TOWN OF BROOKLINE
MASSACHUSETTS

REPORTS OF SELECT BOARD AND ADVISORY COMMITTEE

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held in the High School Auditorium

Tuesday, November 19, 2019

at

7:00 P.M.

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

Town of Brookline

SELECT BOARD

Bernard W. Greene, Chair

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

Heather Hamilton **Raul A. Fernandez**

Melvin A. Kleckner, Town Administrator

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MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Michael Sandman, 115 Sewall Ave., No. 4, Chair, Street 232-7125
Carla Benka, Vice-Chair, 26 Circuit Road 277-6102
Benjamin Birnbaum, 15 Feneno Terrace, ... 276-5944
Harry Bohrs, 27 Toxeth Street 566-3556
Clifford M. Brown, 9 Hyslop Road 232-5626
Carol Caro, 1264 Beacon Street, #2 739-9228
John Doggett, 8 Penniman Place 566-5474
Dennis Doughty, 57 Perry Street 739-7266
Harry Friedman, 27 Clafin Road BE2-0122
Janet Gelbart 216 St. Paul Street #601 566-5616
David-Marc Goldstein, 22 Osborne Road 232-1943
Neil Gordon, 87 Ivy Street ..... (508)265-1362
Susan Granoff, 52 Vernon Street #1 731-0822
Amy Hummel, 226 Clark Road 731-0549
Alisa G. Jonas, 333 Russett Road 469-3927
Janice Kahn, 63 Craftsland Road 739-0606
Steve Kanes, 89 Carlton Street 232-2202
Bobbie M. Knable, 243 Mason Terrace 731-2096
David Lescohier, 50 Winchester Street 383-5935
Carol Levin, 61 Blake Road 731-0166
Pamela Lodish, 195 Fisher Avenue 566-5533
Mariah Nobrega, 33 Bowker Street 935-4985
Carlos Ridruejo, 16 Holland Road 901-5908
Michael Sandman, 115 Sewall Ave., No. 4 232-7125
Lee L. Selwyn, 285 Reservoir Road 277-3388
Kim Smith, 22 Brington Road 277-1606
Stanley Spiegel, 39 Stetson Street 739-0448
Claire Stampfer,50 Sargent Crswy. 448-4201
Charles Swartz, 69 Centre Street 731-4399
John VanScoyoc, 307 Reservoir Road 731-3584
Christine M. Westphal, 31 Hurd Road 738-7981
Neil Wishinsky, 20 Henry Street, No.2 739-0181

Lisa Portscher, Executive Assistant, Town Hall 730-2115

NOVEMBER 19, 2019
SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

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2.	Approval of collective bargaining agreements. (Human Resources)
3.	FY2020 budget amendments. (Select Board)
4.	Appropriation for a four section Driscoll School (Ananian TMM10, et al)
5.	Authorization for the disposal and sale of the real property at 15-19 Oak Street.. (Nobrega, TMM4, et al)
6.	Resolution pertaining to the annual stipends received by members of the Select Board and other committees. (McClelland TMM11, et al)
7.	Resolution pertaining to the maintenance of pavement markings. (Miller)
8.	Legislation authorizing the Select Board to offer a senior discount program for water and sewer rates. (Select Board)
9.	Resolution pertaining to the establishment of a real estate transfer fee (MacMillan,TMM4, et al)
10.	Amend Article 4.9 of the Town's General By-laws to dissolve the Committee on Campaigns. (Select Board)
11.	Authorization for the termination and relocation of certain sewer and drainage easements at Kerrigan Place. (DPW)
12.	Authorization to enter into Solar Power Purchase Agreements (PPAs) for rooftop solar photovoltaic installations on certain Town properties. (Select Board)
13.	Amend Section 4.07 of the Town's Zoning By-Law to allow Accessory Ground-Mounted Solar Photovoltaic Installations. (Planning Department, et al)
14.	Amend Section 6.04 of the Zoning By-law pertaining to electric vehicle parking. (Ananian TMM10), et al)
15.	Amend Section 6.02 of the Zoning By-law to eliminate minimum parking requirements and establish maximum parking ratios for storefront uses within the Transit Parking Overlay District (TPOD). (Pehlke, TMM2, et al)

16. Resolution pertaining to E-Scooters and other micro-mobility devices (Warren, TMM1, et al)

17. Resolution pertaining to Open-Air Parking Licenses and Electric Vehicle Charging Outlets. (Ananian, TMM10, et al)

18. Amend the Town's Zoning By-laws to change the definition of "lodger" and permit certain short term lodging. (Gladstone, TMM16, et al)

19. Amend the Town's Zoning By-law to allow Accessory Dwelling Units (Blood)

20. Amend the Town's Zoning By-law to allow Micro Unit Dwellings in the Coolidge Corner General Business District. (Zuker)

21. Adoption of a new General By-Law prohibiting new fossil fuel infrastructure in major construction. (Gray TMM10, et al)

22. Amend Article 8.31 of the Town's General By-laws to prohibit the use of gasoline powered leaf blowers. (Warner)

23. Amend Article 8.31 of the Town's General By-laws to prohibit blowing leaves and debris onto public property. (Warner)

24. Amend Article 3.14 of the Town's General By-laws pertaining to the Commission for Diversity, Inclusion and Community Relations and Citizen Complaints (Conquest, TMM6)

25. Adoption of a new General By-law prohibiting the Town from using Face Surveillance. (Hummel, TMM12)

26. Rename the Coolidge Corner School the "Florida Ruffin Ridley School" (School Committee, et al)

27. Rename the Coolidge Corner School the "Ethel Weiss School" (Ruttman)

28. Rename the Coolidge Corner School the "Robert I. Sperber School" (Selwyn, TMM13)

29. Resolution pertaining to an Economic-Equity Advancement Fund (O'Neal, TMM4)

30. Adoption of a new General By-Law pertaining to the establishment of a Brookline Community Engagement Plan (Brown, TMM1, et al)

31. Resolution pertaining to the Town's response to Climate Change. (Milner-Brage TMM12, et al)

32. Amend the Town's General By-laws to replace "Chairman" and "Chairperson" with "Chair". (Gordon, TMM1, et al)

33. Amend the Town's General By-laws to replace references to "inhabitants" and "Citizens". (Gordon, TMM1)

34. Amend the Town's General By-laws regarding eligibility for membership on boards, commissions and committees. (Gordon, TMM1)

35. Reports of Town Officers and Committees. (Select Board)

2019 SPECIAL TOWN MEETING WARRANT REPORT

The Select Board and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2019 Special Town Meeting to be held on Tuesday, November 19, 2019 at 7:00 pm.

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

ARTICLE 1

FIRST ARTICLE

Submitted by: Select Board

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for every Town Meeting in case there are any unpaid bills from a prior fiscal year that are deemed to be legal obligations of the Town. Per Massachusetts General Law, unpaid bills from a prior fiscal year can only be paid from current year appropriations with the specific approval of Town Meeting.

SELECT BOARD'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. As of the writing of this Recommendation, there are no unpaid bills from a previous fiscal year. Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on September 10, 2019.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
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.

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

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ARTICLE 2

SECOND ARTICLE

Submitted by: Human Resources

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

SELECT BOARD'S RECOMMENDATION

At the time of their vote there were no Collective Bargaining agreements for Town Meeting authorization. As a result, the Board recommended NO ACTION, by a vote of 5-0 taken on September 10, 2019.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 2 will be included in the supplemental mailing.

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ARTICLE 2

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY & RECOMMENDATION:

There are no collective bargaining agreements that require Town Meeting approval at this time.

By a unanimous vote Advisory Committee recommends NO ACTION on Article 2.

ARTICLE 3

THIRD ARTICLE
To see if the Town will:

A) Appropriate additional funds to the various accounts in the fiscal year 2020 budget or transfer funds between said accounts;

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

C) Appropriate $234,757, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2020, the warrant article is necessary to balance the budget based on higher than projected State Aid and marijuana-related revenue, appropriate ride-share revenue, and to adjust the debt service budget to reflect the cost of the BAN issued for the Oak Street properties.

SELECT BOARD'S RECOMMENDATION

Article 3 of the Warrant for the 2019 Fall Town Meeting proposes amendments to the FY2020 budget. The article is required to address four outstanding items:

1. the final State budget contained higher state aid allocations for Brookline than assumed in the budget approved by Town Meeting;
2. Adjust the debt service budget to reflect the BAN cost of the Oak Street properties which will be funded from the general fund.
3. Appropriating revenue from the assessment on transportation network companies (TNCs) to fund transportation projects;
4. Appropriating revenue from the Host Community Agreements with Recreational Marijuana Facilities.

ADDITIONAL NET STATE AID

The final State budget resulted in an additional $76,789 of Net State Aid (without Offsets[1]), bringing the total FY2019 Net State Aid (without Offsets) figure to $15,036,984, an increase of $162,582 (1.1%) over FY2019. As a result, $76,789 is available for appropriation. The table on the following page shows how the final State budget results in $76,789 more in Net State Aid (without Offsets):

[1] Offset Aid consists of Library aid which goes directly to the Library, without appropriation. The Library will have $1,517 more available than in FY18.

	FY19 FINAL CHERRY SHEET	FINANCIAL PLAN	FY20 FINAL CHERRY SHEET	Final vs. GOV	% CHANGE FROM GOV	VARIANCE FROM FY19	% CHANGE FROM FY19
RECEIPTS							
Ch. 70	14,774,677	14,929,417	15,006,787	77,370	0.5%	232,110	1.6%
Unrestricted General Gov't Aid	6,564,518	6,741,760	6,741,760	0	0.0%	177,242	2.7%
Vets Benefits	80,861	83,618	83,618	0	0.0%	2,757	3.4%
Exemptions	40,779	29,174	29,174	0	0.0%	(11,605)	-28.5%
Charter School Reimbursements	6,847	1,924	1,876	(48)	-2.5%	(4,971)	-72.6%
TOTAL RECEIPTS	**21,467,682**	**21,785,893**	**21,863,215**	**77,322**	**0.4%**	**395,533**	**1.8%**
CHARGES							
County	972,017	1,042,646	1,042,646	0	0.0%	70,629	7.3%
Air Pollution Dist.	31,755	33,397	33,397	0	0.0%	1,642	5.2%
MAPC	30,840	31,698	31,698	0	0.0%	858	2.8%
RMV Surcharge	233,480	233,480	235,800	2,320	1.0%	2,320	1.0%
MBTA	5,219,741	5,364,833	5,364,833	0	0.0%	145,092	2.8%
SPED	7,957	19,068	19,068	0	0.0%	11,111	139.6%
School Choice Sending Tuition	71,558	70,611	44,863	(25,748)	-36.5%	(26,695)	-37.3%
Charter School Sending Tuition	25,399	29,965	53,926	23,961	80.0%	28,527	112.3%
TOTAL CHARGES	**6,592,747**	**6,825,698**	**6,826,231**	**533**	**0.0%**	**232,951**	**3.5%**
OFFSETS							
Libraries	88,500	87,271	89,070	1,799	2.1%	570	0.6%
TOTAL OFFSETS	**88,500**	**87,271**	**89,070**	**1,799**	**2.0%**	**570**	**0.6%**
NET LOCAL AID	**14,963,435**	**15,047,466**	**15,126,054**	**78,588**	**2.4%**	**162,619**	**1.1%**
NET LOCAL AID W/O OFFSETS	**14,874,935**	**14,960,195**	**15,036,984**	**76,789**	**0.5%**	**162,582**	**1.1%**
GROSS LOCAL AID	**21,556,182**	**21,873,164**	**21,952,285**	**79,121**	**0.4%**	**396,103**	**1.8%**

Pursuant to the compromise plan for composting, funding $15,000 will be allocated to the Sanitation program to support composting in the public schools the remaining $61,789 will be divided via the Town/School Partnership, which translates to $30,895 available for the Town and School budgets. The recommendation for the Town appropriation is to support the Fire Department's budget due to the reallocation of personnel funding to meet the expenses of an ongoing court judgment.

DEBT SERVICE ADJUSTMENT: The debt service budget needs to be adjusted to reflect the change in funding source for the BAN secured for the Oak Street properties. Since the debt exclusion held in May of 2019 failed, the source of funds needs to shift to sources within the tax levy. Fortunately we built a contingency into the debt service budget that allows for the adjustment to be made without a negative impact to other areas of the budget. Revenue will decrease by $140,217 and a corresponding decrease to the debt service budget will also be made.

APPROPRIATION OF RIDE SHARE REVENUE

The Town has received $234,757 in funds from the State assessment on transportation network companies (TNCs), such as Uber and Lyft. One half of the $0.20 per ride assessment was distributed to the Town and can be appropriated "to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services in the city or town including, but not limited to, the complete streets program established in

[G.L. c. 90I, § 1] and other programs that support alternative modes of transportation." St. 2016, c. 187, § 8(c)(i).

The following projects are recommended by the Transportation Division:

$77,000 Brookline Elder Transportation Support 3 different programs to increase access to transportation services for Brookline seniors in support of the Town's goal of Aging in Place and our designation as a World Health Organization Age Friendly Community.

$40,000 Public Transportation Bus Stop Amenities Purchase and install up to 20 benches at designated bus stops identified by the Public Transportation Advisory Committee's Bus Stop Amenities project. Will also support the Pedestrian Advisory Committee and Brookline Community Aging Network's request for additional pedestrian seating along main sidewalk walking routes of Harvard Street and Washington Street.

$117,757 Olmsted Bridle Path Restoration Concept Design This is partial funding for the 2018 November Town Meeting requested study to determine the feasibility of the restoration of the Olmsted Bridle Path on Beacon Street, identify necessary relocations or removals of infrastructure, and estimate the construction cost to provide for a 10 to 15 foot dedicated multi-use path for use by bikes, scooters, joggers, runners, wheelchairs, and other non-vehicular transportation modes adjacent to the MBTA right of way. The study of this project was rated one of the highest priority projects at the June 2019 Select Board Sustainability Summit, is included in the Transportation Board approved Green Routes Master Network Bike Plan, and has the support of local and regional groups from a wide array of perspectives including transportation and disability advocates. Money will be used as a local match for potential grants or as part of a larger allocation of town funds to pay for the total cost of the study, which is scoped out for $200,000.

APPROPRIATION OF HOST COMMUNITY AGREEMENT (HCA) REVENUE

The Host Community Agreements allow for a "community impact fee" that can be used to mitigate the actual and anticipated expenses resulting from the operation of the Marijuana Establishment. At the Annual Town Meeting there was insufficient data to build a budget estimate and we anticipated making an adjustment in November to provide resources to the impacted departments. The Board authorized expenditures in advance of appropriation to provide immediate enforcement and mitigation activities in the area of Brookline Village impacted by NETA operations.

Upon holding a hearing and considering this recommendation, the Advisory Committee's capital subcommittee voted to modify the proposal by recommending the reallocation of $80,000 in funding to support an "Ombudsperson" position. These funds would come from a reduction in the programs allocated to the Public Health department. The Town Administrator agreed with the subcommittee's recommended change after considering the testimony of residents in various public hearings or meetings. Clearly, the licensing and management of the recreational cannabis industry is a new and challenging issue for the Town. Several municipal departments are involved with planning/zoning, negotiation, licensing, budgeting and enforcement. The affected community has complained that they do not have a single point of

contact to ask questions or communicate concerns. The Board supports the funding of an administrative position located within the Town Administrator/Select Board office to serve as a central coordinating resource and a point of contact for the public. The position would make use of the web site, social media and other techniques for communication and will collect relevant data necessary to evaluate licensing issues and mitigation activities.

The appropriation under Article 3 is a first step in the allocation of Community Impact Fee funding. We are being conservative in the projection of funding, especially given the recent ban on vaping products and the petition to seek Town Meeting restrictions on future licensing. In addition, at this time we are limiting funding as much as possible to direct expenses associated with the operation of the NETA facility in Brookline Village in order to be fully in compliance with the guidance established by the state Cannabis Control Commission. At the Annual Town Meeting in May, we will propose establishing a special stabilization fund to place HCA Community Impact fees into while additional consideration is made to use such funds. Finally, it is unclear whether the community impact funding will remain available after the initial five year period in the law. As a result, we want to emphasize that this funding is considered temporary and any permanent positions created by it are subject to defunding. The Town will utilize the FY2021 budget development process to further refine proposed use of these funds, and have the following recommendations for Town Meeting appropriation:

$379,944 Police

Overtime for enforcement and inspections	$80,916
2 Additional parking enforcement officers	$95,592
3 Additional Officers for a bike unit	$161,436
Uniforms and supplies	$25,000
Drug Recognition Expert training	$17,000

$134,738 DPW

Dedicated litter personnel	$52,738
Overtime for park enforcement	$30,000
Big Belly Trash unit	$12,000
Signage and supplies	$15,000
Vehicle for addl. FTE	$25,000

$141,048 Health

Substance Abuse position	$61,048 (formerly School funded)
PT Substance abuse counselors (B-PEN)	$25,000
Community Health Specialist	$50,000
Program Supplies	$5,000

$80,000 Select Board

Marijuana Ombudsperson	$80,000

$131,930 Benefits

Fringe benefits for new FTEs	$131,930

On October 29. 2019 the Select Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 3 proposes several adjustments to the FY 20 budget as well as allocation of Transportation Network Company ("Ride Share") Funds. The Advisory Committee recommends FAVORABLE ACTION on Article 3.

BACKGROUND:
Budget adjustments are required to reflect the receipt of higher than projected State Aid and the receipt of marijuana-related revenue in accordance with the Town's Host Community Agreement with NETA. Further, the debt service budget needs to be adjusted to reflect the cost of the Bond Anticipation Note issued for the Oak Street properties adjacent to the Baldwin School Playground. Lastly, Town Meeting is required to appropriate Transportation Network Company (TNC) revenue.

State Aid: In accordance with a May 21, 2019 agreement between the Town Administrator and former Superintendent Andrew Bott, $15,000 of the additional $76,789 in State Aid will be allocated to DPW to cover the costs of composting activities in the public schools. The remaining sum will be divided in accordance with the Town/School Partnership. Select Board staff has recommended that the Town's share, equaling $30,895, be allocated to the Fire Department's FY 20 budget, which has reallocated some of its funds to cover expenses related to the judgment of an ongoing court case. The School Department plans to use its share to fund its ongoing structural deficit.

Community Impact Funds: Article 3, as proposed, would allocate $867,660 in Community Impact Funds, part of the Host Community Agreement, as follows:

- $379,944 for the Police Department to cover overtime for enforcement and inspections. That total breaks down to 240 hours for an inspectional lieutenant and 1300 hours for patrol officers; two additional personnel working 37.5 hours per week for the remainder of the year in parking enforcement; three additional officers for a bike unit, with each officer working 40 hours per week; and uniforms and supplies.
- $134,738 for DPW. These dollars would fund dedicated litter personnel; overtime for park enforcement (12 additional hours per week with an initial focus on Emerson Garden, Boylston Street Playground, Brookline Avenue Playground, and the Muddy River); a Big Belly trash unit; signage and supplies; and a vehicle for additional personnel.
- $221,048 for the Health Department to fund a Substance Abuse position (formerly in the School Department budget); part-time substance abuse counselors; a Community Health specialist; an Environmental Health Policy Analyst; and program supplies.
- $131,930 to cover benefits for the new full-time positions.

TNC (Ride Share) Funds: This is the second year that the town has received one half of the $.20 per ride State assessment on Transportation Network Companies such as Uber and Lyft. The amount received, $234,757, is slightly higher than last year ($207,442). The Transportation Board has recommended that of this year's funding, $77,000 be used to support three of the transportation programs for elders of the Council on Aging (COA): "TRIPPS" –Transportation, Resources, Information, Planning and Partnership for Seniors; "H.E.L.P" - the COA's Medical Transportation and Escort Program; and subsidies for the COA's On-demand Ride-Share Program. Of the remaining amount, the Transportation Board recommends $40,000 be allocated for public bus stop benches (each bench costing approximately $2500); and $117,757 be directed towards the Olmsted Bridle Path Restoration Study and Concept Design. The total cost of the Study is $200,000, $50,000 of which may come from the State and the remaining balance from the Town's Capital Improvement Program.

Debt Service: Town Meeting voted to purchase the Oak Street townhouses in December 2018 and a Bond Anticipation Note was secured to acquire the properties. With the defeat of the debt exclusion ballot in May 2019, an alternative source of funds is now needed to cover the debt interest. Contingency plans built into the debt service budget in the event that the ballot question was defeated allow for servicing the debt on the townhouses' purchase without negatively impacting other areas of the budget. Select Board staff recommends that Item 34b ("Funded debt-Interest") of Article 9 in the May 2019 Annual Town Meeting Warrant be reduced by $140,217.

DISCUSSION:

Advisory Committee members are well aware of the concerns expressed by residents of the neighborhoods abutting NETA and are supportive of most of the mitigation proposed by Select Board staff and department heads. During the discussion of Article 3, it was acknowledged that funds to support such mitigation are not likely to be long-term since the Town's agreement regarding Community Impact Fees lasts for only five years and that any extension would be voluntary. As a result, the Town could be in the position of hiring additional employees only to have their funding source disappear five years from now.

In response, Select Board staff noted that two of the departments that would add positions (Police and DPW) using Impact Fees have typical churn and could be phased out with turnover. The positions proposed for the Health Department would be treated in the same way as positions created by grants to the department. (If the grants are not renewed, the positions do not continue.)

The Advisory Committee supports the recommendation of its Capital Subcommittee to use some of the Impact Fees to create an ombudsperson position within the Select Board's Office. This individual would be in charge of communications with affected neighbors and neighborhoods and with NETA; would coordinate and oversee mitigation efforts; would track the impact of such mitigation efforts; and would report to the Select Board on a regular basis. The Committee recommends reducing some of the funds originally directed to the Health Department to support this new position.

All of the measures described above and scheduled to go into effect after approval by Town Meeting, could be refined as the FY 21 operating budget is developed.

The Committee also endorses the other components of Article 3, specifically recognizing that TNC dollars are restricted to transportation services-related projects, including Complete Streets or other programs that support alternative modes of transportation. All three recommendations of the Transportation Board noted above clearly meet such requirements.

RECOMMENDATION:
By a vote of 24-0-1, the Advisory Committee recommends FAVORABLE ACTION on the following:

VOTED: That the Town:

1. Amend the FY2020 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
	$737,511	$80,000	$817,511
10. Police Department	$16,936,644	$379,944	$17,316,588
11. Fire Department	$15,703,922	$30,895	$15,734,817
13. Public Works	$15,674,679	$149,738	$15,824,417
15. Health and Human Services	$1,236,042	$141,048	$1,377,090
21 Schools	$117,354,211	$30,895	$117,385,106
23 b. Group Health	$31,518,881	$131,930	$31,650,811
34 b. Funded Debt - Interest	$6,856,426	-$140,217	$6,716,209

2. Appropriate $234,757 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure and to meet the appropriation transfer $234,757 from the Transportation Network Company special revenue account.

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FY2020 BUDGET - TABLE 1 MAY, 2019

		FY17 ACTUAL	FY18 ACTUAL	FY19 BUDGET	FY20 BUDGET	PROPOSED AMENDMENTS	FY20 AMENDED BUDGET	$$ CHANGE FROM FY19	% CHANGE FROM FY19
	REVENUES								
	Property Taxes	204,064,199	211,374,488	224,490,479	238,958,751	(140,217)	238,818,534	**14,328,055**	**6.4%**
	Local Receipts	28,627,979	36,277,400	29,778,588	29,943,370	852,660	30,796,030	**1,017,443**	**3.4%**
	State Aid	19,705,394	20,352,973	22,112,759	22,307,826	76,789	22,384,615	**271,856**	**1.2%**
	Free Cash	5,311,538	8,354,017	8,516,286	9,081,257		9,081,257	**564,971**	**6.6%**
	Other Available Funds	7,840,067	3,050,446	4,872,678	3,238,731		3,238,731	**(1,633,948)**	**-33.5%**
	TOTAL REVENUE	**265,549,177**	**279,409,325**	**289,770,790**	**303,529,935**	**789,233**	**304,319,168**	**14,548,378**	**5.0%**
	EXPENDITURES								
	DEPARTMENTAL EXPENDITURES								
	1 . Select Board	710,634	738,119	731,791	737,511	80,000	817,511	**85,720**	**11.7%**
	2 . Human Resources	734,670	755,582	678,268	653,495		653,495	**(24,773)**	**-3.7%**
	3 . Information Technology	1,953,280	1,922,893	2,028,342	2,032,347		2,032,347	**4,005**	**0.2%**
	4 . Diversity, Inclusion, and Community Relations	231,634	228,918	272,149	276,642		276,642	**4,494**	**1.7%**
	5 . Finance Department	3,174,052	3,372,305	3,349,839	3,410,309	0	3,410,309	**60,470**	**1.8%**
	a. Comptroller	*587,376*	*588,341*	*685,500*	*697,828*		*697,828*	***12,328***	***1.8%***
	b. Purchasing	*655,723*	*661,607*	*717,277*	*741,164*		*741,164*	***23,887***	***3.3%***
	c. Assessing	*687,608*	*694,167*	*720,154*	*720,716*		*720,716*	***562***	***0.1%***
	d. Treasurer	*1,243,344*	*1,428,190*	*1,226,908*	*1,250,602*		*1,250,602*	***23,693***	***1.9%***
	6 . Legal Services	1,052,847	1,055,753	1,076,126	1,142,204		1,142,204	**66,078**	**6.1%**
	7 . Advisory Committee	21,196	21,427	27,805	28,042		28,042	**237**	**0.9%**
	8 . Town Clerk	761,507	562,943	792,040	662,765		662,765	**(129,275)**	**-16.3%**
	9 . Planning and Community Development	975,267	1,006,669	1,157,325	1,216,269		1,216,269	**58,944**	**5.1%**
	10 . Police	16,478,636	16,151,311	16,719,112	16,936,644	379,944	17,316,588	**597,476**	**3.6%**
	11 . Fire	15,007,729	15,070,184	15,584,343	15,703,922	30,895	15,734,817	**150,474**	**1.0%**
	12 . Building	7,554,334	7,653,367	8,345,682	8,606,282		8,606,282	**260,600**	**3.1%**
(1)	13 . Public Works	15,540,196	16,336,101	15,533,488	15,674,679	134,738	15,809,417	**275,929**	**1.8%**
	a. Administration	*881,248*	*885,065*	*918,667*	*935,457*		*935,457*	***16,790***	***1.8%***
	b. Engineering/Transportation	*1,151,132*	*1,179,727*	*1,309,832*	*1,360,161*		*1,360,161*	***50,329***	***3.8%***
	c. Highway	*4,504,869*	*4,944,741*	*5,227,069*	*5,194,588*	*92,738*	*5,287,326*	***60,257***	***1.2%***
	d. Sanitation	*3,245,364*	*3,267,293*	*3,260,840*	*3,543,591*	*12,000*	*3,555,591*	***294,751***	***9.0%***
	e. Parks and Open Space	*3,599,580*	*3,766,756*	*4,083,137*	*4,058,129*	*30,000*	*4,088,129*	***4,992***	***0.1%***
	f. Snow and Ice	*2,158,002*	*2,292,518*	*733,945*	*582,755*		*582,755*	***(151,190)***	***-20.6%***
	14 . Library	4,129,662	4,147,017	4,196,362	4,266,111		4,266,111	**69,749**	**1.7%**
	15 . Health and Human Services	1,201,816	1,181,028	1,242,374	1,236,042	141,048	1,377,090	**134,716**	**10.8%**
	16 . Veterans' Services	308,507	303,845	342,378	342,585		342,585	**207**	**0.1%**
	17 . Council on Aging	916,512	902,328	957,812	977,355		977,355	**19,542**	**2.0%**
	18 . Recreation	1,020,333	1,027,649	1,093,345	1,120,983		1,120,983	**27,638**	**2.5%**
(2)	19 . Personnel Services Reserve	715,000	715,000	715,000	715,000		715,000	**0**	**0.0%**
(2)	20 . Collective Bargaining - Town	1,148,529	784,317	1,400,693	2,470,000		2,470,000	**1,069,307**	**76.3%**
	Subtotal Town	*71,772,811*	*72,437,441*	*76,244,275*	*78,209,187*	*766,625*	*78,975,812*	***2,731,537***	***3.6%***
							0		
	21 . *Schools*	*101,118,780*	*105,196,458*	*110,658,255*	*117,354,211*	*30,895*	*117,385,106*	***6,726,852***	***6.1%***
	22. . *Vocational Education Assessments*	*0*	*21,753*	*92,895*	*92,895*		*92,895*	***0***	***-***
	Subtotal Education	*101,118,780*	*105,218,211*	*110,751,150*	*117,447,106*	*30,895*	*117,478,001*	***6,726,852***	***6.1%***
	TOTAL DEPARTMENTAL EXPENDITURES	**172,891,591**	**177,655,652**	**186,995,425**	**195,656,294**	**797,520**	**196,453,814**	**9,458,389**	
	NON-DEPARTMENTAL EXPENDITURES								
(1)	23 . Employee Benefits	54,682,308	59,317,285	63,046,019	66,306,696	131,930	66,438,626	**3,392,607**	**5.4%**
(3)	*a. Pensions*	*19,720,540*	*21,519,358*	*23,174,765*	*24,915,433*		*24,915,433*	***1,740,668***	***7.5%***
	b. Group Health	*26,821,422*	*29,055,009*	*30,746,239*	*31,518,881*	*131,930*	*31,650,811*	***904,572***	***2.9%***
	c. Health Reimbursement Account (HRA)	*0*	*0*	*0*	*0*		*0*	***0***	
(3)	*d. Retiree Group Health Trust Fund (OPEB's)*	*3,774,838*	*4,480,080*	*4,570,465*	*4,781,980*		*4,781,980*	***211,515***	***4.6%***
	e. Employee Assistance Program (EAP)	*24,900*	*22,825*	*28,000*	*0*		*0*	***(28,000)***	***-100.0%***

		FY17 ACTUAL	FY18 ACTUAL	FY19 BUDGET	FY20 BUDGET	PROPOSED AMENDMENTS	FY20 AMENDED BUDGET	$$ CHANGE FROM FY19	% CHANGE FROM FY19
	f. Group Life	*131,381*	*132,145*	*145,000*	*145,000*		*145,000*	***0***	***0.0%***
	g. Disability Insurance	*11,076*	*13,436*	*46,000*	*46,000*		*46,000*	***0***	***0.0%***
(3)	*h. Worker's Compensation*	*1,450,000*	*1,450,000*	*1,450,000*	*2,050,000*		*2,050,000*	***600,000***	***41.4%***
(3)	*i. Public Safety IOD Medical Expenses*	*250,000*	*200,000*	*200,000*	*0*		*0*	***(200,000)***	***-100.0%***
(3)	*j. Unemployment Compensation*	*300,000*	*200,000*	*200,000*	*200,000*		*200,000*	***0***	***0.0%***
	k. Medical Disabilities	*19,810*	*15,709*	*40,000*	*40,000*		*40,000*	***0***	***0.0%***
	l. Medicare Coverage	*2,178,341*	*2,228,723*	*2,445,551*	*2,609,403*		*2,609,403*	***163,852***	***6.7%***
(2)	24 . Reserve Fund	3,348,737	1,939,266	2,547,870	2,689,494		2,689,494	**141,623**	**5.6%**
	25 . Stabilization Fund	0	0	0	0		0	**0**	
	26 . Affordable Housing	158,539	576,803	545,112	200,000		200,000	**(345,112)**	**-63.3%**
	27 . Liability/Catastrophe Fund	144,322	203,644	456,762	389,700		389,700	**(67,062)**	**-14.7%**
	28 . General Insurance	316,595	334,959	420,830	507,952		507,952	**87,122**	**20.7%**
	29 . Audit/Professional Services	129,632	123,252	137,000	142,000		142,000	**5,000**	**3.6%**
	30 . Contingency Fund	13,374	11,874	15,000	15,000		15,000	**0**	**0.0%**
	31 . Out-of-State Travel	2,039	110	3,000	3,000		3,000	**0**	**0.0%**
	32 . Printing of Warrants & Reports	34,479	44,567	55,000	55,000		55,000	**0**	**0.0%**
	33 . MMA Dues	12,281	12,588	13,222	13,553		13,553	**331**	**2.5%**
	Subtotal General	*4,159,998*	*3,247,063*	*4,193,796*	*4,015,699*		*4,015,699*	***(178,098)***	***-4.2%***
(1)	34 . Borrowing	10,255,515	12,577,453	15,658,637	18,968,479	(140,217)	18,828,262	**3,169,625**	**20.2%**
	a. Funded Debt - Principal	*7,859,250*	*9,007,500*	*10,219,250*	*11,952,053*		*11,952,053*	***1,732,803***	***17.0%***
	b. Funded Debt - Interest	*2,381,652*	*3,566,569*	*5,242,387*	*6,856,426*	*(140,217)*	*6,716,209*	***1,473,822***	***28.1%***
	c. Bond Anticipation Notes	*3,250*	*0*	*137,000*	*100,000*		*100,000*	***(37,000)***	***-27.0%***
	d. Abatement Interest and Refunds	*11,363*	*3,384*	*60,000*	*60,000*		*60,000*	***0***	***0.0%***
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**69,097,820**	**75,141,801**	**82,898,452**	**89,290,874**	**(8,287)**	**89,282,587**	**6,384,135**	**7.7%**
	TOTAL GENERAL APPROPRIATIONS	**241,989,410**	**252,797,453**	**269,893,877**	**284,947,167**	**789,233**	**285,736,400**	**15,842,523**	**5.9%**
	SPECIAL APPROPRIATIONS								
	35 . Town Building Rehab/Upgrade (revenue financed)				55,000		55,000		
	36 . Fire Station Renovations (revenue financed)				600,000		600,000		
	37 . Police/Fire Radio Infrastructure (revenue financed)				900,000		900,000		
	38 . Fire Drafting Pit (revenue financed)				50,000		50,000		
	39 . Traffic Calming / Safety Improvements (revenue financed)				265,000		265,000		
	40 . Bicycle Access Improvements (revenue financed)				31,000		31,000		
	41 . Parking Meters (revenue financed, transter from Parking Meter Fund)				161,040		161,040		
	42 . Street Rehabilitation (revenue financed ($1.75M) + Re-appropriation ($228,225))				2,028,225		2,028,225		
	43 . Sidewalk Repair/Reconstruction (revenue financed)				328,000		328,000		
	44 . Fire alarm call box system (revenue financed)				1,125,000		1,125,000		
	45 . Water Meter MTU Replacement (revenue financed Water and Sewer fund)				265,000		265,000		
	46 . Netherlands Road Facility Improvements (revenue financed Water and Sewer fund)				455,000		455,000		
	47 . Larz Anderson Park (revenue financed)				600,000		600,000		
	48 . Robinson Playground Design (revenue financed)				100,000		100,000		
	49 . Playground Equipment, Fields, Fencing (revenue financed)				310,000		310,000		
	50 . Town/School Grounds Rehab (revenue financed)				160,000		160,000		
	51 . Tennis Court rehabilitation (revenue financed)				200,000		200,000		
	52 . Comfort Stations (revenue financed)				350,000		350,000		
	53 . Tree Removal and Replacement (revenue financed)				235,000		235,000		
	54 . Eliot Recreation Center Bathroom Renovation (revenue financed Rec Revolving fund)				50,000		50,000		
	55 . School Furniture Upgrades (revenue financed)				110,000		110,000		
	56 . HVAC Equipment (revenue financed)				150,000		150,000		
	57 . Town/School ADA Renovations (revenue financed)				80,000		80,000		
	58 . Town/School Energy Conservation Projects (revenue financed)				185,000		185,000		
	59 . Town/School Energy Management Systems (revenue financed)				125,000		125,000		
	60 . Town/School Bldg Security / Life Safety Systems (revenue financed)				260,000		260,000		
	61 . Town/School Compactor Replacements (revenue financed)				50,000		50,000		

		FY17 ACTUAL	FY18 ACTUAL	FY19 BUDGET	FY20 BUDGET	PROPOSED AMENDMENTS	FY20 AMENDED BUDGET	$$ CHANGE FROM FY19	% CHANGE FROM FY19
	62 . School Building Rehab/Upgrade (revenue financed)				198,000		198,000		
	63 . Classroom Capacity (revenue financed)				1,450,000		1,450,000		
	64 . Water System Improvements (utility bond)				2,000,000		2,000,000		
	65 . Wastewater System Improvements (utility bond)				3,000,000		3,000,000		
	66 . Town/School Bldg Envelope/Fenestration Repairs (bond)				1,500,000		1,500,000		
	67 . Driscoll School Reconstruction (bond)						0		
	68 . Pierce School Feasibility (bond)				2,000,000		2,000,000		
(4)	**TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS**	**8,879,374**	**9,720,862**	**10,979,868**	**9,767,030**		**9,767,030**	**(1,212,838)**	**-11.0%**
	TOTAL APPROPRIATED EXPENDITURES	**250,868,784**	**262,518,315**	**280,873,745**	**294,714,197**	**789,233**	**295,503,430**	**14,629,685**	**5.2%**
	NON-APPROPRIATED EXPENDITURES								
	Cherry Sheet Offsets	89,197	86,983	88,500	87,271		87,271		
	State & County Charges	6,393,642	6,492,524	6,592,747	6,825,698		6,825,698		
	Overlay	1,840,902	1,722,221	1,762,675	1,877,769		1,877,769		
	Deficits-Judgments-Tax Titles	25,000	25,000	453,123	25,000		25,000		
	TOTAL NON-APPROPRIATED EXPEND.	**8,348,741**	**8,326,728**	**8,897,045**	**8,815,737**	**0**	**8,815,737**	**(81,308)**	**-0.9%**
	TOTAL EXPENDITURES	**259,217,525**	**270,845,043**	**289,770,790**	**303,529,935**	**789,233**	**304,319,168**	**14,548,378**	**5.0%**
	SURPLUS/(DEFICIT)	**6,331,652**	**8,564,281**	**0**	**0**	**0**	**0**	**0**	

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

FY20 BUDGET - TABLE 2 MAY 2019

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)	786,626	7,080	4,000	17,600		2,205			817,511
Human Resources Department (Human Resources Director)	313,646	286,809	20,400	31,000		1,640			653,495
Information Technology Department (Chief Information Officer)	1,190,574	545,773	10,350	17,550		268,100			2,032,347
Diversity, Inclusion, and Community Relations (Director)	226,017	35,600	10,500	3,650		875			276,642
Finance Department (Director of Finance)	2,374,880	913,757	46,960	29,907	1,375	43,430			3,410,309
Legal Services (Town Counsel)	771,430	251,309	4,500	113,100		1,865			1,142,204
Advisory Committee (Chair, Advisory Committee)	23,902		3,275	570		295			28,042
Town Clerk (Town Clerk)	546,413	94,872	17,750	2,450		1,280			662,765
Planning and Community Department (Plan. & Com. Dev. Dir.)	1,106,873	91,034	9,712	4,550		4,100			1,216,269
Police Department (Police Chief)	15,411,953	719,471	244,900	91,000	293,095	556,169			17,316,588
Fire Department (Fire Chief)	14,861,165	166,426	191,952	31,700	212,912	270,662			15,734,817
Public Buildings Department (Building Commissioner)	2,705,666	3,205,653	29,750	13,900	2,567,943	83,370			8,606,282
Public Works Department (Commissioner of Public Works)	8,523,548	4,053,061	997,750	53,500	1,075,059	1,086,500	20,000		15,809,418
Public Library Department (Library Board of Trustees)	3,113,564	226,075	610,764	4,700	267,884	43,124			4,266,111
Health & Human Services Department (Health & Human Svcs Dir)	1,091,268	217,902	20,100	4,120	39,515	4,185			1,377,090
Veterans' Services (Veterans' Services Director)	175,502	2,388	650	163,535		510			342,585
Council on Aging (Council on Aging Director)	842,458	43,583	19,763	4,250	61,601	5,700			977,355
Recreation Department (Recreation Director)	841,770	23,037	86,480	12,400	153,276	4,020			1,120,983
School Department (School Committee)									117,385,106
Total Departmental Budgets	**54,907,254**	**10,883,830**	**2,329,556**	**599,482**	**4,672,660**	**2,378,030**	**20,000**		**193,175,919**
DEBT SERVICE									
Debt Service (Director of Finance)								18,828,262	18,828,262
Total Debt Service								**18,828,262**	**18,828,262**
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	24,915,433								24,915,433
Group Health Insurance (Human Resources Director)	31,650,811								31,650,811
Retiree Group Health Insurance - OPEB's (Director of Finance)	4,781,980								4,781,980
Group Life Insurance (Human Resources Director)	145,000								145,000
Disability Insurance	46,000								46,000
Workers' Compensation (Human Resources Director)	2,050,000								2,050,000
Unemployment Insurance (Human Resources Director)	200,000								200,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	2,609,403								2,609,403
Total Employee Benefits	**66,438,626**								**66,438,626**
GENERAL / UNCLASSIFIED									
Vocational Euducation Assessments									92,895
Reserve Fund (*) (Chair, Advisory Committee)				2,689,494					2,689,494
Liability/Catastrophe Fund (Director of Finance)				389,700					389,700
Housing Trust Fund (Planning & Community Develpoment Dir.)				200,000					200,000
General Insurance (Town Administrator)		507,952							507,952
Audit/Professional Services (Director of Finance)		142,000							142,000
Contingency (Town Administrator)				15,000					15,000
Out of State Travel (Town Administrator)		3,000							3,000
Printing of Warrants (Town Administrator)	25,000	20,000	10,000						55,000
MMA Dues (Town Administrator)				13,553					13,553
Town Salary Reserve (*) (Director of Finance)	2,470,000								2,470,000
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	**3,210,000**	**672,952**	**10,000**	**3,307,747**					**7,293,594**
TOTAL GENERAL APPROPRIATIONS	**124,555,880**	**11,556,782**	**2,339,556**	**3,907,229**	**4,672,660**	**2,378,030**	**20,000**	**18,828,262**	**285,736,400**

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

ARTICLE 4

FOURTH ARTICLE

Submitted by: C. Scott Ananian, TMM 10, (correspondent), Dave Gacioch, TMM 13, Beth Gilligan, Jesse Gray, TMM 10, Andreas Liu, TMM 10, Kim Loscalzo, A. Nicole McClelland, TMM 11.

