking capacity at this location by building the housing project over the lot using "air rights".

The Board of Selectmen agrees with the demonstrated need to develop additional affordable senior housing in Brookline as documented in the recent Housing Production Plan. The Board also believes that the use of municipally owned property can be a cost effective and productive way to develop affordable housing, as was demonstrated at the

new Olmstead development on Town owned land on Fisher Hill. There is some concern that the identification of a single Town owned parcel (the Kent and Station Street lot) limits the consideration of the best possible site for the project, especially given that the Town is planning to conduct a comprehensive "Strategic Asset" study of all municipally owned property and facilities. However, an effort by the Advisory Committee to expand the potential sites for this housing development to include Town owned properties in North Brookline was rejected by the Town Moderator as being beyond the scope of the original Warrant Article. The Board is also sensitive to the demands of staff in the Planning and Community Development department, who are currently consumed with multiple Chapter 40B housing development proposals and involved in the planning for the 9th Elementary School. For this reason, and because of the complexity of planning an air rights development with a private partner, it is expected that this study would be contracted for with a Selectmen's Committee, possibly with an outside consultant. It is anticipated that this study would be funded from the Affordable Housing Trust Fund.

At their meeting on October 25, 2106, the Board voted unanimously to recommend FAVORABLE ACTION on Article 34 with a minor amendment. Under the Therefore clause, the Board voted to substitute the words "develop a proposal" for the word "pursue", to read as follows;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen, the Planning Board and the Housing Advisory Board to develop a proposal for a suitable air rights development of age-restricted affordable, mixed-income housing over the existing Town-owned parking lot in Brookline Village situated between Kent and Station Streets across from the Brookline Village MBTA station (Parcel No. 140-05-00).

The full motion is as follows:

VOTED: THAT THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

Whereas, the Town of Brookline has committed to taking meaningful actions toward becoming a more age-friendly community;

Whereas, the aging of the baby boom population cohort has created a need for a substantial expansion of Brookline's supply of housing for seniors;

Whereas, Brookline's need for more affordable housing for seniors with low and moderate incomes is already acute;

Whereas, senior citizens benefit from living within walking distance of public transit, services, shopping, and cultural resources;

Whereas, Brookline Village is a pedestrian friendly location that meets the living needs of seniors, including those who do not own an automobile;

Whereas, the Town's municipally-owned parking lots offer an opportunity for attractive air rights development of senior housing, including for low and moderate income households; and

Whereas, the public process leading to the Town's Housing Production Plan identified Town-owned municipal parking lots, including the Town-owned site situated between Station and Kent Streets in Brookline Village as a suitable location for affordable senior housing development;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen, the Planning Board and the Housing Advisory Board to develop a proposal for a suitable air rights development of age-restricted affordable, mixed-income housing over the existing Town-owned parking lot in Brookline Village situated between Kent and Station Streets across from the Brookline Village MBTA station (Parcel No. 140-05-00).

Passed by an Electronic Hand Vote of 223 in favor, 30 opposed and 7 abstentions.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 34 is a resolution placed on the Warrant by citizen's petition. It asks the Selectmen, Planning Board, and Housing Advisory Board to pursue development of affordable senior housing above the Town-owned parking lot between Station Street and Kent Street in Brookline Village. Many members of the Advisory Committee supported this general concept in principle, but members also questioned whether the Station/Kent site was the best location for affordable senior housing. The Advisory Committee was aware of the concerns of neighbors and the density of the area near the Station/Kent parking lot. The Advisory Committee thus initially voted to recommend an amended resolution that would have asked that all of the Town-owned parking lots in North Brookline be considered as part of an attempt to identify a possible site for affordable senior housing. The amended resolution also urged that Brookline's Strategic Asset Plan, currently in preparation, be taken into account. The Moderator, however, ruled that the amendment was beyond the scope of the Warrant, so the Advisory Committee reconsidered Article 34.

The Advisory Committee was almost evenly divided and voted 10–9–2 to recommend NO ACTION on Article 34.

BACKGROUND:

The current need for additional senior housing in Brookline is substantial. The Brookline Housing Authority currently has a waiting list of 1,400 seniors, and it is typical of communities across the country. Over the next 20 years, the number of Americans over the age of 65 (40 million) will double, and the need for appropriate housing will become even more acute unless communities work to develop additional homes suitable for seniors. Brookline's rising housing costs present a special problem. According to the petitioners, over 60% of senior renters in Brookline are paying too high a percentage of their income–they are "housing cost-burdened."

Ideally, senior housing should be located in or near a walkable commercial area and near public transportation. But in an urban area, the availability of affordable land for senior housing is limited. The petitioners who are offering Article 34 have looked beyond Brookline to see what solutions other communities have developed. One solution has been the use of air rights for land owned by local government, since the land is already controlled by the municipality or county. The supermarket and hotel over the Massachusetts Turnpike in Newton and a long stretch of that highway in downtown Boston are obvious examples of the use of air rights over public land being used for buildings in the Boston area. And of course the Marriott Hotel on Webster Street is on land leased from the Town, although it is not an air rights project.

Other urban communities, including four in Los Angeles County and at least one in Toronto have done the same thing as a way to find land for senior housing. The projects the petitioners identified have public parking at grade and parking for residents on a second level, with affordable senior housing above. The petitioners have assessed the various Town-owned parking lots and identified the lot between Station Street and Kent Street as a suitable site.