To see if the Town will vote to appropriate, borrow or transfer from available funds, $108,800,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee to reconstruct the Driscoll School,

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This is a duplicate of special appropriation item 32 under Article 9 submitted by the Advisory Committee for the May 2019 Town Meeting warrant. The special appropriation was converted to a resolution at the May 2019 Town Meeting; the resolution stated "that Town Meeting urges the Select Board to prepare a debt exclusion question specifically for a 4-section Driscoll School and to place said question on the ballot of a special town election, to be held no later than the Special Town Meeting in Fall 2019." This resolution passed by a vote of 153-57-15. In anticipation of the Select Board potentially placing the called-for debt exclusion question on the ballot after the warrant closes, the original special appropriation is being resubmitted for the Fall Special Town Meeting warrant. As in the Spring, this article could be used to either appropriate the funds authorized by a debt exclusion passed by the voters before Town Meeting, converted to an appropriation contingent on a debt exclusion vote scheduled no more than 90 days after Town Meeting, or converted again to a resolution.

As of the closing of the warrant, it is expected that the School Committee's Capital Subcommittee will vote on a recommendation for a long-term capital plan including the Driscoll School at their September 10 meeting, and will present this recommendation to the full School Committee on September 12. The Select Board would have to vote to authorize a debt exclusion ballot by October 1 to hold an election on November 5, the traditional "first Tuesday in November" election day. There are no competing state or national elections this year. Delaying the election date past November 5 conflicts first with the Veterans Day weekend, and then with Town Meeting the following week.

SELECT BOARD'S RECOMMENDATION

Article 4 is a petitioned article that asks the Town to appropriate funds for the construction of the Driscoll School. In the aftermath of the failed override for the bundled Driscoll/Baldwin projects, the Board needed to understand the School Committee's revised plans to address school enrollment growth. In May, 2019, Town Meeting voted on a Resolution that encouraged the Board to place the Driscoll project on the ballot prior to the 2019 Special Town Meeting. The Board felt that they could not act on the Driscoll project until they had a formal report from the School Committee on its Town-wide plan for addressing classroom needs and how the Driscoll project fits into that plan. The Board received this report on October 1, and commenced a series of public discussions, including a public hearing, on the possibility of scheduling an election for the purpose of placing the Driscoll debt exclusion question on the ballot.

The Board heard from Driscoll School parents on the importance of this project, and also heard concerns expressed by the Advisory Committee and others about the current design and an emerging need for office space for district-wide professional staff. The Board encouraged the School Committee to explore and report back to the community about whether there is an opportunity for some or all of the needed office space to be sited at the new Driscoll School and to layout for the Brookline community in the next few weeks (and hopefully before Town Meeting) the final program for a renovated and rebuilt Driscoll School.

The Select Board voted to set an election date of December 10, 2019. With the election now scheduled, the Board struck the unnecessary Advisory Committee language with regard to scheduling an election.

The Board voted 4-0-1 FAVORABLE ACTION on the following motion:

VOTED: That the Town appropriate, borrow, or transfer from available funds up to $108,800,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, including the evaluation of the feasibility of providing office space for district-wide staff of the Brookline Public Schools, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

ROLL CALL VOTE:

Aye:	Abstain:
Greene	Heller
Franco	
Hamilton	
Fernandez	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 4, as submitted, is a duplicate of Special Appropriation Item 32 under Article 9 in the May 2019 Town Meeting Warrant, which provided for funding the construction of a new Driscoll School.

The Advisory Committee recommends FAVORABLE ACTION on Article 4, as amended.

BACKGROUND:
With the defeat of the debt exclusion ballot question, Item 32 under Article 9 could not be approved by Town Meeting last May. Town Meeting did, however, pass a resolution which stated "that Town Meeting urges the Select Board to prepare a debt exclusion question specifically for a 4-section Driscoll School and to place said question on the ballot of a special town election, to be held no later than the Special Town Meeting in Fall 2019." The resolution was approved by a vote of 153-57-15.

On September 26, 2019, the School Committee unanimously voted to endorse a Long-term Capital Plan that included a 4-section Driscoll School, a 5-section Pierce School, and a ninth school at a location to be determined. The Committee's goal is to have a new Driscoll School ready to open in the Fall of 2022.

To date, the Select Board has not placed the called-for debt exclusion question on a ballot, therefore if Article 4 were to be approved by Town Meeting in November, it would need to include conditional language regarding a debt exclusion vote. (That vote would need to be scheduled no more than 90 days after the November Town Meeting.) Alternatively, Town Meeting could vote to convert the article to another resolution.

It should be noted that while the School Committee has developed a plan to address the impacts of enrollment growth, that plan currently does not address the need to relocate the offices of up to 60 district staff members by September 2020. The need for such relocation stems from decisions to not renew either the lease for office space at 24 Webster Place or the lease for classroom space at 62 Harvard Street. Forty-two staff members from Webster Place and an additional 18 staff members, who will be moved out of the Sperber Education Center in order to accommodate the students now attending classes in the Harvard Street building, will be without workspace next fall. School administrative staff estimates that between 15,000 and 25,000 square feet of office space will be needed, but it has not been made clear how these numbers were calculated or where that office space is to be found.

DISCUSSION:
Few members of the Advisory Committee questioned the need to go forward with a new Driscoll school, but a significant number of members questioned whether the excessively high cost of the schools that Brookline builds was necessary or financially sustainable.

Examples of new schools designed and built for less money in neighboring communities were noted.

Other comments and observations included the following:

- There are no cost estimates assigned to the School Committee's Long-term Capital Plan, making it difficult to consider the $108.8 million price tag for Driscoll within any kind of budgetary context and continuing the unfortunate practice of presenting each renovated or new school as a discrete project.

- Architects are not given a price or a price range to guide them in the design process and the Education Plan for each new school building, developed by the Public Schools of Brookline, does not mention costs.

- When the Town partners with the School Building Assistance Bureau ("MSBA"), it must follow the MSBA's guidelines, but in those instances when there is no MSBA participation, the School department does not appear to have written guidelines that reflect standards for school buildings, i.e. size of classrooms and offices, number of music and art rooms, number and size of gyms, etc. Communities such as Newton have such standards.

- If the Town does not receive MSBA funds, does it still need to build all of its schools according to MSBA standards in order to ensure equity and consistent quality across the system or could other standards be used?

- Some design elements in the current schematic design plans for the school, which may be aesthetically pleasing and contribute to the "wow" effect of the project, were questioned as to whether they were either appropriate for an elementary school or fiscally prudent. Examples of such design elements include the multi-story atrium because of its inherent extra costs including fire-protection and noise attenuation; locating the cafeteria at the base of the atrium, rather than in an enclosed space; the monumental stairs; the glass railings throughout the atrium; and finally the location of the multipurpose room, with its large fenestration, adjacent to Washington Street, the busiest street on the site.

- While changes to a design, particularly to decrease project costs, are sometimes achieved through "value-engineering," it was also noted that when the proposed changes alter the initial design concept to a very substantial degree, the best approach is to scrap the initial design and start anew. It was argued that in the case of the current design for the new school building, the elimination of the atrium space would be a very substantial modification, in essence causing the initial design to be abandoned.

- A peer review of the design, with the goal of reducing the currently estimated project cost, could be very useful. There is approximately $270,000 of unexpended funds in the FY 19 Schematic Design allocation for Driscoll School.

- While it was acknowledged that members of the Driscoll School Building Committee chose the least expensive option presented to them, it was also pointed out that $108,800,000 still makes the project a very expensive one.

- Supporters of Article 4 pointed out that delaying Driscoll would not only postpone a necessary step in addressing student enrollment growth and attendant problems, but it would also increase the cost of the project. They noted that construction costs have been increasing by 8% per year, consequently for every week the school project is delayed, the cost increases $175,000. In response it was stated that building costs don't inevitably continue to increase, but rather that increases (and decreases) in the price of labor and materials respond to a host of factors, including economic recessions.

- Although because of the bundled nature of last Spring's debt exclusion ballot question it is impossible to determine why the Driscoll project was rejected by the voters, it is not unreasonable to believe that cost may have played a factor in the defeat of the initiative. The high cost of Driscoll may jeopardize funding for Pierce and subsequent projects, including a ninth school and the renovation and expansion of the Baker School.

- The possibility of including office space for a number of district employees in the Driscoll design should be explored and the additional cost compared to other options for relocating district staff.

RECOMMENDATION:
There were a number of proposals that attempted to impose a spending limit on the project in order to underscore the strong sentiment of many members that the project costs should be reduced. A motion to reduce the dollar amount by 20% (from $108,800,000 to $87,040,000) received support from about one-third of Committee members. However since consensus on a dollar amount for savings could not be reached, the Advisory Committee simply included general language regarding cost effectiveness and program delivery efficiency in its motion.

By a vote of 18-3-4, recommends FAVORABLE ACTION on the following motion:

> That the Town appropriate, borrow, or transfer from available funds up to $108,800,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, including the evaluation of the feasibility of providing office space for district-wide staff of the Brookline Public Schools, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to be held no earlier than January 15, 2020 and no later than 90 days after the dissolution of the November First Special Town Meeting to fund the debt service on said borrowing.

XXX

ARTICLE 4

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Article 4, as submitted, is a duplicate of Special Appropriation Item 32 under Article 9 in the May 2019 Town Meeting Warrant, which provided for funding the construction of a new Driscoll School.

As previously published in the combined Reports, The Advisory Committee recommends FAVORABLE ACTION on Article 4, as amended.

SUPPLEMENTAL NOTE:

The original motion under Warrant Article 4 authorized the Select Board to seek a $108 million override to reconstruct the Driscoll School.

When Article was reconsidered on November 7, 2019 in order to reconcile it with the Select Board's motion, the Advisory Committee learned that the Select Board was considering asking Town Meeting to authorize a $119 million override. Additional funds might be used to add school administrative offices to the site, thereby replacing the ongoing cost of renting office space, and accommodate the increase in building costs that the seven-month delay following the defeat of the May 2019 override.

Given the defeat of the May 2019 override for reconstruction of Driscoll and the construction of new K-8 school at the Baldwin site, several Advisory Committee members were deeply concerned by the proposed increase. They posited that while the Driscoll override might pass, the impact on residential real estate taxes would be such that future school construction overrides would be at risk.

The Advisory Committee did not change its recommendation of FAVORABLE ACTION on Article 4, but its recommendation remains at $108 million. In advance of Town Meeting, the Committee may be asked to vote on a resolution asking for the Driscoll reconstruction project to be put on hold so that the school can be redesigned to substantially reduce costs.

ARTICLE 4

AMENDMENT OFFERED BY HARRY FRIEDMAN TMM12

Substitute $98,000,000 for the $108,000,000, and delete the language referencing finding office space for district-wide staff.

VOTED: That the Town appropriate, borrow, or transfer from available funds up to $~~108,800,000~~98,000,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency~~, including the evaluation of the feasibility of providing office space for district-wide staff of the Brookline Public Schools~~, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Clean version of motion:
VOTED: That the Town appropriate, borrow, or transfer from available funds up to $98,000,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Explanation:
Other cities and towns build schools less expensively than Brookline does on a cost per square foot basis and on a cost per student basis. While not each and every one of these other schools is directly comparable to a specific Brookline school, there are lessons to be learned from these other towns. The reduction to $90 million is a 10% reduction, and it would appear achievable by, for example, cutting the garage and atrium out of the Driscoll design, as well as asking the architects to come up with other cost-saving measures.
Saving is important because each dollar we spend on school construction adds to the tax levy as well as limits the borrowing capacity of the town. Where this comes into play is for future school projects, such as the Pierce and Baker school projects. Unnecessary spending on early projects just makes it more likely that the voters will reject later projects. It's time we looked at school construction costs as part of a planned series of projects, as opposed to treating each school project as a standalone, with no effect on what we have to do in future years.

The reference to school administration offices is deleted because it is considerably cheaper to rent office space than to build offices into a school.

ARTICLE 4

MOTION OFFERED BY C. SCOTT ANANIAN TMM10

VOTED: That the town appropriate, borrow, or transfer from available funds up to $115,300,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a fossil-fuel-free four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency, provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Motion Marked against the AC motion:
That the town appropriate, borrow, or transfer from available funds up to ~~$108,800,000~~ **$115,300,000** to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, to reconstruct the Driscoll School as a **fossil-fuel-free** four section school, with the understanding that the final stages of project design, which follow voter and Town Meeting approval, will include efforts to further optimize the project's design in terms of both program delivery and cost efficiency~~, including the evaluation of the feasibility of providing office space for district-wide staff of the Brookline Public Schools,~~ provided that such appropriation shall be contingent on the approval by Town voters of a debt exclusion vote to fund the debt service on said borrowing.

Explanation:

A motion to preserve a fossil-fuel free Driscoll
Given construction cost inflation in the Boston area, which is as high as 15.7% for FY2020 given MSBA school construction cost data, the architect for the Driscoll project recommends a 10% increase over the original FY2019 bid price. The architect's projected total costs are:

	FY2019 Total Project Cost	**FY2020 Total Project Cost**
Building and Site	$96.6M	$106.3M
Play Area:	$2.5M	$2.7M
Structured Parking:	$3.4M	$3.8M
Fossil Free Allowance:	$6.3M	$6.9M
Total:	**$108.8M**	**$119.7M**

The Advisory Committee and Select Board have emphasized the need to contain costs, and both have advanced a motion allocating only the original $108.8M for the Driscoll school. Given the financial realities of building cost inflation, it appears that a straightforward way to bring the project back to the original budget is to sacrifice structured parking and the fossil fuel free building: $119.7M - $6.9M - $3.8M = $109M.

In order to safeguard the fossil-fuel free construction, which Town Meeting voted on as part of the schematic design but has not yet affirmed for the final building, **this motion adds the original FY2019 $6.3M fossil fuel free allowance back to the $109M to arrive at a final budget of $115.3M.** The FY2019 FFF allowance was used as a member of the Advisory Committee opined that fossil fuel free systems have in fact been trending downward in price, and would likely be an exception to the overall construction cost inflation.

This motion also strikes the administrative space from the appropriation, in keeping with the constrained budget and the questionable cost-effectiveness of adding office space to a building constructed to school standards.

ARTICLE 4

SCHOOL COMMITTEE RECOMMENDATION

On September 26, 2019, the Brookline School Committee voted unanimously with 9 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Ms. Ditkoff, Mr. Glover, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 4: Appropriation for a Four Section Driscoll School.

ARTICLE 5

FIFTH ARTICLE

Submitted by: Mariah Nobrega, TMM4, Neil Wishinsky, TMM5, Ben Franco, Select Board Member

To see if the Town will vote to authorize the Select Board to sell, lease or otherwise dispose of the parcels of land located at 15-19 Oak Street, Brookline, Massachusetts, consisting of approximately 8,209 square feet, including all buildings and structures thereon and all privileges and appurtenances thereto belonging and all interests held pursuant to M.G.L. c. 183A, as well as all trees and shrubs thereon, on such terms and conditions as the Select Board determines to be in the Town's best interest, or take any other action relative thereto.

Land Description:
A certain parcel of land with the buildings thereon known as and numbered 15 Oak Street, Brookline, MA, situated in Brookline, Norfolk County, Massachusetts, and bounded and described as follows:

EASTERLY by Oak Street, sixty-two and 12/100 (62.12) feet;

SOUTHERLY by Lot 10 on a plan hereinafter referred to, one hundred (100) feet;

WESTERLY by land of owners unknown, sixty (60) feet;

NORTHERLY by Lot 8 on said plan, eighty-five and 40/100 (85.40) feet;

Containing approximately 5,709 square feet of land and being Lot 9 on a plan of 18 house lots near Chestnut Hill Station, Brookline, drawn by Whitman and Breck, Surveyors, dated April 18, 1871, and recorded with Norfolk County Registry of Deeds in Book 410, Page 30.

Also, a certain parcel of land lying Southwesterly on Oak Street in said Brookline, bounded and described as follows:

NORTHEASTERLY by said Oak Street, twenty-five (25) feet

SOUTHEASTERLY by land formerly of the Rivers School and now of the Town of Brookline, one hundred (100) feet;

SOUTHWESTERLY by land now or late of Carroll and by land formerly of Daniel F. McGuire, twenty-five (25) feet; and

NORTHEASTERLY by other land formerly of Daniel F. McGuire, one hundred (100) feet.

Containing about 2,500 square feet of land, or however otherwise said premises may be bounded or described and be all or any of said measurements or contents more or less.

Said premises are shown on a "Plan of Land in Brookline, Mass", dated September 18, 1941, by Walter A. Devine, Town Engineer, and recorded with Norfolk Registry of Deeds, Book 2369, Page 279.

Assessor's Description:

Address	Block-Lot-Sub lot
15-19 OAK ST, Unit 15	432-18-01
15-19 OAK ST, Unit 17	432-18-02
15-19 OAK ST, Unit 19	432-18-03

PETITIONER'S ARTICLE DESCRIPTION

In furtherance of the proposed Baldwin School project, Town Meeting authorized the purchase of three residential condominiums at 15-19 Oak Street in December of 2018. The transaction was completed in early 2019 and the cost of debt service for the acquisition was incorporated into the debt exclusion referendum which was rejected by Brookline voters at the Annual Town Election on May 7, 2019. Annual debt service is expected to average about $333,477 for a 25-year borrowing period. With the failure of the debt exclusion referendum, the matter of whether the Town should sell the properties has been raised since the reason for the acquisition has not come to pass and there may be alternative uses for the funds. This warrant article is being filed to preserve the Town's ability to sell the units and to insure that this debate happens at the November Town Meeting.

Recently, the School Committee proposed using the Oak Street condominiums as office space in the fall of 2020 as part of their overall space planning. The Building Commissioner has raised a number of zoning and building code requirements to convert the Oak Street residential properties into office use. It is likely that there are more cost effective approaches to providing the required office space but that would need to be further analyzed. If the Town decides to sell the Oak Street properties, the School Department would be required to issue a Request for Proposals (RFP) to identify other leased space for administrative offices. Sale of property requires an open and competitive process to realize the highest price possible. Note that should this be approved by Town Meeting, the Select Board would not be required to sell the properties. This is merely an authorization to sell. The Select Board would also determine the timing of such a sale, if one occurs.

SELECT BOARD'S RECOMMENDATION

Article 5 is a petitioned article that asks Town Meeting to authorize the Select Board to sell three residential condominiums at 15-19 Oak Street. These properties were purchased as part of the plan for the proposed Baldwin School project. With the failure of the debt exclusion referendum, the matter of whether the Town should sell the properties has been raised since the reason for the acquisition has not come to pass.

The Select Board had reservations on whether or not it would be appropriate to sell these properties because there may be a future use that would meet a Town need. At the same time the debt service on these properties is taking up capacity in the CIP that could be used to fund more pressing needs. A majority of the Board agreed that allowing Town Meeting to provide this authorization does not tie the Board's hands, but can give the Board flexibility to act should there be a need to relinquish these units.

The Select Board voted FAVORABLE action on the motion offered by the Advisory Committee.

ROLL CALL VOTE:

Aye:	Abstain:
Greene	Heller
Franco	
Hamilton	
Fernandez	

ADVISORY COMMITTEE'S RECOMMENDATION

Summary

Article 5 authorizes, but does not require, the Select Board to Sell 15-19 Oak Street.
The Advisory Committee unanimously voted to approve Article 5 (vote of 23-0-0).

Background

Article 5 would authorize the Select Board to sell three residential condominiums at 15-19 Oak Street that were purchased in anticipation of a successful debt exclusion vote for the previously proposed Baldwin School project. The properties were acquired after Town Meeting authorized their purchase in December of 2018 and in advance of the debt exclusion vote. The transaction was completed in early 2019 and the cost of debt service for the acquisition was incorporated into the debt exclusion referendum which was rejected by Brookline voters at the Annual Town Election on May 7, 2019. The acquisition of the properties was achieved via the issuance of Bond Anticipation Notes (BANs). With the failure of the debt exclusion referendum and no plans to pursue the Baldwin School further, the original rationale for their acquisition no longer exists. At

the time of the filing of the Article, the School Committee had proposed using the Oak Street condominiums as office space beginning in the fall of 2020 as part of their overall space planning. For a variety of reasons, including renovation expense and a number of zoning and building code requirements to convert the Oak Street residential properties into office use, the School Committee is no longer proposing the office idea. Currently, the Town is exploring a possible ninth school on Fisher Hill, the acquisition of which (or any other future school development project) may benefit from having the ability to sell the properties expeditiously. The approval of the Article by Town Meeting does not compel the Select Board to sell the properties. An affirmative vote would merely provide the Select Board with the authority to take such action (and indeed, the Select Board filed an identical article for consideration at this Town Meeting). Any sale would require a public process. The Select Board would also determine the timing of such a sale, if one occurs.

Discussion

The Committee agreed that the Select Board should be given the authority to sell the properties. The principal conversations revolved around whether an additional recommendation regarding the timing of a sale should be offered as well as whether to include a sunset provision on the authority approval of Article 5 would bestow.

In discussing the timing of a sale, several facts were reviewed that an analysis would need to consider:

1. The Town currently is financing the properties using interest only short-term debt. Though short-term debt can continue to be used for as long as 10 years, amortization of the debt must begin in the third year after acquisition. Also, if the property is held as income producing, the Town would need to use taxable debt as opposed to tax-exempt debt. The estimated current interest-only cost to the Town is approximately $147,000. That would increase to approximately $298,000 once amortization is required.[1]
2. The debt service will crowd out other projects in the CIP
3. Any rental income must be placed into a revolving fund for the maintenance of the properties and could only be added to free cash (hence back to the CIP) at the end of a fiscal year.
4. Market rent likely will be insufficient to enable the Town to break-even
5. If the properties were sold and put back onto the tax rolls, it would be considered new growth, generating approximately an additional $45,000 in tax revenue.
6. As the debt is amortized, the Town would build equity in the properties like any homeowner does.
7. There is option value to holding the assets, particularly if there are reasonably anticipated and viable uses for the properties.
8. The properties were purchased entirely with debt. A sale does not generate cash (unless there is a profit) but it does free up borrowing capacity as well as some cash flow.

[1] Assuming a 3% cost of capital

9. Ownership could result in appreciation if Brookline's market stays robust but it could result in price depreciation if the market falters or the property suffers damage from renters.
10. Being a landlord carries risks and responsibilities the Town may not be well-prepared to manage.

The rest of the discussion revolved around whether a sunset provision to the authorization was warranted and whether the Committee should offer a recommendation about the timing of a sale.

The argument for a sunset provision generally revolved around the idea of reminding the Select Board (or a future Select Board) that they actually had the ability to take an action with the properties and that, at a particular point in time, they would lose that authority. To many, that seemed counter to the very notion that by giving the executive branch the authority, they were being entrusted with the responsibility of evaluating all the facts and determining when the appropriate time to dispose of the assets (if ever) would be. Too, it was pointed out that setting a sunset provision could result in a poorly timed action under adverse market conditions because of the fear that the authority would not be regranted.

There was also a general sense that the Committee believes the Select Board should be encouraged to dispose of the properties sooner rather than later in large part because there is no obvious strategic use for them, the cash flow impact on the CIP is meaningful and because they can be revenue positive due to the new growth classification. This general sense led to the separate resolution the Advisory Committee has sent to the Select Board.

Recommendation

A motion to amend the Article and add a 5-year sunset provision failed by a vote of 2-20-1. The Committee then unanimously voted favorable action on the following motion by a vote of 23-0-0:

That Town will vote to authorize the Select Board to sell, lease or otherwise dispose of the parcels of land located at 15-19 Oak Street, Brookline, Massachusetts, consisting of approximately 8,209 square feet, including all buildings and structures thereon and all privileges and appurtenances thereto belonging and all interests held pursuant to M.G.L. c. 183A, as well as all trees and shrubs thereon, on such terms and conditions as the Select Board determines to be in the Town's best interest, or take any other action relative thereto.

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NORTHERLY by Lot 8 on said plan, eighty-five and 40/100 (85.40) feet;

Containing approximately 5,709 square feet of land and being Lot 9 on a plan of 18 house lots near Chestnut Hill Station, Brookline, drawn by Whitman and Breck, Surveyors, dated April 18, 1871, and recorded with Norfolk County Registry of Deeds in Book 410, Page 30.

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SOUTHWESTERLY by land now or late of Carroll and by land formerly of Daniel F. McGuire, twenty-five (25) feet; and

NORTHEASTERLY by other land formerly of Daniel F. McGuire, one hundred (100) feet.

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Assessor's Description:

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15-19 OAK ST, Unit 17	432-18-02
15-19 OAK ST, Unit 19	432-18-03

XXX

ARTICLE 5

SCHOOL COMMITTEE REPORT AND RECOMMENDATION

On September 26, 2019, the Brookline School Committee voted with 6 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Ms. Charlupski, Mr. Glover, Ms. Monopoli, and Ms. Scotto), 1 opposed (Mr. Pearlman) , and 2 abstentions (Dr. Abramowitz and Ms. Ditkoff), to recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 5: Authorization for the Disposal and Sale of the Real Property at 15-19 Oak Street.

Financial Rationale:
The Town paid $4.7 million for the three properties. The interest cost for the FY 2020 Bond Anticipation Notes (BAN) from March-March was $140,217 (net interest cost 1.72%). According to Deputy Town Administrator Melissa Goff, BAN costs would be similar for a 3-5 year BAN. If the Town wanted to pay interest and principal, the cost would be conservatively speaking $333,477 for a 25-year term bond to pay both interest and principal at 5%. Ms. Goff believes that this is a very conservative estimate.

If the Town was able to get $4,000.00 in rent per unit, the Town would get $144,000 a year and if the rent were $4,500 the amount would be $162,000 which would cover any expenses and might leave the Capital Improvements Program (CIP) with a bit of money.

Strategic Rationale:
More importantly, the Town should not give up a property that the Town owns now when everything is in such flux. The Town can always sell the property later on if it is not needed. (The example was brought up of Sewall School on Cypress Street and if the Town still had this property, the Town might be able to solve our overcrowding issues).

Because the Oak Street property is adjacent to the Baldwin School site, the Baldwin Playground, and Soule, it is strategically situated and could be used for many School, Town, or Park uses. As one example, it could be used along with the Baldwin Playground for field space.

In addition, since the Town has not solved the serious overcrowding issues in our schools, the School Committee asks the Select Board to keep the Oak Street property.

The Oak Street site combined with the Baldwin parcel increases the value and potential use of both sites.

Land is scarce in Brookline and the Town should not sell properties at this time. The School Committee encourages Town Meeting to vote no action on Article 5.

ARTICLE 5

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Summary

Article 5 authorizes, but does not require, the Select Board to Sell 15-19 Oak Street.

The Advisory Committee unanimously voted to approve Article 5 (vote of 23-0-0).

Background

Article 5 would authorize the Select Board to sell three residential condominiums at 15-19 Oak Street that were purchased in anticipation of a successful debt exclusion vote for the previously proposed Baldwin School project. The properties were acquired after Town Meeting authorized their purchase in December of 2018 and in advance of the debt exclusion vote. The transaction was completed in early 2019 and the cost of debt service for the acquisition was incorporated into the debt exclusion referendum which was rejected by Brookline voters at the Annual Town Election on May 7, 2019. The acquisition of the properties was achieved via the issuance of Bond Anticipation Notes (BANs). With the failure of the debt exclusion referendum and no plans to pursue the Baldwin School further, the original rationale for their acquisition no longer exists. At the time of the filing of the Article, the School Committee had proposed using the Oak Street condominiums as office space beginning in the fall of 2020 as part of their overall space planning. For a variety of reasons, including renovation expense and a number of zoning and building code requirements to convert the Oak Street residential properties into office use, the School Committee is no longer proposing the office idea. Currently, the Town is exploring a possible ninth school on Fisher Hill, the acquisition of which (or any other future school development project) may benefit from having the ability to sell the properties expeditiously. The approval of the Article by Town Meeting does not compel the Select Board to sell the properties. An affirmative vote would merely provide the Select Board with the authority to take such action (and indeed, the Select Board filed an identical article for consideration at this Town Meeting). Any sale would require a public process. The Select Board would also determine the timing of such a sale, if one occurs.

Discussion

The Committee agreed that the Select Board should be given the authority to sell the properties. The principal conversations revolved around whether an additional recommendation regarding the timing of a sale should be offered as well as whether to include a sunset provision on the authority approval of Article 5 would bestow.

In discussing the timing of a sale, several facts were reviewed that an analysis would need to consider:

1. The Town currently is financing the properties using interest only short-term debt. Though short-term debt can continue to be used for as long as 10 years, amortization of the debt must begin in the third year after acquisition. Also, if the property is held as income producing, the Town would need to use taxable debt as opposed to tax-exempt debt. The estimated current interest-only cost to the Town is approximately $147,000. That would increase to approximately $298,000 once amortization is required.[1]
2. The debt service will crowd out other projects in the CIP
3. Any rental income must be placed into a revolving fund for the maintenance of the properties and could only be added to free cash (hence back to the CIP) at the end of a fiscal year.
4. Market rent likely will be insufficient to enable the Town to break-even
5. If the properties were sold and put back onto the tax rolls, it would be considered new growth, generating approximately an additional $45,000 in tax revenue.
6. As the debt is amortized, the Town would build equity in the properties like any homeowner does.
7. There is option value to holding the assets, particularly if there are reasonably anticipated and viable uses for the properties.
8. The properties were purchased entirely with debt. A sale does not generate cash (unless there is a profit) but it does free up borrowing capacity as well as some cash flow.
9. Ownership could result in appreciation if Brookline's market stays robust but it could result in price depreciation if the market falters or the property suffers damage from renters.
10. Being a landlord carries risks and responsibilities the Town may not be well-prepared to manage.

The rest of the discussion revolved around whether a sunset provision to the authorization was warranted and whether the Committee should offer a recommendation about the timing of a sale.

The argument for a sunset provision generally revolved around the idea of reminding the Select Board (or a future Select Board) that they actually had the ability to take an action with the properties and that, at a particular point in time, they would lose that authority. To many, that seemed counter to the very notion that by giving the executive branch the authority, they were being entrusted with the responsibility of evaluating all the facts and determining when the appropriate time to dispose of the assets (if ever) would be. Too, it was pointed out that setting a sunset provision could result in a poorly timed action under adverse market conditions because of the fear that the authority would not be regranted.

[1] Assuming a 3% cost of capital

There was also a general sense that the Committee believes the Select Board should be encouraged to dispose of the properties sooner rather than later in large part because there is no obvious strategic use for them, the cash flow impact on the CIP is meaningful and because they can be revenue positive due to the new growth classification. This general sense led to the separate resolution the Advisory Committee has sent to the Select Board.

Recommendation

A motion to amend the Article and add a 5-year sunset provision failed by a vote of 2-20-1

The Committee then unanimously voted favorable action on Warrant Article 5 by a vote of 23-0-0.

ARTICLE 5

MOTION TO BE OFFERED BY EITHER THE ADVISORY COMMITTEE OR JOHN DOGGETT TMM13, AND CLIFF BROWN TMM14

*The Advisory Committee will consider this motion on 11/19

VOTED: That the Town adopt the following resolution:

Resolution Pertaining to Oak Street Property Disposition

WHEREAS, on February 1st, 2019 the Town of Brookline purchased the properties 15, 17 and 19 Oak St (the "Properties") for municipal purposes and more specifically in anticipation of a successful debt exclusion vote to construct a school commonly referred to as The Baldwin School, and;

WHEREAS, such debt exclusion vote failed and there are no existing plans to construct The Baldwin School or any facility that would require the land or the properties list above, and;

WHEREAS, the Town paid a total of $4.7 million for the Properties which were assessed to contribute combined real estate taxes of $33,548 in FY 19 which were instead absorbed by all other taxpayers in Town, and;

WHEREAS, the Properties are neither designed nor constructed for economical use for any purpose other than residential use, and;

WHEREAS, the Properties cannot be rented at levels that would enable the Town to substantially mitigate the implicit and explicit costs of carrying and maintaining the properties, particularly once the Town begins to amortize the debt used to buy the properties, which the Town is required to do in FY21, and;

WHEREAS, putting the Properties back on the tax rolls would be considered new growth, thereby adding approximately an additional $43,000-$45,000 property tax revenue to the Town, and;

WHEREAS, the estimated implicit and explicit negative cost of carry to the Town currently approximate $124,000 per year and will increase to as much as $315,000 per year when the acquisition debt begins to amortize in 2021, and;

WHEREAS, explicit negative net 'cost of carry' incurred by the Town has an immediate and direct impact on the Town's Capital Improvement Program, and;

WHEREAS, Town Meeting has provided the Select Board with the authority to sell the Properties,

THEREFORE, BE IT RESOLVED that in consideration of the budgetary impact of maintaining Town ownership the Oak St properties, the current cost of rebuilding the Driscoll school and the possible $10+m increase in that appropriation, the Advisory Committee calls upon the Select Board to dispose of the Properties as soon as possible, with the following conditions and alternatives:

1. If the School Committee and School Department wish to carry the cost of the Properties and to absorb the entire explicit net 'cost of carry' they may do so. If they so choose, the School Department will also be the beneficiary of any positive net proceeds if, and, when the School Committee requests that the Select Board sell the Properties.

2. The Select Board determines, through consultation with realtors, that the sale of the Properties would generate a total loss (defined as the sale price less any negative net cost of carry less any outstanding debt) that could be avoided or materially reduced by maintaining ownership for a period of not more than three years from the original date of purchase.

ARTICLE 6

SIXTH ARTICLE

Submitted by: Nicole McClelland TMM11, Mariah Nobrega TMM4, Neil Wishinsky TMM5

To see if the Town will adopt the following resolution:

WHEREAS Select Board members carry heavy, time-demanding responsibilities, particularly the Select Board Chair, and

WHEREAS though the stipend increased in 2011 to $4500 for the Chair and $3500 for other members, those amounts do not represent the true effort involved, essentially demanding an average of 20+ hours per week of time, and

WHEREAS many town residents who might otherwise be interested cannot afford to provide their time to this level and therefore the current system is exclusionary and eliminates potentially excellent candidates, and

WHEREAS all Brookline inhabitants and employees will benefit from an inclusive Select Board elected from competitive races.