DISCUSSION:
The Station Street site was acquired by the Town by taking two houses. Since the Town has control over the land, it can require that the housing built on the site be affordable permanently, something that cannot be guaranteed with affordable units developed under Chapter 40B. The petitioners' concept would provide public parking that would be accessed from Station Street at grade, and resident parking and housing above. Services for seniors would be integrated into the operation of the building and also would be available to other seniors living in the area. The petitioners' concept calls for the availability of public parking to be visible from the Station St. side, and the existing pedestrian access from the Brookline Village MBTA station to Kent Street would be preserved.

As it was originally drafted, Article 34 asks the Board of Selectmen, Planning Board and Housing Advisory Board to consider an air rights development with the characteristics noted above. The next steps in the proposed process are uncertain, but Town Counsel is studying the concept. The petitioners hope that a committee would be formed to provide oversight over the development of a Request for Proposal (RFP) from appropriate developers, and they would prefer the selection of the Brookline Improvement Coalition, Inc. or some other non-profit developer. Development could be contracted out and supervised by Housing Advisory Board (which has taken a "straw vote" of 6–0 in favor of the Article). But the Town cannot designate a developer without issuing an RFP to which any developer could respond.

The Department of Planning and Community Development objected to the designation of a specific Town-owned site by the proposed RFP, because the Town is currently looking for a consultant to complete a Strategic Asset Plan that will include all Town-owned sites. The Housing Production Plan references the Station/Kent site, and the proponents

have a strong sense of urgency regarding what they see as a housing crisis. They would like to transmit that sense of urgency to the Town.

An RFP would presumably ask developers to conform to certain criteria that could include setback and height restriction in order to answer the concerns of abutters. The Advisory Committee became aware of concerns conveyed by Town Meeting members from Precincts 4, 5 and 6 about the open-ended nature of the proposal and the absence of a schematic. The petitioners, however, believe that debating the specifics in advance of an RFP is premature. Thus they were not prepared to offer a schematic, nor did they present one to the Advisory Committee

The petitioners were pressed on why they focused on this one site rather than suggest a study that would cover all of the potential sites in North Brookline, but they insisted that the Station Street lot was the ideal site because the elevation difference between Station Street and Kent Street made it an ideal location to provide for both public parking and resident parking.

The concept is an interesting one in that it would reduce the headroom for 40B housing that is not restricted to seniors. And 40B developments are typically only 20 to 25% affordable. But there was opposition to the idea of focusing on a specific site rather than looking more broadly at all Town-owned sites that might be appropriate for a project involving the use of air rights.

Initially the Advisory Committee voted 14–5–1 for an amended resolution that would broaden the Article by opening the study up to all Town-owned parking lots in North Brookline. That recommendation reflected concerns that an air rights development over the Station/Kent parking lot would have an adverse effect on Brookline Village—especially the immediate abutters who depend on the open space provided by the parking lot for light and air. Some members of the Committee were concerned that the process should not begin with a Town Meeting vote to focus on a single site. The Committee also hoped that any study would be conducted "in alignment" with the Town's Strategic Asset Plan, if that plan is available in time.

The amended resolution initially recommended by the Advisory Committee was rejected by the Moderator because it was deemed to be outside the scope of the original Warrant Article, which only referred to the Station/Kent parking lot.

The Advisory thus reconsidered Article 34. After a lengthy debate in which members recognized the need for affordable senior housing, but also questioned whether the Station/Kent site was the best location and whether the process should begin with Town Meeting's consideration of a resolution that focused on that site, the Advisory Committee narrowly voted to recommend No Action.

RECOMMENDATION:
The Advisory Committee, by a vote of 10–9–2 recommends NO ACTION on Article 34.

XXX

## Executive Summary

The Moderator's Committee on Leaf Blowers was organized in December 2015, following a November 2015 Town Meeting motion to refer Warrant Article 10, a ban on leaf blowers, to a Moderator's committee.

The Committee submitted a preliminary report to May 2016 Town Meeting, recommended the filing of two Warrant Articles for the November 2016 Town Meeting (WA23-Change to Noise Control and Leaf Blower By-laws, and WA24-Resolution with Respect to Administration of the Leaf Blower By-law), and submits this Final Report. The Committee has recently accepted proposed amendments to WA23 and WA24, as offered by the Advisory Committee, and these comprise the recommendations of the Committee reported herein.

This Report is distributed in the Combined Reports, but the Appendices and Additional Information because of size are not distributed on paper but are available electronically. The Report, the Appendices and Additional Information are all on the Moderator's Committee on Leaf Blowers page on the Town website – www.brooklinema.gov/1288/Moderators-Committee-on-Leaf-Blowers.

The Committee recommends changes to the By-law Article 8.31 -- Leaf Blowers (WA23), and, accordingly, technical changes to By-law Article 8.15 Noise Control By-law, as follows:

1. Combine all regulations regarding leaf blowers into one By-law, Article 8.31, by moving the relevant sections of the Article 8.15 Noise Control By-law into the amended Article 8.31;
2. Make the property owner, or occupant if the property is leased, or manager in control of the property (e.g. a condo association) responsible for allowing any violation that is committed by an agent or contractor, in addition to holding the agent or contractor responsible for any leaf blower By-law violations;
3. Provide that the first offense for each party (property owner and contractor) result in a warning; and that subsequent offenses receive $50 - $150 fines each;
4. Change the Fall start date for permitted use of gasoline powered leaf blowers from September 15th to October 1st, and the end date from November 30th to December 31st;
5. Change the weekend and holiday use end time from 8pm to 6pm;
6. Limit the number of simultaneous leaf blowers in operation, to two, on lots of 7,500 square feet or less;
7. Retain the current 5 acre exemption for Summer use of gasoline powered leaf blowers;
8. Retain the 67dBA noise limit for leaf blowers;
9. Retain an anonymous complaint process;
10. Enable By-law exemptions, at the discretion of the Board of Selectmen;

The Committee also recommended a Resolution (WA24), that the Board of Selectmen consider assigning additional leaf blower By-law compliance and enforcement duties to the Sanitation Division of the Department of Public Works, to include:

1. Taking calls during Town Hall business hours;
2. Investigating and attempting to resolve complaints with the parties involved;
3. Working with the landscape service provider community to build awareness of noise concerns, help further the use of best practices and promote use of protective equipment for operators;

4. Working with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. Issuing warnings and citations, as appropriate;
6. Calling on the Police Department for support and/or enforcement, as appropriate;
7. Tracking, monitoring and reporting, periodically, statistics and resolutions;
8. Communicating and educating Town residents as to their responsibilities to reduce leaf blower noise;
9. Recommending regulation changes, as appropriate;

By upgrading an existing position, rather than creating a new one, the Committee felt that this would require only a modest additional expense while making a significant contribution to increasing compliance and reducing noise from leaf blowers.

**Data Gathering**

During its data gathering phase, the Committee conducted an on-line survey of town residents, through the Town's website, between January and March, 2016. For purposes of receiving public feedback and comment, this survey was considered by the Committee as a complement to the public hearing process. The Committee received over 1,300 responses and over 3,600 comments.

By a wide margin, respondents did not favor a complete gasoline powered leaf blower ban, and did not favor further significant restrictions on leaf blowers.

It was reported by many that noise is their primary concern, and that enforcement of the current By-law is ineffective. Many felt that calling the police was a barrier to reporting noise violations. Also, many commented that excessive use that is currently legal (e.g., excessive cleaning or sweeping of sidewalks), is not addressed by the current By-laws.

The Committee found that complaints to the police average about 120 per recent year. The Committee's analysis of these complaints showed that over 50% of calls made resulted in "nothing found" or "OK", meaning that these calls had no impact on noise reduction. Only about 10 citations have been issued annually. (In 2016, through September 30th, just two citations have been issued.)

With the backdrop that the town has over 8,300 single/two/three family residences and apartment and condominium buildings, and over 250 landscape service providers active in town, the Committee concluded that compliance through education should be its primary focus.

The Committee felt that a two-pronged strategy for compliance and enforcement was needed to have significant impact on reducing noise: Responsibility by the Property Owner and (primarily) non-police education and enforcement of leaf blower use in Brookline.

**Property Owner Responsibility**

Under the present By-law, the operator of a leaf blower is liable for any violation. Accordingly, if a property owner contracts with a landscaper, the property owner is not held responsible.

The Committee believes that taking the responsibility by the Property Owner for a violation committed on the owner's property, is key to increasing leaf blower By-law compliance.

The Committee felt that with this shift in responsibility, that a written warning for the first offense would

encourage property owners to advise their contractors of a need to comply with the law and give the property owner and the contractor time before a second offense might be committed, for the contractor to come into compliance.

**Non-Police Enforcement**
By resolution, the Committee is suggesting that the Board of Selectmen consider assigning responsibility for Leaf Blower By-law enforcement to the Sanitation Division of the Department of Public Works. The division would take on two roles: increase compliance through communication/education, and investigate complaints and enforce the By-law, with assistance from the Police Department. The Committee believes that these efforts would be of modest cost, but could substantially increase By-law compliance and, accordingly, noise reduction.

**Other Provisions**
Some modest changes are proposed in WA23. These are the increase of "quiet time" in the Fall by extending the Summer prohibition of using gasoline powered leaf blowers until October 1. Also the weekend and holiday operating hours have been reduced, changing the allowed time from 8pm to 6pm.

A limit of two leaf blowers being used simultaneously on lot sizes of 7,500 sq. ft. or less has been included, as requested by a number of residents. The Committee (in live tests of leaf blowing in Larz Anderson Park) found that two blowers make little additional perceptible noise and are more time efficient than a single blower.

The proposed amended By-law would permit an exemption from the By-law, by applying to, and approval by the Board of Selectmen. The Committee felt, for example, that a school on less than 5 acres, which is excluded from the current exemption, might appropriately desire to operate equipment in the summer, to clear playgrounds or playing fields.

## Introduction

The November 2015 Special Town Meeting considered Warrant Article 10, which proposed banning operation of all leaf blowers in Brookline. A proposed amendment, accepted by the Petitioners, would have continued an exemption for the Town. Town Meeting voted to refer the subject matter of Article 10 to a Moderator's Committee. Accordingly, the Moderator appointed a seven member committee: John Doggett TMM P13 (elected Chair), Dennis Doughty TMM P3 (elected Secretary), Neil Gordon TMM P1, Benedicte Hallowell TMM P15, Jonathan Margolis TMM P7,Faith Michaels TMM P5, and Maura Toomey TMM P8. The Committee was organized in December 2015, and adopted the following charge:

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

## Summary of Meetings and Activities

Through 10/26/2016, the Committee met 17 times, including 2 public hearings and an observed a live test event of leaf blower operations, in Larz Anderson Park. The Committee also received responses from 1,312 residents from an on-line leaf blower survey that the Committee sponsored.