THEREFORE BE IT RESOLVED THAT:

1. The Town is encouraged to raise the annual stipends of the Select Board to $40,000 (members) and $60,000 (chair) effective for the Fiscal Year beginning July 1, 2020, and
2. Such stipend should increase annually by an amount equal to the general increase granted to Department Heads pending an affirmative action by Town Meeting to ratify that increase.as stated in the budget Conditions of Appropriation.
3. The Town is encouraged to review the compensation status of other committees, with a focus on School Committee.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The objective of this resolution is two-fold:

1) To professionalize the board and compensate for increased expectations. Town government is a 335 million dollar enterprise (FY20). The town has been very fortunate to have had Select Board members thus far who have had the dedication and skills to run

it effectively. However, the pressures on Town government are continuing and the challenges appear to be growing more complex; the skills these positions demand, and the time commitment, are likely to grow. We need to proactively ensure that we are attracting the best candidates for the job, but many of the most-qualified people have other opportunities to spend their time, including compensated opportunities. Providing a larger stipend may overcome that challenge, while still representing a miniscule fraction of the overall cost of town government; increasing the stipend value from $18,500 total per year to $220,000 per year will cost just over $200,000 (.06% of the budget). While this amount is substantial and reduces resources available elsewhere, it is time for the Town to finally bite the bullet and pay what these positions are really worth.

Further, the expectations on our Select Board members have increased: with the advent of cell phones and e-mail, they are expected to be "on" 24/7, in addition to attending multiple meetings and community events each week. It is an unrealistic expectation that a volunteer Select Board member, currently compensated at approximately $0.35/hr, would have the capacity to respond to constituents and engage with the community at the same level as a properly paid municipal official. An additional advantage of proper compensation for the Select Board is that members may be able to reduce or cut back on other obligations, thus allowing for more responsiveness.

2) Remove a major barrier to participation at the executive level of town government and attract a broader array of candidates. Many Brookline inhabitants face serious financial pressure to live here. As documented in "Understanding Brookline"[1] almost one-third of Brookline residents live in households below the 300% poverty threshold, a marker of economic insecurity. Even for the other 70% of inhabitants who do not fall below that line, it may be very hard to afford to participate: childcare is frequently $15/hour or more, meaning a Select Board member could easily pay $500 a month in childcare just to attend the biweekly meetings. Increasing the number of people who can afford to participate as a member of the Select Board is an inclusive practice that is likely to result in competitive elections, the hallmark of thriving democracy. To date the Select Board has not been representative of much of Brookline inhabitants, skewing older/retired and white. Though Brookline is nearly 20% Asian, there has been no Asian member; the first Hispanic/Latino member was elected this year, the first Black member elected in 2015.

Several quotes from Newton City Councilors provided in the report illustrate why economic support enables better government and are also applicable to Brookline:

- "no one becomes a City Councilor to become rich, but there is middle ground between becoming rich, and not needing to be compensated. A large swath of our population falls into that middle ground." (page 34)
- "I am not comfortable with my city government being run by a group of well-meaning volunteers. I want representation that illustrates a range of different life experiences, understands the value of a dollar, and in some cases, not necessarily

[1] Report available at https://www.brooklinema.gov/DocumentCenter/View/4332/Understanding-Brookline-Report---Brookline-Community-Foundation-May-2013-PDF

all, can only engage in work that is paid as a matter of financial survival. Their finances do not allow for 10-20 hours a week of volunteer work...That voice on the council is necessary to represent a faction of our city." (page 35)

The Newton report also provides a good overview of why compensation is appropriate on pages 8-9:

The Commission concluded that, despite the fact that both Council and School Committee roles are part time and outside employment is permitted, the City Council and School Committee perform necessary functions which only they may perform by charter. The Commission concluded that it is in the interest of every citizen that those duties be performed at the highest possible level by the most qualified representatives chosen from a diverse pool of candidates.

With that understanding in mind, the Commission concluded that compensation is required to encourage delivery of this type of public service regardless of an individual's economic status. In fact, the current levels of compensation are relatively modest and may currently operate as a de facto disqualification for economically challenged citizens to serve. It was the Commission's thought that higher compensation might serve the community by tending to increase the economic diversity of the candidate pool, or at the very least minimizing barriers to economic diversity, resulting in more contested elections and a more representative group of elected officials. The Commission concluded that the electorate gains when an increased range of talent, perspectives and views is contributed to the governing process and that higher compensation might facilitate that objective.

As the Commission found, the part-time positions of Councilor and School Committee member require a substantial time commitment, most of which takes place in the evening. While these officials are not required to relinquish outside employment, they do incur costs in meeting the time commitments of these positions, both in terms of time rendered unavailable for other engagements and for out-of-pocket expenses . While not legally prohibited, as a practical matter, City Councilors and School Committee members would be challenged to work a second job or take extra hours at their primary employment given the hours required by their elected capacities. The Commission concluded that modest compensation helps offset these costs. Furthermore, the prospect of modest compensation might attract candidates for office who would decline to run and serve without compensation.

Rationale for Action at this Time

There are several reasons to approve this stipend at this point in time:

- The new cannabis revenue may provide additional flexibility to take this action without reducing elsewhere in the budget

- This is relatively low-hanging fruit related to the recent Town Meeting vote affirming our commitment to inclusion (Spring 2019 Town Meeting, Warrant Article 29)

While not a principal rationale, it is also noted that there has been significant discussion in town in recent years to pursuing city status. One benefit of this revision is that it would make the cost of the Select Board somewhat cost-neutral to that of a mayor, thus removing that issue from the overall calculus of which municipal structure to pursue, if and when the discussion advances to that stage.

History of Select Board Compensation

One of the earliest references to the SB stipend is the town budget of 1895, when the stipend was set at $1,200 for the chair and $400 for members. The next reference found was in 1901 where the stipend was set at $1,350 for the chair and $750 for members. Starting in 1902, there is data for all years. The full history is in the table below.

Year	Chair Stipend ($)	Current Value ($)[2]	Member Stipend ($)	Current Value ($)
1895	1,200	36,592	400	12,197
1901	1,350	40,750	750	22,639
1902-1915	1,500	44,676	1,000	29,784
1916-1947	2,500	58,748	1,500	35,249
1948-2010	3,500	37,199	2,500	26,570
2011-	4,500		3,500	

So if Town Meeting accepts $60,000 and $40,000, we are roughly restoring the Select Board back to the buying power of the stipend as it existed in 1916.

At this time the compensation does not include health insurance. Brookline Select Board members were previously eligible for health insurance and there are many people for whom health insurance would be extremely valuable, e.g. people who are self-employed, work part-time, or otherwise don't receive insurance through their jobs. Many of these people might have the most flexibility to devote to town activities. This is something we may choose to consider in the future. As noted in the comment by one Newton Councilor: "I am concerned that doing this will eliminate the candidacies of those who have part time jobs, are self- employed, or don't receive health care coverage at work. Note – some of our most productive Councilors fall into these categories. It will markedly reduce the pool to those who have full time jobs." (page 39)

[2] according to the CPI Inflation calculator at http://www.in2013dollars.com/us/inflation/. Calculation on current value done for first year of range, i.e. current $ values done for years of 1902, 1916 and 1948.

Executive Compensation in other Municipalities

The table below reports on selected Massachusetts municipalities. Brookline is the largest town in the Commonwealth, so its peer communities are mostly cities with mayors who receive a salary. Information on Plymouth, the only town comparable to Brookline in size, was not available. Smaller towns are also included for context. As shown, Brookline's peer municipalities are paying more for their elected executives both overall and per capita. The average executive cost per person of the first seven peer communities (cities) is $4.41, which is also the cost of the proposed increase in Brookline's stipend.

			Compensation					
			Select Board		Mayor/City Council			
	Structure	Pop	Members	Chair	Councilors	Mayor	# of members of SB or Council	Exec $/person
Brookline	Town	59,000	3,500	4,500			5	$0.37
Boston	City	694,600			103,500	207,000	13	$2.24
Cambridge	City	119,000			83,600	118,000	9	$7.31
Quincy	City	94,600			29,700	150,000	9	$4.41
Newton	City	89,000			9750	125,000	24	$4.03
Somerville	City	75,800			25,000	145,000	11	$5.54
Malden	City	61,000			17,500	105,000	11	$4.88
Medford	City	57,888				142,000	7	$2.45
Lexington	Town	31,400	0	0			5	$0.00
Easton	Town	23,100	1,800	1,800			5	$0.47
Grafton	Town	17,800	1,000	1,000			5	$0.34
Raynham	Town	13,400	6,200	6,200			3	$1.85

WOMEN'S COMMISSION RECOMMENDATION

The Commission agrees with this article's petitioners that inadequate compensation is one of many barriers to civic participation that disproportionately impact women, especially those who are primary caregivers of young children. Unpaid service can lead to a skewing of candidates for the local offices that require significant time commitments such as Select Board and makes all forms of civic participation especially challenging for those with fewer means, family care obligations, and/or inflexible job commitments. The purpose of

this warrant article is to lower that barrier and encourage more diversity in the executive officers of the town.

Some commissioners felt that while Brookline's volunteer government structure certainly depressed socioeconomic diversity in elected offices, the Select Board had included many women members in recent decades, including as chair of the Board. Others suggested that only a subset of women, principally those without children at home and/or without full-time jobs outside the home, had served on the Select Board. Some commissioners spoke of their personal experience with paid and unpaid work and said that a stipend such as that suggested by the article would make a significant difference in their own thinking about public service in Brookline.

The BCW believes that it's important to emphasize the intersectional relationship of socioeconomic status and gender, and a majority felt that the schedule of stipends in the article would make it possible for more women to hold this office in Brookline. By a vote of 4 in favor, none opposed, and 2 abstentions, the BCW urges favorable action on Article 6.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 23, 2019. By a vote of 6-0-2, the CDICR recommends FAVORABLE ACTION on Warrant Article 6.

DISCUSSION

Warrant article 6 recommends increased stipends for the Select Board. The petitioners have several motivations for filing the warrant article; the one most relevant to CDICR emphasis is that of increasing the diversity of candidates for, and ultimately members of, the Select Board. Broadening the Select Board's experience and perspective through a more socioeconomically diverse (among other measures of diversity) board is a strong positive for this warrant article. Therefore, the commission voted FAVORABLE ACTION on the warrant article, by a vote of 6-0-2.

MOTION OFFERED BY THE PETITIONERS

VOTED that the Town adopt the following resolution:

WHEREAS Select Board members carry heavy, time-demanding responsibilities, particularly the Select Board Chair, and

WHEREAS though the stipend increased in 2011 to $4500 for the Chair and $3500 for other members, those amounts do not represent the true effort involved, essentially demanding an average of 20+ hours per week of time, and

WHEREAS many town residents who might otherwise be interested cannot afford to provide their time to this level and therefore the current system is exclusionary and eliminates potentially excellent candidates, and

WHEREAS all Brookline inhabitants and employees will benefit from an inclusive Select Board elected from competitive races.

THEREFORE BE IT RESOLVED THAT:

1. The Town is encouraged to raise the annual stipends of the Select Board to $40,000 (members) and $60,000 (chair) effective for the Fiscal Year beginning July 1, 2020, and

2. Such stipend should increase annually by an amount equal to the general increase granted to Department Heads pending an affirmative action by Town Meeting to ratify that increase.as stated in the budget Conditions of Appropriation.

3. This experience will be used to inform a future review of the compensation status of other committees, with a focus on the School Committee.

SELECT BOARD'S RECOMMENDATION

In previous instances that involved questions of compensation for the Select Board, the Ethics Commission has advised that the Select Board cannot deliberate as a Board in matters in which they have a distinct financial interest. In line with past practice in this regard, the Select Board is not presenting a recommendation on Article 6.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Warrant Article 6 seeks to expand participation and diversity of the Select Board by increasing the stipends paid to Select Board members, which petitioners believe will attract a larger and more diverse set of applicants. In addition, Warrant Article 6 acknowledges the increased demands associated with the role of administering an over $300M budget with an entirely volunteer government, which petitioners claim has become impractical.

The Advisory Committee recommends NO ACTION on Warrant Article 6, as amended.

BACKGROUND:

Compensation has been provided to the Select Board since at least 1895. At that time the annual stipend for the Chair was $1,200 and the other members were paid $400. In 1901 this changed to $1,350 for the Chair and $750 for the other members. The full history is attached to this report. Adjusting for inflation, the "current value" of the annual stipend for the Chair has ranged from (the current) $4,500 to $58,748.

Stipends remained fixed between 1948 and 2010. By the end of this period the purchasing power of the stipends had decreased substantially; and in addition, at the end of this period, the Town stopped providing health insurance to Select Board members.

In the Fall of 2009 Town Meeting passed, by a wide margin, Article 15 (as amended) which called for: *(1) The Town is encouraged gradually over a period of several years to increase the stipend for the Chair of the [Select Board] from $3,500 to $7,000 and stipends for other members of the [Select Board] from $2,500 to $5,000. (2) Going forward, the Advisory Committee is encouraged at regular intervals to review the stipends for members of the [Select Board] and make recommendations for adjustments that are incorporated in the budget presented to Town Meeting.*

In May 2010, the Annual Budget was amended by $5,000 to increase the stipends of each member by $1,000, resulting in the stipends that have remained to this day. Despite the overwhelming support in 2009 to gradually increase the stipends and for the Advisory Committee to make recommendations for adjustments, no such recommendations have been made in the intervening years.

The stipends paid to the Select Board ($18,500) currently represent .006% of the budget. Adopting the proposal in Warrant Article 6 ($220,000) would result in an increase to 0.07%.

A table showing the compensation provided to similar officials in selected cities and towns is attached to this report.

DISCUSSION:

By a roughly 2-1 margin, the Advisory Committee does not support the provisions of Warrant Article 6, although there was considerable agreement with petitioners' characterization of the current problems with our volunteer Select Board. There were several themes which recurred throughout the discussion:

1) This is inequitable. There are many boards and commissions which rely on considerable volunteer commitment; what makes the Select Board different? Petitioners argue that the Select Board is considerably more demanding from a time perspective and requires participants to assume personal risks that are not absorbed by members of other committees.

2) Also from an equity perspective, why should we reward the current Select Board members, who were elected while fully aware of the current stipends, rather than rolling this out incrementally as new Select Board members are voted in? A motion to this effect was proposed and rejected, primarily on the grounds that it would also be inequitable to have inexperienced Select Board members be paid significant stipends at the same time that the experienced members, doing more of the work, would receive substantially less.

3) This is an interesting idea but this is nowhere near enough money to substantively change the incentives around running for Select Board, especially when you consider that you don't receive the stipend unless you win and campaigns are expensive. This is a very speculative way to increase economic diversity on the Select Board.

4) If the concern here is that the Select Board is under-compensated for what is essentially a full-time political job, how is it reasonable to compensate someone at $40,000 for a full-time political job? And if we're not willing to provide full-time compensation for this job, can we really predict how these increased stipends will change who is attracted to the job and how would we measure whether we were effective? Petitioners offered some anecdotal evidence that some parents of small children who currently feel excluded from the Select Board would be attracted to the position but failed to articulate a distinction between the Select Board and the School Committee with respect to how one manages to attract parents and the other doesn't, although both place rigorous demands on participation.

5) Isn't this really a charter question? In other words, isn't this an end run towards turning Brookline into a City or towards changing the organizational structure such that instead of a Town Administrator Brookline has a Town Manager instead? There was much support on the Advisory Committee towards exploring a strong Town Manager role versus our weaker Town Administrator role and much antipathy towards using this Warrant Article as a means towards that end.|

6) If the objective is to encourage women who have children requiring childcare to run for office, consider that of the nine School Committee members, five have children in the public schools, and four of the five are women. If the barriers to serving on the

Select Board and School Committee are similar, that suggests that parents of young children are more interested in serving on the School Committee.

RECOMMENDATION:

A revised motion was proposed, shown below, in which the third resolved clause was slightly changed from the petitioners' motion to no longer mandate a compensation review of committees other than the Select Board. The amended motion failed to achieve a majority vote.

Warrant Article 6, As Amended

WHEREAS Select Board members carry heavy, time-demanding responsibilities, particularly the Select Board Chair, and

WHEREAS though the stipend increased in 2011 to $4500 for the Chair and $3500 for other members, those amounts do not represent the true effort involved, essentially demanding an average of 20+ hours per week of time, and

WHEREAS many town residents who might otherwise be interested cannot afford to provide their time to this level and therefore the current system is exclusionary and eliminates potentially excellent candidates, and

WHEREAS all Brookline inhabitants and employees will benefit from an inclusive Select Board elected from competitive races.

THEREFORE BE IT RESOLVED THAT:

1. The Town is encouraged to raise the annual stipends of the Select Board to $40,000 (members) and $60,000 (chair) effective for the Fiscal Year beginning July 1, 2020, and
2. Such stipend should increase annually by an amount equal to the general increase granted to Department Heads pending an affirmative action by Town Meeting to ratify that increase.as stated in the budget Conditions of Appropriation.
3. This experience will be used to inform a future review of the compensation status of other committees, with a focus on the School Committee.

By a vote of 9 in favor, 16 opposed, and 2 abstentions, the Advisory Committee recommends NO ACTION on Warrant Article 6, as amended.

Year	Chair Stipend ($)	Current Value ($)	Member Stipend ($)	Current Value ($)
1895	1,200	36,592	400	12,197
1901	1,350	40.750	750	22,639
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1916-1947	2,500	58,748	1,500	35,249
1948-2010	3,500	37,199	2,500	26,570
2011 - present	4,500		3,500	

4.

(Current value according to the CPI Inflation calculator at http://www.in2013dollars.com/us/inflation/)

			Compensation					
			Select Board		Mayor/City Council		# of members of SB or Council	Exec $/person
	Structure	Pop	Members	Chair	Councilors	Mayor		
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Quincy	City	94,600			29,700	150,000	9	$4.41
Newton	City	89,000			9750	125,000	24	$4.03

			Compensation					
			Select Board		Mayor/City Council		# of members of SB or Council	Exec $/person
	Structure	Pop	Members	Chair	Councilors	Mayor		
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Malden	City	61,000			17,500	105,000	11	$4.88
Medford	City	57,888				142,000	7	$2.45
Lexington	Town	31,400	0	0			5	$0.00
Easton	Town	23,100	1,800	1,800			5	$0.47
Grafton	Town	17,800	1,000	1,000			5	$0.34
Raynham	Town	13,400	6,200	6,200			3	$1.85

XXX

ARTICLE 7

SEVENTH ARTICLE

Submitted by: Christi Electris, TMM7; Robert M. Miller, TMM8

To see if the Town will adopt the following resolution:

A resolution calling for the Town to properly maintain street markings for all modes of travel.

Whereas all markings on a street contribute to safety and clarity for users of the public way, including people walking, bicycling, using mass transit, and driving automobiles and trucks, and

Whereas the Town of Brookline's Complete Streets Policy states that "The Town of Brookline shall plan, construct, and maintain its public ways to enhance safety, access, inclusion, convenience, and comfort for all users, thereby creating complete streets," and

Whereas observations indicate that the maintenance of certain street markings intended for pedestrian and bicycle safety-such as crosswalks and bike lanes-has been inadequate to keep up with wear and tear, and

Whereas users of the public way who walk and bicycle are particularly vulnerable by virtue of their mode of transportation, inadequate maintenance of markings has a disproportionate negative impact on their safety, and

Whereas the Town of Brookline budgets for maintaining pavement markings in its operating budget, including those related to pedestrian and bicycle safety,

Now therefore, be it resolved that the Town evaluate and repaint or refurbish all roadway markings as needed when any markings on a segment of a road are repainted.

And further, be it resolved that the Town operating budget shall provide sufficient funds to allow for proper maintenance of street markings for automobile, bicycle, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.

PETITIONER'S ARTICLE DESCRIPTION

In recent years the idea that streets should be safe for all users has become an increasing priority, in Brookline, the Commonwealth of Massachusetts and around the world. For example, the Massachusetts Department of Transportation created the Complete Streets Funding Program to support projects that will improve safety, ADA accessibility,

pedestrian and bike mobility, transit access and operations, and vehicular and freight operations. In 2019 Brookline applied for and was awarded a Complete Streets Funding Program grant of $234,968.

The Town has not maintained all street markings steadfastly. Pedestrian and bicycle markings are more likely to be faded, incomplete, or otherwise more difficult to see than are other street markings. If we are committed to this infrastructure, it is not enough to do it once. It must be maintained. Just as the Town doesn't prioritize replacing one color light bulb over another when it burns out in a traffic signal, the Town should repaint on street markings on streets with equal priority. This resolution makes that policy directive clear.

SELECT BOARD'S RECOMMENDATION

Article 7 is a petitioned resolution that asks the Town to refurbish all roadway markings when any segment of the road undergoes repainting as well as encourages the Town to provide sufficient funds to properly maintain all roadway markings, whether for bicyclists, vehicles, or pedestrians.

The Select Board supports this resolution and believes it is a legitimate issue. The Board questioned where would the funding for this resolution come from because the Town has a lot of pressing needs and issues. The Board was interested in seeing how the Town currently handles roadway management and whether it was prudent to pursue pavement markings that could potentially last longer and what impact the cost-benefit could have in limiting the number of faded markings. This resolution poses a question on how to prioritize spending because this is one of many legitimate requests that the Town receives every year as part of the budget process. The Board acknowledges that this is an important public safety issue yet was concerned about the original language requiring that action be taken and supported the Advisory Committee version that encouraged sufficient funds to be allocated for roadway maintenance.

On October 29, 2019, the Board recommended FAVORABLE ACTION on the motion offered by the Advisory Committee, by a vote of three in favor and two opposed.

ROLL CALL VOTE:

Aye:	Nay:
Greene	Hamilton
Franco	Fernandez
Heller	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 7 is a resolution asking that the Town properly maintain street marking for all modes of travel.

BACKGROUND:
Warrant Article 7 seeks more rigorous review of pavement and safety markings, and additional monies to better maintain those pavement markings, including street markings for automobiles, bicycle, pedestrian use and any other markings required for safety. Citing Brookline's Complete Streets Policy, in which the Town committed itself to plan, construct, and maintain public ways to enhance safety, access, inclusion, convenience, and comfort, the WA notes that the Town has not been able to adequately adhere to it's commitment.

The Highway and Sanitation Department, which is charged with maintaining traffic markings, has a yearly budget to maintain pavement markings, from which it must also pay for police details. It often finds funds to cover at least some of the cost for the details from operating budget monies.

This past fiscal year Highway and Sanitation spent $101,803 of the $102,673 budgeted for pavement markings as follows:

- the 4" white gutter lines, 4" yellow center lines and 4" double yellow center lines are all repainted twice a year;
- 55% of the 12" white crosswalk and stop bars near schools and in commercial districts are done twice a year, the rest are done once a year;
- Symbols are done once a year;
- Other symbols, such as bike lanes, are complaint driven.
- This past year police detail added $4000 to the cost of the work - $1000 of which comes out of the DPW budget for this line-item. As noted above, the remainder is generally scraped together from the operating budget.

DISCUSSION:
The Committee generally agreed that clear safety markings are a priority and discussed possible funding source options and best practices.

The committee asked about the availability of Transportation Network Company (TNC) funds, of which Brookline received $207,442.50 this past year. We were told the monies were not available for pavement markings. There have been cases in which pavement markings that are part of a larger TNC funded project are covered, but the markings themselves are not. State Aid is not readily available either.

The Director of Highway & Sanitation provided a cafeteria-style table of the additional monies required for a variety of options. The table provided estimates which where meant to be informative, but they were not a department wish list. The Committee learned that ideally, the department of Highway and Sanitation would like to:

- continue to paint the long lines (the 4" white gutter lines, 4" yellow center lines and 4" double yellow center lines) twice a year;
- paint all crosswalks twice a year (rather than only 55% of them); and
- paint all other symbols once a year (as opposed to the current complaint driven model).

The additional estimated cost for that upgraded service lies between an estimated, $70,000 to $75,000.

In addition to discussing funding sources and suggested budgetary changes to improve pavement-marking maintenance, which everyone seemed to agree on, the Committee reviewed possible improvements to the petitioner's original language. Because the petitioners had not had an opportunity to speak with anyone from the DPW before submitting their WA, they were not aware that when the Highway Division sends a truck out and with a detail, it simply drives along the road; the concept of evaluating segments of the road as it is repainted, which the petitioner's advocated for, is not part of the process and need not become part of the process in order to improve pavement marking maintenance. The Committee suggested adjusting the language as a result.

There was additional discussion regarding whether or not the last resolve clause should include the directive that the Town "shall" provide sufficient funds, or whether it should "encourage" the Town to provide sufficient funds. The Committee voted on language to "encourage", because the WA seems to have wide ranging support, and the more conciliatory language seemed appropriate.

RECOMMENDATION
By a VOTE of in 20 favor, none opposed, and no abstentions the Advisory Committee recommends FAVORABLE ACTION on WA 7 as amended:
VOTED

To see if the Town will adopt the following resolution:

Whereas all markings on a street contribute to safety and clarity for users of the public way, including people walking, bicycling, using mass transit, and driving automobiles and trucks, and,

Whereas the Town of Brookline's Complete Streets Policy states that "The Town of Brookline shall plan, construct, and maintain its public ways to enhance safety, access, inclusion, convenience, and comfort for all users, thereby creating *complete streets*;" and,

Whereas observations indicate that the maintenance of certain street markings intended for pedestrian and bicycle safety—such as crosswalks and bike lanes—has been inadequate to keep up with wear and tear, and

Whereas users of the public way who walk and bicycle are particularly vulnerable by virtue of their mode of transportation, inadequate maintenance of markings has a disproportionate negative impact on their safety, and

Whereas the Town of Brookline budgets for maintaining pavement markings in its operating budget, including those related to pedestrian and bicycle safety,

~~Now therefore, be it resolved that the Town evaluate and repaint or refurbish all roadway markings as needed when any markings on a segment of a road are repainted.~~

~~And further, be it resolved that the Town operating budget shall provide sufficient funds to allow for proper maintenance of street markings for automobile, bicycle, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.~~

Now therefore be it resolved that Town Meeting strongly encourages the Town to include sufficient funds in the operating budget to allow for proper maintenance of street markings for automobile, bicycle, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.

XXX

ARTICLE 7

MOTION OFFERED BY THE PETITIONERS

VOTED: That the Town adopt the following resolution:

A resolution calling for the Town to properly maintain street markings for all modes of travel.

Whereas all markings on a street contribute to safety and clarity for users of the public way, including people walking, bicycling, using mass transit, and driving automobiles and trucks, and

Whereas the Town of Brookline's Complete Streets Policy states that "The Town of Brookline shall plan, construct, and maintain its public ways to enhance safety, access, inclusion, convenience, and comfort for all users, thereby creating *complete streets*," and

Whereas observations indicate that the maintenance of certain street markings intended for pedestrian and bicycle safety—such as crosswalks and bike lanes—has been inadequate to keep up with wear and tear, and

Whereas users of the public way who walk and bicycle are particularly vulnerable by virtue of their mode of transportation, inadequate maintenance of markings has a disproportionate negative impact on their safety, and

Whereas the Town of Brookline budgets for maintaining pavement markings in its operating budget, including those related to pedestrian and bicycle safety,

Now therefore, be it resolved that the Town evaluate and repaint or refurbish all roadway markings as needed.

And further, be it resolved that the Town operating budget shall provide sufficient funds to allow for proper maintenance of street markings for automobile, bicycle, mass transit, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.

PETITIONER MOTION MARKED AGAINST ADVISORY COMMITTEE MOTION (deletions struck, additions in bold and underlined)

To see if the Town will adopt the following resolution:

A resolution calling for the Town to properly maintain street markings for all modes of travel.

Whereas all markings on a street contribute to safety and clarity for users of the public way, including people walking, bicycling, using mass transit, and driving automobiles and trucks, and,

Whereas the Town of Brookline's Complete Streets Policy states that "The Town of Brookline shall plan, construct, and maintain its public ways to enhance safety, access, inclusion, convenience, and comfort for all users, thereby creating *complete streets*;" and,

Whereas observations indicate that the maintenance of certain street markings intended for pedestrian and bicycle safety—such as crosswalks and bike lanes—has been inadequate to keep up with wear and tear, and

Whereas users of the public way who walk and bicycle are particularly vulnerable by virtue of their mode of transportation, inadequate maintenance of markings has a disproportionate negative impact on their safety, and

Whereas the Town of Brookline budgets for maintaining pavement markings in its operating budget, including those related to pedestrian and bicycle safety,

Now therefore, be it resolved that the Town evaluate and repaint or refurbish all roadway markings as needed

And further, be it resolved that the Town operating budget shall provide sufficient funds to allow for proper maintenance of street markings for automobile, bicycle, mass transit and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.

~~Now therefore be it resolved that Town Meeting strongly encourages the Town to include sufficient funds in the operating budget to allow for proper maintenance of street markings for automobile, bicycle, and pedestrian use, as well as any other markings that are provided on the public way for the safety of users.~~

ARTICLE 8

EIGHTH ARTICLE

Submitted by: Select Board

To see if the Town will vote to authorize and empower the Select Board to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO OFFER A SENIOR DISCOUNT PROGRAM FOR WATER AND SEWER RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline Select Board may discount fees charged to residents aged 65 and over for the use of the town's water and sewer system.

SECTION 2. This act shall take effect upon its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

When the revised rate structure for FY2020 was reviewed with the Select Board the potential of expanding the availability of the discount offered to senior water uses was explored. The Town would need to file legislation in order provide the discount recommended by the Water and Sewer Director. The intent is to expand the exemption to seniors also enrolled in the Tax Deferral and Senior Work-Off Exemption programs through the Assessing Department. The article would give the Select Board the authority to determine the specific discount offered, which would be voted during the annual rate setting process.

SELECT BOARD'S RECOMMENDATION

Article 8 asks the Town to authorize the Select Board to file home rule legislation that would allow for the Board to offer a senior discount program for water and sewer rates. The Town currently offers a senior discount, a 20% discount to eligible seniors, as

determined by the Assessors Department, modeled under Clause 17D and 41C Property Tax Exemptions. When looking to expand the program to seniors also enrolled in the Tax Deferral and Senior Work-Off Exemption programs through the Assessors Department the Water and Sewer Division was advised that special legislation should be sought. Town Counsel noted that several communities offer this or a similar type of discount to senior ratepayers without such authority, however DOR/DLS has taken the position under Brand v. Water Commissioners of Billerica, 242 Mass. 223 (1922) that such authority is required.

The Select Board appreciates the concerns expressed at the public hearing on whether or not this authority was needed, but agreed that a more conservative approach is appropriate. The Board adopted the Administration and Finance Subcommittee of the Advisory Committee's recommendation to add "income eligible" before the word residents in Section 1 since that was the intent of the proposal.

On September 17th a unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: To authorize and empower the Select Board to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO OFFER A SENIOR DISCOUNT PROGRAM FOR WATER AND SEWER RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline Select Board may discount fees charged to income eligible residents aged 65 and over for the use of the town's water and sewer system.

SECTION 2. This act shall take effect upon its passage.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 8 will be included in the supplemental mailing.

XXX

ARTICLE 8

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Article 8 would authorize the Select Board to file a Home Rule petition to allow the Town to offer additional discounts of the water and sewer fees to eligible seniors (65 and over) who participate in the Tax Deferral program and Senior Tax Work-off Exemption program.
If passed by the Legislature, the Select Board would then determine criteria and implement the program.

The Advisory Committee recommends FAVORABLE ACTION on Article 8.

BACKGROUND:
The price of water in the U.S. has increased rapidly in recent years. The average water and sewer bill increased 3.6% from 2018 to 2019, the eighth consecutive year of increase. This year, Americans nationwide will pay an average $104 per month in water and wastewater bills, an increase of 31% since 2012, far exceeding inflation.

The Town offers water and sewer bill discounts to individuals who meet 17D and 41C property
tax exemption criteria. Currently, 7 people are taking advantage of the program. It is estimated that the number could increase to between 40 to 50 people. The cost of fully implementing this program is estimated to be less than $30,000. The water bill comprises both a usage rate and a base rate, which helps to cover infrastructure costs. The base charge for water and sewer recoups about 15% of the cost. Seniors on the above mentioned programs currently get a 50% discount on the base rate. To be eligible, one must be 65 years old, a MA resident for 10 years, homeowner for 5 years, and income eligible. Income eligibility is based on income and assets, but exclude the house. It is the same criteria as the Tax Deferral and Senior Work-off programs. The Assessor's Office determines who qualifies.

DISCUSSION;
The petitioners expressed concerns as to how long a home rule petition would take to wind its way through the State House. This process can typically take months to years, if it survives the legislative session, and if it does not, it would have to be refiled in the next session. There is language in state law that seemed to indicate that the Town can already do what the article asks under Chapter 41, section 69B, and some towns apparently do use Chapter 41 now, while others do not. While there is the question as to whether the Select Board could do this now under Chapter 41, the Water & Sewer Department is hesitant to implement a program without the home rule petition.

Deputy Town Administrator Melissa Goff had discussed this with the Town Counsel Joslin Murphy, and it was Town Counsel's opinion that we should file the home rule petition.

She wrote:

"We have determined that in order to offer the proposed senior water and sewer rate discount, the Town will need to seek special legislation. I note, as you have, that several communities apparently offer this or a similar type of discount to senior ratepayers without such authority, however DOR/DLS has taken the position under Brand v. Water Commissioners of Billerica, 242 Mass. 223 (1922) that such authority is required."

There are issues with the current program, such as being available only to homeowners, not renters. Otherwise qualified seniors who live in condos are also not eligible to take part, due to the requirement of needing to have their name on the water bill. Raising the number of eligible participants slightly will not raise rates on other ratepayers, as the cost would come out of the Enterprise Fund. Concerns of some Advisory Committee members included the fact that there are no specifics in the language, and one member noted that the warrant article called for broader authority than the rationale for the article in the petitioner's explanation. He felt that it was premature to suggest program specifics and that the legislative history should reflect a broader and more flexible view.

Approval of this article will simply give authority to the Select Board to design and implement a program.

Articles 25 and 26 of the 2018 Annual Town Meeting tasked the Town with exploring ways to provide relief to seniors who are financially stressed and risk losing their home. This proposed article would not help the vast majority of seniors who need it, but it is a first step. The Advisory Committee felt that the Select Board should also look at Chapter 41 to determine if additional help could be provided now under existing State Law. The petitioners provided a study from Northeastern University (link to the study is at the end of this report).

RECOMMENDATION:
The Advisory Committee voted to amend the article by adding the words "income eligible" in section 1, second line before "residents aged 65 and over".

By a vote of 22-3-3, the Advisory Committee recommends FAVORABLE ACTION on article 8 as amended (new language underlined):

Voted: that the Town votes to authorize and empower the Select Board to file a petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO OFFER A SENIOR DISCOUNT PROGRAM FOR WATER AND SEWER RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the town of Brookline Select Board may discount fees charged to income eligible residents aged 65 and over for the use of the town's water and sewer system.

SECTION 2. This act shall take effect upon its passage.

https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf

ARTICLE 9

NINETH ARTICLE

Submitted by: Wendy MacMillan, TMM4; David Lescohier, TMM11; Deborah Brown, TMM1

To see if the Town will authorize and empower the Select Board, on such date and in such manner as required by the House Clerk, to file a petition for legislation to authorize the Town to levy a real estate transfer tax, which will be considered in the legislative session opening on the first Wednesday in January in the year 2020, provided that the General Court may reasonably vary the form and substance of this requested legislation which shall be within the scope of the general public objectives of this petition.

WHEREAS Brookline is one of the state's wealthiest towns with a median household income, of $111,289 one of the highest in Boston's inner-core and the median for married couples with dependent children is approximately $260,756. Elderly women living alone earn $32,519 per year.

WHEREAS Brookline has the highest median home price of any community in the Commonwealth, at $892,959 and the average market rent is approximately $3,435.

WHEREAS affordable housing is further compounded and complicated by a combination of regional housing demand and constrained supply.

WHEREAS in view of limits on Brookline revenue growth, there is likely insufficient funding from existing sources for affordable housing purposes after meeting the Town's existing operational and infrastructure maintenance commitments.

WHEREAS the Town of Brookline's Land Bank Study Committee has researched a real estate transfer fee to expand Brookline affordable housing, among the possible purposes. Since the State House, however, will be considering transfer fee legislation for Somerville and Cambridge beginning in January 2020, it is urgent that the Town file its petition at the beginning of this upcoming legislative session so that Brookline may join this official conversation prior the scheduling of the session's hearings.

WHEREAS the Real Estate Transfer Fee, as recommended, to fund the Brookline affordable housing trust fund is equitable, very low impact, and inexpensive to administer.

WHEREAS a real estate transfer fee would be in line with the direction neighboring communities including Concord, Cambridge and Somerville are moving to employ a Real Estate Transfer Fee to create affordable housing.

WHEREAS this type of fee is appropriate to fund housing and clearly defined, non-recurring purposes.

WHEREAS a real estate transfer fee earmarked for the affordable housing trust is well suited to operate within the Town's organizational structure and financial policies, and is specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

THEREFORE, the Town of Brookline hereby requests that the Legislature grant the Town of Brookline authority to levy a real estate transfer fee of the portion of the purchase price exceeding $500,000 upon the transfer of the purchase price of non-exempt real estate transactions, not to exceed 1.0 % is to be paid by the seller and not to exceed 1.0% to be paid by the buyer. Any agreement between the purchaser and the seller or any other person with reference to the allocation of the liability for the fee shall not affect such liability of the purchaser to the Town. The Town may define by bylaw what constitutes a controlling interest and the calculation of the fee.

And that the Town shall authorize certain transfers of real property interests be exempt from the fee including: transfers to the federal government, the Commonwealth, the Town, and any of their instrumentalities, agencies or subdivisions, including the Brookline Housing Authority; transfers to the Brookline Improvement Corporation; transfers of real property subject to an affordable housing restriction; (transfers made without additional consideration to confirm, correct, modify or supplement a transfer previously made;; and transfers to a charitable organization, as defined in clause Third of section 5 of chapter 59 of the General Laws, or a religious organization, provided, however, that the real property interests so transferred will be held solely for the production of affordable housing.

And the Town may not, by bylaw or otherwise, eliminate or reduce any exemption set forth in this in this law.

And that the Town may use existing property tax collection and billing methods. The fee shall be paid to the Town. The Town shall have such remedies to collect the fee as provided by law with respect to the collection of real property taxes. The Town may, by by-law, adopt additional requirements, exemptions, and regulations to implement or enforce said fee, consistent with this act.

And that the Town shall through policy, regulation and or by-law require prioritization of projects that employ sustainable practices which focus on increasing the efficiency of resource use — energy, water, and materials — while reducing building impacts on human health and the environment during the building's lifecycle, through better siting, design, construction, and use.

And that the Town shall through policy, regulation and or by-law require prioritization of projects that employ mixed income and mixed-use development as characterized as pedestrian-friendly development that blend two or more residential, commercial, cultural, institutional, and/or industrial uses.

And that the Town shall require a copy of the deed or other instrument evidencing such transfer and shall be accompanied by: (i) an affidavit signed under oath or under the pains and penalties of perjury by the purchaser and seller attesting to the purchase price; (ii) the

applicable fee owed or, if applicable, an affidavit of intent to seek one of the permissible exemptions, as described above for that property by the purchaser; and (iii) the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from said fees. Upon receipt of the transfer fee or satisfactory evidence of exemption, the Town or its designee shall promptly thereafter issue a certificate indicating that the fee has been paid or that the transfer is exempt from the fee. The Norfolk Registrar of Deeds shall not record or register a deed unless the deed is accompanied by such certificate.

And that the Town's appropriation of funds into the Municipal Affordable Housing Trust Fund under the provisions of MGL Chapter 44 Section 55 C, shall be limited to financing affordable housing and reasonable amounts for personnel and other costs.

And that the Town shall prepare and issue an annual report that: (i) identifies fee receipts; (ii) quantifies affordable housing programs funded, including type and purpose; and (iii) evaluates the impact of said affordable housing programs, including but not limited to, to the extent reasonably possible and permitted by applicable law, the number and demographics of individuals and families served as well as measures of housing stability and wealth generation in the community.

and

And that this Act shall only become effective by a majority vote for a question on a Town election ballot.
or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Resolution to Request that the Legislature Grant the Town of Brookline Authority to Levy a Real Estate Transfer Tax Fee

The purchase and financing of a house in Brookline is increasingly difficult and near out of reach for far too many. The high cost of real estate is also a significant impediment in developing affordable housing for lower-income and working families in Brookline. A real estate transfer tax fee (RETT) would help to raise resources to create a housing stock for families, the elderly, disabled and veterans. The Town of Brookline has relied largely on the Brookline Housing Authority and MA Chapter 40B to satisfy the housing needs of those who lack the income to purchase or rent a home in Town, but that is far from enough to meet a significant current and projected housing needs.

The Town's proposed RETT would fund affordable housing and does not extend to funding schools, green space other purposes. We believe that by focusing on the Town's most significant issue, affordable housing, the Legislature is far more likely to vote in favor of our home ruel petition. The Town would be putting residents in a better position to maintain our existing housing stock. Benefits of a RETT in Brookline are as follows. We

will be able to expand our current housing stock. First time home-buyers will have a better chance at home ownership. The RETT will play an essential role in providing housing for those most in need. This RETT is progressive. The proposed tax is also very low impact and inexpensive to administer.

Finally, a RETT would allow the Town through established committees and financial policies and processes to build the necessary funding to act quickly when the Town becomes aware of market opportunities. The Town would be able to anticipate opportunities and trends. It will increase the Town's capacity to adjust its priorities and manage its resources, as circumstances require. The aim of this warrant article is to introduce a new model into the mix of Brookline's means and methods for protection, creation, and preservation of Brookline's housing values.

Critical Timing for Approval

The Town of Brookline's Land Bank Study Committee has researched a real estate transfer fee to expand Brookline affordable housing, among the possible purposes. Since the State House, however, will be considering transfer fee legislation for Somerville and Cambridge beginning in January 2020, it is urgent that the Town file its petition at the beginning of this upcoming legislative session so that Brookline may join this official conversation prior the scheduling of the session's hearings.

Background

By way of background, Brookline has a population of 59,157 people and is the 18th largest community in Massachusetts. It is a largely white-collar town, with fully 96.76% of the workforce employed in white-collar jobs, well above the national average. Overall, Brookline is a town of professionals, managers, and sales and office workers. There are especially a lot of people living in Brookline who work in management occupations (14.98%), teaching (12.36%), and healthcare (12.13%). The per capita income in Brookline in 2010 was $65,189, which is wealthy relative to Massachusetts and the nation. This equates to an annual income of $260,756 for a family of four. On average Asians earn approximately $72,500 and Whites earn $65,668. Approximately 11.4% of the Town lives in poverty. However, Brookline contains both very wealthy and poor people as well. The Town's racial demographics are: 71.4% white, 15.7% Asian American, 5.9% Latinix, 3.9 two or more races, 3% African American, and 0.1% Native American. (SCOUT 2019)

Brookline was once a town of renters but over time – and in response to homeownership demand – the multifamily market has gradually declined to just over half of all Brookline households now renting the unit they occupy. It has approximately 24,716 residential properties that vary widely in price. The median home price is $892,959 . In 2018, there were approximately 1400 sales transactions. Approximately 38% of Brookline homes are valued at over $1.2 million; 16% are valued between $900,000 - $1.2 million; and 25.5% range from $600,000 to $909,000. Therefore, approximately 80% of the Town's home values far exceed over $900,000. In terms of housing sizes they are: 2 bedrooms at 30%, 3 bedrooms at 23.2%, 4 bedrooms at 11.6% and greater than five bedrooms at 8.4%. Most of the Town's housing stock is old. Approximately 50.3% is pre 1939 housing, 25.8% was built between 1940-1969, 20% between 1970 to 1999 and 3.9% of homes were built after

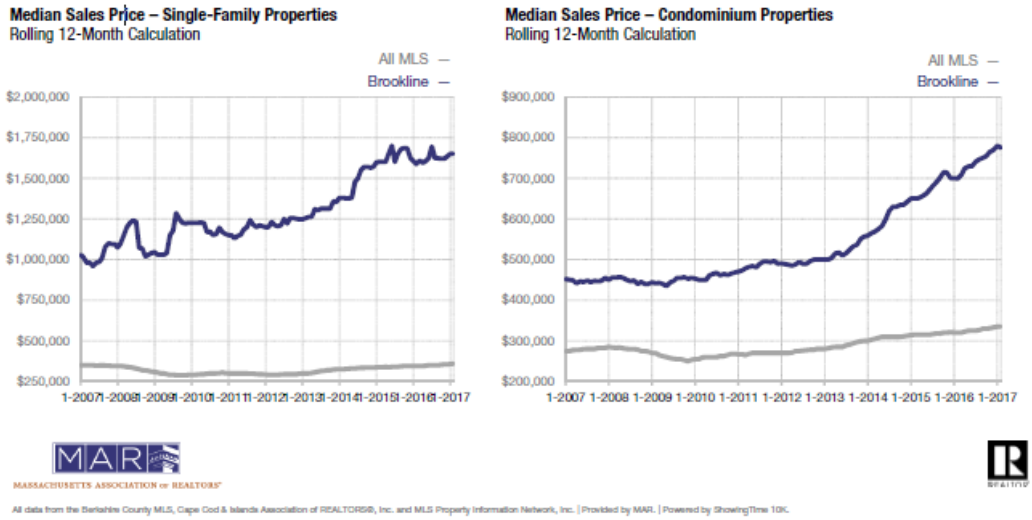
2000. In terms of types of homes, 20.9% are single family homes, 22.8% are small buildings, 51.7% are apartment complexes and 4.6% are townhomes. (SCOUT 2019)

Financial Benefits and Tax Implications

We appreciate that many Brookline homeowners are understandably concerned about the impact of increasing our tax burden. The RETT is not an override and will not increase property tax levy. It will not increase the automobile excise tax, the meals tax, the hotel occupancy tax, or other recurring taxes. It will not increase fees or fines. The RETT would actually shift the burden to more expensive properties, making it more progressive because it exempts at least the first $500,000 of the sale price. Furthermore, lower income owners tend to stay put while more affluent owners move more frequently. (Sexton 2010)

Any acquisitions for commercial development would contribute to the growth of the tax base. Since assessed property values in Brookline have recently increased consistently at rates of up to 7 - 10% per year (Table 1), virtually every Brookline seller has surely realized a gain, often reaching hundreds of thousand dollars. In effect, even if the real estate transfer tax fee reduces the sale price a small fraction of 2%, the sellers still reap a very substantial benefit from having property located in a community with excellent schools, parks, services, infrastructure, walkability, and transportation.

Table 1. Brookline Real Estate Trends



Therefore, it seems fair and appropriate for sellers and buyers to return a small portion of their change in property value to support the infrastructure from which they have, or will, benefit. The RETT payment, like impact fees are often employed in other parts of the

country in areas experiencing rapid development (Been 2005), represents partial compensation for the Town's contribution to increasing property value. (Bahl 2010)

For investors and developers in the business of owning, managing, and trading in properties, real estate is an asset. However, residential, owner-occupied real estate with the benefits of household occupancy is, first and foremost, a home that, in the Brookline market, happens to be very likely to appreciate and may reap tax advantages. When a home appreciates, the growth in value is generally viewed as at least partially due to the schools, the high quality public domain, a robust commercial sector, and the desirability of the location. It happens that the real estate appreciation in Brookline overwhelmingly offsets the property tax and RETT burdens. In this way, the RETT is a mechanism to return a small portion of this net change for sellers and buyers to the Town as fair compensation for services and infrastructure maintenance and investment that, clearly, has added substantially to the sale price and value of the property. (Bahl 2010)

Specifically, the empirical case studies presented indicate that there is no statistically significant impact of transfer tax rates on either home price or sales at the local level. This actually makes sense in a more rudimentary framework as well. Given that commissions, fees, closing costs, inspections, and other fees can run as high as 8% of the sales price of a property, the 0.45% increase in transfer rates on the most expensive homes is a proverbial drop in the bucket." (Thornberg 2012)

Not all taxes are broad-based. (Capital Gains, gift, and Inheritance are examples.) Equitable taxation depends on a mix of broad-based as well as some narrower, more targeted taxes. The targeting of the RETT is equitable within a broad context as long as it does not constitute too great a proportion of the overall tax burden. The rate ceiling and exemption floor minimize any risk that the RETT will be excessive or cause significant deadweight losses (market distortion). "Our state and local tax system remains "upside-down": low- and moderate-income households pay a larger share of their income in taxes than do households with higher incomes. In fact, the highest-income households in Massachusetts – those in the top 1 percent – pay a smaller share of their income in state and local taxes than does any other income group. (Baxandall and Kurt Wise 2019)

Compounding these problems, Congress enacted federal tax cuts at the end of 2017 that are skewed heavily toward the highest-income households, delivering to those in the top one percent of Massachusetts households a total cut in federal taxes of some $2.58 billion in 2019. Nationwide, the federal revenue loss from these tax cuts is anticipated to reach $1.9 trillion over a decade, according to the Congressional Budget Office. The lost revenues will curtail the federal government's ability to support programs in Massachusetts and throughout the nation for years to come. (Baxandall and Wise 2019)

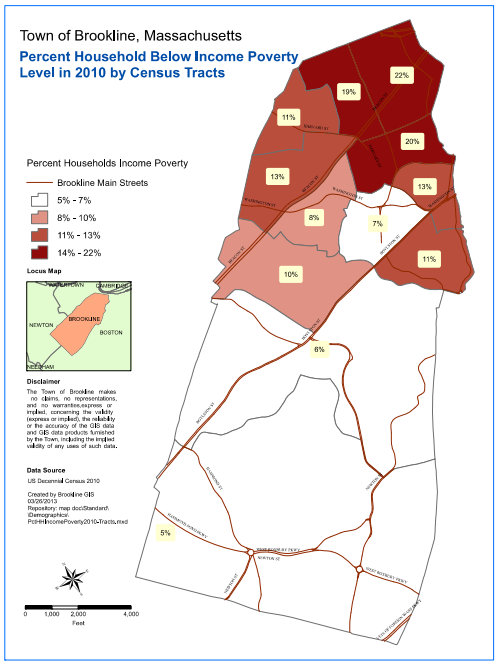
It is usually the case that a particular tax doesn't perfectly match a taxpayer's ability to pay. Equitable taxation generally depends on a mix of taxes so that inequity in some taxes is off-set by features of others. We all support the schools, services for the elderly, and veterans through our taxes, even though a minority of households in Brookline have school age children, and many others are not elderly, or veterans or use the Town's plentiful parks and greenspace or other

services, and therefore may not benefit directly from various specific services their taxes support.

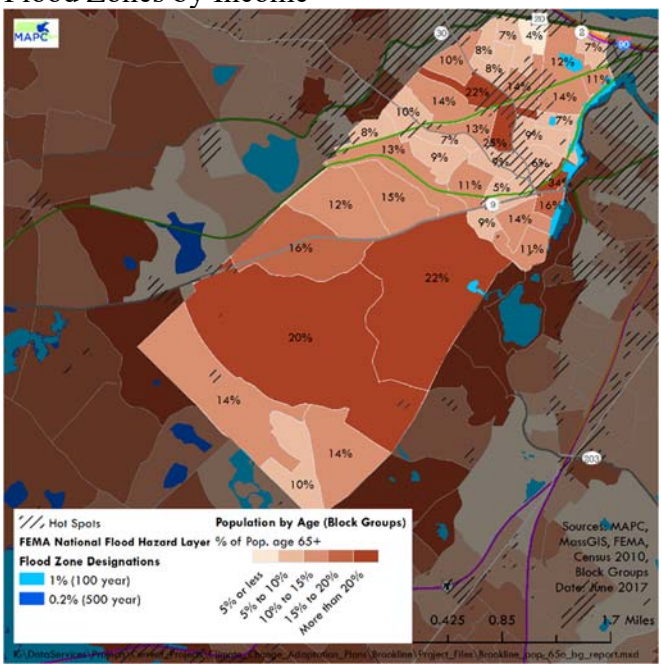
Homeownership and Intergenerational Wealth

Wealth concentration is high and rising in the US, reigniting an old debate within economics about the role that intergenerational wealth transmission plays in understanding savings and wealth accumulation. (Laura Feiveson and John Sabelhaus) Moreover, there is a strong relationship between homeownership and intergenerational wealth. An Urban Land Institute study found that "having a home owning parent increases a young adult's likelihood of being a homeowner by 7 to 8 percentage points. Additionally, a 10 percent increase in parental wealth increases a young adult's likelihood of owning by 0.15 to 0.2 percentage points. For example, if parental wealth is $200,000, the young adult would have a 50 percent likelihood of owning a home. Parental wealth includes financial assets and nonfinancial assets, such as homes and automobiles, minus any debt. Parents' tenure status and wealth explains 12 to 13 percent of the difference in homeownership between black and white young adults. Young adults are more likely to be homeowners if their parental wealth is above $200,000. More than 50 percent of white parents and only 10 percent of black parents hold more than $200,000 of wealth." (Jung Hyun Choi Jun Zhu Laurie Goodman) Table 2 below, highlights where the Town's most significant poverty exists. There is also a h correlation between where poverty exists in Brookline and race. Moreover, our research has found that these areas are also most likely to be impacted by climate change, because they live in close proximity to flood zone. (Town of Brookline GIS)

Table 2 – Housing and Income in Brookline



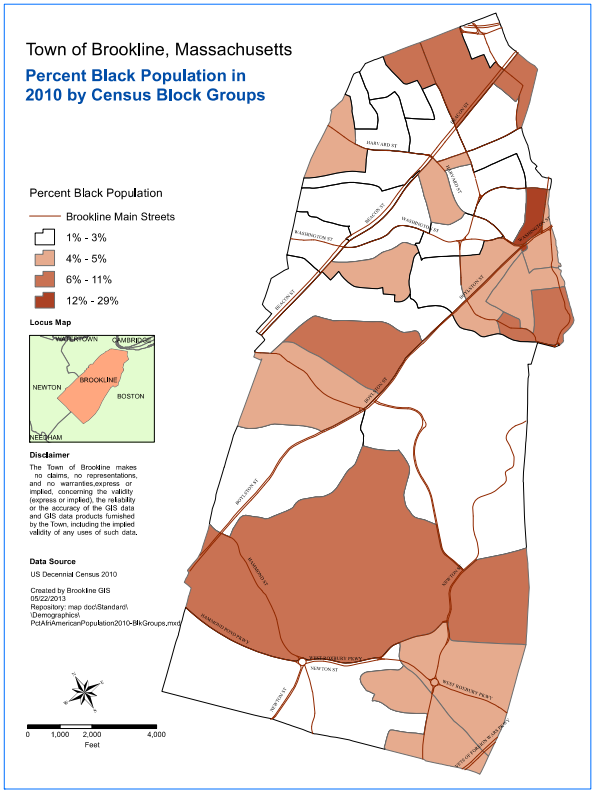
Flood Zones by Income

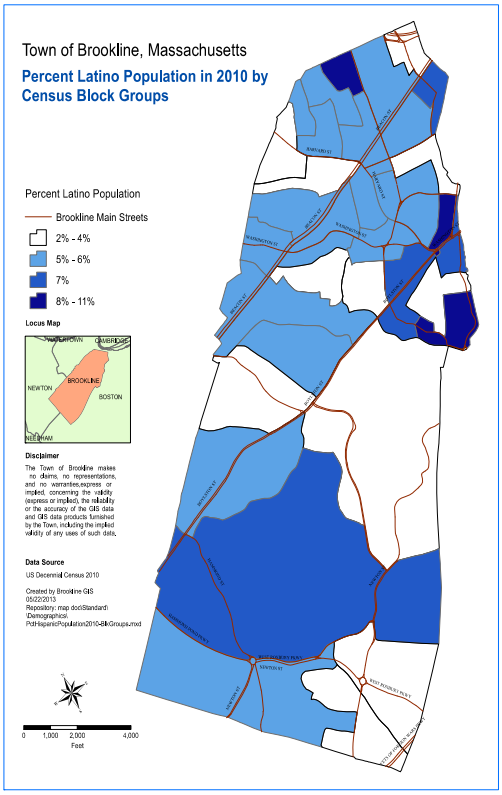


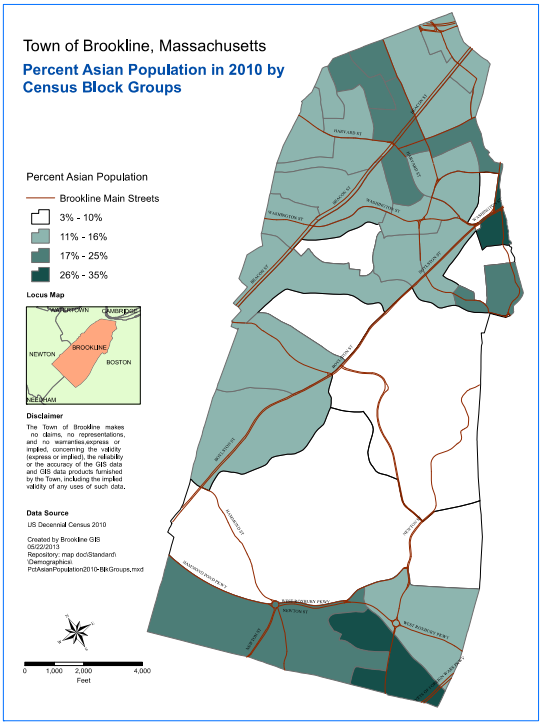
Segregated Housing Patterns in Brookline

Finally, data supports that a RETT will help to minimize Brookline's housing segregation patterns, which is also an intergenerational wealth problem as described above. A Boston Federal Reserve study found that "the typical white household in Boston is more likely than nonwhite households to own every type of liquid asset. For example, close to half of Puerto Ricans and a quarter of U.S. blacks don't have either a savings or checking account, compared to only 7% of whites. The typical white household in Boston is more likely than nonwhite households to own every type of liquid asset. For example, close to half of Puerto Ricans and a quarter of U.S. blacks don't have either a savings or checking account, compared to only 7% of whites. Whites and nonwhites also exhibit important differences in assets that associated with homeownership, basic transportation, and retirement. Close to 80% of whites own a home, whereas only one-third of U.S. blacks, less than one-fifth of Dominicans and Puerto Ricans, and only half of Caribbean blacks are homeowners. (Ana Patricia Muñoz, Marlene Kim, Mariko Chang, Regine O. Jackson, Darrick Hamilton, and William A. Darity Jr.) And while Brookline is not Boston, we believe that these trends may be quite similar in Brookline.

Table 3 below includes maps that highlight housing segregation patterns. You will see that maps below that people of color are concentrated in particular areas of Town.


Town of Brookline, Massachusetts
Percent Black Population in 2010 by Census Block Groups
Percent Black Population
Brookline Main Streets
1% - 3%
4% - 5%
6% - 11%
12% - 29%
Locus Map
WALTHAM
CAMBRIDGE
NEWTON
BROOKLINE
BOSTON
NEEDHAM
Disclaimer
The Town of Brookline makes no claims, no representations, and no warranties,express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the Town, including the implied validity of any uses of such data.
Data Source
US Decennial Census 2010
Created by Brookline GIS
05/22/2013
Repository: map doc\Standard\
\Demographics\
PctAfrAmericanPopulation2010-BlkGroups.mxd
0 1,000 2,000 4,000
Feet


Town of Brookline, Massachusetts
Percent Latino Population in 2010 by Census Block Groups
Percent Latino Population
Brookline Main Streets
2% - 4%
5% - 6%
7%
8% - 11%
Locus Map
WALTHAM
CAMBRIDGE
NEWTON
BROOKLINE
BOSTON
NEEDHAM
Disclaimer
The Town of Brookline makes no claims, no representations, and no warranties,express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the Town, including the implied validity of any uses of such data.
Data Source
US Decennial Census 2010
Created by Brookline GIS
05/22/2013
Repository: map doc\Standard\
\Demographics\
PctHispanicPopulation2010-BlkGroups.mxd
0 1,000 2,000 4,000
Feet



Overall, housing equity makes up about two-thirds of all wealth for the typical (median) household. In short, for median families, the racial wealth gap is primarily a housing wealth gap. This is no accident. Besides facing discrimination in employment and wage-setting, for generations even those African-American families that did manage to earn decent incomes were barred from accessing the most important financial market for typical families: the housing market. Housing policies that prevented blacks from acquiring land, created redlining and restrictive covenants, and encouraged lending discrimination reinforced the racial wealth gap for decades. (Jones 2017)

"While much of the policy discussion around segregation looks back at the lasting impact of racially biased policies like redlining, a focus on these historic injustices risks letting us off the hook for actions taken today. *Current* practices, many of which function through local zoning codes, also serve to perpetuate residential segregation and inflate housing prices. (Luc Schuster 2019) That said, we know that "Communities that permitted more housing units appear to have experienced greater reductions in segregation between 2000 and 2017. That relationship appears to be stronger for multifamily housing than for housing production as a whole. (The Boston Foundation 2019)

Conclusion

Housing is Brookline's third rail, it can and will drive our future. While the RETT will not solve all aspects of our housing problems, it is an essential step if we are to better serve our current and future residents. For the above reasons, we believe that the RETT would benefit the entire community.

Summary: A resolution to see if the Town will authorize Select Board to file a petition for legislation to authorize it to levy a real estate transfer tax for affordable housing.

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Moreover, "The Greater Boston Housing Report Card 2019: *Supply, Demand and the Challenge of Local Control*, helps explain how these dynamics work. Municipalities with zoning codes that make it difficult to build multifamily housing tend instead to produce only single-family homes accessible only to a small segment of the population–this is referred to as "exclusionary zoning." Our mental model for "segregation" often leads us to picture urban neighborhoods of color, but some of our region's most intense segregation is also in our affluent white suburbs. These communities have produced very little multi-family housing and instead are composed mostly of expensive single-family homes affordable only to higher-income families, most of whom tend to be white. In addition to analyzing problems with our current approach to local zoning, the Housing Report Card also analyzes which cities and towns aren't producing their fair share of housing for lower-income residents."

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COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 23, 2019. By unanimous vote, the CDICR supported Warrant Article 9.

DISCUSSION

We are all aware that affordable housing is a huge issue in Brookline. Most residents support the idea of creating more affordable housing in the town. This is a diversity issue that benefits all of us. We know that Brookline is a more vibrant community when there is greater diversity in our population and when it is not just the wealthy who can remain or move into our community. Think of seniors, the disabled, people of color, people working for non-profits and our own public servants – teachers, police officers, firefighters, etc. who are often priced out of the housing market in Brookline.

This warrant article provides a mechanism for funding more affordable housing programs. The Real Estate Transfer Fee is relatively small and would not impose a hardship on any individual buyer or seller but cumulatively will create a significant and sustainable source of funding from which additional affordable housing units may be added to the town's housing stock. Therefore, the commission recommends FAVORABLE ACTION on warrant article 9.

SELECT BOARD'S RECOMMENDATION

Article 9 is a non-binding resolution submitted by petition that seeks authorization from the Massachusetts Legislature for the Town to levy a 1% Real Estate Transfer Tax (RETT) to fund expenditures related to affordable housing. The RETT would levy a 1% tax upon the proceeds of a sale of real estate above $500,000, to be paid by the seller. The revenue generated by the tax would be would be deposited into the Affordable Housing Trust Fund. Expenditures from the Fund would be restricted for the creation and preservation of affordable housing for the benefit of low and moderate income households.

The matter of a real estate transfer tax was the subject of Article 24 of the 2018 Annual Town Meeting. The body voted to refer the matter to a study committee. While the proposal related to funding a land bank with the proceeds of a transfer tax, the Select Board's charge to the study committee was broad. The charge of the study committee includes;

- Advantages of using a transfer tax as a mechanism to provide alternative revenue to Brookline.
- Identify the potential range of use for such a transfer tax.
- Identify if a Land Bank is the best mechanism for administrating the allocation of such funds.
- Examine the economic impact of a potential transfer tax.
- Consider whether adoption of the Community Preservation Act can be an alternate or additional means of achieving the goals of the Land Bank contemplated under Article 24.

The Select Board is generally supportive of a real estate transfer tax to fund dedicated expenses for affordable housing and other essential community priorities. However, the Board believes that the Town ought to wait for the study committee to complete its review and recommendations before seeking the Legislature's permission to extend such significant taxing authority. In particular, the Board expects a full review of the merits of the existing Community Preservation Act (CPA) in lieu of a RETT. The CPA provides state funding in addition to the taxes derived from the local property tax surcharge.

The Board thanks the petitioners for their outstanding research and findings relative to Brookline's affordable housing crisis and look forward to the study committee's report which will develop a detailed proposal for Town Meeting's consideration in May of 2020.

The Select Board voted FAVORABLE ACTION on the following motion:

VOTED: To refer the subject matter of Article 9 to the Land Bank Study Committee with a report due back no later than annual Town Meeting scheduled for May 2020.

ROLL CALL VOTE:

Aye:	No:	Abstain:
Greene	Fernandez	Hamilton
Franco		
Heller		

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation on Article 9 will be included in the Supplemental Mailing.

XXX

ARTICLE 9

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Warrant Article 9 is a home rule petition, asking the State Legislature to authorize the Select Board to file legislation authorizing the Town to levy a real estate transfer tax. Petitioners would like the Town to levy such a tax and use the revenues to support affordable housing initiatives.

The Advisory Committee recommends REFERRAL of Article 9 to the Land Bank Study Committee.

BACKGROUND:

While the specifics of the proposed tax would still be subject to negotiation, the petitioners propose levying a tax of not more than 2% of the portion of the purchase price exceeding $500,000, subject to certain exemptions. Petitioners estimate that somewhere between $5 and $15 million could be raised annually through such a levy.

In 2018, in response to Warrant Article 24 of the Annual Town Meeting, Brookline established a Land Bank Study Committee which has, among other matters, researched a real estate transfer fee.

Neighboring communities including Concord, Cambridge, Nantucket, and Somerville have established or are establishing similar transfer fees (each with different characteristics). Nationwide, 35 states have "luxury" real estate transfer taxes. Vermont has a progressive RETT with an additional tax on out-of-state owners. Connecticut has collected $186M from their RETT. New York City has had a "mansion" tax since 1989.

DISCUSSION;

The Advisory Committee supports initiatives to improve the affordable housing situation in Brookline but had many concerns regarding Article 9, including:

Fairness

Many members felt it unfair to exempt the first $500,000 from such taxation. Petitioners argue that exemptions make the tax progressive; most committee members hewed to the idea that "everyone should be pitching in." Another oft-expressed concern was around the fact that, as proposed, a couple who sold their single-family home in order to "downsize" and remain in Brookline would be subject to taxes on both transactions. Petitioners

acknowledged that some communities decline to tax in this situation and suggested that any final legislation would likely establish such an exemption. Finally, many members expressed concern around the impact on the elderly or other vulnerable populations, especially those whose net worth is mostly contained in their home. Although they may have experienced significant appreciation over the years, this tax may still hit many hard (or be perceived as doing so). And not every transaction will necessarily represent a profit for the seller that can offset the pain of an additional 2% tax.

Limitations

Members questioned whether it was reasonable to so severely restrict the potential uses of the additional revenues. Increasing the availability of affordable housing is an admirable goal, but so is increased greenspace, school initiatives, and a variety of transportation initiatives. This is potentially a lot of money to permanently devote to a single cause, especially when increasing affordable housing almost certainly exacerbates those other needs.

The unusual nature of this home rule petition

This home rule petition sets out a set of general public objectives and trusts that future negotiations between the General Court and the Select Board will result in appropriate legislation. Many members would prefer a more constrained set of specifics in a home rule petition (and, accordingly, would prefer more discussion and debate prior to filing the petition).

Process concerns

A common argument was that we have only recently established the Land Bank Study Committee, which has not yet had time to do its work. Members argued that this transfer tax is clearly within the purview of the Study Committee and we should allow the committee to continue evaluating it and we should wait for the committee's recommendations.

RECOMMENDATION:

A motion to refer the subject matter of Warrant Article 9 to the Land Bank Study Committee was proposed. By a vote of 19 in favor, 3 opposed, and 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION ON THE MOTION TO REFER.

ARTICLE 9

PLANNING BOARD REPORT AND RECOMMENDATION

Article 9 submitted by citizen petitioners is a resolution to authorize the Select Board to file a petition with the State Legislature that would allow the Town to levy a real estate transfer tax (RETT). This tax would be collected when a property is sold and would be paid partly by the seller and partly by the buyer. This warrant article only allows the Select Board to file a petition with the State Legislature to allow the Town to implement the real estate transfer tax by a Town–wide vote. The details in the article could be subject to substantial modifications before any Town-wide vote on it. This article mandates that the fees collected from the RETT would be used to fund the Brookline Affordable Housing Trust Fund, which is overseen by the Housing Advisory Board. The article also recommends that the Town establish policies and/or regulations which prioritize projects with sustainable practices and are mixed-income and mixed-use.

While the Planning Board generally supports the concept of a Real Estate Transfer Tax, the Board feels that this article is premature and not yet ready for its support. A Land Bank Study Committee, which includes a member of the Planning Board, has been working on crafting a warrant article on a real estate transfer tax for the Spring Town Meeting and several details have not yet been decided, such as where funds should be allocated.

Therefore, the Planning Board voted No Action on Article 9 and to refer it back to the Land Bank Study Committee for further evaluation and development.

ARTICLE 9

MOTION OFFERED BY THE PETITIONERS AND RITA MC NALLY, TMM2

Additions **bold and underlined**, deletions ~~struck~~

VOTED: That Town authorize and empower the Select Board, on such date and in such manner as required by the House Clerk, to file a petition for legislation to authorize the Town to levy a real estate transfer tax, which will be considered in the legislative session opening on the first Wednesday in January in the year 2020, provided that the General Court may reasonably vary the form and substance of this requested legislation which shall be within the scope of the general public objectives of this petition.

WHEREAS Brookline is one of the state's wealthiest towns with a median household income, of $111,289 one of the highest in Boston's inner-core and the median for married couples with dependent children is approximately $260,756. Elderly women living alone earn $32,519 per year.

WHEREAS Brookline has the highest median home price of any community in the Commonwealth, at $892,959 and the average market rent is approximately $3,435.

WHEREAS affordable housing is further compounded and complicated by a combination of regional housing demand and constrained supply.

WHEREAS housing owned and or sponsored by the Brookline Housing Authority (BHA) is a necessary resource for sustaining demographic diversity and for sustaining the supply of affordable rental housing in Brookline, and the BHA's properties are in need of significant capital repair, and the BHA in 2018 initiated an extensive Preservation Initiative to renovate its properties.

WHEREAS in view of limits on Brookline revenue growth, there is likely insufficient funding from existing sources for **sufficient** affordable housing purposes after meeting the Town's existing operational and infrastructure ~~maintenance~~ commitments.

WHEREAS the Town of Brookline's Land Bank Study Committee has researched a real estate transfer fee to expand Brookline affordable housing, among the possible purposes. Since the State House, however, will be considering transfer fee legislation for Somerville and Cambridge beginning in January 2020, it is urgent that the Town file its petition at the beginning of this upcoming legislative session so that Brookline may join this official conversation prior the scheduling of the session's hearings.

WHEREAS the Real Estate Transfer Fee, as recommended, to fund the Brookline affordable housing trust fund is equitable, very low impact, and inexpensive to administer.

WHEREAS a real estate transfer fee would be in line with the direction neighboring communities including Concord, Cambridge and Somerville are moving to employ a Real Estate Transfer Fee to create affordable housing.

WHEREAS this type of fee is appropriate to fund ~~housing and~~ ~~clearly defined~~ non-recurring ~~purposes~~ **expenditures**.

WHEREAS a real estate transfer fee earmarked for the affordable housing trust is well suited to operate within the Town's organizational structure and financial policies, and is specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

THEREFORE, the Town of Brookline hereby requests that the Legislature grant the Town of Brookline authority to levy a real estate transfer fee of the portion of ~~the~~ **any** purchase price exceeding $500,000 upon the transfer of the purchase price of non-exempt real estate transactions, not to exceed ~~1.0 % is to be paid by the seller and not to exceed 1.0% to be paid by the buyer~~ **2.0% in aggregate to be paid by buyer and seller.** Any agreement between the purchaser and the seller or any other person with reference to the allocation of the liability for the fee shall not affect such liability of the purchaser to the Town. The Town may define by bylaw what constitutes a controlling interest and the calculation of the fee.

And that the Town ~~shall~~ **may** authorize certain transfers of real property interests be exempt from the fee including: transfers to the federal government, the Commonwealth, the Town, and any of their instrumentalities, agencies or subdivisions, including the Brookline Housing Authority; transfers to the Brookline Improvement Corporation; transfers of real property subject to an affordable housing restriction; (transfers made without additional consideration to confirm, correct, modify or supplement a transfer previously made; and transfers to a charitable organization, as defined in clause Third of section 5 of chapter 59 of the General Laws, or a religious organization, provided, however, that the real property interests so transferred will be held solely for the production of affordable housing.

~~And the Town may not, by bylaw or otherwise, eliminate or reduce any exemption set forth in this in this law.~~

And that the Town ~~shall~~ **may** use existing property tax collection and billing methods. The fee shall be paid to the Town. The Town shall have such remedies to collect the fee as provided by law with respect to the collection of real property taxes. The Town may, by by-law, adopt additional requirements, exemptions, and regulations to implement or enforce said fee, consistent with this act.

And that the Town ~~shall~~ **may** through policy, regulation and or by-law require prioritization of projects that employ sustainable practices which focus on increasing the efficiency of resource use — energy, water, and materials — while reducing building impacts on human

health and the environment during the building's lifecycle, through better siting, design, construction, and use.

And that the Town may through policy, regulation and or by-law require prioritization of projects that employ mixed income and mixed-use development as characterized as pedestrian-friendly development that blend two or more residential, commercial, cultural, institutional, and/or industrial uses.

And that the Town shall through policy, regulation and or by-law require prioritization of projects, including renovation projects, that preserve and or expand the supply of housing affordable for low income renter households, and give particular consideration for such projects owned and or sponsored by the Brookline Housing Authority (BHA).

And that the Town shall require a copy of the deed or other instrument evidencing such transfer and shall be accompanied by: (i) an affidavit signed under oath or under the pains and penalties of perjury by the purchaser and seller attesting to the purchase price; (ii) the applicable fee owed or, if applicable, an affidavit of intent to seek one of the permissible exemptions, as described above for that property by the purchaser; and (iii) the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from said fees. Upon receipt of the transfer fee or satisfactory evidence of exemption, the Town or its designee shall promptly thereafter issue a certificate indicating that the fee has been paid or that the transfer is exempt from the fee. The Norfolk Registrar of Deeds shall not record or register a deed unless the deed is accompanied by such certificate.

And that the Town's appropriation of funds into the Municipal Affordable Housing Trust Fund under the provisions of MGL Chapter 44 Section 55 C, shall be limited to financing affordable housing and reasonable amounts for personnel and other costs.

And that the Town ~~shall~~ **may** prepare and issue an annual report that: (i) identifies fee receipts; (ii) quantifies affordable housing programs funded, including type and purpose; and (iii) evaluates the impact of said affordable housing programs, including but not limited to, to the extent reasonably possible and permitted by applicable law, the number and demographics of individuals and families served as well as measures of housing stability and wealth generation in the community.

And that this Act shall only become effective by a majority vote for a question on a Town election ballot.

ARTICLE 10

TENTH ARTICLE

Submitted by: Select Board

To see if the Town will vote to amend the Town's General By-laws by deleting Section (G) of Article 4.9 "Committee on Campaigns" in its entirety, thereby dissolving the Committee on Campaigns; or take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Committee on Campaigns was established by Town Meeting in 2006 following the work of the Moderator's Committee on Campaign Finance. The Committee recommended a series of reporting requirements, which were also established at the 2006 Special Town Meeting. The Committee has not met or taken any action in several years. Since the Committee was established via the General By-Laws, the purpose of this article is to remove the committee from the By-Laws.

COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE REPORT AND RECOMMENDATION

This Article would amend Article 4.9 of the Town's General By-laws to dissolve the Committee on Campaigns.

Article 4.9 of the Town Bylaws was adopted by Town Meeting in 2006 after recommendation by the Moderator's Committee on Campaign Finance (2003). The purpose of the Committee includes monitoring political campaign fundraising by:

- reviewing the financial records filed by candidates for municipal office and reporting the results of such analysis
- considering any recommendations for improvements, including electronic reporting and posting campaign finance information
- examining the feasibility of public financing for campaigns for town offices
- examining the relationship between campaign finance and appointments to Town boards & commissions
- holding public forums to discuss the municipal election process

Town Clerk Pat Ward indicated that the Committee had accomplished its goals and that current campaign contributions and financial records are available online, and are transparent and compliant at the local and state level.

The Committee on Campaigns has not met for at least 5 years and is not currently listed on the Town website under Boards & Commissions. The last member term expired in 2014.

RECOMMENDATION
The Unanimous CTOS Recommends FAVORABLE ACTION on the vote proposed by the Select Board under Article 10. VOTED 10.24.19

SELECT BOARD'S RECOMMENDATION

The Board agrees that the Committee on Campaigns has served its purpose and can be extinguished from the Town's by-laws. The Committee has not met or taken any action in several years. Should any other issue arise the Board could always charge a study committee to examine the issue and make recommendations, but it does not make sense to keep a dormant committee on the books. The Select Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the General By-laws by deleting Section (G) of Article 4.9 "Committee on Campaigns" in its entirety, thereby dissolving the Committee on Campaigns.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under article 10 will be included in the supplemental mailing.

XXX

ARTICLE 10

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Article 10 would amend the Town's General By-Laws by deleting Section (G) of Article 4.9. The effect of this would eliminate the Committee on Campaigns. The rest of Article 4.9 would remain unchanged.

The Advisory Committee recommends FAVORABLE ACTION on Article 9.

BACKGROUND:
Article 4.9 was passed at the Fall Town Meeting in 2006 (Warrant Article 18) upon the recommendation of the Moderator's Committee on Campaign Finance, which formed in 2003. The Committee on Campaigns has not met in years, and the Committee's abandoned page on the Town website (https://www.brooklinema.gov/742/Campaigns-Committee) still lists members whose terms expired between 2012 and 2014.

Its mission, according to the webpage, included analyzing information from finance reports filed by candidates for Town Office, recommending ways to improve the process by which candidates are elected, and examining the concept of public financing of campaigns.

A report may have been filed with the Select Board's office, but its whereabouts is unknown. The Committee members considered their work complete and have not met in years. There currently are a number of dormant committees, and the Select Board filed this article after the Town Moderator recommended that this inactive committee be removed from the By-Laws.

DISCUSSION;
No (former) member of the Committee showed up to the hearing. Some members of the Advisory Committee felt strongly that the Committee on Campaigns should be revived, especially now that the Town is trying to increase diversity in Town Government as well as with the Town's various boards and commissions.

It was felt that new active committees (including CDICR) that were recently formed will be taking a look into those issues and that trying to revive this particular committee wasn't needed. The report that the committee reportedly filed before disbanding could not be located so the Advisory Committee could not examine the Committee on Campaigns' findings and conclusions.

A large majority of the Advisory Committee felt there was no need to keep this dormant committee in the By-Laws.

RECOMMENDATION:
By a vote of 22-5-1, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

Voted: that the Town votes to amend the Town's General By-Laws by deleting section (G) of Article 4.9 "Committee on Campaigns" in its entirety, thereby dissolving the Committee on Campaigns.

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Department of Public Works, Peter Ditto, Town Engineer

To see if the Town will authorize the Select Board to terminate and relocate two old town sewer and drainage easements (currently not in use) from the 1800's located in Kerrigan Place, a Private Way described as follows:

1) Drainage Easement in Kerrigan Avenue (n/k/a Kerrigan Place), a Private Way, by a grant from Patrick Kerrigan to the Town of Brookline in an Instrument dated May 6, 1863, and recorded in Book 329, Page 43 at the Norfolk Registry of Deeds; and
2) A 4' wide Sewer Easement in the lands n/f of Catherine Kelly located at 10-12 Kerrigan Place, by a grant from Catherine Kelly to the Town of Brookline in an Instrument dated March 2, 1888, and recorded in Book 793, Page 423 at the Norfolk Registry of Deeds; and

to further authorize the Select Board to accept a grant for the relocation of said drainage easements from Claremont Brookline Suites LLC a limited liability company duly organized and existing under the laws of the Commonwealth of Massachusetts, or one of its successors or assigns, for One Dollar ($1.00) and other good and valuable consideration and upon terms and conditions that are in the best interest of the town; said grant of easement is for the relocation of the sewer and drainage easement over a portion of land at 111 Boylston Street, Brookline, Massachusetts and is shown as UTILITY EASEMENT 1,010+/- S.F. on a plan entitled "Easement Plan in Brookline, MA dated July 22, 2019 prepared by Precision Land Surveying, Inc., Michael Pustizzi PLS #46505. Said Plan and Easement Agreement to be recorded at the Norfolk County Registry of Deeds upon acceptance by the Select Board.

Said new Easement Area location is described as follows:

Boundary Description of Utility Easement
A certain easement located in the Commonwealth of Massachusetts, County of Norfolk, Town of Brookline, situated on the northerly sideline of Boylston Street, and is shown as Utility Easement, 1,010± square feet on "#111 Boylston Street, Easement Plan in Brookline, MA (Norfolk County)" by Precision Land Surveying, Inc., Dated July 22, 2019, more particularly bounded and described as follows:

Beginning at a point on the northerly sideline of Boylston Street, said point being the most southeasterly corner of the parcel; thence running

WESTERLY	6.90' by the northerly sideline of Boylston Street, by a curve to the left having a radius of 7,674.73' to a point; thence turning and running
N 13°52'40" W	147.06' to a point; thence turning and running
N 86°40'50" E	7.02' to a point; thence turning and running
S 13°52'40" E	145.74' to the POINT OF BEGINNING.

Containing 1,010 square feet or 0.023 acres, more or less.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In connection with the development of the Homewood Suites at 111 Boylston Street the town conveyed a small piece of land (500 s.f. +/-) in the former Kerrigan Place to the developer. The town requested that the developer relocate the existing sewer and drainage system in Kerrigan Place and grant an easement back to the town for the new location. The relocation of the sewer and drainage system and related work was completed as part of the construction for the hotel. The developer paid for the design and installation of the new drainage system in accordance with the plans and specifications approved by the town. The new drainage system is in a better location and the upgraded design and plastic pipes are an improvement to the older system located in Kerrigan Place and installed in the late 1800's. This article will allow for the formal termination and abandonment of the old sewer and drainage easements and the acceptance of the new easement for the town will be recorded at the Norfolk County Registry of Deeds.

SELECT BOARD'S RECOMMENDATION

Article 11 allows the Town to terminate an old easement and accept a new easement as a result of upgrades made to the sewer and drainage system in Kerrigan Place. The developer of the Homewood Suites at 111 Boylston Street paid for the design and installation of the new drainage system in accordance with the plans and specifications approved by the town. The new drainage system is in a better location and the upgraded design and plastic pipes are an improvement to the older system located in Kerrigan Place and installed in the late 1800's. The Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: That the Town will authorize the Select Board to terminate and relocate two old town sewer and drainage easements (currently not in use) from the 1800's located in Kerrigan Place, a Private Way described as follows:

1) Drainage Easement in Kerrigan Avenue (n/k/a Kerrigan Place), a Private Way, by a grant from Patrick Kerrigan to the Town of Brookline in an Instrument dated May 6, 1863, and recorded in Book 329, Page 43 at the Norfolk Registry of Deeds; and
2) A 4' wide Sewer Easement in the lands n/f of Catherine Kelly located at 10-12 Kerrigan Place, by a grant from Catherine Kelly to the Town of Brookline in an Instrument dated March 2, 1888, and recorded in Book 793, Page 423 at the Norfolk Registry of Deeds; and

to further authorize the Select Board to accept a grant for the relocation of said drainage easements from Claremont Brookline Suites LLC a limited liability company duly organized and existing under the laws of the Commonwealth of Massachusetts, or one of its successors or assigns, for One Dollar ($1.00) and other good and valuable consideration and upon terms and conditions that are in the best interest of the town; said grant of easement is for the relocation of the sewer and drainage easement over a portion of land at 111 Boylston Street, Brookline, Massachusetts and is shown as UTILITY EASEMENT 1,010+/- S.F. on a plan entitled "Easement Plan in Brookline, MA dated July 22, 2019 prepared by Precision Land Surveying, Inc., Michael Pustizzi PLS #46505. Said Plan and Easement Agreement to be recorded at the Norfolk County Registry of Deeds upon acceptance by the Select Board.

Said new Easement Area location is described as follows:

<u>Boundary Description of Utility Easement</u>
A certain easement located in the Commonwealth of Massachusetts, County of Norfolk, Town of Brookline, situated on the northerly sideline of Boylston Street, and is shown as Utility Easement, 1,010± square feet on "#111 Boylston Street, Easement Plan in Brookline, MA (Norfolk County)" by Precision Land Surveying, Inc., Dated July 22, 2019, more particularly bounded and described as follows:

Beginning at a point on the northerly sideline of Boylston Street, said point being the most southeasterly corner of the parcel; thence running

WESTERLY	6.90' by the northerly sideline of Boylston Street, by a curve to the left having a radius of 7,674.73' to a point; thence turning and running
N 13°52'40" W	147.06' to a point; thence turning and running
N 86°40'50" E	7.02' to a point; thence turning and running

S 13°52'40" E 145.74' to the POINT OF BEGINNING.

Containing 1,010 square feet or 0.023 acres, more or less.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 11 seeks authorisation to terminate two old town sewer and drainage easements, no longer in use, on Kerrigan Place, a private way, no longer in existence. In addition, it authorises the Town to obtain an easement for a new sewage and drainage system installed at 111 Boylston Street, adjacent to Davis Path. No money, other than $1, is changing hands.

The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered under the warrant article.

BACKGROUND: What's Where
On the north side of Boylston Street, between Cypress and Washington Streets, opposite the old Lincoln School, there is the Boylston Street Playground. The Playground runs from Boylston Street to the former Boston and Albany tracks, now the Highland Branch of the MBTA's Green Line.[1] The town acquired this property in 1854 (or 1867). It was originally the site of the new South Primary School, later called the Boylston School. The building was used as a school until 1922. It was then used by the Recreation Department. From 1931, until it was torn down in 1971, it was used as the Stephen F. Rutledge Post of the Veterans of Foreign Wars. Once demolished, the land was converted into playground space.[2]

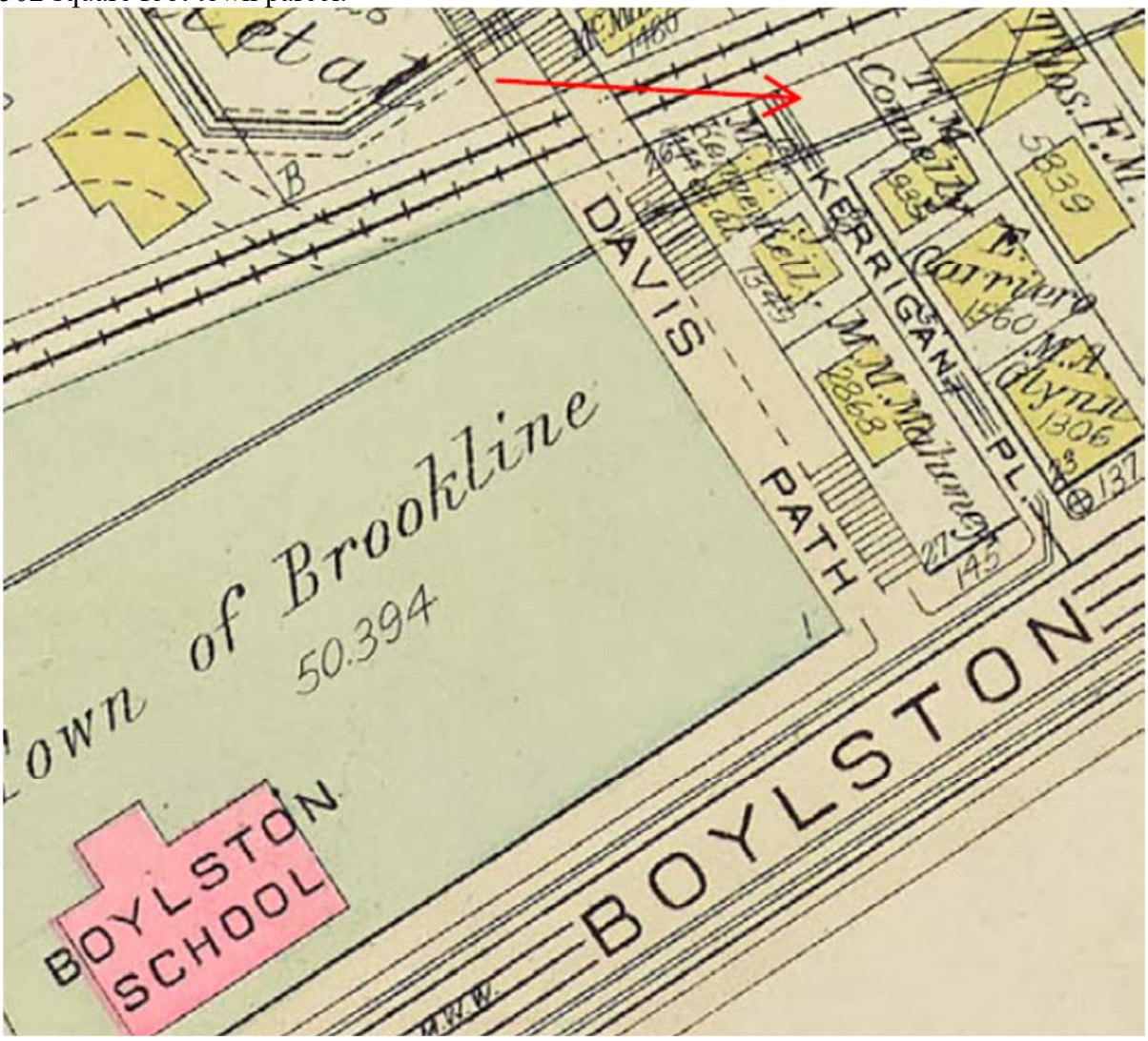
Just to the east of the Playground, is Davis Path, a public way, built in 1911. It was called Walnut Path until 1924. It too starts at Boylston Street, but actually goes over the B&A tracks, via a bridge, and ends at White Place. (It is the only public path that includes a bridge.)
Just east of Davis Path, was Kerrigan Place, a private way. The street itself was only 12 feet wide. Like the Playground, it extended from Boylston Street to the B&A tracks. As late as 1927, there were three houses on the Davis Path or west side of Kerrigan Place, and three on the east side.

Note: at the end of Kerrigan Place, just to its east and adjacent to the B&A tracks, was a 502 square foot parcel of land owned by the Town. The Town acquired the parcel via a taking in 1905, when a grade crossing over the tracks was eliminated. It allowed

[1] Also known as the Riverside Line.
[2] There are reports that the northern end of the playground lot also held the Town's first public bathhouse, which was used from 1883 or 1884, until a newer one was built on Tappan Street in 1897. However, an 1893 map shows no such structure.

carriages at the end of Kerrigan Place to turn around, and was later used by Kerrigan Place residents as a parking/storage area.

Just east of Davis Path was the former Red Cab site, which is now the Homewood Suites hotel.
This 1927 Bromley Atlas map shows the location of the Boylston School (now the Playground), Davis Path, Kerrigan Place and its six houses, and the arrow points to the 502 square foot town parcel.



BACKGROUND: Old Easements History

The town built drainage and sewage pipes under Kerrigan Place. Because Kerrigan Place was private, easements had to be granted to the town to construct these pipes. The drainage easement was granted to the town on May 6, 1863, by Patrick Kerrigan, and the sewage easement was granted to the town on March 2, 1888, by Catherine Kelly.

BACKGROUND: Sale of the Town Parcel

Between 1936 and 1972, all but one of the homes on Kerrigan Place were demolished.[3] As part of the redevelopment of the site into a hotel, the remaining home, on the west side of the street nearest to the B&A tracks, was to be acquired by the developer and demolished. (A deed registered on March 25, 2014, indicates the home was sold for $1,418,888.88. A deed registered April 25, 2014, indicates the Red Cab site was sold to the developer for $3,875,000.) The Town had no use for the 502 square foot parcel, and at the 2007 November Special Town Meeting, Warrant Article 15 proposed to authorise the Board of Selectmen to sell the Town parcel for not less than $85,000.[4] The article passed Town Meeting by a two-thirds vote.

The Board of Selectmen did not actually authorise the sale until December 3, 2013. At that time, the town parcel was conveyed to Claremont Brookline Suites, the developer of the yet-to-be-built hotel. It appears the full $85,000 was paid to the Town.

BACKGROUND: New Drain and Sewer

The old Kerrigan Place sewer and drain, dating to the 19th century, were not very good, and required a lot of maintenance. As part of the sale of the Town parcel, the Town requested the developer to relocate the sewer and drainage system, and grant an easement back to the Town. The construction of the new drain/sewer was completed when the hotel was built. The developer paid for the design and installation of the new drainage system in accordance with plans and specifications approved by the Town. The new drainage system is in a better location, and the upgraded design and plastic pipes are an improvement over the originals.

DISCUSSION

Because the old sewer and drain under Kerrigan Place have been abandoned (and probably no longer even exist), the easements held by the Town are no longer necessary, and the article authorises the Select Board to terminate them.

Because the new sewer and drain are on private property, the article authorises the Select Board to acquire a new easement of approximately 1,010 square feet on the westerly portion of the property at 111 Boylston Street, adjacent to Davis Path.

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[3] Going from north to south, the homes on the east side of Kerrigan Place appear to have been demolished in 1969, 1955, and 1972. The homes on the west side appear to have been demolished in 2014, 1977, and 1936.

[4] The original article called for a swap of the parcel for an equivalent amount of land that would parallel Davis Path. Sometime between the introduction of the article and town meeting, it was decided to just do a purchase and sale of the town parcel.

The easement will be in perpetuity. The actual sewer and drain go from Boylston Street to the B&A tracks, and then join another sewer/drain that go behind the buildings on Boylston Street, all the way to Washington Street.
The DPW considers the warrant article to be a housekeeping measure.

RECOMMENDATION:
The Advisory Committee voted in favour of recommending FAVORABLE ACTION on the Select Board'motion offered under Warrant Article 11 by a vote of 25-0.

XXX

ARTICLE 12

TWELFTH ARTICLE

Submitted by: Select Board

Warrant Article authorizing the Select Board to enter into Solar Power Purchase Agreements (PPAs) with other parties to install, own and operate solar systems on several Brookline properties and sell the power to the Town.

To see if the Town will vote to authorize the Select Board as follows:

a.) Upon terms and conditions in the best interest of the Town, to enter into 20-year solar Power Purchase Agreements ("PPAs") on or before December 31, 2021 for rooftop solar photovoltaic system installations on Town properties listed by Assessors Parcel ID in Table A below (the "Properties"); and

b.) As part of the PPAs referenced above, to enter into Payment in Lieu of Taxes (PILOT) Agreements in lieu of real and personal property taxes in accordance with General Laws Chapter 59, §38H (Acts of 1997 Chapter 164, Section 71(b)), as amended) and the Massachusetts Department of Revenue (DOR) Guidelines published in connection therewith.

Table A – Town Properties for Rooftop Solar Photovoltaic System Installations

Assessors Parcel ID	***Address***	***Property Name***
048-13-00	345 Harvard Street	Coolidge Corner School
245-01-00	50 Druce Street	Runkle School
202-09-00	115 Greenough Street	High School
441-43-00	870 Hammond Street	Municipal Service Center
277-01-00	100 Eliot Street	Heath School
194-10-11	46 Tappan Street	Kirrane Pool/Gym/UAB Building

Or take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Town of Brookline has committed to prioritize planning to achieve zero greenhouse gas emissions by 2050, Town- and community-wide. This Warrant Article seeks authorization for the Select Board to enter into solar Power Purchase Agreements (PPAs) on six properties. Over the next several years, the Town anticipates potentially installing solar systems via PPAs on the following roofs:

Proposed Roof Locations for the Solar Systems	***Size (Estimated DC kW)***
Coolidge Corner School	292
Runkle School	174
High School	146
Municipal Service Center	292
Heath School	217
Kirrane Pool & Gym	263
TOTAL	1,384

Overview: There are typically two principal paths available to the Town for acquiring solar energy systems. The first path is direct ownership: the Town purchases a solar system and owns and operates it, using the electricity and retaining its "environmental attributes" (known as Renewable Energy Certificates "RECs"). The second option is to use third-party financing and contract for a Power Purchase Agreement (PPA) with a company that owns and operates the system and sells the electricity back to the Town (through so-called "net metering credits," which appear as reductions on the Town's electricity bill). Both approaches have advantages and disadvantages, and different implications for financing the systems' capital cost and meeting the Town's climate-neutral goal.

Direct financing and ownership allows the Town to use the energy produced and retain ownership of the projects' RECs. Using this approach to procure and install solar systems, the Town would need to raise or allocate funds (e.g. through a bond offering) to cover the projects' costs. At approximately $3.15/watt installed cost[1], the six proposed solar locations would cost about $4.5 million. As a municipality, the Town cannot benefit from certain investment credits and incentives available to private tax equity investors, such as the solar Investment Tax Credit (ITC) and accelerated depreciation. However, the Town could participate in the Commonwealth's current Solar Massachusetts Renewable Target (SMART) program, but under that program would not own the RECs produced with the electricity from the solar systems.

Solar Massachusetts Renewable Target (SMART): By participating in the SMART program (either under the recommended PPAs or via direct ownership), the Town is helping to meet the State's Renewable Portfolio and Clean Energy Standards (RPS and CES). However, as is required when participating in the SMART program, the electric utility company — not the Town — owns the RECs. In this case, the Town cannot "count" SMART RECs toward its emissions reduction goal because the RECs are counted by the electric utility toward the RPS and CES; for the Town to count them toward its own goal would be "double counting." To achieve greenhouse gas reductions within the Town's operations, if participating in the SMART program, the Town would need to purchase the equivalent amount of RECs on the market.

Alternatively, the Town could forgo SMART incentives, and then could own and retire the RECs from the market. In this case, as noted, the Town would need to (1) pursue a direct

[1] Memorandum regarding Solar Pricing from Cadmus (the Town's solar consultant), dated 3/18/2019

ownership model (not under SMART), or (2) use a third-party financing model in which the Town is specifically entitled to the RECs through the contracting arrangement.

Third-party financing with a PPA needs no capital investment from the Town, and does not cost the Town anything to maintain and operate the projects. With each PPA, the Town makes regular, fixed-rate energy payments (for the length of the contract), at a price per kilowatt-hour stipulated in the PPA.

This Warrant Article is seeking authorization for the Select Board to enter into solar Power Purchase Agreements at the six designated sites, for the following reasons:

1) The Town of Brookline has committed to prioritize planning to achieve zero greenhouse gas emissions by 2050, Town- and community-wide. The energy grid and buildings are important sectors for climate action. Substituting fossil fuel electricity with renewable energy through the installation of solar systems on Town buildings is an important step in achieving the Town's greenhouse gas reduction goals.

2) The PPAs give the Town a timely, no-cost path forward with a vendor/investor for a major group of solar installations. The PPAs framework has been pre-negotiated by PowerOptions, a non-profit energy-buying consortium, on behalf of municipal and other participants.[2] The pricing methodology used is transparent and consistent.

3) The PPAs are designed to take advantage of the incentives offered through the Commonwealth's SMART program, as well as the federal solar ITC and rapid depreciation.

4) By participating in the SMART program through these PPAs, the Town is helping to meet the State's Renewable Portfolio and Clean Energy Standards (RPS and CES). Because greenhouse gas emission reductions do not have a geopolitical boundary for environmental impact, participating in the SMART program is a meaningful form of climate action.

5) There are advantages to moving forward with these PPAs now, as both the SMART incentives and the ITC decline over the next few years—with a corresponding increase in PPA prices. That is, there may be an opportunity cost to waiting.

6) A 20-year term for the PPAs fixes the Town's energy cost for the term, insulating the Town from market volatility for the quantity of energy produced.

7) While other solar procurement approaches might have advantages, they have not yet been explored in depth; a direct ownership approach would require a funding process that would take, at minimum, several years. Until such options can be explored and analyzed, it is unknown whether they might be more or less advantageous than implementing these PPAs.

[2] Public entities may participate in the PowerOptions solar PPA program without conducting individual procurement (MGL Chap. 164, Sec. 137).

8) Until the Town further explores options for direct ownership and its feasibility by site, an *immediate* alternative to these options is the recommended PPAs.

9) PPAs can allow the Town, at one or more points during the term, to buy out the contract and own the system after a minimum holding period (usually seven years, which is the time an investor needs to realize fully the value of the tax incentives). This buy-out provision—once it is examined by the Town—may be a way for the Town to acquire rights to the RECs. This provides the Town with critical optionality in the future.

10) These PPAs would apply only to the six roof locations for which designs have been completed.[3]

11) The PPAs in no way prevent the Town from considering other approaches to solar in the future, and in fact provide potential flexibility with these six solar projects, given the buyout provision.

If Brookline contracts with a third party under the PPAs, the Town will enter a Payment In Lieu Of Taxes (PILOT) agreement with the Provider. This provides cost certainty over the term while capturing a fair value that reflects comparably to personal property tax.

SELECT BOARD'S RECOMMENDATION

Article 12 asks Town Meeting to authorize the Select Board to enter into Solar Purchase Power Agreements (PPAs), to allow the installation, operation, and the purchase of energy generated by solar systems on several Town properties. As well as authorization to enter into a Payment In Lieu Of Taxes agreement with the contracted third party under the PPA.

Article 12 would authorize the Select Board to negotiate a 20-year PPA. The Board noted that this has been an ongoing effort to get solar on roofs throughout the Town and is supportive of this project. A review of sites throughout the Town determined that the proposed buildings were the most viable sites to consider under this proposal. The Board wanted to make sure that there was an option to purchase these leased systems if the Town were able to do so. There is no agreement in place, but this article would allow the Select Board to quickly proceed with approval if an agreement were reached to capture incentives before the monetary impact was reduced.

The Board recommended FAVORABLE ACTION, by a vote of five in favor taken on October 22, 2019.

[3] Two of these projects—the Heath School and the Municipal Service Center—may end up not being included, depending on the CIP roofing schedule.

Voted: To authorize and empower the Select Board to enter into 20-year solar Power Purchase Agreements on or before December 31, 2021 for rooftop solar photovoltaic system installations on Town properties; and enter into Payment in Lieu of Taxes Agreements in lieu of real and personal property taxes, subject to any authorizations, approvals and reviews, on such terms and conditions determined by the Select Board to be in the best interest of the Town.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 12 will be included in the supplemental mailing.

XXX

ARTICLE 12

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Warrant Article 12 seeks authorization for the Select Board to enter into solar Power Purchase Agreements (PPAs) with other parties to install, own and operate roof-top solar power systems on six town-owned properties, over the next several years and sell the power generated to the Town.

The Advisory Committee recommends FAVORABLE ACTION on Article 12.

BACKGROUND:

The Town of Brookline has committed to prioritize planning to achieve zero greenhouse gas emissions by 2050 town and community wide. Municipalities can go solar by installing photovoltaic (PV) panels on a single site or a fleet of buildings. They also can choose from two models of ownership: direct ownership and third-party ownership.

Under direct ownership, the municipality pays for and owns all solar PV equipment. It reaps the full financial value of the electricity produced by its panels. With third-party ownership, a separate entity owns the solar panels installed on the municipal property, and the municipality pays the third party for the electricity produced by the panels. Municipalities pay two separate electric bills under third-party ownership: one to the utility company and one to the third-party solar owner. One of the challenges of solar power system financing is that many of the financial incentives, such as federal tax credits are not available to the town, since the town does not pay taxes.

The most common third-party arrangement is called a Power Purchase Agreement (PPA). This is the route the Select Board is asking Town Meeting to empower the Board to take.

As Brookline is not eligible to receive tax credits, a PPA enables systems installed, owned and financed through third parties which will monetize the tax credit on our behalf. These third-party investors will incorporate their tax credit savings into the cost they charge the municipality for the electricity generated.

If Brookline contracts with a third party under the PPAs, the Town will enter a Payment In Lieu of Taxes (PILOT) agreement with the Provider. This provides cost certainty over the term while capturing a fair value that reflects comparably to personal property tax.

This article is asking Town Meeting to authorize the Select Board to enter into PILOT solar agreements (20 years is a common length of time for an agreement).

The Town is working with Solect Energy that is based in Hopkinton, MA. They advertise that they offer smart solutions and proven expertise in solar development, technology, construction, policy, and incentives, as well as individualized financial guidance. Solect Energy has 70 employees, manages 600 solar facilities, and has installed 500, 60 of which were under the Power Options program. Their website lists recent municipal installations in Medford, Haverhill, Holliston, and Worcester.

The envisioned agreement would allow the solar company to receive Federal tax credits and use accelerated depreciation and the Town will know when the agreement is drafted, what its costs of electricity reduction will be. Brookline can either get cash or receive a reduction in its electric bill over the years of the contract. Also, the Town may purchase the system at fair market value after seven years.

Solect Energy has already been chosen by Power Options, a non-profit energy-buying consortium, through a procurement process so Brookline will not have to engage in an open bidding process to select a provider.

DISCUSSION;

The Committee's concerns were around liabilities, a financial pro forma analysis and the risks and rewards. After initial concerns were raised, in a second meeting, Town staff produced an array of detailed information to the questions that had been raised by the Committee which addressed most of the concerns.

Concerned about physical roof-top liabilities, the Committee was assured that the risk for potential damage to roofs is accounted for in any contract that Select Board will sign. It was also informed that the installer has to be certified with the roofer the Town used for the original roof installation to preserve the original warranty on the roof.

While a financial pro forma was not available at this time, since there are as yet no detailed financial specifics, it was clear from the experience of other cities and towns that we would expect a reduction in electricity cost and that it was anticipated the Select Board would have such an analysis before proceeding with signing with a supplier.

In terms of other financial risk, insolvency of the supplier and that this is a 20 year "bet" on the price of electricity, were raised as the main concerns.

It was noted that when other providers in this space had gone out of or left the business, that the solar systems installed were quickly taken over by other providers in the field. Also, the panels would still be on the roof, generating electricity, so supplier insolvency is primarily a contract and administrative concern.

In terms of the "bet" on electricity prices over the next twenty years, while it seemed, given the current trend, that prices would only go up and a contract under a PPA arrangement is for a fixed 20 year Kilowatt/hour rate, Town staff indicated that, for the maximum of 6

possible projects in this article that the amount of electricity generated represents only about 10% of electricity consumed by the Town's buildings.

RECOMMENDATION:
By a vote of 20-0 with 3 abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 12.

Voted: that the Town votes to amend the Town's General By-Laws by deleting section (G) of Article 4.9 "Committee on Campaigns" in its entirety, thereby dissolving the Committee on Campaigns.

ARTICLE 12

SCHOOL COMMITTEE REPORT AND RECOMMENDATION

On October 24, 2019, the Brookline School Committee voted, with 7 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Mr. Glover, Ms. Monopoli, and Mr. Pearlman), 0 opposed, and 1 abstention (Ms. Ditkoff) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 12: Authorization to Enter into Solar Power Purchase Agreements (PPAs) for Rooftop Solar Photovoltaic Installations on Certain Town Properties.

The Brookline School Committee supports environmental sustainability and the Town of Brookline's plan to prioritize planning to achieve zero greenhouse gas emissions by 2050. The School Committee supports a path for acquiring solar energy systems through Solar Power Purchase Agreements which include school buildings. In addition to the environmental benefits it is anticipated that there will be financial benefits to the Town.

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: The Department of Planning & Community Development❖
Co-petitioners: Blake Cady; David Lescohier, TMM11; David Lowe, TMM11; Scott Englander, TMM6; Willy Osborn.
❖Principal petitioner for point-of-contact.

Zoning By-Law Amendment to permit accessory Ground-Mounted Solar Photovoltaic Installations under certain circumstances.

To see if the Town will amend the Zoning By-Law by amending Section 4.07 – Table of Use Regulations – to allow small accessory ground-mounted solar infrastructure in a similar manner as sheds, by adding text in the description of Accessory Use 61 in the Use Table, underlined below:

> 61. Non-commercial greenhouse, tool shed, Ground-Mounted Solar Photovoltaic Installation, or other similar accessory structure.
>
> To be considered an accessory use, the nameplate capacity of Ground-Mounted Solar Photovoltaic Installations may not exceed 50 kW DC and shall be subject to use regulations described in Section 5.06.4.h(3-13). Additionally, Ground-Mounted Solar Photovoltaic Installations with a nameplate capacity greater than 10 kW DC in any district requires a Special Permit.
>
> * Special permit required if in excess of 150 square feet of gross floor area.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Zoning By-Law Amendment to permit accessory Ground-Mounted Solar Photovoltaic Installations under certain circumstances.

If passed, this proposed Zoning By-Law amendment would allow for ground-mounted solar photovoltaic installations in the Zoning By-law, which currently prohibits them outside of two municipally-owned properties: a portion of the municipally-owned transfer station site on Newton Street and Singletree Hill Reservoir just south of Route 9. The proposal does this by adding text specifically allowing ground-mounted solar systems to Use 61, which describes allowable accessory uses. The amendment does not change any setback or other siting requirements for accessory buildings and structures in the zoning

by-law, and further, adds a minimum 25 foot setback from all lot lines by requiring adherence to site plan review and other use regulations described in Section 5.06.4.h(3-13). Accessory ground-mounted solar photovoltaic installations would be limited to 50 kWdc and any system larger than 10 kWdc (a footprint of roughly 460 square feet) would require a special permit.

Solar modules have significantly increased in power and decreased in cost over the last 10 years, and solar projects are increasingly regarded as both desirable investments and a tangible way for individuals and organizations to address global warming. Brookline homeowners and businesses are allowed to put solar modules on their roofs, but many are prevented from doing so because of poor roof orientation or shading from trees or buildings. This amendment expands the solar options available to property owners by allowing the installation of ground-mounted solar systems anywhere a small outbuilding or other accessory use structure might be sited, such as to the side or rear of a house.

Given the Town's commitment to prioritize planning to achieve zero greenhouse gas emissions by 2050 (no reliance on fossil fuels), we should be doing everything reasonable and possible to encourage property owners to reduce their carbon footprints. Ground-mounted solar is a proven technology that has great potential for emissions reduction and as such should be permitted by the Town. If the Zoning By-law allows accessory structures such as sheds and out-buildings, there is good reason to also permit accessory ground-mounted solar systems.

The proposed zoning by-law amendment protects against excessively large installations by limiting "as-of-right" (without special permit) ground-mounted systems to 10 kWdc, approximately the footprint of two parking spaces. The capacity limit of 10 kW would accommodate up to approximately 30 330-watt solar modules, on racks attached to the ground or acting as a canopy over vehicle parking. It would also allow for the installation of more innovative and efficient systems such as dual-axis trackers on high-strength pole supports. With power levels of 330 watts per module, a 30-module system could produce on average about 1,000 kilowatt-hours per month—a supply of clean, carbon-free energy that could more than meet the electricity needs of a moderately-sized house.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article Description

The Planning and Community Development Department submitted Article 13 with co-petitioners Blake Cady, David Lescohier, David Lowe, Scott Englander, and Willy Osborn. If passed, this zoning change would allow smaller ground-mounted solar installations on private properties. Ground solar installations with a nameplate capacity up to 50 kW DC would be added to Use 61 in the Table of Uses which allows accessory structures, such as sheds or greenhouses. Installations with a nameplate capacity smaller than 10 kW DC would be allowed as of right as long as the siting meets all the setback requirements for accessory structures and are setback at least 25 feet from all lot lines. Ground-mounted solar

installations with a nameplate capacity between 10 and 50 kW DC would require a Special Permit.

Background

In November 2010, Brookline Town Meeting passed a Planning Department warrant article that defined Ground-mounted solar installations and allowed them as-of-right (no discretionary permit required) on the Town's Singletree Hill Reservoir site in Chestnut Hill. At a subsequent Town Meeting, as-of-right zoning for ground-mounted solar panels was expanded to include the Newton Street transfer station.

Allowing as-of-right ground-mounted solar, even though limited to two municipal properties, helped the Town meet two of five criteria to become eligible for state grants under the Green Communities Act: (i) to provide as-of-right siting of renewable or alternative energy generating facilities of at least 250 kW in designated locations and (ii) to adopt an expedited permitting process for such facilities that does not exceed one year.

The 2010 zoning change also created a Special Overlay District that spells out a process for site plan review by the Planning Board, including a minimum setback from all property lines of 25'. To ensure as-of-right siting for purposes of the Green Communities Act, the site plan review notes that facilities of at least 250 kW in nameplate size cannot have conditions attached that make such installation infeasible. This threshold is reflected in the current zoning definitions, which differentiates between Small and Large Ground-Mounted Solar Photovoltaic Installations at the 250 kW threshold.

Current Regulation of Solar Panels on Private Property

The Building Department also permits solar panels on roofs of buildings or accessory structures as permitted with our existing zoning. However, a ground-mounted system, such as a residential scale tracking/pivoting solar system that sits on a single high-strength pole (about 15' high) is not currently permitted.

Town Climate Action Goals

The Town's Climate Action Plan recommends a streamlined and expedited permitting process for renewable energy system installations; a reasonable first step is to permit more types of renewable energy systems, especially if the installation has a similar impact to abutting properties as sheds, garages, and accessory buildings.

Following the Select Board's June 5th Climate Summit, the Select Board agreed that one of the staff-led working teams following the Summit focus on strategic deployment of renewable energy systems on public and private property. The co-petitioners of this article are residents that have spent significant time on this article as well as the warrant article related to a municipal power purchase agreement for several municipal properties.