The Committee divided its work into three phases: data gathering; analysis and solutions; and recommendations and report. The Committee's goal was a final report and, if indicated, warrant article(s), for the Fall Town Meeting in November, 2016.

Meeting agendas included:

- Review of the 6/24/2015 Selectman's Noise By-law Committee's report and findings;
- Review of current noise control and leaf blower regulations Articles 8.15 and 8.31;
- Public hearing on the subject matter of Warrant Article 10, current noise and leaf blower by-laws, and related matters;
- Examination of leaf blower complaint data;
- Review of police enforcement activities;
- Review of the results of a 16 question online survey
- Discussion of the leaf blower regulations of more than 20 other municipalities;
- Evaluation of noise levels and leaf clearing efficiency of different machines (both gasoline and electric) in a live trial conducted by the Parks & Recreation Department;
- Learning about technology developments for noise and battery improvements from a leading manufacturer;
- Meeting with various Town officials and employees, to discuss leaf blower operations, enforcement, health issues related to leaf blower operations, and the legal aspects of current and proposed regulations;
- Consideration of a variety of solutions for leaf blower noise mitigation;Drafting of two warrant articles (By-Law amendment and a Resolution related to mitigation and enforcement) for November 2016 Town Meeting consideration.

## Current Leaf Blower Regulation

Currently, there are two By-laws that regulate leaf blowers and leaf blower use: Article 8.15 – Noise Control[1] and Article 8.31 – Leaf Blowers[2].

Article 8.15 limits the sound level and operational hours of portable leaf blowers. Portable leaf blowers are limited to 67dBa or below sound level, which must be indicated by a sticker on the device, either from the manufacturer (for machines after model year 2010) or from the Town, through testing by the DPW. Operational hours are restricted to between the hours of 8am to 8pm Monday through Friday, and from 9am to 8pm on Saturdays, Sundays and holidays.

Article 8.31 further limits the operation of gasoline powered leaf blowers, to the periods between March 15th and May 15th, and between September 15th and December 15th, in each year.

1 Town of Brookline General By-laws P356 - http://www.brooklinema.gov/DocumentCenter/Home/View/353
2 Town of Brookline General By-laws P465 - http://www.brooklinema.gov/DocumentCenter/Home/View/353

Exceptions to this provision are:
Use of leaf blowers by the Town and its contractors;
Use by nonresidential property owners with parcels that contain at least five acres of open space;
Use of leaf blowers in an emergency declared by the DPW Commissioner.

Article 8.31 may be enforced by a police officer, Building Commissioner (or designee), DPW Commissioner (or designee), or Director of Public Health (or designee), and provides for a warning or $50 fine for the first offense, $100 for the second offense and $200 for the third and subsequent offenses.

## Public and Official Input

The Committee gathered and received public comment and input from eight sources:

- Public hearings;
- Public attendance at Committee meetings;
- Online leaf blower survey;
- Written submissions;
- Town officials;
- Officials from other towns;
- Live field test of various leaf blowers,
- Stihl, a manufacturer of electric and gas powered leaf blowers.

In its 17 Committee Meetings, including two public hearings, the Committee heard from over 30 members of the public, received eight e-mailed comments, met with nine Town officials, one manufacturer representative, six officials from other towns (interviewed by individual Committee members), and 1,312 residents of Brookline, in an on-line survey sponsored by the Committee

## Current Situation

The Committee took stock of the town's current situation concerning the use of leaf blowers, and particularly the Fall and Spring leaf clean-ups, to identify issues that might be addressed by the Committee.

### On-line Survey

#### *Background*

With the help of the Town's IT Department, the Committee sponsored an on-line survey (see Appendix 1) for town residents, using Survey Monkey and accessed via the home page on the Town's website.

The survey was self-selecting and therefore the results are not held by the Committee to be statistically valid. However, the Committee does believe that the responses received are indicative of residents' opinions.

1,312 residents completed the survey, and of those, 1,025 were completed with street name, allowing for analysis by Precinct, by question (see Appendix 2).

Over 3,600 comments (see Additional Information) were received.

***Survey Highlights***

The use of leaf blowers for Fall clean-up, and the associated after-the-snows Spring clean-up, did not concern most survey respondents (see Appendix 1, Question 12). There is a general recognition that the extensive Fall leaf drop we experience, needs to be cleaned up using leaf blowers, although a minority disagreed.

Respondents were asked to rate the impact of leaf blowers on them, considering noise, air quality, health and misuse. Most ranked noise as having the most important impact (see Appendix 1, Question 5).

Respondents were asked if they were in favor of a complete year round ban of gasoline powered leaf blowers (see Appendix 1 Question 8) and a majority were opposed to a ban.

Respondents were asked if they were satisfied with the current restrictions on leaf blowers (see Appendix 1 Question 10), and by a small majority, respondents were satisfied.

Respondents were asked if they favored additional restrictions on leaf blowers (see Appendix 1 Question 11), and a significant majority said that they opposed further restrictions.

A significant majority of respondents rated education aimed at mitigating misuse by landscapers and homeowners as moderately or extremely important (see Appendix 1 Question 7).

And finally, on the issue of exemptions to the By-law (see Appendix 1 Question 9), a majority of respondents favored no exemptions, whereas others favored exemptions for the Town, large open space areas, and institutions.