Proposed Special Permit Threshold

Massachusetts General Law 40A section 3 states, "No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare." The Massachusetts Department of Energy Resources

(DOER) advises municipalities to allow any solar facility less than 40,000 square feet to be allowed as of right[1], but also recognizes that this is DOER's interpretation and that municipalities will want to adapt their own rules and thresholds. The Planning Department is not aware of any case law where the definition of 'unreasonable' in this sentence has been tested.

As noted in the warrant article explanation, the warrant article proposes amending accessory use 61 for non-commercial greenhouses and tools sheds with a permitting threshold between as-of-right and a special permit being required at a 10 kW nameplate size, which is approximately the size of 460 square feet of site area; the co-petitioners estimate that this size could more than meet the electricity of a moderately-sized house. This accessory use currently has a special permit threshold in excess of 150 square feet of gross floor area, which would remain in place.

Because our existing zoning definition for ground-mounted solar uses the kW size to define categories of use, and because this specification is easily found and used in the industry to identify size, the co-petitioners submitted the warrant article utilizing the nameplate kW size as both the threshold for a special permit as well as maximum size as an accessory use (50 kw).

Discussion with other Committees

At the Zoning By-Law Committee and the Advisory Subcommittee on Planning & Regulation, a couple members inquired about abutter notification for this use compared to sheds and greenhouses. Staff noted that unlike sheds and greenhouses, even as-of-right installations would be subject to Site Plan Review at a public meeting.

One resident at the Zoning By-Law Committee asked how these installations would potentially count against required open space. Both groups also were weary of defining size thresholds by nameplate capacity and expressed a preference for a square footage threshold, either the area that it projects onto the ground or the area of the photovoltaic panels. At the request of the Zoning By-Law Committee, the co-petitioners confirmed with the Town Moderator that making an amendment to use an equivalent (or lower) square footage in lieu of nameplate capacity would be found within the scope of the article.

The co-petitioners are amenable to this proposed amendment, which would read as follows:

To see if the Town will amend the Zoning By-Law by amending Section 4.07 – Table of Use Regulations – to allow small accessory ground-mounted solar infrastructure in a similar manner as sheds, by adding text in the description of Accessory Use 61 in the Use Table, underlined below:

> 61. Non-commercial greenhouse, tool shed, Ground-Mounted Solar Photovoltaic Installation, or other similar accessory structure.

[1] March 2014 Policy Guidance for Regulating Solar Systems, MA Department of Energy https://www.mass.gov/files/documents/2017/10/16/model-solar-zoning-guidance.pdf

To be considered an accessory use, Ground-Mounted Solar Photovoltaic Installations may not exceed 2,400 square feet of total photovoltaic module surface area and shall be subject to use regulations described in Section 5.06.4.h(3-13). Additionally, in all districts, Ground-Mounted Solar Photovoltaic Installations with a total photovoltaic module surface area greater than 475 square feet, require a Special Permit.

* Special permit required if in excess of 150 square feet of gross floor area.

The Planning Board voted to recommend FAVORABLE ACTION on the above revised version of this zoning warrant article but suggested a requirement for a Special Permit for all Ground-Mounted Solar Installations in order to allow notice to abutters, evaluation of impacts to abutters and the neighborhood on a case-by-case basis. A **by-right** installation outside of a required setback could be as tall as 35' in a single or two family zoning district and the solar array itself could be 500 square feet.

SELECT BOARD'S RECOMMENDATION

Warrant Article 13 seeks to amend Section 4.07 of the Town's Zoning By-Law to allow Accessory Ground Mounted Solar Photovoltaic Installations. If passed, this zoning change would allow smaller ground-mounted solar installations on private properties. These installations would be added to Accessory Use 61 in the Table of Uses in the Zoning By-Law, which currently allows accessory structures such as sheds or greenhouses. Installations smaller than 500 square feet would be allowed as of right as long as the siting meets all the setback requirements for accessory structures and are setback at least 25 feet from all lot lines. Larger accessory ground-mounted solar installations would be allowed by Special Permit, but in no case would be greater than 2,500 square feet, nor 10% of the lot area, whichever is less.

Ground-mounted solar installations are solar panels that are affixed to the ground via a high-strength pole or as an array of panels that are elevated off the ground. While in many cases property owners prefer for solar panels to be mounted on their roofs (which is allowed in the Brookline Zoning By-Law) to capture solar energy, there can be site conditions where a yard is less shaded than the roof. Additionally, some property owners may have an aesthetic preference or concerns about roof maintenance that drives them to not want to install solar on their roof. Residential scale ground-mounted solar technologies are becoming more available in the market, including systems that can pivot to follow the sun during the day. For these reasons, ground-mounted solar installations may be an attractive alternative for property owners looking to create renewable energy on-site.

Currently, the Zoning By-Law only permits ground-mounted solar installations on two municipal properties (Singletree Hill Reservoir site and the Newton Street transfer station); this designation helped the Town meet required criteria to become eligible for state grants under the Green Communities Act. Section 5.06.4.h(3-13) of the Zoning By-Law specifies site plan review requirements, including a minimum setback from all property lines of 25'. Under the proposed By-Law amendment, these requirements would also be applied to accessory ground-mounted solar structures.

The Town's Climate Action Plan recommends a streamlined and expedited permitting process for renewable energy system installations; a reasonable first step is to permit more types of renewable energy systems, especially if the installation has a similar impact to abutting properties as sheds, garages, and accessory buildings.

The original warrant article listed thresholds for special permit and maximum size by nameplate capacity in kilowatts (kW), as the current Zoning By-Law utilizes nameplate capacity in the section related to ground-mounted solar installations. However, several Boards expressed concern about the certainty of physical size, as systems of similar nameplate capacity could vary in size due to a variety of efficiencies with various installations. The co-petitioners agreed to amend the proposed By-Law to utilize square footage in lieu of nameplate capacity to define maximum size (2,500 square feet) as well as the threshold for a required special permit, which is 500 square feet.

Additionally, the co-petitioners amended the language such that in no case could the ground-mounted system be greater than 10% of the lot area.

Accessory Use 61, which currently includes non-commercial greenhouses, tool sheds, and other similar accessory structures, has a special permit threshold of 150 square feet of gross floor area in residential zones, which would remain in place. Additional language has been added to clarify that the 150 square foot of gross floor area threshold would not apply to accessory ground-mounted solar systems. Ground-mounted solar systems are already defined in the Zoning By-Law as systems that are not roof-mounted, and therefore would not be associated with a gross floor area.

Additionally, language was added as a reference to remind potential applicants that the Town's Stormwater Management By-Law should also be reviewed, as it regulates removal of trees over 8 inches in diameter breast height when an aggregate of 32 inches in diameter breast height is proposed to be removed.

<u>RECOMMENDATION:</u>
By unanimous vote, the Select Board recommends FAVORABLE ACTION on an amended and revised Warrant Article 13, as follows:

> That the Town amend the Zoning By-Law by amending Section 4.07 – Table of Use Regulations – to allow small accessory ground-mounted solar infrastructure in a similar manner as sheds, by adding text in the description of Accessory Use 61 in the Use Table, underlined below:

61. Non-commercial greenhouse, tool shed, Ground-Mounted Solar Photovoltaic Installation, or other similar accessory structure. To be considered an accessory use, Ground-Mounted Solar Photovoltaic Installations may not exceed 2,500 square feet of above-ground lot area nor exceed 10% of the lot area, whichever is less, and shall be subject to use regulations described in Section 5.06.4.h(3-13) and the Town's Stormwater Management By-law. Additionally, in all districts, Ground-Mounted Solar Photovoltaic Installations that exceed 500 square feet of above-ground lot area, require~~s~~ a Special Permit.

* Special permit required if in excess of 150 square feet of gross floor area except for Ground-Mounted Solar Photovoltaic Installations not attached to non-commercial greenhouse, tool shed or other similar accessory structure.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 13 seeks to amend Section 4.07 of the Town's Zoning By-Law to allow Accessory Ground Mounted Solar Photovoltaic Installations. If passed, this zoning change would allow smaller ground-mounted solar installations on private properties. Ground solar installations with a nameplate capacity up to 50 kW DC would be added to Use 61 in the Table of Uses which allows accessory structures, such as sheds or greenhouses. Installations with a nameplate capacity smaller than 10 kW DC would be allowed as of right as long as the siting meets all the setback requirements for accessory structures and are setback at least 25 feet from all lot lines. Ground-mounted solar installations with a nameplate capacity between 10 and 50 kW DC would require a Special Permit.

Advisory Committee recommends FAVORABLE ACTION on an amended and revised Warrant Article 13

BACKGROUND:
Solar Panels in the Town of Brookline
In November 2010, Brookline Town Meeting passed a Planning Department warrant article that defined Ground-mounted solar installations and allowed them as-of-right (no discretionary permit required) on the Town's Singletree Hill Reservoir site in Chestnut Hill. At a subsequent Town Meeting, as-of-right zoning for ground-mounted solar panels was expanded to include the Newton Street transfer station.

Allowing as-of-right ground-mounted solar, even though limited to two municipal properties, helped the Town meet two of five criteria to become eligible for state grants under the Green Communities Act: (i) to provide as-of-right siting of renewable or

alternative energy generating facilities of at least 250 kW in designated locations and (ii) to adopt an expedited permitting process for such facilities that does not exceed one year.

The 2010 zoning change also created a Special Overlay District that spells out a process for site plan review by the Planning Board, including a minimum setback from all property lines of 25'. To ensure as-of-right siting for purposes of the Green Communities Act, the site plan review notes that facilities of at least 250 kW in nameplate size cannot have conditions attached that make such installation infeasible. This threshold is reflected in the current zoning definitions, which differentiates between Small and Large Ground-Mounted Solar Photovoltaic Installations at the 250 kW threshold.

Current Regulation of Solar Panels on Private Property
The Building Department also permits solar panels on roofs of legal buildings or accessory structures as permitted with our existing zoning. However, a ground-mounted system, such as a residential scale tracking/pivoting solar system that sits on a single high-strength pole (about 15' high) is not currently permitted.

The existing zoning definition for Ground-Mounted Solar Photovoltaic Installations is "A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, unless it is located on the roof of a water reservoir or similar structure that is not designed for human occupancy. Such an installation is considered large-scale if it has a minimum nameplate capacity of at least 250 kW DC; all installations with a minimum nameplate capacity less than 250 kW DC are considered small-scale."

By definition, in almost all cases Ground-Mounted Solar Photovoltaic Installations will not have gross floor area (because they are not roof-mounted). In the rare case where Ground-Mounted Solar Photovoltaic Installations are located on a roof not designed for human occupancy, that accessory structure's gross floor area would then also trigger a special permit if the gross floor area is over 150 square feet and the project is located in a residential district.

Town Climate Action Goals
The Town's Climate Action Plan recommends a streamlined and expedited permitting process for renewable energy system installations; a reasonable first step is to permit more types of renewable energy systems, especially if the installation has a similar impact to abutting properties as sheds, garages, and accessory buildings.

Following the Select Board's June 5th Climate Summit, the Select Board agreed that one of the staff-led working teams following the Summit focus on strategic deployment of renewable energy systems on public and private property. The co-petitioners of this article are residents that have spent significant time on this article as well as the warrant article related to a municipal power purchase agreement for several municipal properties.

Proposed Special Permit Threshold
Massachusetts General Law 40 A section 3 states, "No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect

the public health, safety or welfare." The Massachusetts Department of Energy Resources (DOER) advises municipalities to allow any solar facility less than 40,000 square feet to be allowed as of right[2], but also recognizes that this is DOER's interpretation and that municipalities will want to adapt their own rules and thresholds. The Planning Department is not aware of any case law where the definition of 'unreasonable' in this sentence has been tested.

As noted in the Warrant Article explanation, the Warrant Article proposes amending accessory use 61 for non-commercial greenhouses and tools sheds with a permitting threshold between as-of-right and a special permit being required at a 10 kW nameplate size, which is approximately the size of 500 square feet of site area; the Co-Petitioners estimate that this size could more than meet the electricity of a moderately-sized house. This accessory use currently has a special permit threshold in excess of 150 square feet of gross floor area, which would remain in place.

Because our existing zoning definition for ground-mounted solar uses the kW size to define categories of use, and because this specification is easily found and used in the industry to identify size, the Co-Petitioners submitted the Warrant Article utilizing the nameplate kW size as both the threshold for a special permit as well as maximum size as an accessory use (50 kw).

DISCUSSION:

The Advisory Committee agreed with the concept of this amendment, but discussed that the language of the article could be clarified. There was much discussion on the size of 10 kW DC installations and why the amendment defines the structures by the output power rather than overall square-footage.

The Advisory Committee suggested that in order to not penalize future technology improvements in output, that perhaps a square-foot limit should be used rather than the power output limitation. This approach would not penalize future, more efficient installations. It would also limit the unintended consequence of a someone using a severely outdated system which in turn would be oversized. If the structure moves to follow the sun, the maximum movement area of the apparatus would define the overall envelope of the structure. A limit on the square footage would make the approval process easier and for abutters to imagine what proposed installations would look like. Abutter notification process was discussed. For these solar structures, even as-of-right installations would be subject to Site Plan Review at a public meeting.

The Advisory Committee proposed that the Article be amended with a limit in square footage instead of output power. The Town Moderator has found this change to be within the scope of the Article and the Petitioners have provided language that would substitute square footage area for 10 kW DC and 50 kW DC on an equivalent basis, as well as providing clarifying language for accessory structures that are not solar ground-mounted structures.

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[2] March 2014 Policy Guidance for Regulating Solar Systems, MA Department of Energy
https://www.mass.gov/files/documents/2017/10/16/model-solar-zoning-guidance.pdf

RECOMMENDATION:
By a vote of 21 in favor, 1 opposed and 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: C. Scott Ananian, TMM 10, (correspondent) Jesse Gray, TMM 10

To see if the Town will amend Section 6.04 of the Zoning By-law ("Design of All Off-Street Parking Facilities") by amending paragraph 11, as follows (new language appearing in bold/italics, deleted language appearing in strikeout):

11. Parking lots for six vehicles or fewer shall conform to the regulations of this section, with the exception of paragraphs 2., 3., 4., (subparagraphs a. and b.), ~~and~~ 7.**, and 15**.

And adding a new paragraph 15, to read:

§6.04.15 – ELECTRIC VEHICLES
15. At least 15% of parking spaces, and not less than a single parking space, must be EV READY, as defined in Section C405.10 of 780 CMR 13, the Massachusetts Building Code. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use and/or electricity consumed. The count of EV READY spaces may include spaces designated for visitors or tradespeople, and need not be reserved for the use of Electric Vehicles. 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

Section 1.00 of Brookline's Zoning By-law declares its purpose to be "promotion of the public health, safety, convenience, and welfare" by, among other things, "assisting in the economical provision of transportation [...] and other public facilities". Climate change is a public health crisis. Our sustainability goal for the Town of Brookline is to increase transport efficiency and electrify all motorized transportation. This warrant article advances the latter goal by ensuring that our public transportation facilities are compatible with the electrified-transport future; it complements and does not conflict with other Town efforts to reduce the number of cars necessary and reduce the amount of land surface required to store them: it just helps ensure that whatever parking is provided in town is consistent with the electrification goal.

This article does not increase the amount of parking required or permitted, and it does not mandate that an EV READY parking space be reserved for electric vehicle use. The EV READY parking space simply has the infrastructure required for charging.

A zoning amendment very similar to the present one was introduced in Fall 2016. At the time, no definition of an EV READY parking space appeared in the Massachusetts building code, and a concern was raised that the necessary definitions and wiring requirements in the Fall 2016 article veered too closely to "methods and materials of construction", which by state law only the building code (and not zoning regulations) can regulate. In March 2019 the state Board of Building Regulations and Services approved amendments to the state building code that define "EV READY parking space", clearing the way for a reintroduction of this article.

The Fall 2016 article was referred to a committee, who reported back to Town Meeting in Spring 2017. Recommendation #2 of the 2017 Report to Annual Town Meeting of the Electric Vehicle Charging Station Sub-Committee of the Select Board's Climate Action Committee (April 20, 2017) was to:

2) Amend Zoning By-Law utilizing one of several possible alternative approaches, (See Section 8 for a more detailed discussion of a variety of regulatory approaches). One such approach would be to amend Article 6 – relating to off-street parking facilities, to require or encourage EVSE installation or EVSE-ready wiring for projects of a certain threshold size. Action: Fall 2017 Warrant Article.
https://www.brooklinema.gov/DocumentCenter/View/18795/Report-to-Annual-Town-Meeting-2017-v4

Although the full subcommittee report discusses other possible forms for a zoning by-law amendment, the introduction of a State EV READY definition cleared the obstacles from implementing what that report labeled "Path 1".

It is worth noting that EV charging infrastructure is especially needed in the transition to fully-electric vehicles, when plug-in hybrids are expected to be the most common and cost-effective zero-emission option for many owners. Plug-in hybrid electric vehicles typically have very small batteries, and are only "zero emission" if that battery is kept charged! Once you drive past the limited range of the battery, a plug-in hybrid is just a plain polluting greenhouse-gas-emitting internal combustion engine car. So widespread charging infrastructure is even more important for plug-in hybrids, which might need to be topped off after every trip to keep them driving clean, than it is for a modern long-range fully battery-electric vehicle, which might need to be charged only once a week.

This by-law exempts parking lots with 6 or fewer spaces to mitigate impact on small residential homeowners. In our existing zoning, parking is allowed by principal use #22 ("Residential parking garage or parking area, whether as the sole use of a lot or as a secondary use, solely for the storage of cars of residents of other lots located within 1,400 feet."), but this existing zoning use only allows business L, G, O, and industrial I zones to park more than 5 cars by right. Residential T, F, and M zones already require a special permit to have more than 5 cars, and S and SC currently require a variance to do so. Lots with 7 or more spaces are not typical in our Town.

Further, there are robust grandfather clauses to ensure the zoning change in this article does not unduly affect existing buildings. State law (MGL Ch 40A sec 6) provides that "a

zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun [...] but shall apply to any change or substantial extension of such use [...] except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure." The key phrase is "increase the nonconforming nature of said structure"; doing unrelated renovation work (adding a mudroom, for example) does not increase the "nonconforming nature" of its parking spaces. In addition, our local Brookline zoning bylaw states in 6.01 (1): "Structure and land uses in existence or for which building permits have been issued at the date of adoption of this By-law shall not be subject to the requirements of this Article so long as the kind or extent of use is not changed, provided that any parking facilities now serving such structures or uses shall not in the future be reduced below such requirements." Repaving an existing parking lot or adding drainage, for example, doesn't change "kind or extent of use", and so would not trigger the new EV READY requirements added by this warrant article. For any remaining unusual cases which might slip through the cracks, this warrant article allows the Zoning Board of Appeals to issue a special permit as a final loophole.

Given all these exceptions, the 15% EV READY requirement in this article is probably too low to meet our state and town electrification goals. As part of the Multi-State ZEV Task Force (zevstates.us) Massachusetts has committed to putting 300,000 ZEVs on the road by 2025. In 2016, we had 2.3 million vehicles registered in Massachusetts. Simple math indicates that 13% of our statewide fleet will need to be electric in the next six years to meet the state goal. Our Brookline goal, as proposed in another article in the warrant for this Town Meeting, is for 30% of our Town vehicles to be electric by 2030. Given the slow rate of new building construction in town, the number of electric vehicles in town will quickly outpace the EV READY spaces provided for by this article. I hope that we will increase our EV READY guidelines for major impact projects substantially (currently 2% EV READY + "capacity" for an additional 15%), and take further efforts to incentivize the creation of both public and private chargers for "garage orphans" in this town. This warrant article is but a modest first step.

PLANNIGN BOARD REPORT AND RECOMMENDATION

Introduction

Warrant Article 14 (EV-Ready Parking Spaces) was proposed by petitioner Scott Ananian. Mr. Ananian's goal is "to ensure Brookline's built infrastructure can support the Massachusetts Zero Emission Vehicle Action Plan target of 10% registered vehicles ZEV by 2025, and the Town's own more ambitious electrification goals."

The petitioner's initial proposal was reviewed by the Planning and Building Departments, and those comments were provided to the Planning and Regulatory Subcommittee of the Advisory Committee on September 12 and September 25; the resulting revision is supported by the Planning and Building Departments, Advisory's Planning and Regulatory Subcommittee, and the petitioner.

The petitioner initially proposed adding a new paragraph, Section 6.04.15, and amending Section 6.04.11. The latest version of Section 6.04.15 is below; the petitioner no longer proposes an amendment to Section 6.04.11.

> **Section 6.04.15 of Zoning Bylaw** [Current Version of Proposal]
> 15. For Parking Areas, Non-residential and Residential, with 15 or more parking spaces, at least 15% of the total parking spaces, and not fewer than two parking spaces, shall be EV Ready Spaces. The definitions of EV Ready Space, Electric Vehicle, and Electric Vehicle Supply Equipment (EVSE) are as defined in the latest edition of the Massachusetts State Building Code. For additions and renovations to existing buildings, exceptions to this paragraph shall be consistent with the latest edition of the Massachusetts State Building Code.

Background
The State's Board of Building Regulations and Standards (BBRS) has adopted language defining EV Ready Space, Electric Vehicle, and Electric Vehicle Supply Equipment (EVSE) and requires that parking areas with at least 15 spaces have one EV-Ready Space. Projects that include additions and renovations to existing buildings will need to meet this requirement as well, except for projects that do not require an upgrade to electrical capacity. These changes to the State Building Code will go into effect January 2020.

The Commonwealth has a goal of putting 300,000 EVs on the road by 2025. The new Building Code requirement is necessary to ensure that parking facilities provide reliable EVSEs to encourage the purchase of EVs. Electrifying transportation is a critical component of the State's and the Town's emissions policies.

Now that the BBRS has defined EV-Ready Space, the Town is able to amend its zoning by-law without running into conflicts with the State Building Code. As defined in the adopted language of the Building Code, EV-Ready Space means that a parking space will require a 50-amp branch circuit to service Electric Vehicles. Because the circuit shall result in a receptacle or electrical connector, at least an outlet will be provided for plug-in EV charging.

The current version of Warrant Article 14 is consistent with the BBRS's adopted language except that 15% of the parking spaces would need to be EV-Ready Spaces; that is, at least 2 spaces (15% x 15 spaces) versus one space would need to be EV-Ready. Per Section 6.02.1.a, fractions less than 0.5 are rounded down.

Existing Town Guidelines for EV Charging
The petitioner submitted a similar warrant article to Town Meeting that resulted in the appointment of an EV Charging Study Subcommittee of the Town's Climate Action Committee. The priority recommendation was to update the Town's Transportation Access Plan (TAP) Guidelines administered by the Transportation Division to ensure that for Major Impact Projects, 2% of parking spaces would be installed with EVSE and another 15% of spaces would have conduit for future wiring. An update to the zoning

bylaw would improve upon and supersede this section of the TAP Guidelines, which were always intended to evolve with the State Building Code.

Types of Activities Triggering the Bylaw and Exceptions
The EV-Ready Space requirement of the Building Code pertains to, among other uses, residential buildings of three units or more. However, because the EV-Ready threshold affects parking areas with at least 15 spaces or more, smaller scale properties, like three-families and small businesses, are likely not to be affected.

The proposed warrant, as revised, mirrors these requirements and the Planning Department is confident that these thresholds will not unduly burden owners of smaller scale residential and commercial properties. The proposal updates Article 6 of the Zoning Bylaw to ensure that parking facilities are designed to support the use they serve by making EVSE more reliably available.

RECOMMENDATION
The Planning Board voted to recommend FAVORABLE ACTION on the revised (current) version of this zoning warrant article.

Section 6.04.15 of Zoning Bylaw [Current Version of Proposal]

15. For Parking Areas, Non-residential and Residential, with 15 or more parking spaces, at least 15% of the total parking spaces, and not fewer than two parking spaces, shall be EV Ready Spaces. The definitions of EV Ready Space, Electric Vehicle, and Electric Vehicle Supply Equipment (EVSE) are as defined in the latest edition of the Massachusetts State Building Code. For additions and renovations to existing buildings, exceptions to this paragraph shall be consistent with the latest edition of the Massachusetts State Building Code.

SELECT BOARD'S RECOMMENDATION

The Select Board is supportive of Warrant Article 14. The Board believes that:

1 - Electrifying transportation is a critical component of the State's and the Town's emissions policies. Ensuring that parking facilities have provisions for reliable and accessible EV charging on site will encourage the purchase of electric vehicles.

2 - The proposed warrant, as revised, will not unduly burden smaller property owners because:

(a) It mirrors the requirements of the newly adopted EV-Ready Space requirements of the State Building Code.
(b) As set forth in the State Building Code, the bylaw is triggered for parking areas with at least 15 spaces or more, which will not affect smaller scale properties, like three-families and small businesses.

(c) As set forth in the State Building Code, if a proposed project does not require an upgraded electric capacity, this bylaw would not apply.

3 - The proposed warrant goes beyond the State Building Code by requiring that at least 15% of the total parking space be EV-Ready versus at least one space. Upgrading more than one parking space is both prudent and efficient during new construction or a major renovation and is less costly than upgrading parking areas later.

The Select Board unanimously recommends FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 14 would introduce a new zoning requirement (§6.04.15 – ELECTRIC VEHICLES) mandating that in all newly constructed or substantially renovated residential and non-residential parking areas with 15 or more parking spaces, that at least 15 percent of all parking spaces be Electric Vehicle ("EV") Ready.

Subject to certain revisions suggested by the Planning Department, the Advisory Committee recommends FAVORABLE ACTION on Article 14.

BACKGROUND:
Petitioners Scott Ananian explained that the objective of the article was to make additional EV parking infrastructure available in Brookline to better accommodate the anticipated increase in the adoption of plug-in electric vehicles, both all-electric and hybrid. The Warrant Article as submitted would introduce a new zoning requirement (§6.04.15 – ELECTRIC VEHICLES) mandating that in all newly constructed or substantially renovated residential and non-residential parking areas with 15 or more parking spaces, that at least 15 percent of all parking spaces (but not less than one space) be Electric Vehicle ("EV") Ready. (Since 15% of 15 is 2.25, which would be rounded down to 2, the effective minimum number of EV-Ready spaces would thus always be two.) Small parking areas with fourteen or fewer spaces would be exempt; thus, single family dwellings and small multi-family dwellings would not fall within this requirement. The Warrant Article cross-references, but does not include, the definition of "EV Ready" as it may appear from time to time in the State Building Code. The current edition of the State Building Code includes the following definitions pertaining to Electric Vehicles:

> ELECTRIC VEHICLE. An automotive-type vehicle for on-road use, such as passenger automobiles, busses, trucks, vans, neighborhood electric vehicles, electric motorcycles, and the like, primarily powered by an electric motor that draws current from a rechargeable storage battery, fuel cell, photovoltaic array, or other source of electric current.

> ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). The conductors, including the ungrounded, grounded and equipment grounding conductors. and the Electric Vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the Electric Vehicle.
>
> ELECTRIC VEHICLE CHARGING SPACE ("EV READY SPACE"): A designated parking space which is provided with one dedicated 50-ampere branch circuit for EVSE servicing Electric Vehicles.

DISCUSSION:
Maria Morelli, Senior Planner at the Town's Department of Planning and Community Development offered a modified version of the Petitioner's proposed language so as to better conform the Town's Zoning By-Law with the State Building Code, which currently applies to parking areas with 15 or more parking spaces, but requires that only one (1) EV-Ready space be provided. As revised, §6.04.15 – ELECTRIC VEHICLES would provide as follows:

> For Parking Areas, Non-residential and Residential, with 15 or more parking spaces, at least 15% of the total parking spaces, and not fewer than two parking spaces, shall be EV Ready Spaces. The definitions of EV Ready Space, Electric Vehicle, and Electric Vehicle Supply Equipment (EVSE) are as defined in the latest edition of the Massachusetts State Building Code. For additions and renovations to existing buildings, exceptions to this paragraph shall be consistent with the latest edition of the Massachusetts State Building Code.

Thus, Brookline's By-law would exceed the State Building Code minimum EV-Ready requirement. For example, a parking area with 100 spaces would require only one (1) EV-Ready space under the State Building Code, but would require 15 such spaces under the proposed By-Law. The Petitioner indicated his acceptance of the modified language.

The revised language does not specify whether the 15% is to be rounded up or down if the result is other than an integer. For example, 15% of 15 spaces is 2.25. However, §6.02.1(a) provides that "[w]here the computation of required parking space results in a fractional number, only the fraction of one-half or more shall be counted as one." Thus, in the above example, the 15% requirement for a 15-space parking area would require 2 EV-ready spaces.

As submitted, the original proposal also covered parking lots between 7 and 15 spaces. However, the Advisory Committee felt that the By-law trigger should align with the 15-space trigger in the State Building Code. The Committee was also cognizant of trying to avoid unintended consequences of requiring what could be an expensive electrical upgrade to accommodate the new 50 amp circuits when the building code wouldn't have otherwise required it.

Questions were raised with respect to multi-unit residential buildings where parking spaces are assigned to individual units, whether rented or owned as condominiums. Ms. Morelli expressed the opinion that this was something that could be dealt with by the landlord or condominium association, such as by placing the EV-Ready spaces in common or "visitor" spaces, or perhaps by exchanging assigned spaces for EV-Ready spaces where a tenant or owner requests it.

RECOMMENDATION:
By a VOTE of 24-0, the Advisory Committee recommends FAVORABLE ACTION on Article 14, as revised, as follows:

ARTICLE 14
That the Town amend Section 6.04 of the Zoning By-law ("Design of All Off- Street Parking Facilities") by adding a new paragraph 15, as follows:

> §6.04.15 – ELECTRIC VEHICLES
> For Parking Areas, Non-residential and Residential, with 15 or more parking spaces, at least 15% of the total parking spaces, and not fewer than two parking spaces, shall be EV Ready Spaces. The definitions of EV Ready Space, Electric Vehicle, and Electric Vehicle Supply Equipment (EVSE) are as defined in the latest edition of the Massachusetts State Building Code. For additions and renovations to existing buildings, exceptions to this paragraph shall be consistent with the latest edition of the Massachusetts State Building Code.

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ARTICLE 14

SCHOOL COMMITTEE REPORT AND RECOMMENDATION

On October 24, 2019, the Brookline School Committee voted, with 6 in favor (Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Mr. Glover, Ms. Monopoli, and Mr. Pearlman), 0 opposed, and 2 abstentions (Ms. Schreiner-Oldham and Ms. Ditkoff) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 14: Amend Section 6.04 of the Zoning By-law pertaining to Electric Vehicle Parking.

In future new construction and renovation projects at sites owned or operated by the Public Schools of Brookline, the School Committee is willing to support the Warrant Article 15% allocation of parking spaces to provide e-vehicle and hybrid vehicle access to electric charging stations. This includes parking garages and ground-level parking, but excludes street parking. It is the School Committee's understanding that this warrant article does not require retrofitting of existing Public Schools of Brookline parking facilities. However, electric vehicle chargers are already present at Coolidge Corner School, and are planned in the Driscoll renovation.

ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: Linda Olson Pehlke, TMM Pct. 2, and Paul Saner, TMM Pct. 13

To see if the Town will amend the Zoning By-Law by:

1) Adding the following language to Section 6.02, Paragraph 1:

"e. For storefront uses (which shall include Uses 12 through 14 inclusive, 16 through 18A inclusive, 20 through 21 inclusive, 29, 30, 32 through 36A inclusive, 36C, 37and 44, as listed in **Article IV)** on any lot for which any portion of the lot is within the Transit Parking Overlay District, the parking ratios specified in the table in **6.02, paragraph 1** shall serve as maximum allowable parking ratios. These storefront uses are not subject to the minimum parking space requirements in Section 6.02.

2) Changing the final footnote to Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements as follows:

"Section 6.02, paragraphs 1.~~2~~ through 7. contain additional requirements by type of use and by location.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Warrant Article seeks to remove minimum parking requirements and establish maximum parking ratios for most commercial store front uses within the Transit Parking Overlay District. The TPOD covers most of North Brookline and is defined as all parcels within 0.5 miles of a Green Line transit stop. The TPOD was adopted in 2016. The purpose of establishing the TPOD was to better align Brookline's residential parking requirements with household vehicle ownership and travel behavior as well as achieving better alignment with historic land use patterns within areas served by public transportation.

Subject to Town permitting review, commercial property owners and businesses would be free to propose any amount of parking considered appropriate, up to a reasonable maximum. The proposed maximum is equivalent to the current town wide minimum parking requirements for commercial storefront uses as identified in Section 6.02, paragraph 1, Table of Off-Street Parking Space Requirements. In general, the current minimum parking requirements range between 3 -5 spaces per 1,000 sq. ft. for ground floor retail and general office uses. Upper floor general retail and office parking requirements range from 1 space to 2.5 spaces per 1,000 sq. ft. Required parking for restaurants is

calculated based on the number of seats the restaurant, (or other uses considered "public assembly") have, ranging between requiring one parking space per 3 seats to one space per 5 seats. This often results in a parking requirement that is much higher for restaurants than for general retail, causing permitting issues when a restaurant wishes to locate in an existing retail storefront. It's interesting to note that the Selectmen's Parking Committee (2010) documented that 68% of Brookline's commercial businesses that are primarily retail or restaurant had no on-site, off-street parking.

An impact of this Article would be to allow greater flexibility and case-by-case consideration of parking for a commercial change of use within existing storefronts. This same flexibility would apply to any proposed new commercial development within the TPOD. Existing storefront uses which have on-site private parking could repurpose some or all of their on-site parking if they deemed it to be unnecessary, subject to Town permitting, licensing and review. This could have the beneficial result of allowing for more shared parking between adjacent uses and public use of our existing private parking resources.

The principle reasons for taking this step are as follows:

1. Our compact, walkable neighborhood commercial areas succeed because of their transit access, shared public parking resources, dense neighborhoods within walking and biking distance, and the juxtaposition of multiple civic, shopping and entertainment destinations. Most of the buildings devoted to store front uses in these areas were built prior to the advent of minimum parking requirements for such uses, and therefore do not have on-site private parking. This fact contributes to the compact, inviting, pedestrian-friendly commercial areas we enjoy today. Requiring a minimum amount of on-site private parking for new commercial projects or for a change of use within our existing storefronts limits economic activity. In addition, meeting such requirements is often not possible or desirable if we wish to maintain our historical and current land use patterns and walkable accessibility. Inadequate room for new parking on existing sites prevents the renovation of older buildings, or can result in replacing storefronts (or entire stores) and street trees with garage entrances and associated curb cuts, and/or blank facades hiding floors of parking, all of which substantially degrade the pedestrian environment When everyone parks at their destination, with no reason to use the sidewalk, street life is eliminated, and storefront businesses in the vicinity of the destination see less foot traffic.[1]

2. Transportation accounts for approximately 40% of Brookline's greenhouse gas emissions. The Town's commitment to prioritize planning to achieve zero carbon emissions by 2050 requires a reconsideration of old planning norms based on automobile-centric design and land use patterns. We must take steps to improve and support active and public transportation options. Incentivizing car parking through private parking requirements—when transit, walking, and biking alternatives are readily available and heavily used—works against this goal.

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[1] Speck, Jeff, 2018. *Walkable City Rules: 101 Steps to Making Better Places*, (Washington DC: Island Press) pp 38-39

3. Traditional minimum parking requirements are based on outmoded planning and engineering concepts. The basis for the parking demand estimates embedded in traditional parking requirements derive from parking occupancy counts at isolated commercial properties in suburban and rural settings. Therefore, these requirements do not reflect conditions in compact, mixed-use, transit-oriented settings such as Brookline's commercial districts and historic transit corridors. Such requirements were developed "without considering parking prices, the cost of parking spaces, or the wider consequences for transportation, land use, the economy, and the environment."[2]

4. In our neighborhood commercial areas, new businesses seeking to lease an existing storefront can sometimes be forced through the special permit process, adding expense and delay to their business plans, simply because the use they are proposing requires more parking under our Zoning By-Law than the business previously occupying the same location—even when the previous business occupied a storefront with no on-site parking. Additionally, to avoid a special permit or variance request, proposed restaurants often have to limit the amount of seating they could otherwise provide because the minimum parking requirements are tied to the number of seats. These added burdens can sometimes be too much for a small local business, causing new entrepreneurs to look elsewhere to open, or to close rather than adapt their business model within their current location. With the advent of this Warrant Article, change of use requests for storefront uses can be reviewed and permitted by Town Building Department personnel, without resulting in new small businesses having to get a special permit for these storefront uses."

5. Small businesses contribute to Brookline's quality of life. Moreover, expanding our commercial tax base will help the Town close a forecasted structural revenue shortfall—an important town wide goal. Based on tax revenue per square foot of land area, businesses in our walkable, compact commercial areas are exceptionally valuable to the Town from a tax revenue standpoint. Private on-site parking is an extremely inefficient use of our limited land resources and works against commercial productivity. Almost all of our recent overlay zoning districts have removed minimum parking requirements for commercial uses and capped the number of parking spaces allowed by including a maximum number of parking spaces. This more flexible approach has proven successful in the market for which these projects secured financing.

6. Maximum parking standards for businesses in mixed-use, transit-oriented districts make sense because parking in excess of what is actually needed could invite automobile trips that would otherwise be shifted to transit, walking, bicycling, or carpooling. Numerous jurisdictions around the United States have adopted maximum parking requirements in transit-oriented commercial settings, and the MBTA's transit-oriented development policy encourages communities to set reasonable maximums within their station areas. For Brookline, the current town wide minimum parking requirements represent a reasonable set of *maximum* requirements for storefront uses within the TPOD: from a zoning perspective, these requirements have already been deemed to provide adequate parking capacity for businesses located anywhere in town, including those that lack proximity to

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[2] Shoup, Donald, 2018. "Truth in Transportation Planning", in Donald Shoup (ed.). *Parking and the City*, (New York: Routledge) pg. 72

Green Line stops or shared parking resources. It is reasonable to expect that businesses within the TPOD would not need more parking, on a dedicated, on-site basis, than these maximum standards would allow. In exceptional cases, a property owner would have the usual right to seek relief through the Zoning Board of Appeals.