***On-line Survey Summary***

The survey responses, combined with public hearing input, and correspondence, led the Committee to the preliminary conclusion that leaf blower noise is the primary concern of residents, that there is little appetite for a ban or significantly increased restrictions on leaf blowers, and that education has a significant role to play in any solution to the noise problem.

## Technical Considerations

***Background***

The Committee felt it important to experience leaf blowers in action so that it could better assess the trade-offs of noise, versus speed, versus efficiency, of different machines. In addition, the Committee wanted to examine electric battery powered machine technology, as much input was received on this subject from residents.

The Committee, with the help of the Director of Parks and Open Spaces and a representative of the Stihl Company, a manufacturer of both gasoline and electric leaf blowers, devised a series of outside demonstration tests, performed by Parks and Open Spaces staff, which was held in Larz Andersen Park (see Appendix 3).

The Parks and Open Spaces Department set out two 20ft squares of leaves in Larz Anderson park, on which to perform tests and do sound level measurements. Seven leaf blower models and types and a mulching mower were tested, 5 of the leaf blowers were gasoline powered, and of different power/noise levels, and two were electric, one corded and one battery powered.

The tests were designed to answer a number of questions raised by the Committee and the public:

How noisy are the various machines, in sound level as well as pitch?
Is it better to have a more powerful, noisier machine doing a faster job, than a less powerful, quieter machine running for longer?
Is an electric machine quieter than a gasoline powered one?
Is an electric machine as effective as a gasoline one?
How much faster are two leaf blowers than one?
Is the noise level of two machines significantly greater than that of one?
Which machines perform better clearing leaves from a hedgerow?
Is mulching leaves better (i.e., quieter and more efficient) than blowing them?

***Results***

Generally, the more powerful the blower, the more leaves were cleared in a given time period. The most powerful and noisiest machine (Redmax 77dBA) cleared twice the volume of leaves as the least noisiest gasoline machine (Echo 65dBA) and 12 times more than the corded electric (Toro 68 dBA).

Two blowers working at the same time were at least 50% more effective than one blower, but did not produce significantly more perceptible noise. In fact, when one blower was shut off Committee members could barely discern the difference in sound level of one vs. two machines in operation at the same time. Also, the two most powerful (and loudest) machines cleared only about 16% more leaves than the two quietest gasoline machines.

At 56 dBA, the electric battery model was much quieter than all the other models. However, the low power, short battery life (about 30 minutes on full boost) and considerable expense of this unit (each battery costs around $900) make it not viable for widespread commercial use at this time.

***Technical Considerations Summary***

Having heard a range of machines at different decibel levels, the Committee felt that the machines that conform to the current noise level restriction of 67dBA optimized an acceptable level of noise and a reasonable level of efficiency.

As two machines operating at the same time took much less time to clear the same area that a single machine, with little or no impact on overall perceived noise, the Committee felt that this was an important finding for consideration of any restrictions on the simultaneous use of multiple machines.

The mulching mower was considered noisy, dusty and messy and so the Committee does not consider this a viable option for effectively removing large volumes of leaves.

## Emissions Considerations

### *Background*

Concerns have been raised about leaf blower emissions. These include particulate matter (PM) or dust raised in plumes by gasoline and electric blowers; and for gasoline blowers, all of the emissions associated with the burning of gasoline, including fine PM, carbon dioxide (CO2) and volatile organic compounds (VOCs). The Committee looked at the data regarding these emissions and also considered the health concerns that go with these emissions, which is discussed in the next section.

For its examination of emissions, the Committee relied upon data from the US Environmental Protection Agency (EPA), Massachusetts Department of Environmental Protection (MassDEP) and a report by Banks and McConnell[3] which determines emission levels for all lawn and garden equipment, including leaf blowers.

### *Carbon Dioxide*

As regards the greenhouse gas, $CO^2$, the data show that all lawn and garden equipment in the US are responsible for at most 0.3% of all US $CO^2$ emissions. The Banks and McConnell report concluded *"Because of the relatively small contribution of GLGE CO2 to All Emissions (0.3%), it is not further considered in this report"*. From data in the report, the Committee noted that all US leaf blowers account for an estimated 0.03% of all US $CO^2$ emissions (see Appendix 4). The Committee considers the amount of $CO^2$ emitted from leaf blowers to be minimal, and in and of itself, does not compel further leaf blower regulation.

### *VOCs*

MassDEP monitors emissions of VOCs in Massachusetts and regularly publishes data on sources of these pollutants. Using this data, the Committee determined that lawn and garden equipment accounted for 1.0% of VOCs emitted in MA (see Appendix 5). Again, leaf blowers would be responsible for only 0.1% of VOCs emitted in MA.

### *Dust - Particulate Matter*

MassDEP monitors particulate matter (dust) that is 2.5 microns or less in size (PM2.5), (PM2.5 has been associated with disease) and publishes data concerning the sources of PM2.5 on a regular basis. Using this data the Committee determined that lawn and garden equipment accounted for 0.9% of VOCs emitted in MA (see Appendix 6) and that leaf blowers are responsible for 0.09% of VOCs emitted in MA.

Dust plumes, that can be seen generated by leaf blowing, generally have particles greater than 10 microns in size (PM10) and these fall to the ground fairly quickly (see Appendix 7). The Committee considered a study by Fitz, et al, University of California[4] , which examined leaf blowing dust plumes, and which were measured as being dissipated in the background level of dust within 5 to 10 minutes, and not traveling more than a 20-30ft from the source.