7. The urban form of North Brookline was established long ago, before the automobile became ubiquitous. Land use patterns were based on access to public transportation, biking and walking. Many studies have documented the desirability and value-added of walkable settings, and this is a part of Brookline's historical legacy that we should maintain. The resulting density and compactness of our commercial areas are key to the charm, usefulness, economic efficiency and support for small and local businesses that these areas provide. Adding significant quantities of on-site private parking works against Brookline's core values, strengths, and character in such a setting.

Though not addressed directly by this warrant article, our shared, public parking resources, both on-street and in our Town-owned lots, should be better managed to meet customer demand and encourage customer parking turnover, utilizing best practices, such as performance pricing.[3] Generally speaking, the term performance pricing refers to implementing a dynamic parking pricing strategy based on demand that achieves a performance target, usually set at a goal of 85% parking utilization, thus always having 15% of spaces available. Such a strategy significantly reduces circling the block, etc. and provides available parking where it is most desired.

Additionally, to better manage our public parking resources, the Town should pursue Transportation Demand Management to incentivize active and public transportation use by employees. New solutions, such as merchant employee parking at the Coolidge Corner School during non-school hours, would effectively increase the public parking supply. Public shared parking is much more efficient than single-use private parking, with several businesses enjoying customer and employee utilization of a single parking space. If it is determined that additional parking resources are necessary, the Town should consider expanding shared public parking, as well as encouraging the shared use of existing excess capacity on private sites.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article Description:
Article 15 was submitted by citizen petitioners Linda Pehlke and Paul Saner. It proposes to amend the parking requirements for storefront uses within the Transit Parking Overlay District (TPOD) in the Zoning By-Law by eliminating minimum parking requirements and establishing the minimum parking requirements as the maximum requirements. Certain uses (i.e. banks,

[3] Shoup, Donald, 2018. "Free Parking or Free Markets", in Donald Shoup (ed.). *Parking and the City*, (New York: Routledge) pg. 270

childcare centers, and recreational marijuana establishments) are excluded from this proposed amendment.

Background:
The petitioners argue that the existing commercial parking requirements are rooted in suburban, auto-centric zoning and do not align with Brookline's transit-centric, walkable geography. According to the petitioners, reducing parking requirements would spare storefront change-of-use cases the unnecessary exercise of seeking parking relief from the Zoning Board of Appeals (ZBA), and would not affect commercial development due to the restrictive nature of the Town's existing zoning.

The Brookline Chamber of Commerce and the Coolidge Corner Merchants' Association (CCMA) have both endorsed this proposal. These local business organizations believe that in change-of-use situations, prospective storefront tenants are deterred by the need to seek parking relief from the ZBA. This appeal process can take several months, and the ZBA almost always grants the requested relief, even when its variance relief. The Chamber and CCMA maintain that the existing minimum parking requirements, if eliminated, would minimize the amount of time that storefronts are left vacant as new tenants would be able to secure permit approvals more quickly.

At its public hearing on October 4, Advisory's Planning & Regulation Subcommittee approved an amended version of Article 15, which eliminated maximum parking requirements for storefront uses.

Recommendation:
The Planning Board recommends FAVORABLE ACTION of this warrant article if it includes a revision to allow businesses to exceed the maximum parking requirement with a Special Permit, provided that it could be demonstrated by a parking expert that more parking was warranted for the proposed use.

SELECT BOARD'S RECOMMENDATION

Article 15 proposes to remove parking requirements for storefront uses if the commercial use is located in the Transit Parking Overlay District (TPOD), thus well-served by rapid transit. Minimum parking requirements would be eliminated and the current minimum parking requirements would become the maximum parking requirements. The warrant article is very specific about which commercial uses can utilize the reduced parking requirement and lists each allowed use by its number from the Table of Uses in the Zoning By-Law. Certain uses (i.e. banks, childcare centers, and recreational marijuana establishments) are excluded from the parking reduction.

The citizen petitioners, supported by Brookline Chamber of Commerce, the Coolidge Corner Merchants' Association and Brookline Village Business Association, believe that this warrant article, if approved, would result in a quicker turn-around of stores and thus fewer vacancies in the business districts and emphasize the walkability of the commercial areas.

One Select Board member who supported the warrant article felt that language should be added to make it crystal clear that this article does not reduce parking for residential uses and suggested that wording to that effect be added. It was also felt that uses 20b and c for medical marijuana dispensaries and delivery businesses should not be included in allowing less parking.

The Advisory Committee subcommittee supported a revised version of the article, which would eliminate the maximum parking requirements for storefront uses and the Planning Board recommended a special permit to exceed the maximum parking requirement by special permit if additional parking was found to be warranted.

Therefore, the Select Board recommends FAVORABLE ACTION of this warrant article as follows:

VOTED: That the Town amend the Zoning By-Law by:

1) Adding the following language to Section 6.02, Paragraph 1, which exclusively affects non-residential uses:

"e. For storefront uses (which shall include Uses 12 through 14 inclusive, 16 through 18A inclusive, 20, 20a, 21, 29, 30, 32 through 36A inclusive, 36C, 37and 44, as listed in **Article IV)** on any lot for which any portion of the lot is within the Transit Parking Overlay District, the parking ratios specified in the table in **6.02, paragraph 1** shall serve as maximum allowable parking ratios. These storefront uses are not subject to the minimum parking space requirements in Section 6.02.

2) Changing the final footnote to Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements as follows:

"Section 6.02, paragraphs 1.~~2~~ through 7. contain additional requirements by type of use or by location.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 15 will be included in the supplemental mailing.

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ARTICLE 15

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Warrant Article 15 seeks to remove minimum parking requirements for most commercial store front uses within the Transit Parking Overlay District (TPOD) to be replaced with maximum parking requirements that are equivalent to the current town wide minimum requirements for these same storefront uses. The TPOD encompasses essentially all of North Brookline and significant portions of South Brookline.

The Advisory Committee recommends FAVORABLE ACTION on Article 15.

BACKGROUND:
The TPOD is defined by a zoning map that includes all parcels within 0.5 miles of a Green Line transit stop. The TPOD was adopted in 2016. The purpose of establishing the TPOD was to better align Brookline's residential parking requirements with household vehicle ownership and travel behavior as well as achieving better alignment with historic land use patterns within areas served by public transportation.

DISCUSSION;
Warrant Article 15 changes two separate but related parking requirements for commercial buildings. One part is the elimination of minimum parking requirements and the second part is the setting of maximum parking requirements in place of the existing minimum requirements in the TPOD, using the same number of parking spaces as maximums that were once used as parking requirement minimums.

Minimum Parking Requirements
Petitioners argue that compact, walkable neighborhood commercial areas succeed because of their transit access, shared public parking resources, dense neighborhoods within walking and biking distance, and the juxtaposition of multiple civic, shopping and entertainment destinations. The fact that buildings devoted to store front uses in these areas were built prior to the advent of minimum parking requirements for such uses and, therefore, do not have on-site private parking, contributes to the compact, inviting, pedestrian-friendly commercial areas that we have in the Town.

Requiring a minimum amount of on-site private parking for new commercial projects or for a change of use within our existing storefronts limits economic activity. In addition, meeting such requirements is often not possible or desirable if we wish to maintain our historical and current land use patterns and walkable accessibility. Petitioners also argue that the numerical minimum requirements in the Zoning Bylaw are arbitrary and unreasonable, and that there is no evidentiary basis for continuing them. The Advisory Committee agreed and concluded it was time for these minimum requirements to be

eliminated as proposed in WA15 and did not spend significant time reaching that conclusion.

Maximum Parking Requirements

Petitioners also argue that maximum parking standards for businesses in mixed-use, transit-oriented districts make sense because parking in excess of what is actually needed could invite automobile trips that would otherwise be shifted to transit, walking, bicycling, or carpooling. Petitioners further argue that in Brookline, the current town wide minimum parking requirements represent a reasonable set of *maximum* requirements for storefront uses within the TPOD; and, that from a zoning perspective, these requirements have already been deemed to provide adequate parking capacity for businesses located anywhere in Town, including those that lack proximity to Green Line stops or shared parking resources.

Some members of the Advisory Committee believed that removing the parking minimums preserved and protected the street experience, but that a similar beneficial argument was lacking with respect to setting parking maximums. They believed that removing the minimum requirements for storefront uses is a major directional change in our zoning without the unintended consequences inherent in setting maximum parking requirements based upon the questionable replacement of arbitrary minimum requirements with similarly arbitrary maximum requirements, using the same numerical ratios. The unintended consequences include possibly inhibiting needed development in less urban areas of the Town that are not easily accessible by mass transit and walking, such as Route 9, with no clear benefit.

Setting maximum parking requirements would be yet a further directional change in our zoning. While that change may be desirable, some members of the Advisory Committee were of the view that it should be proposed only after a study of what maximum parking ratios make sense for Brookline's unique commercial storefront uses. These members believed that it would be prudent to move incrementally after solid analysis and not to act arbitrarily. Petitioners presented an amended version of WA15 that provided that the Zoning Board of Appeals may grant a special permit to exceed the maximum number of parking spaces allowed.

Advisory Committee voted to accept the Petitioners' amended version of WA15, to remove minimum parking requirements and to replace them with maximum parking requirements, with the possibility of a special permit to exceed the maximum requirement, by a vote of 12-10-1., was finally approved by the Advisory Committee, as follows.

RECOMMENDATION:

By a vote of 26-0 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on Article 15 as follows:

Voted: That the Town amend the Zoning By-Law by:

1) Adding the following language to Section 6.02, Paragraph 1, which exclusively affects nonresidential uses:

"e. For storefront uses (which shall include Uses 12 through 14 inclusive, 16 through 18A inclusive, 20, 20A, 20C, 21, 29, 30, 32 through 36A inclusive, 36C, 37and 44, as listed in **Article IV)** on any lot for which any portion of the lot is within the Transit Parking Overlay District, the parking ratios specified in the table in **6.02, paragraph 1** shall serve as maximum allowable parking ratios. These storefront uses are not subject to the minimum parking space requirements in Section 6.02. The Zoning Board of Appeals may grant a special permit to exceed the maximum number of parking spaces allowed.

2) Changing the final footnote to Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements as follows:

"Section 6.02, paragraphs 1.~~2~~ through 7. contain additional requirements by type of use or by location.

ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: Paul Warren, TMM1 and Heather Hamilton, Select Board Member

To see if the Town will vote to adopt the following resolution:

BE IT RESOLVED, that Town Meeting urges the Select Board not to adopt any further or extend any existing shared E-Scooter or other micro-mobility pilot programs or implement any permanent shared E-Scooter or other micro-mobility services, until such time as: (1) the State updates and clarifies existing laws governing the use and operation of E-Scooters and other micro-mobility devices, and (2) the Transportation Board holds public hearings and adopts rules and regulations regarding the operation and parking of E-Scooters and other micro mobility devices upon public sidewalks, public paths and in parks; and,

BE IT FURTHER RESOLVED, that Town Meeting urges Brookline's State legislative delegation to work with the State Legislature to ensure that in any legislation involving E-Scooters and other micro-mobility devices that Brookline retains local control to regulate its sidewalks with respect to the use and operation of such devices.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Select Board launched an E-Scooter pilot program to identify and evaluate potential demand, community issues, benefits and costs of a permanent E-Scooter Share Program in Brookline.

The pilot program, based on usage data and user survey results supplied by the vendors, indicates that in Brookline there appears to be significant demand for shared E-Scooter services. The level of reported demand and replaced automobile trips appears to be consistent with what has been reported by other communities that have deployed shared E-Scooter services.

The pilot program has also highlighted that the operation and parking of motorized scooters on sidewalks has raised concerns with respect to pedestrians, and in particular, the elderly, disabled and the very young. These concerns include the risk of injury from collisions as well as tripping and fall hazards from improperly parked E-Scooters.

The pilot program also highlighted gaps in State and local regulations governing E-Scooters.

Brookline has been working in a leadership role to address these gaps by participating in the planning and development of a regional, regulatory and operating framework with other local municipalities including Boston, Cambridge, Watertown and Somerville.

Contemporaneously, several bills have been introduced in the legislature to address E-Scooters and other micro-mobility devices regarding the operation of such devices on public sidewalks. Thus far, the filed legislation permits the operation of these devices on sidewalks other than in business districts. It does, however, preserve local control of sidewalks by allowing municipalities to pass local ordinances and regulations limiting any operation on sidewalks whether in or outside of business districts. But, of course, there is no assurance that the final legislation will preserve the local option.

This first resolution seeks to postpone additional piloting or the permanent deployment of E-Scooters and other micro-mobility devices in Brookline until the State legislature updates and clarifies its existing laws and until the Brookline Transportation Board holds public hearings and develops rules and regulations to govern the use of such devices in Brookline.

The second resolution urges our State legislative delegation to work with the State Legislature to ensure that, in any legislation involving E-Scooters and other micro-mobility devices, Brookline retains local control to regulate its sidewalks with respect to the use and operation of such devices.

SELECT BOARD'S RECOMMENDATION

Article 16 is a resolution that asks the Select Board to postpone additional piloting or the permanent deployment of E-Scooters and other micro-mobility devices in Brookline until the State legislature updates and clarifies its existing laws and until the Brookline Transportation Board holds public hearings and develops rules and regulations to govern the use of such devices in Brookline. The Article also asks Brookline's legislative delegation to work with the state legislature to legislative efforts retain control at the local level so communities can regulate the use and operation of these devices.

The Select Board has used the current pilot program to get feedback from the community on the desire for a permanent e-scooter program. The nebulous nature of the current laws governing operation e-scooters prompted Select Board member Hamilton and co-petitioner Warren to file this article to encourage the various parties to establish legislation, rules and regulations that will allow for a coordinated framework that would be developed in partnership with neighboring communities.

A unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

BE IT RESOLVED, that Town Meeting urges the Select Board not to adopt any further or extend any existing shared E-Scooter or other micro-mobility pilot programs or implement any permanent shared E-Scooter or other micro-mobility services, until such time as: (1) the State updates and clarifies existing laws governing the use and operation of E-Scooters and other micro-mobility devices, and (2) the Transportation Board holds public hearings and adopts rules and regulations regarding the operation and parking of E-Scooters and other micro mobility devices upon public sidewalks, public paths and in parks; and,

BE IT FURTHER RESOLVED, that Town Meeting urges Brookline's State legislative delegation to work with the State Legislature to ensure that in any legislation involving E-Scooters and other micro-mobility devices that Brookline retains local control to regulate its sidewalks with respect to the use and operation of such devices.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 16 is a resolution that urges the Select Board to postpone all decisions on adopting, extending, or implementing any programs, including pilot programs, related to shared e-scooters or other micro-mobility devices in Brookline until after (1) the State Legislature has updated and clarified Massachusetts's current laws governing the use and operation of these devices and (2) the Transportation Board has held public hearings and has adopted rules and regulations regarding the operation and parking of e-scooters and other micro-mobility devices on Brookline's public sidewalks and public paths and in its parks. WA 16 also urges that Brookline's delegates to the State Legislature work to ensure that, in any new state legislation passed involving e-scooters or micro-mobility devices, Brookline retains local control to regulate its sidewalks with respect to the use and operation of such devices.

The Advisory Committee recommends FAVORABLE ACTION on WA 16.

BACKGROUND:
In the fall of 2018 the Select Board voted to approve a 7 1/2-month shared rental e-scooter pilot program in Brookline running from April 1, 2019 to November 15, 2019. Brookline's e-scooter pilot program, which is the first in the state, was initiated at the urging of Select Board Member Heather Hamilton and after consultation with Transportation Administrator Todd Kirrane and Transportation Board Chair Christopher Dempsey. Originally the e-scooter rental companies participating in the pilot program were Lime and Bird, which provided approximately 300 scooters; several months after the start of the program, Spin became the third participating e-scooter rental company.

E-scooters are part of a broad category of lightweight electric vehicles known as "micro-mobility devices." These devices include electric-powered scooters, skateboards, unicycles, bicycles, and hoverboards. While these devices (and in particular e-scooters) are frequently made available to users via shared rental services, they are also being privately purchased. E-scooter rental services are becoming increasingly popular in many communities throughout the country.

Riders use a mobile phone application to rent e-scooters and pay for trips. When signing up to rent an e-scooter, riders must sign and agree to the rental company's user agreement, which can be more than 50 printed pages long, typically requires that all disputes be settled by confidential arbitration, and limits the company's liability to the rider. (In the case of Lime, for example, liability is currently capped at $100.) Typically, there is no general liability insurance coverage provided should the rider hit a pedestrian, crash into a car, or damage someone's property.

Because users of these devices can and do cross municipal borders, the development of appropriate safety regulations with respect to these devices is a local, regional, and statewide transportation issue.

At present, e-scooters appear to be covered under Mass. General Law Chapter 90, Section 1, which defines a "motorized scooter" as "any 2 wheeled tandem or 3 wheeled device, that has handlebars, designed to be stood or sat upon by the operator, powered by an electric or gas powered motor that is capable of propelling the device with or without human propulsion." Under decades-old current state law (Ch. 90, sect. 1E), which was developed to regulate faster, gas-powered mopeds and scooters such as Vespas, motorized scooters must be equipped with brake lights and turn signals, cannot be operated at a speed in excess of 20 miles per hour, can only be operated during daylight hours, and its operators must have a valid driver's license or learner's permit and wear protective headgear. Nine different bills seeking to regulate different aspects of e-scooter usage have been filed in the current session of the State Legislature, including one by Governor Baker.

In Brookline, e-scooters are currently regulated locally by Article VII, Section 15, of the Transportation Department Rules and Regulations, which bars driving vehicles on sidewalks with limited exceptions. The Brookline Police Department has been using this regulation to justify stopping people driving e-scooters on sidewalks. Section 7.5.11 of Brookline's By-laws, which prohibits sidewalk obstructions of "free passage for travelers" except with special permits for building purposes, might also be applicable, but, according to co-petitioner Paul Warren, has not been enforced with respect to e-scooters on sidewalks that are blocking pedestrian ways. Town counsel has informed co-petitioner Warren that Town Meeting does not have the authority to change laws governing Brookline's sidewalks. Rather, the Transportation Board has exclusive jurisdiction and authority to regulate Brookline's sidewalks, pursuant to Chapter 317 of the Acts of 1974, which created Brookline's Transportation Board.

On a regional basis, Brookline has been working with the Massachusetts Area Planning Council in a regional planning effort with Boston, Cambridge, Watertown, and Newton to develop a coordinated regulatory framework for the operation of micro-mobility devices.

DISCUSSION:
The petitioners emphasize that WA 16 does not take a position either for or against e-scooter usage in Brookline or on micro-mobility devices in general. It simply seeks a moratorium on any Select Board actions with respect to future e-scooter rental programs in Brookline until after the State Legislature and Brookline's Transportation Board have enacted up-to-date regulations for the use, operation, and parking of e-scooters and other micro-mobility devices. There is general agreement that current state and local laws, which were enacted decades ago, are not adequate for regulating e-scooters and other modern micro-mobility devices, particularly with respect to the ways that these devices actually operate and are used in our communities.

This delay would also give the town time to assess the 7 ½ month-long e-scooter pilot program that ended on November 15 of this year, to survey public feedback about this program from the Brookline community at large, and to better evaluate the benefits, costs, and operational needs of any future permanent e-scooter rental program that might be considered.

A few Advisory Committee members questioned whether this warrant article was necessary and opined that it might have been better handled as an executive order by the Select Board. It was also pointed out that we don't know how long it will take the State Legislature to take action on the nine bills seeking to regulate e-scooter usage that are currently being considered, particularly since the Governor's bill is a comprehensive transportation bill in which e-scooter regulation is just a small part.

The Advisory Committee is mindful that the pilot e-scooter rental program highlighted a number of problems and concerns that will need to be addressed in the future. These problems and concerns include: the risk of injury to pedestrians from tripping, falling, and collision hazards due to improperly parked e-scooters left on sidewalks and e-scooters being ridden on sidewalks and in parks; underage operators; lack of helmet law compliance; the absence of visible ID numbers on e-scooters; Police Department challenges and additional costs related to enforcement of e-scooter regulations; the failure of accident/injury data to capture the “near miss rate” or the “fear factor” experienced by pedestrians with respect to e-scooters being ridden on sidewalks and in parks; the absence of liability insurance for riders; and the legal liability of Brookline if e-scooter parking impedes sidewalk accessibility required under ADA law. The petitioners noted that setting regulations will just be the start of addressing these problems and that there will be a need for follow-up investments in enforcement, education, and infrastructure to better ensure public safety.

The Advisory Committee is strongly supportive of the two chief goals of this article: (1) postponement of any Select Board decisions on adopting, extending, or implementing rental e-scooter programs in Brookline until after the State Legislature and Brookline's Transportation Board have enacted up-to-date regulations for the use, operation, and parking of e-scooters and other micro-mobility devices and (2) Brookline's retention of local control over its sidewalks in any state laws and regulations that might be enacted by the State Legislature.

RECOMMENDATION:
By a vote of 24-0-1, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

November 19, 2019
Special Town Meeting
Article 16 – Supplement No. 1

Article 16 (Electric Scooters)

AMENDMENT OFFERED BY HUGH MATTISON, TMM5

To see if the Town will vote to adopt the following resolution (~~deleted text~~):
BE IT RESOLVED, that Town Meeting urges the Select Board not to adopt any further or extend any existing shared E-Scooter or other micro-mobility pilot programs or implement any permanent shared E-Scooter or other micro-mobility services, until such time as:
~~(1) the State updates and clarifies existing laws governing the use and operation of EScooters and other micro-mobility devices, and (2)~~ the Transportation Board holds public hearings and adopts rules and regulations regarding the operation and parking of EScooters and other micro mobility devices upon public sidewalks, public paths and in parks; and,

BE IT FURTHER RESOLVED, that Town Meeting urges Brookline's State legislative delegation to work with the State Legislature to ensure that in any legislation involving EScooters and other micro-mobility devices that Brookline retains local control to regulate its sidewalks with respect to the use and operation of such devices. Or act on anything relative thereto.

Explanation:
This amendment eliminates this text: ~~(1) the State updates and clarifies existing laws governing the use and operation of EScooters and other micro-mobility devices, and.~~

The purpose of this amendment to the first resolution is to remove dependence on the State schedule for changing existing laws relating to electric scooters and other micro-mobility devices. At this time, there is no schedule set for discussion of these laws by the Legislature. This resolution also asks the Select Board not to implement any pilot program until the Transportation Board has held public hearings and has adopted rules and regulations.

The pilot electric scooter program that the Select Board authorized this past spring, and that the Transportation Division successfully implemented, has provided the experience we need to fine tune a revised pilot. The primary issues of scooters cluttering sidewalks and parks, and use of scooters on sidewalks, can be addressed by the Transportation Board. After all, the purpose of a pilot program is to identify issues and work on solutions.

In the second resolution, we are asking our State representatives to work with the State Legislature to allow Brookline to retain local control to regulate its sidewalks with respect to the use and operation of electric scooters and other micro-mobility devices.

We have been leaders in the state in the use of electric scooters, and have momentum in understanding the factors needed for improvement. For example, seated scooters much more suitable for older users could expand the user community substantially. One requirement of a new pilot program could be to require rental operators Lime and Bird to offer these seated scooters.

It seems ironic that a number of warrant articles are dealing with eliminating use of fossil fuels. Without this amendment, Article 16 would actually delay the use of fossil-fuel-free vehicles until the state issues guidelines, and there is no certainty when this will occur.

ARTICLE 17

SEVENTEENTH ARTICLE

Submitted by: C. Scott Ananian, TMM 10, (correspondent) Jesse Gray, TMM 10

Resolution regarding Open-Air Parking Licenses and Electric Vehicle Charging

To see if the Town will adopt the following Resolution:

> WHEREAS, according to the 2017 report to Annual Town Meeting of the Electric Vehicle Charging Study Committee, 50% of Brookline properties are rental, not owner-occupied, and residents living in rented dwellings who wish to transition from a fossil-fuel burning vehicle are not in a position to invest in or adapt their home for an Electric Vehicle; and
>
> WHEREAS, although reducing reliance on single-owner vehicles has a number of beneficial effects in addition to reducing greenhouse gas emissions, the electrification of the remaining motorized transport is necessary to meet the goals of the Commonwealth and Brookline's commitments under the Paris agreement; and
>
> WHEREAS, lack of a self-owned parking spot can make charging an electric vehicle logistically difficult, discouraging Town citizens from switching to an emission-free vehicle; and
>
> WHEREAS, the current open-air parking license process administered by the Select Board is cumbersome, and enforcement against those renting out open-air parking spots without a license is practically-speaking non-existent;
>
> NOW, THEREFORE, BE IT HEREBY RESOLVED that the Select Board appoint a committee to study the process of administering open-air parking licenses, with the following goals: (1) to fund a pilot program to provide incentives, including rebates on acquisition and installation costs, for open-air parking license holders who provide EV Ready parking spots, as defined in Section C405.10 of 780 CMR 13, the Massachusetts Building Code; (2) to reform the license process to make it less burdensome to comply with the law in good faith and acquire and renew an open-air parking license, and (3) to more effectively enforce licensing requirements.
>
> BE IT FURTHER RESOLVED that the Town endeavor to add multiple low-speed charging outlets to all Overnight Resident Parking Lots, and establish a program to facilitate their use for overnight charging of battery electric vehicles and plug-in hybrids.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

One of the surprising findings of the Electric Vehicle Charging study committee was the large percentage of "garage orphans": Brookline residents who face obstacles switching to an electric vehicle because of the lack of a dedicated charger. The solution to the garage orphan challenge in our town must be multifold, including ensuring that Major Impact Projects in town provide sufficient charging capacity in parking structures, supporting a renters/condo-owners "bill of rights" to ensure they are able to install chargers at their own expense, and providing public chargers, for example in town lots and in town-provided overnight parking, to accommodate those without their own dedicated charger. This article addresses one additional piece of that challenge, in attempting to increase the number of rented parking spaces which provide electric vehicle charging facilities. A small pilot program of, for example, $10,000 could provide $500 rebates to the first 20 open-air parking license holder applicants, and would provide feedback on whether this incentive would be effective in increasing EV charger availability in our town.

It is time to broaden the adoption of Electric Vehicles to those who rent or who cannot afford to own property with dedicated parking.

SELECT BOARD'S RECOMMENDATION

A report and recommendation on Article 17 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 17 will be included in the supplemental mailing.

XXX

ARTICLE 17

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 17 is a petitioned resolution asking the Select Board to establish a committee to review the open-air parking license process and increase EV Ready parking spots. The committee would be tasked with reporting back to the Select Board on a pilot program to provide incentives to open-air parking license holders to provide EV Ready parking spots. As well as review and provide suggestions to reform and enhance enforcement of the open-air parking license process. Further, it encourages the Town to add charging outlets in Town parking lots to facilitate the charging of battery electric vehicles and plug-in hybrids.

The Select Board was largely supportive of the resolution. Particularly efforts to look at how the Town could encourage increasing EV Ready parking spots. Board members did express hesitancy in providing an incentive program to open-air license holders with no means-testing in place. The Board ultimately determined that they could define the financial parameters necessary for the committee through the charge. Regarding a review of the open-air licensing process and how to make it more effective. The Board felt this was a noble task that should be pursued, but felt that this committee should not discuss this sort of policy discussion in particular. The Board felt that the committee should focus on the recommendations for an incentive program to encourage EV Ready parking spots.

On November 5, 2019, the Board recommended FAVORABLE ACTION, by a vote of four in favor and one abstention, on an amended Warrant Article 17, as follows:

VOTED: That the Town adopt the following resolution:

WHEREAS, according to the 2017 report to Annual Town Meeting of the Electric Vehicle Charging Study Committee, 50% of Brookline properties are rental, not owner-occupied, and residents living in rented dwellings who wish to transition from a fossil-fuel burning vehicle are not in a position to invest in or adapt their home for an Electric Vehicle; and

WHEREAS, although reducing reliance on single-owner vehicles has a number of beneficial effects in addition to reducing greenhouse gas emissions, the electrification of the remaining motorized transport is necessary to meet the goals of the Commonwealth and Brookline's commitments under the Paris agreement; and

WHEREAS, lack of a self-owned parking spot can make charging an electric vehicle logistically difficult, discouraging Town citizens from switching to an emission-free vehicle; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Select Board appoint a committee to study the process of administering open-air parking licenses, with the following goals: (1) to consider a pilot program no later than FY22 to provide incentives, including rebates on acquisition and installation costs, for some open-air parking license holders who provide EV Ready parking spots, as defined in the Massachusetts Building Code, and (2) to consider requiring EV Ready parking spots as a condition of obtaining or renewing some open-air parking licenses.

BE IT FURTHER RESOLVED that the Town endeavor to add multiple charging outlets (possibly including L1 as well as L2) to all Overnight Resident Parking Lots, and establish a program to facilitate their use for overnight charging of battery electric vehicles and plug-in hybrids.

ROLL CALL VOTE:

Aye:	Abstention:
Greene	Hamilton
Franco	
Heller	
Fernandez	

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

WA 17 is a Resolution that seeks Town Meeting approval to direct the Select Board to appoint a committee to study the open-air licensing process with three goals: (1) to fund an incentivized pilot program for open-air parking licensees to provide EV Ready parking spots; (2) to reform the license process to make it less burdensome for licensees to comply with the law; and, (3) to better enforce licensing requirements. The Resolution also seeks to encourage the Town to add multiple low-speed (L1) charging outlets to overnight resident parking lots.

The Advisory Committee recommends FAVORABLE ACTION ON THE ARTICLE AS AMENDED. The amended wording is included at the end of the Recommendation

BACKGROUND:

At the Special Town Meeting in November 2016 C. Scott Ananian (TMM-10) proposed an amendment to Section 6.04 of the Zoning By-law that would have added a new Section 6.04.15 (Electric Vehicles) requiring that at least 2% of parking spaces, and not less than a single parking space, be equipped for electric vehicle charging, providing a Level 2 or Level 3 charger. The goal of that warrant article was to encourage electric vehicle adoption by residents of Brookline. That 2016 warrant article was referred to the Selectmen's Climate Action Committee for further study. Linda Olson Pehlke (TMM-2) who chaired

the EV Charging Station Study Subcommittee estimated that approximately 5,000 vehicles (about 15% of all registered vehicles) in the Town are "garage orphans," that is, cars that are parked in spaces not owned or controlled by the vehicle owner.

The current warrant article is an outgrowth of the EV Charging Station Study and was filed in order "to begin addressing the needs of those members of our community who rent or own property without dedicated parking who might otherwise want to invest in purchasing or renting an electric vehicle."

DISCUSSION:

Warrant Article 17 is being submitted by the Transportation & Renewable Energy Working Team, which emerged from the first Select Board's Sustainability & Climate Action Summit to address the broader goal of reducing greenhouse gas emissions from fossil fuel-powered vehicles. The Commonwealth of MA is committing to having 10% or 300,000 ZEVs (Zero Emission Vehicles) on the road by 2025. There were about 28,000 registered vehicles in Brookline in 2010 according to MAPC data, so 10% of that would be 2,800 EVs. One of the goals of this Warrant Article is to enable "garage orphans" to participate in that 10% state commitment. The Sustainability Working Team town goal is to triple the total number of EVs in Brookline within the next 10 years. EV adoption is especially challenging for people who don't have access to chargers, and therefore these "garage orphans" are slow adopters of BEVs (battery electric vehicles) and plug-in hybrid cars which run on both battery and fossil fuel.

If it votes in favor of the article, Town Meeting would be urging the Select Board to appoint a study committee to examine the process for administering open-air licenses, so as to encourage the installation of EV chargers throughout the Town through the existing licensing authority. The three areas of study the resolution identifies is: (1) funding a pilot program with incentives for those who have an open-air parking license to provide EV Ready parking spots, (2) reforming the currently burdensome process for acquiring an open-air license, and (3) enforcing the licensing requirements.

According to state law, everyone who rents out a parking space (indoor or outdoor) needs to have a license. There is no minimum – it can be 1-car parking space. According to our zoning by-laws a property owner in a residential zone (S/SC/T/F/M) can have 5 spaces by right – but if money is exchanged for the parking space, a license is required. The largest licensed lot is at 808 Commonwealth Avenue, which has 143 spaces.

The Advisory Committee discussion focused on the two "Resolved" clauses.

Resolved Clause 1

The Select Board is the licensing authority in the Town for open-air parking licenses. Given the number of committees that the Select Board needs to appoint and to staff, the many Town staff who are already dealing with EV's and other environmental issues, and to

enable the Town to move forward with the goals of this article, the Advisory Committee recommends that the words **"or direct their designee(s)"** be added to give the Select Board flexibility. The petitioner was amenable to that additional language.

The first goal of the Resolution is to fund a pilot program with incentives to open-air parking licensees to install EV chargers. Incentives could include rebates on costs incurred with the acquisition and installation of EV chargers, for example. The petitioner estimated that the pilot program would cost the Town approximately $10,000. Zoe Lynn, Sustainability Program Administrator within the Planning and Community Development Department noted that because Brookline is one of 240 MA Green Communities, the Town is eligible for State grant programs. Since 2011 the Town has received over $800,000 in State grants for energy conservation measures (e.g., conversion to LED streetlighting). The Town is also eligible for Federal grants and other sources of funding for sustainability initiatives. With the goal of seeking funding in mind, the Advisory Committee recommends that **"no later than FY22"** be added to the wording with the intention of securing funding for the FY22 budget cycle. The petitioner was amenable to that additional language, as well.

The petitioners' second goal is to simplify the current licensing process which may discourage property owners from seeking an open-air parking license. The current application requirements include an initial Fire Department inspection, yearly license renewals by the Select Board, and a public process that includes notifying people within a certain radius via certified mail about the intention to rent out one or more parking spaces and having a hearing before the Select Board. The EV charging sub-committee estimated that only about 20% of the rental parking spaces are properly licensed. The fee itself is minimal – about $50/year for 5 parking spots. According to data on the Town's website, as of 2017 there were 62 open-air licenses in Brookline. Deputy Town Administrator Melissa Goff provided the most recent five-year history of revenues from open-air parking licenses, for a total of $55,525 (FY15 $13,600; FY16 $12,180; FY17 $10,620; FY18 $8,205; FY19 $10,920), or an average of a little over $11,000 a year.

The third goal is simply to enforce the licensing requirements.

All three of those goals would, according to the lead petitioners, work together to encourage the adoption of Battery Electric Vehicles and Plug-in Hybrid Vehicles by residents of Brookline. The members of the Advisory Committee were divided on that view. In a vote to amend WA17 to remove goals 2 and 3 from the first "Resolved" clause, the Advisory Committee voted 13 in favor, 11 opposed, and two abstentions. A slight majority felt that the primary goal of the warrant article was encapsulated in the pilot program and that by limiting the scope of the study committee to the first goal, the study committee could more effectively focus its energies.

<u>Resolved Clause 2</u>

The discussion focused on what level charger should the Town encourage. In the language of the original article, the Town would encourage only low speed chargers. Low speed chargers (Level 1) use standard household outlets (15 amp), which would be especially good for plug-in hybrids which have smaller batteries that could be fully-charged overnight. These are relatively inexpensive charging outlets to install and the study committee could look at the costs, for instance, of installing a regular outlet at every space. It's anticipated that plug-in hybrids will be adopted in greater numbers before battery-only electric vehicles.

Level 2 (220 volt) charging outlets are medium speed which is better for BEVs which have larger batteries and could charge a battery in 4 hours. The current chargers in Town parking lots are 2-headed (2 spots) medium speed chargers.

According to the petitioner, in 2015 the Department of Energy found that Level 2 chargers (4-hour or overnight) cost anywhere from $600 - $12,000. In CA the retrofit costs were $4,000 to $7,000. In MA the costs are $700 - $1200 for new construction, and approximately $7,000 for retrofits.

The Advisory Committee supports adding language to encourage the installation of both Level 1 and Level 2 chargers to the second "Resolved" clause.

RECOMMENDATION:

By a vote of 24 -1 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION ON THE AMENDED RESOLUTION, as follows:

Resolution regarding Open-Air Parking Licenses and Electric Vehicle Charging

Deletions in ~~strikeout~~, additions in **bold underline**.

To see if the Town will adopt the following Resolution:

> WHEREAS, according to the 2017 report to Annual Town Meeting of the Electric Vehicle Charging Study Committee, 50% of Brookline properties are rental, not owner-occupied, and residents living in rented dwellings who wish to transition from a fossil-fuel burning vehicle are not in a position to invest in or adapt their home for an Electric Vehicle; and
>
> WHEREAS, although reducing reliance on single-owner vehicles has a number of beneficial effects in addition to reducing greenhouse gas emissions, the electrification of the remaining motorized transport is necessary to meet the goals of the Commonwealth and Brookline's commitments under the Paris agreement; and

WHEREAS, lack of a self-owned parking spot can make charging an electric vehicle logistically difficult, discouraging Town citizens from switching to an emission-free vehicle; and

WHEREAS, the current open-air parking license process administered by the Select Board is cumbersome, and enforcement against those renting out open-air parking spots without a license is practically-speaking non-existent;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Select Board appoint a committee **or direct their designee(s)** to study the process of administering open-air parking licenses, with the following goals: (1) to fund a pilot program **no later than FY22** to provide incentives, including rebates on acquisition and installation costs, for open-air parking license holders who provide EV Ready parking spots, as defined in Section C405.10 of 780 CMR 13, the Massachusetts Building Code. ~~; (2) to reform the license process to make it less burdensome to comply with the law in good faith and acquire and renew an open-air parking license, and (3) to more effectively enforce licensing requirements.~~

BE IT FURTHER RESOLVED that the Town endeavor to add multiple ~~low-speed~~ charging outlets **(possibly including L1 as well as L2)** to all Overnight Resident Parking Lots and establish a program to facilitate their use for overnight charging of battery electric vehicles and plug-in hybrids.

ARTICLE 18

EIGHTEENTH ARTICLE

Submitted by: Scott Gladstone and Isaac Silberberg

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

1. By amending Section 2.12.3 – the definition of "Lodger" – by adding the additional language underlined below:

A person who rents space for living or sleeping purposes, for a period of 30 consecutive days or longer, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – "L" Definitions – to add a new item known as "Lodger, short term" after the term "Lodger," as follows:

Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table if Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 62C §7 and under any additional registration required by the Town By-Law as it may be amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, or a designated property manager must sleep in the dwelling unit being rented to a short term lodger for all but one night of such short term lodger's rental.