### *Air Quality*

3 "National Emissions from Lawn and Garden Equipment" Dr. Jamie Banks, Quiet Communities and Robert McConnell EPA - www.epa.gov/sites/production/files/2015-09/documents/banks.pdf

4 "Particulate matter emissions factors and emissions inventory from leaf blowers in use in the San Joaquin valley" Dennis Fitz et al, University of California Riverside - www.valleyair.org/newsed/leafblowers/leafblower.pdf

For the last 15 years Brookline's overall air quality, as measured by MassDEP to the US Environmental Protection Agency (EPA) standard, has been rated as "Good," which is the highest rating on the EPA air quality scale ranging from "Good" to "Hazardous" (see Appendix 8).

***Emissions Considerations Summary***

The Committee concluded that leaf blowers contribute a minimal amount of emissions, as compared with all other sources of the same emission, and add no significant burden to $CO^2$, VOC and PM2.5 emissions that are already in the environment, in significant ways, from other sources. The fact that Brookline's air overall air quality is rated "Good" by MassDEP, and has been improving for the last 15 years, confirmed to the Committee that emissions from leaf blowers were not a compelling problem requiring further leaf blower regulation.

As to dust plumes raised during operations, these are temporary in nature, dissipating in 5-10 minutes, and can be avoided by waiting, or by crossing the road, or the operator stopping temporarily. Overall air quality indicates that there are no long term compelling problems due to these plumes requiring further leaf blower regulation.

**Health Considerations**

***Background***

Concerns were raised by residents about health and the use of leaf blowers. In order to address health issues, the Committee consulted with and heard from Dr. Alan Balsam, the Director of Health, and Dr. Anthony Schlaff, Chair of the Town's Advisory Council on Public Health (ACPH).

***Health Department and ACPH Observations***

Dr. Balsam pointed out that the responsibility of the Health Department is to assess what risks are serious risks and what mitigation (if any) is reasonable. The Health Department held a public hearing in October 2015 (see Appendix 9) regarding the health issues associated with leaf blower use, and concluded that although leaf blowers do kick up particulates, and are noisy, there is no compelling public health threat from their use.

For the general population, the Health Department supports noise-based controls (for nuisance control), enforcement of the existing laws, and would support limits on the numbers of leaf blowers used simultaneously in a given area. In addition, the Department was concerned about the use of leaf blowers for debris sweeping of sidewalks and parking lots as opposed to their recommended use in clearing yards. The Health Department believes that a total ban on leaf blowers is unnecessary.

***Health Considerations Summary***

The Committee felt that given the low levels of emissions, and the opinions of the Town's Health Director and the Advisory Council on Public Health, that there is no compelling health reason to further restrict the use of leaf blowers.

**DPW Considerations**

***Background***

The DPW maintains 600 acres, close to 120 sites, and 450 miles of public roadways, and is consequently a major user of leaf blowers. While the look and appearance of a clean and tidy Town is a DPW goal, safety is a significant factor requiring the removal of leaves and debris around town.

***DPW Observations***

The DPW believes retaining the exemption from the leaf blower By-laws is necessary, and justified by their "public good" argument. The cleaning work done by the DPW is for the benefit of all town residents and the safety aspects are particularly important in clearing game fields, for example, so that residents, and children in particular, can use the Town's outdoor areas safely. Tests have been done by the Department, comparing rakes to leaf blowers (see Appendix 10). The Department estimates that if it had to conform to the By-law without an exemption, the additional time taken to perform the cleaning tasks would cost $500,000 or more, annually.

The DPW is cognizant of its responsibility to adhere to the spirit of the By-law whenever possible, and takes complaints concerning their leaf blower operations seriously.

**Exemptions Issue**

The Town exemption from the leaf blower By-law is a concern to many residents. At least 40% of the on-line survey respondents believed the Town should not have an exemption. In discussing Article 10 of Fall Town Meeting in 2015, the Advisory Committee voted 12 in favor of retaining the exemption, 8 against.

In the on-line comments, the main reason cited for opposition to Town exemption was that an exemption was inherently unfair, that "what is sauce for the goose, is sauce for the gander."

***DPW Considerations Summary***

The Committee agrees with the DPW that there is a "public good" argument and there should be an ongoing exemption for the Town. However, the Committee also believes the Town should continue efforts to reduce leaf blower use, and improve its "best practices."

## By-law Enforcement

***Background***

Enforcement of the By-law is currently the responsibility of the Police Department. Calls are given "Level 1" priority (same priority as a medical emergency). Most calls are initiated by the public, but police officers also initiate enforcement.

***Police Report Analysis 2014***

In 2014, there were 121 leaf blower related calls received by the police (See Appendix 11).

| | |
|---|---|
| 69 | Nothing showing/gone on arrival or "OK" |
| 38 | Advised company/individual of complaint, or warned |
| 14 | Citations written |
| **121** | **Total** |

***Police Report Analysis 2015***
In 2015, there were 117 leaf blower related calls received by the police (See Appendix 11).

| | |
|---|---|
| 60 | Nothing showing/gone on arrival or "OK" |
| 46 | Advised company/individual of complaint or warned |
| 11 | Citations written |
| **117** | **Total** |

***Police Report Analysis 2016YTD***
In 2016, there are 70 leaf blower related calls received by the police (See Appendix 11).

| | |
|---|---|
| 47 | Nothing showing/gone on arrival or "OK" |
| 21 | Advised company/individual of complaint or warned |
| 2 | Citations written |
| **70** | **Total** |

In 2014-2015, 21 calls were found to relate to use exempt from the By-law due to either Town operations, or contractor operations working for the Town.

***Location of Calls***
As the maps in Appendix 12 show, in 2015, about 60% of calls were north of Route 9. There are about ten "hot spots," accounting for 50-60% of all calls made. The four largest "hot spots" are Beacon St-Borland St area, Brookline Ave-Village Way area, Pleasant St-Dwight St area and the Woodland Rd-Hammond St. area.

In 2015-16, police sectors 1,8 and 9 (for Sector map see Appendix 13) accounted for over 50% of calls. In 2014-15, Police Sectors 5 and 8 had almost half the calls.

***Department Observations***
The Police Department informed the Committee that the Department was not opposed to a leaf blower (or contractor) registration scheme, but did not want it to be a police function. Also, the Department considered that a notion of "standing" for complaint callers be considered, such as a complaint to be reported by someone in a position to be directly adversely affected by the noise or other factors. The Department considered that targeting "hot spots," particularly with outreach to those involved, would perhaps greatly improve the overall situation. The Department also did not think that picking a distinct day, per neighborhood, for leaf blowers to be active, would be workable in practice. The concern was voiced that a concentration of landscaper trucks in one area could cause parking and traffic problems.

***Enforcement Summary***
The Committee noted that over 50% of complaint calls, on average, resulted in no noise reduction, as there either was nothing to be seen or no violation. It appears that enforcement by interdiction is ineffective. The Committee felt that the Police Department was taking seriously the enforcement of the current By-laws, but that the numbers of complaints and citations seemed low compared to the volume of complaints voiced in the public hearing, correspondence, and the on-line survey. Many comments from the public voiced concern about calling or using the police to enforce the leaf blower By-law as they

felt the police have more important things to do.

All of these factors led the Committee to begin consideration of alternative enforcement processes.

## Solutions

The Committee felt it important to survey the experience of other cities and towns as to their experiences and solutions to the leaf blower noise problem.

### Other Cities and Towns

***Background***

The Committee found about 61 communities in the US that have enacted local ordinances to restrict leaf blower usage: 37 in California, 12 in New York State, and 3 in Massachusetts; the remaining 9 are in Illinois, Florida, Oregon, Maryland and New Jersey.

Almost all 34 communities that have enacted complete bans on leaf blowers, gasoline and electric, or just gasoline, are located in CA.

The Committee closely examined 21 communities, 12 of which were in NY, 3 in MA, 3 in CA and 2 in IL (see Appendix 12).

***Findings***

The reviewed communities limit the noise level of leaf blowers to between 65-80 dBA, with 70dBA being the most common.

Outside of CA, which does not have seasonal bans, the dates for gasoline powered leaf blower bans in 18 communities do not vary much and hours of operation restrictions vary slightly, but are generally consistent.

Four communities have restrictions as to the number of leaf blowers per lot based on square footage, and three communities register landscape service companies: Cambridge MA; Sleepy Hollow NY; and Tarrytown NY. Cambridge (pop. 100,000+) and Sleepy hollow (pop. 10,000+) have about 50 registered companies each.

In terms of exemptions, a number of communities have lists, exempt large lots, or residents. Only one, Palo Alto, does not exempt city or town operations.

In terms of enforcement, most cities and towns use the police, but an increasing number, six, that the Committee identified, are using code enforcement officers, using the police for enforcement only outside of business hours.

Enforcement in many communities is a challenge. For example, the police in Palo Alto relinquished enforcement responsibility in 2014 and only recently this year did the city appoint a code enforcement officer to address resident leaf blower noise complaints. Santa Monica CA , about the same population size as Brookline, has about 1,200 complaints annually. Both communities have a complete ban on gasoline leaf blowers.

The Committee found only one community, Burlingame CA, which allows leaf blowers to be

used one day a week (and weekends) in a given section of the city for each day of the week.

In Massachusetts, the Boston Globe reported (March 29th 2015) that " . . . control efforts have failed in other communities. Attempts to limit the blowers in Cohasset, Framingham, Marblehead, Newton, Salem, Swampscott, and Wellesley, for example, have been shot down, though Newton is reconsidering the idea." and "A proposal for a seasonal ban was set to go before Lincoln voters at Town Meeting this spring, but a study group decided there wasn't enough support among residents and held off."

***Other Cities and Towns Summary***
As a result of this external survey, the Committee felt that further examination of the dates and times of our gasoline powered leaf blower ban should be reviewed; that exemption lists were not used by most towns and should be used judiciously; that although not frequently used, that restrictions on blowers by lot size needs further examination; and that the code enforcement officer approach needs further examination.

**Solutions Considered and Rejected**

***Leaf Blower Ban***
Leaf blower bans are almost exclusively in California where the climate, and, accordingly, the leaf drop, is vastly different from that experienced in Brookline. Also, 360 (28%) respondents to the on-line survey were in favor of a ban whereas the majority, 764 (59%) were not (see Appendix 1, Question 8).

The Committee considered a leaf blower ban and rejected this as a solution.

***"One Day a Week" Operation***
The Committee felt the one place that this did work, Burlingame, being in California where the climate, the seasons and tree-drop activity is completely different, was not applicable to our situation in Brookline. In addition, the input from the DPW and the police department who both considered this idea as unworkable were major considerations.

The Committee considered a "one day a week" leaf blower operation not practical.

***Landscape Service Provider Registration***
The Committee had a number of discussions on this idea, which was reviewed in detail with Selectman Franco, who chaired the Selectman's Noise By-law Committee. Also, two of our Committee members served on the Selectman's Noise By-law Committee. The Committee's main recommendation was to implement a registration system for landscape providers.

During the course of its meetings, the Committee compiled a list of landscape service providers observed doing business in the Town. There are well over 250 accounted for. (This list has been provided to the police department to help them in their enforcement and communication efforts.)

There were many concerns expressed by the Committee about registering this number of

providers, as the resources required to do the registration and manage the list would be significant. The Committee sought Town Council's advice on legal aspects of registration for example, as to whether the Town could remove a company from the list, effectively barring it from working in the Town, if that company committed multiple violations. Depriving individuals or companies of their livelihood was not a topic the Committee relished exploring. There was some question as to whether this is in effect a license, which would then be subject to a licensing hearing, adding potentially a significant burden on the Selectmen to process 250+ applications each year.

In discussions with the Cambridge officials whose licensing board runs their registration system, it was unclear whether any benefits – less noise or noise complaints – accrued to the residents of that city as a result. Also, Cambridge had only 50 companies registered (which suggests that many operate without registration).

At the end of the day, the Committee did not believe that registration would in any way directly reduce noise from leaf blowers in the town. In the worst case scenario it would be a large bureaucracy costing all involved, with little to no reduction in noise.

The Committee thus rejected the idea of a Landscape Service Provider Registration System.

***Approved Equipment List***

The Committee considered an Approved Equipment List instead of a blanket 67 dBA limit as the Committee observed, during its tests, that some machines rated greater that 67dBA actually were, due to pitch, less annoying than ones at or below that level. One city in California has such a list whereby if the equipment is on the list, regardless of its labeled noise level sticker it is permissible to use it.

The Committee felt that to maintain the list and even getting agreement as to what machines would get on the list would be difficult to manage. The Committee observed that the one list on the CA City's website was almost completely out of date – the machines listed were no longer available.

The Committee concluded that an Approved Equipment list is not workable.

**Solutions Considered and Agreed**

***Property Owner Responsibility***

The Committee discussed the responsibility of the landscape provider or operator who is regarded, by the community and the police, as being responsible for any violation of the By-laws.

Currently the property/home owner considers the landscape provider or contractor responsible for complying with the noise and leaf blower By-laws.

The Committee firmly believes that the property owner should also be responsible for actions of their agents or contractors regarding what happens on their property. The Committee also believes that to have the property/owner involved in ensuring that their contractor adheres to the law will greatly increase compliance and, accordingly, reduce

noise.

Increasing compliance also reduces the pressure on the enforcement agencies, which currently is the police.

Expanding the responsibility of any By-law violation to the property owner (or condominium association, etc.) on their property from the agent or contractor to the owner, involves that owner in a conversation with their agent or contractor to obey the law, since the property owner would be liable for fines that result from failure to observe the law.

The Committee believes that this should significantly increase compliance and reduce violations of the leaf blower By-laws. In addition, it lays the groundwork for another proposed change, a shift to non-police enforcement and education compliance efforts, which the Committee expects will ultimately leaf blower compliance, and noise, in the community.

The Committee proposes legislation to make the property owner liable for the violations of the leaf blower By-law by his/her agents or contractor as well as the agent or contractor themselves. The Committee proposes to have a mandatory first violation warning which will be followed by fines of $50 each for the second offense, $100 each for the third offense and $150 fines each for successive offenses, in any one calendar year.

***Civilian (i.e., non-police) Enforcement***
The Committee believes that the primary enforcement of the Leaf Blower By-law should become the responsibility of a civilian employee within DPW, not the Police.

The Committee sees the civilian enforcement specialist as a key point person in communicating with property owners and the landscape service providers. Reporting periodically as part of the Department's "dashboard" also will provide an important window on the progress on noise and complaint reduction.

The Committee, through a Town Meeting Resolution, proposes that the Town change from a Police enforcement approach to civilian responsibility for leaf blower By-law compliance, education of the By-law and best practices for property owners and landscape service providers. An example of a best practices brochure has been produced in three languages, English, Spanish and Portuguese (see Appendix 13).

***Other Changes***
There are several lesser changes that the Committee believes will reduce the impact of leaf blower noise,

These are:

- Change the Fall start and end period by two weeks, by moving the permitted use date of gas blowers from September 15th to October 1st and moving the end date of permitted use from December 15th to December 31st
- Change the weekend and holiday permitted end hour from currently 8pm, to 6pm

The change of start and end date for Fall gasoline powered leaf blower operation enables

there to be more "quiet" time for residents during (hopefully) nice outdoor weather in September. Usually, leaves have not started falling, so this is not a burden on landscapers or home owners. To extend the end date to December 31st provides for more winter cleanup time (weather permitting) which would potentially reduce the need for leaf blowing in the Spring.

Twelve out of 17 towns that have seasonal bans were using Sept 30th/Oct 1st as the end of their seasonal ban.

The Committee is proposing that the weekend and holiday times of permitted operation be set to end at 6pm rather than the current 8pm.

***Mechanisms***

The Committee has produced two Warrant Articles for Town Meeting to consider: a Warrant Article which proposes to consolidate all proposed changes from A8.15 to the new leaf blower By-law A8.31, and a Resolution for the Selectmen to consider shifting primary responsibility for leaf blower By-law compliance to DPW.

BOARD OF SELECTMEN

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Benjamin J. Franco
Nancy S. Heller
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