S-YES

SC-YES

T-YES

F-YES

M-YES

L-YES

G-YES

O-YES

I-YES

or act upon anything else relative thereto

PETITIONER'S ARTICLE DESCRIPTION

The Building Department currently interprets the definition of "Lodger" under the Zoning By-Law to mean a lodger for 30 days or more. This warrant article makes explicit the interpretation that the Town has been using for the proposition that short term lodging, such as those offered by Air Band B and similar services, are not a permitted use in Brookline. As a consequence, based on complaints, the Building Department has been shutting down advertised Air B and B's and similar short term rentals.

This warrant article also adds a new definition for "short term lodgers" and adds a new use that explicitly permits short term lodging under conditions similar to those already allowed for lodgers for 30 says or more, which is permitted under the existing Use 51. The proposed new Use 51C, includes the same restrictions as the existing Use 51: renting of not more than two rooms, which rooms cannot have separate cooking facilities, to not more than two short term lodgers and in no event can all more than 4 of unrelated persons dwell at one time in a dwelling unit.

The proposed new use would have the following additional requirements:

1. The owner would need to be registered under the Commonwealth's short term rental registration system created by G.L. c. 62C, Section 7;

2. The owner would need to comply with any additional registration or regulatory requirements the Town may choose to impose through amendments to the Town By-Law;

3. The owner of the dwelling unit, or a Lodger (long term) living in the dwelling unit, must sleep in the dwelling unit being rented to a short term lodger for each night of such short term lodger's rental in order to avoid a scenario wherein (i) an owner-occupier vacates the unit in order to facilitate the short-term lodger or (ii) the owner occupier of a two, three or multi-family building rents the units in which the owner does not live to short term lodgers.

Town Meeting previously accepted the terms of G.L. c. 64G, Section 3A in order to be able to facilitate a local use tax on hotels. By operation of G.L. c. 62C, Section 7, such taxes are now automatically applicable to short term rentals. That being the case, every Air B&B renter, who has not been shut down by the Town, will in theory be paying the local tax into the Commonwealth and the Town will then start collecting that tax payment as of July 1,

2019. This warrant article will legalize at least some of the uses for which the Town will be collecting that tax.

The primary motivation for starting with the proposed new Use 51A is to permit low and fixed income people to be able to take advantage of short term rentals in order to supplement their income and facilitate their staying in their homes. Such owners may prefer to supplement their income in this fashion, as opposed to taking on long term lodgers as roommates, in order to maintain their autonomy and privacy when the spare bedroom(s) are not rented. Also, long term lodgers may be more difficult to evict if they become a problem for the owner, which is less of a concern when it comes to short term renters. Thus, this proposal has a strong economic justice component.

MOTION OFFERED BY THE PETITONER

VOTED: That the Town amend the Zoning By-Law as follows:

1. By amending Section 2.12.3 – the definition of "Lodger" – by adding the additional language underlined below:

A person who rents space for living or sleeping purposes, <u>for a period of 30 consecutive days or longer</u>, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – "L" Definitions – to add a new item known as "Lodger, short term" after the term "Lodger," as follows:

Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table if Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 64G and M.G.L. c. 62C §67 and under any additional registration required by the Town By-Law as it may be amended from time to time, and conforming to Brookline regulations of this use as they may be promulgated and amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, or a designated property manager must sleep in the dwelling unit being rented to a short term lodger for all but one night of such short term lodger's rental.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

MARKED UP VERSION OF MOTION AGAINST ORIGINAL ARTICLE

~~To see if~~Motion to adopt Article 18 as amended below:

VOTED: That the Town ~~will~~ amend the Zoning By-Law as follows:

1. By amending Section 2.12.3 – the definition of "Lodger" – by adding the additional language underlined below:

A person who rents space for living or sleeping purposes, for a period of 30 consecutive days or longer, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – "L" Definitions – to add a new item known as "Lodger, short term" after the term "Lodger," as follows:

Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table if Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

~~51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 62C §7 and under any additional registration required by the Town By-Law as it may be amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, must sleep in the dwelling unit being rented to a short term lodger for each night of such short term lodger's rental.~~

~~S-YES~~
~~SC-YES~~
~~T-YES~~
~~F-YES~~
~~M-YES~~
~~L-YES~~
~~G-YES~~
~~O-YES~~
~~I-YES~~

~~… or act upon anything else relative thereto~~

Principal Uses	**Residence**					**Business**			**Ind.**
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 64G and M.G.L. c. 62C §67 and under any additional registration required by the Town By-Law as it may be amended from time to time, and conforming to Brookline regulations of this use as they may be promulgated and amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, or a designated property manager must sleep in the dwelling unit being rented to a short term lodger for all but one night of such short term lodger's rental.									

PETITIONER SUPPLEMENTAL EXPLANATION

This supplement is in respond to some of the written objections that have been presented during the review process

Nothing about passing Article 18 will affect the ability of the Town to regulate short term rentals in the future: The language of Article 18 facilitates the passage of regulations and a registration system so that the Town can impose whatever rules it deems appropriate. This is similar to the enabling zoning for lodging houses, which use is also subject, per the zoning use table, to any rules the Town wishes to impose. Since the rules for inspection, safety, etc. will not be zoning changes (they likely will be Town General By-Law changes), AND because the language of the proposed use 51C requires adherence to later passed rules, there is no concern about any grandfathering affect precluding further regulation of these units.

Nothing about Article 18 will preclude the Town from expanding the right to short term rentals further: It is hard to imagine a more restrictive form of the short term rental use than the one being proposed in Article 18, especially given the requirement that the owner, or a long term tenant, must sleep in the unit while the short term guests are there. The current iteration of the Town's proposal for the spring Town Meeting would be MORE PERMISSIVE of short terms rentals in several respects. While the Town cannot take away a right given under zoning once a person takes advantage of that right, there is nothing in Article 18 that would preclude the Town from advancing an expansion of the right to short terms rentals, which is what the current iteration of the Planning Department's proposal for the spring would do. Why not start small with Article 18 and see how the experiment goes before asking Town Meeting to entertain a more expansive set of short term rental uses as the Planning Department is preparing?

A No Action vote on Article 18 does not end short term rentals. Short term rentals would just go on unregulated until they are shut down, one by one, as the Building Department gets around to it in light of its workload and resources. At a recent forum for the Planning Department's proposal for short terms rentals (perhaps to be filed in the spring), the representative of the fire department expressed his desire to legalize at least some of the hundreds of unregulated short terms rental units so that his department can

have an opportunity to inspect more units in Town. Saying "no" to Article 18 means that these units continue as scofflaws, without any inspections. It is better public policy to create a pathway for limited lawful short-term rentals that can be regulated. That then gives much more moral authority and legal certainty in the Town's efforts to crack down on operators that refuse to come into the regulatory fold.

Why not wait until the Planning Department presents its proposal in the spring? There are two answers to this:
1. Spring may never come in this respect. Almost all of the arguments being made against Article 18 apply to ALL short term rentals. The opponents would rather step up enforcement of the Building department's interpretation of the current by-law to stop short terms rentals altogether. They do not wish to have any exemptions to a complete ban, including for those minority of people who are so in need of funds that they are willing to take in strangers to sleep in their spare bedrooms while they also sleep in the unit. If that narrative carries the day, then the Town's proposal planned for the spring (currently much more expansive that Article 18) will fail to gain the necessary 2/3 vote of Town Meeting. Why is that bad? See Point 2 below.

2. The Building Department's current a-textual interpretation of the definition of the word Lodger to mean 30 days or more is subject to challenge such that any short-term rental use asserting that they should fit within the current Use 51 might be declared lawful by the ZBA. Use 51 already allows a small number of Lodgers (the same number limit as is being provided for in Article 18) in all zoning districts. The current zoning by-law does NOT have any time component to the definition of Lodger. Therefore, the Building Department's "interpretation" that inserts a non-existent 30-day minimum is subject to challenge before the ZBA. If challengers win their ZBA appeals, this would create a patchwork of pre-existing non-conforming units with perpetual unlimited rights to do short term rentals, only bound by the terms of Use 51. One of the purposes of Article 18 is to address a deficiency in the current by-law. One of the petitioners, Scott Gladstone, is currently representing a client appealing an enforcement action against her for renting to short-term renters. In that appeal, counsel is asserting that short terms rentals are currently allowed under Use 51.

One opponent to Article 18 decries the fact that one of the petitioners of Article 18 has a client that will benefit from Article 18, as will many other similarly situated fixed income people, but that is ok for two reasons:
1. Mr. Gladstone's client agreed to put off her hearing on her ZBA appeal of the enforcement letter issued by the Building Department until after Town Meeting so as to give Town Meeting a chance to fix the law properly, rather than seek her own relief that will only benefit her. Mr. Gladstone knows of at least one other fixed income empty-nester in his Precinct 16 neighborhood who would benefit from this as well, and no doubt there are many others.

2. Here is the story of Mr. Gladstone's client:
She is currently allowed to rent to long term tenants under the Building Department's interpretation of Use 51, which she had been doing in order to be able to afford to stay in her condo. A recent long-term tenant renting one of her two spare bedrooms turned into a

horror show: not paying rent, hoarding garbage in his room, using intoxicants. She started the eviction process, but that took weeks. In the meantime, her other tenant moved out because of the issue with the trouble tenant. The trouble tenant filed false reports against the unit owner's friend, who came over as much as possible to be an ally for her, resulting in Brookline police arresting her friend and barring her friend from returning to her home, which was still also the residence of the trouble tenant. At that point, until she could get her trouble tenant out, she stayed in her bedroom with her door locked. This unit owner wants to be able to supplement her income with short terms renters, who have review histories on platforms such as Air B&B, so that she has a better sense of who she is having in her apartment and, in any event, they are there for a short time and with NO RIGHTS to stay if they become a problem. Again, Mr. Gladstone knows of another elderly fixed income person in his Baker School neighborhood who uses a spare bedroom for short terms rentals for the same reason. Mr. Gladstone's client's story is not unique.

The early history of Use 51 is amazingly apropos of the discussion today on Article 18. When Use 51 was adopted as part of the 1962 zoning modification (the basis for today's zoning by-law), the joint report included the following rationale: "The Board feels that this type of residence use is an asset to the community rather than a liability. For widows or older couples on limited incomes, or young families in large houses, taking in a lodger is of great assistance in maintaining the home. Brookline has many houses that undoubtedly owe their good upkeep to the owner's freedom to rent a room." The same rationale applies to the modernization of Use 51, which is what Article 18 wishes to accomplish by inserting Use 51C.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article Description

Article 18 was submitted by citizen petitioners Scott Gladstone and Isaac Silberberg. It proposes to amend the definition of "Lodger" by establishing a minimum rental period, adding an additional definition for a "Lodger, short term", and add a new use 51C that would allow short-term rentals in all zoning districts by right.

Short-term rentals can appear in a very wide variety of forms, depending on different types of rental arrangements, from homeowners hosting guests in an otherwise unused bedroom to businesses that acquire or lease and then manage multiple properties as short-term rentals. This proposal would introduce an allowance for a very basic and limited version of a short-term rental. Under this proposal, a short-term rental would only be allowed if it involves the rental of no more than 2 rooms with no separate cooking facilities in an owner-occupied dwelling unit to no more than 2 short-term lodgers and where the owner/lodger (long-term)/property manager sleep in the unit for all but one night of the short-term stay. The new use (51C) would also be required to register under M.G.L. c. 64G and M.G.L. c. 62C §67, state regulations pertaining to short-term rentals, and under any other additional registration required by Town bylaws. No local registration system is being proposed by this warrant article or otherwise at this time.

Background

The Commonwealth has taken action in recent years on the regulation of short-term rentals. In addition, many neighboring communities have already passed zoning bylaws/ordinances on short-term rentals that are a valuable resource to consult.

At a local level, staff from the Planning, Building, Health, and Fire Departments, the Select Board's Office, and Town Counsel's Office have been working to develop a comprehensive set of short-term rental (STR) regulations. The purpose of the regulations will be to balance the interests of Brookline STR operators, residents who may be experiencing negative impacts from STRs, and the Town. These regulations would be based on existing examples of best practices from nearby communities and include: identifying types of units to be allowed; establishing eligibility requirements for these units; establishing a registration process and types of documentation that will be required to register a unit; collecting a fee for registration; setting an inspection process; requiring that operators provide certain information/amenities within the units; and establishing appropriate penalties. The resulting zoning amendment from this cooperative town effort is expected to be proposed at the Spring 2020 Annual Town Meeting, and significant outreach to the community is a planned and necessary element to the process leading to that proposal.

In surrounding communities such as Cambridge, Somerville, Newton, and Boston, STR regulations have already been put into place. These municipalities followed a comprehensive rezoning process involving input through public testimony, working groups, community meetings, hearings with relevant boards/commissions, and meetings with stakeholders. The bylaws/ordinances passed in these communities are extensive in the variety of STRs contemplated as well as the regulations pertaining to those STRs. There is value in utilizing existing examples and best practices, customized to Brookline's unique needs, rather than attempting an entirely separate approach that may not address all of the regulatory needs pertaining to STRs.

At the state level, a new statute (M.G.L. c. 377) was passed defining STRs, providing a degree of regulation, and authorizing additional local regulation. Under the state definition of STR, lodging houses, inns, and hotels are explicitly exempt from STR regulations. The state statute is yet another level of complexity to the question of STR regulations that must be carefully considered in the crafting of a comprehensive bylaw.

<u>Recommendation</u>

Short-term rentals have been, and will continue to be, a rapidly growing use. They are generally desirable in that they provide an additional source of income to residents who have space to rent-out and need the additional income to afford staying in the Town. They can also produce a number of undesirable impacts for neighbors, such as late-night disturbances due to noise and mix-ups on the correct location of the STR. Establishing reasonable and enforceable regulations for STRs is an important and time-sensitive endeavor that, more importantly, requires a comprehensive approach involving widespread community input. The current proposal falls short of this standard. It has involved no community input and is overly simplistic and narrow in its solution.

Therefore, the Planning Board recommends NO ACTION on Article 18 and recommends that the Town allow the Planning Department's and Building Department's efforts on short-term rentals to produce a proposed bylaw for Spring Town Meeting before taking any related action.

SELECT BOARD'S RECOMMENDATION

Article 18 proposes to amend the Zoning By-law to change the definition of "Lodger" by establishing a minimum rental period of 30 days or less, adding an additional definition for a "Lodger, short term", and adding a new use 51C that would allow short-term rentals in all zoning districts by right. This proposal aims to create a mechanism to allow Short-Term Rentals in Brookline as they are currently not allowed in any circumstances. Article 18 would allow Short-Term Rentals only in one specific and limited manner where the owner of a unit rents out no more than two bedrooms within their unit to no more than two guests only if the owner, a long-term tenant, or a property manager is present and sleeps in the unit for all but one night of the short-term stay.

The Select Board appreciated that the Petitioner is eager to tackle an important and challenging issue that is worth serious consideration and exploration by the Town. The Board also agreed that some form of regulations will be required to address Short-Term Rentals in Brookline and expressed support for a set of regulations to be drafted rather than the alternative option of continuing forward with no regulations and an effective ban on all Short-Term Rentals. The Board is aware that the Planning Department, along with staff from numerous other departments, is leading an effort to draft a comprehensive set of regulations on this topic for Spring 2020 Town Meeting and that Article 18 is an attempt to pass a narrower version of regulations in the interim.

The Board's discussion raised numerous concerns with Article 18 as proposed. The Board felt that there are many more intricacies and implications of Short-Term Rentals than are covered in the rather limited scope of the Petitioner's article. More time and consideration should be given to consider what these details are and how they can be incorporated into a more comprehensive set of regulations. Another concern is the grandfathering of Short-Term Rental uses. The Petitioner confirmed that once Short-Term Rentals are allowed in Brookline, any unit serving as a Short-Term Rental will become grandfathered under that use even if regulations were to change in the future that sought to further restrict the use. For this reason, the Board felt that it is very important to consider all options for how Short-Term Rental regulations should be implemented. Some Board members felt that Short-Term Rentals should not be allowed in all parts of Brookline and that restricting the use to only certain areas should be considered.

The Board members felt that the Town should follow the process already underway by the Planning Department and urged the Petitioner to remain involved in that process to incorporate his strong ideas and interests into the proposed Spring 2020 regulations. While the Board considered recommending no action on this warrant article, after further discussion, the Board members ultimately decided that recommending that the article be

referred to the (existing) staff committee would send a stronger message to Town Meeting Members that this is a topic that the Town should take seriously and put on its radar in anticipation of Spring Town Meeting.

A unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: To refer the subject matter of Article 18 to the existing staff committee currently developing regulations.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 18 would allow Air B&B-type short-term rentals by adding a new use 51C, subject to certain conditions that, according to the Petitioner, are intended to prevent individual residential dwellings to be converted into *de facto* hotels whose absentee owners do not themselves reside in the dwelling.

For the reasons discussed below, the Advisory Committee recommends NO ACTION on Article 18.

BACKGROUND:
The Building Department estimates that there are currently some 400 residential dwelling units (i.e., houses, condos) that actively offer short-term Air B&B-type rentals in Brookline. The Planning Department is currently developing ** and has indicated its intention to address the issue through one or more Warrant Articles in the Spring 2020 Annual Town Meeting. Petitioner Scott Gladstone submitted Warrant Article 18 in an effort to accelerate the legalization of such short-term rentals. He has disclosed that his action was undertaken behalf of a client who is anxious to benefit from the revenue that such short-term rentals could provide.

The Petitioner explained that the Building Department currently interprets the definition of "Lodger" under the Zoning By-Law to mean someone who rents a room for a period of 30 days or more. Because short-term lodging, such as those offered by Air B&B and similar services, are not a permitted use in Brookline, the Building Department has been shutting down advertised Air B&B's and similar short-term rentals upon receipt of a property-specific complaint.

According to the Petitioner, Article 18 would allow short-term lodgers by adding a new use 51C, subject to certain conditions that the property owner will be required to satisfy:

1. The owner would need to be registered under the Commonwealth's short-term rental registration system created by G.L. c. 62C, Section 7;
2. The owner would need to comply with any additional registration or regulatory requirements the Town may choose to impose through amendments to the Town By-Law; and

3. The owner of the dwelling unit, or a Lodger (long term), or a designated property manager living in the dwelling unit, must sleep in the dwelling unit being rented to a short-term lodger for all but one night of such short-term lodger's rental in order to avoid a scenario wherein (i) an owner-occupier vacates the unit in order to facilitate the short-term lodger or (ii) the owner occupier of a two, three or multi-family building rents the units in which the owner does not live to short-term lodgers.

According to the Petitioner, these conditions – and in particular the requirement that the dwelling be owner-occupied and that the owner or long-term lodger (who could be serving as the property manager) actually sleep in the dwelling -- would preclude the creation of *de facto* hotels out of multi-unit buildings or groups of condo units by nonresident investors. The Petitioner characterized this as a small step toward eliminating what he described as extensive scofflaw violations of existing zoning. He argued that owners would only rent such rooms to such transients on a short-term basis in cases of actual financial need. He suggested that the numerous disadvantages of allowing strangers into one's home would preclude abuse except where actual financial need exists.

DISCUSSION:
The Advisory Committee noted that, despite the language putatively specifying that the unit be owner-occupied, the Article as drafted would not require that the property owner ever actually sleep in the dwelling; under the By-law as proposed, that requirement appears to be satisfied by either a long-term Lodger or by a resident property manager. Notably, the term "owner-occupied" does not appear to be defined anywhere within the Brookline Zoning By-law.

The following criticisms of the proposal were reviewed:

1) The proposed conditions for approval of a short-term rental, namely being an owner-occupier and that that said owner must be sleeping in the home or unit while it is being leased to short-term renters, are unworkable and unverifiable. While in theory, the presence of the owner would hopefully tamp down on errant behavior, it will be impossible to establish whether or not the owner was present during the rental, should a complaint arise.
2) Permitting Short-term rentals in all residential districts is highly problematic and not well thought-out. There are instances where an emergency arises at a building and the occupants of the short-term rental could not be alerted because property management does not have knowledge of the rental or the occupants. Legal experts have alerted condominium boards as to the need for very high levels of liability insurance that is required for the unit owner. The demand on common services (i.e. trash, water, heat, etc.) would be impacted by allowing short-term rentals, not to mention the potential for damage to common area property. Then there are the safety and quality of life issues that arise from admitting transient strangers into residential properties with common entrances, etc.
3) As a matter of Town-wide public policy, we need to carefully consider the potential impacts to housing availability and housing costs if some of our existing housing stock is converted to serve tourists, not residents. Also, short-

term rentals will cannibalize the clientele (and therefore tax revenue) for our existing hotels, bed and breakfast inns, lodging houses, etc. Similar to the end run around the taxi regulations, Air B&B facilitates, through technology, an end run around fire, safety, licensing, etc. regulations.

4) Passing this now would grandfather all currently operating short-term rentals. This would make any future efforts by the Town to regulate and oversee short-term rentals moot. The Planning Department is presently studying this complex regulatory problem and they should be allowed to continue gathering feedback, working across departments, etc. to make a comprehensive proposal for future consideration. Approving WA 18 would interfere with this work and it would by-pass the necessary community outreach and listening that still needs to occur on this issue. Other members of the public expressed similar concerns.

The Planning Department is currently working on a more comprehensive solution to the Air B&B type of rental, and has advised that it expects to offer one or more articles for the 2020 Annual Town Meeting. These short-term rentals in private homes are currently being operated under-the-radar of safety and other regulations that apply to hotels and lodging houses, and that such disparate regulation is unfair to these enterprises where compliance was required. There is no provision in Article 18 that would subject short-term rental dwellings to the types of health and safety regulations to which hotels and lodging houses were routinely subjected. More specific concerns were raised regarding short-term renters' ability to understand and act upon basic safety requirements in the event of an emergency, such as how to exit from the premises in the event of fire. Hotels are required to post such information in all guest rooms and provide other fire safety arrangements.

The Petitioner's notion that homeowners should be allowed to engage in such rentals as a means for supplementing their income was also questioned. Engaging in such activities is essentially a business, and zoning prohibits the establishment of most types of businesses in residential zones. The Petitioner claimed that the existing illegal Air B&B locations in Brookline could not be easily shut down except in response to specific complaints by neighbors. But the locations of all such illegal activities can be easily obtained from the Air B&B and similar websites. And also the Building Department may not currently have the inspectional staff to pursue and shut down all of these locations, it also lacks the staff to enforce health and safety regulations that Article 18 would impose.

Concerns were also raised regarding public safety arising from the presence of unknown individuals in neighborhoods where short-term rentals were being offered, as well as broader concerns about Brookline's housing stock being converted from residents to transient tourists.

Because the Planning Department is undertaking to address this issue more comprehensively than the solution offered by Article 18, the Advisory Committee felt that the proposed By-law change was, at the very least, premature and required additional study, which is currently underway at the Planning Department.

<u>RECOMMENDATION:</u>
By a vote of 24-0-1, the Advisory Committee recommends NO ACTION on Article 18.

XXX

ARTICLE 19

NINETEEN ARTICLE

Submitted by: Roger Blood

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

Add, a new subsection c. to §2.01 - "A" DEFINITIONS, 1. ACCESSORY

c. Accessory dwelling unit "ADU": A separate and self-contained dwelling unit located in a single family detached building, or in a detached building located on the same lot as a single family building as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of Brookline Zoning By-Law, Section 4.05 Paragraph 3.2.

Add a new sub section 5. to §2.15 - "O" DEFINITIONS

5. OWNER-OCCUPIED – Serving as the principal or year-round residence of the property owner of record as defined by the Town Assessor and as further documented in §4.05, Paragraph 3.2.

Add at the end of the sentence in sub section1. of §4.04 - LIMITATION OF AREA OF ACCESSORY USES

, except that an accessory dwelling unit may occupy up to the lesser of 750 square feet of habitable space or 30 per cent of the floor area of the principal building by right or, by Special Permit, up to the lesser of 950 square feet of habitable space or 30 percent of the floor area of the principal building.

After "No accessory use" in sub section 3. of §4.04 – LIMITATION OF AREA OF ACCESORY USES, add

, except accessory dwelling units,

To change the title of §4.05 to ACCESSORY USES IN RESIDENCE DISTRICTS; ACCESSORY DWELLING UNITS

To add the following new Section 3 to §4.05 – ACCESSORY DWELLING UNITS

3.1 Intent: Accessory dwelling units are an allowed accessory use where they are, by design,
clearly subordinate to the principal dwelling unit and meeting the requirements of this Section. Accessory dwelling units are intended to advance the following:

1. To provide flexibility for families as their needs change over time and, in particular, provide options for older adults to be able to stay in their homes and for households with disabled persons;

2. To increase the diversity of housing choices in the Town while respecting the residential character and scale of existing neighborhoods;

3. To provide a non-subsidized form of housing that is generally less costly and more affordable than similar units in multifamily buildings;

4. To add housing units to Brookline's total housing stock with minimal adverse effects on Brookline's neighborhoods.

3.2. Accessory dwelling units in single family owner-occupied buildings shall conform to all
the following provisions:

1. Maximum square footage. An accessory dwelling unit shall occupy up to 30 per cent of the floor area of the principal building or 750 square feet of habitable space, whichever is less.

An accessory dwelling unit which exceeds 750 sq. ft. but does not exceed 950 sq. ft. of habitable space or 30 percent of the floor area of the principal building, whichever is less, may be approved by Special Permit. Criteria for issuance of this Special Permit shall include documentation that a permanent household member with a handicap or illness, not of a temporary nature, requires the aid of a resident caregiver to aid a family member. This Special Permit may require an additional off-street parking space.

2. Owner-occupancy. A building containing an accessory dwelling unit shall be owner-occupied, which requirement may be met via either the principal or the accessory dwelling unit. Qualifying owner-occupancy must be certified as a precondition for receiving a Certificate of Occupancy for the accessory dwelling unit and not less than once per calendar year thereafter, by an affidavit, in a form to be provided by the Building Department and signed by the owner-applicant. Copies of the completed Affidavits of Owner-Occupancy shall be retained by the Building Department.

Owner-occupancy shall be further certified by inclusion of the subject property in the listing of residential property tax exemptions as maintained by the Town Assessor, beginning not more than 24 months following, as applicable, the issuance of a Certificate of Occupancy for a new accessory dwelling unit or the transfer of ownership for a pre-existing accessory dwelling unit, and continuing for each Fiscal Year thereafter.

3. Building envelope. An accessory dwelling unit may be created in an existing building or accessory building if the building envelope is not expanded and any

increase in FAR stemming from the conversion of non-habitable space to habitable space does not produce a resultant FAR greater than 120% of the allowed FAR in the current Zoning By-Law. An expansion of the building envelope to create an accessory dwelling unit shall be allowed by Special Permit if the resultant FAR is no greater than 120% of the allowed FAR in the current Zoning By-Law and all other dimensional requirements are met. The provisions of subsection 1.a.and e. of Section 5.22 shall not apply to the creation of accessory dwelling units.

4. Exterior appearance. A building containing an accessory dwelling unit must exhibit no exterior evidence of occupancy by more than one family, including, but not limited to the following:

(1) Having no more than one means of access/egress visible from the street upon which the property faces;

(2) Having no more than one street number address; if the accessory dwelling unit has a second mailbox or mail delivery slot, it shall not be visible from the street;

(3) Having no electric, gas, or water meters other than those serving the principal dwelling unit of the building in which it is situated;

5. Exterior alterations are permitted, provided they are in keeping with the architectural integrity of the structure, including but not limited to:

(1) The exterior finish material should be the same or visually consistent with the exterior finish material of the remainder of the building;

(2) The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;

(3) Trim should be consistent with the trim used on the remainder of the building;

(4) Windows should be consistent with those of the remainder of the building in proportion and orientation.

6. Parking. A single family property with a by right accessory dwelling unit will conform to parking requirements as applicable to single-family homes with no accessory dwelling unit. An accessory dwelling unit which exceeds 750 sq. ft. of habitable space and which requires a Special Permit may, as a condition of the Special Permit, require one addi-tional off-street parking space. Existing setback requirements will apply to all parking.

If additional parking is required, including surface parking replacing existing garage space, in addition to meeting setback requirements, screening is required

sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences or a combination.

7. Maximum number of occupants. The total number of individuals residing in the principal and accessory dwelling units combined may not exceed the number allowed in the principal dwelling unit alone, under Section 2.06 "F" definitions for family.

8. Minimum age of principal dwelling unit. The principal dwelling unit must have been constructed five or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling; where no such certificate is available, the property owner will provide other evidence of lawful occupancy of the existing dwelling on or before a date at least five years prior to the date of application satisfactory to the Building Department, or if by Special Permit, satisfactory to the Board of Appeals.

9. Conversion of garage space. An accessory dwelling unit that is created by conver-sion of a pre-existing garage, including an existing garage in a separate structure from the primary residential building, may be approved only by Special Permit. No separate structure, other than conversion of an existing garage, may be approved as an accessory dwelling unit. Garage space eligible for conversion to an accessory dwelling unit must have been constructed five or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by an original building permit or other documentation satisfactory to the Board of Appeals**.** The provisions of Section 5.22, Exceptions to Maximum Floor Area Ratio Regulations for Residential Units 1.e prohibiting replacement of garage parking to a location exterior to the house does not apply to this subsection.)

10. Allowable means of egress. An accessory dwelling unit must have two means of egress that conform to the applicable requirements of the Building Code. If the second means of egress requires an exterior stairway, any such stairway will require a Special Permit and may not exceed more than one story in height nor be visible from a public way.

11. One accessory dwelling unit per lot. No more than one accessory dwelling unit shall be allowed per lot.

12. No separate ownership. No accessory dwelling unit shall be held in separate ownership from the principal structure/dwelling unit; at no time shall an accessory dwelling unit, or the building of which it is a part, be deeded as a condominium unit.

13. Curb cut limit. Accessory dwelling units may not be located on any lot which is accessed from any public or private street by more than one curb cut, except for lots having more than one pre-existing curb cut for a period of at least five years.

14. Minimum rental period. Rental of either the accessory dwelling unit or its associated primary dwelling unit shall be for a term of not less than six (6) months and shall be subject to a written rental or lease agreement.

15. Historic districts. Where a building is located within a local historic district and therefore subject to the procedures required under Article 5.6 of the General By-Law, any decisions of the Brookline Preservation Commission shall take precedence over the criteria and procedures set forth above, but the Preservation Commission may be guided by the provisions of this Section in addition to its own criteria and procedures.

16. Recording at Registry of Deeds. Before a Certificate of Occupancy is issued, the property owner of any accessory apartment shall record with the Norfolk County Registry of Deeds or with the Land Court a certified copy of the approval, in a form prescribed by the Building Commissioner or, if required, the Special Permit. Certified copies of the recorded documents shall be filed with the Building Department.

17. Change of ownership. When ownership of any residential property containing an existing accessory dwelling unit changes, the new property owner shall within 30 days of the title transfer, file with the Building Commissioner a sworn affidavit attesting to continued compliance with the requirements of this section and all applicable public safety codes, at which time the Building Commissioner shall conduct a determination of compliance with this Section.

The new property owner shall certify annually thereafter on the first business day of January, or upon transfer to a new owner as provided above, continued compliance with the requirements of this section in a form acceptable to the Building Commissioner.

18. Termination. A property owner who chooses to discontinue an accessory dwelling unit shall notify the Building Commissioner in writing within 30 days following such action.

19. Enforcement. A property owner who fails to recertify as required an accessory dwelling unit or otherwise comply with all provisions of this section shall be subject to regulatory enforcement by the Building Commissioner.

The Building Commissioner shall seek advice and counsel from the Director of Planning and Community Development when there is any question in the application of the criteria contained in this Section and in the approval of any special permit for accessory dwelling unit approval.

The Building Commissioner may re-inspect the property for compliance with the Zoning ByLaw and health and safety regulations, including but not limited to when there is a change of ownership.

20. Public listing of approved units. A listing of all accessory dwelling units shall be maintained by the Town in such a manner as to be accessible on the Town of Brookline website.

3.3. Pre-existing unauthorized accessory dwelling units may be approved by the Building Commissioner subject to the following requirements:

(1) The property owner shall submit an application request in a form prescribed by the Building Commissioner;

(2) The property owner must provide evidence, in a form satisfactory to the Building Commissioner, that the accessory dwelling unit was constructed five or more years prior to the date of adoption of this Bylaw section.

(3) The pre-existing accessory dwelling unit must comply with all requirements of the accessory dwelling unit section of the Zoning Bylaw; however, the Building Commissioner may approve an accessory dwelling unit with habitable space exceeding 950 sq. ft., but not exceeding 30 percent of the floor area of the principal building.

(4) Before approval of an existing accessory dwelling unit, the Building Department shall conduct an onsite inspection for compliance with all applicable Building Code requirements and other applicable provisions of this Section.

To add the following to §4.07 – TABLE OF USE REGULATIONS , following Accessory Uses 51A:

Accessory Uses	Residence				Business			Industry
	S	SC	T F	M	L	G	0	I
51B. Within a detached single-family owner-occupied dwelling in all zones or within an existing garage accessory to that dwelling, an Accessory Dwelling Unit as further defined and limited in Section 4.05, paragraph 2.	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*No*	*No*

To add, to §5.22- EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS,

at the end of Section 1. General Provisions, a, before "."

, except for accessory dwelling units per Section 4.05(2)

at the end of 2 b.,

> For purposes of this subsection only, an accessory dwelling unit, as per Section 4.05 paragraph 2 shall not be considered a separate unit.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

An accessory dwelling unit ("ADU") is a self-contained or segregated space within a single-family home, comprised of a kitchen, bathroom and living/sleeping area and subject to size, design, ownership and use restrictions.

In 2009, Town Meeting considered an ADU-authorizing zoning bylaw amendment. While a strong majority voted in favor of that article, it fell several votes short of the 2/3 required super majority for adoption of all zoning articles. This current ADU article for single family homes differs in some respects from the prior article, while adopting some provisions from the Newton ADU ordinance which became effective in 2017.

Under Article __, the principal residence or the ADU must be owner-occupied; the ADU, if granted by right, can be no greater than 750 square feet or 30 percent of the home's total habitable space, whichever is less, and by Special Permit, under certain conditions may be up to 950 square feet. The property must be under a single common ownership, i.e., it cannot be 'condo'd'. The exterior of the house must continue to appear as a single-family home and can have only one set of metered utilities.

All approved ADU's would require initial and periodic certifications of owner-occupancy of the subject property. Based upon the many specific restrictions included in the article, a single-family home containing an authorized ADU would be very different than a two-family home.

In recommending this Article, the Brookline Housing Advisory Board (HAB) has observed the growing popularity of ADU's in urban, suburban and rural communities, both in Massachusetts and nationwide. This trend is mainly a result of households becoming smaller; the continued aging of our population with a desire of many homeowners to 'age in place'; and more inclusive definitions of "family". The AARP, among others, has reported very favorable research on accessory dwelling units, and many of our neighboring communities now authorize and encourage ADU's.

A review of numerous Greater Boston area communities that have adopted an ADU Bylaw indicates on the one hand significant variations in specific bylaw provisions and, on the other hand, remarkable uniformity in the overall volume of resulting activity, which has been low everywhere. The HAB has found no evidence that these communities have experienced any adverse neighborhood effects.

The HAB sees ADU's as one component of a strategy that encourages a diversity of housing types to serve many legitimate social, economic and housing needs of our increasingly diverse Brookline citizenry.

In particular, ADU's are seen as potentially helpful to:

- Young families or single working parents seeking stable childcare options;
- Middle-aged parents helping adult children to become independent;
- Frequent travelers, or retirees who winter in warmer climes, concerned about leaving homes unattended;
- Older homeowners seeking to remain in homes, while needing personal assistance/ companionship;
- Adult children seeking to care for older parents while maintaining independence for both;
- Families with disabled members seeking stable and convenient options for in-house care;
- Homeowners of all ages struggling to pay their living and home maintenance costs;
- Renters seeking lower cost living options. Short term rentals would be prohibited.

In summary, the Housing Advisory Board believes that Article __ will enable some home-owners—especially older adults--to reduce their own housing (or other life) costs and/or for
the occupants of ADU's to live more economically, thereby increasing affordability in general without public cost or further new development.

Finally, this ADU article will promote greater personal safety and security by providing an opportunity for owners of currently unauthorized dwelling units to have their units inspected for fire, health and safety code compliance and allowing their existing illegal units to be legalized.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article Description

Article 19 was submitted by citizen petitioner Roger Blood. It proposes to add provisions to the Town's Zoning By-Law that would define Accessory Dwelling Units (ADU) and allow them by-right or by Special Permit, depending on specific circumstances relating to the size of the ADU, whether a structural expansion is necessary, and what kind of space

is being converted to create the ADU. The new use would be classified as an accessory use under the By-law and allowed in all zoning districts except the Industrial district and the Business and Professional Offices district.

In the simplest terms, an accessory dwelling unit is a self-contained apartment in an owner-occupied single-family home/lot that is either attached to the principal dwelling or in a separate structure on the same property. The ADU provisions proposed by this warrant article essentially adopt this definition and then set limitations on the use. Key limitations include size, effects on building envelope, conversion of accessory structures, and minimum age of principal dwelling. Under the proposed zoning provisions, ADUs would be limited in size to 750 sf or 30% of the habitable space (whichever is less) of the principal dwelling, with an option to exceed this limit by Special Permit (subject to very strict criteria and a hard limit of 950 sf). While ADUs that do not expand the building envelope and that are within 120% of the allowed FAR for that district would be allowed by right, ADUs that are proposed with a corresponding addition would require zoning relief under a Special Permit; such proposals would also be required to comply with all other dimensional requirements of the Zoning By-Law. The proposed provisions prohibit ADUs from being created in accessory structures, with the exception of detached garages, where such a conversion would nonetheless require a Special Permit and be subject to additional minor restrictions. Finally, the provisions prohibit any ADU from being created on a property where a Certificate of Occupancy has been granted within the previous 5 years; this to prevent applicants from constructing an addition that is converted into an ADU shortly thereafter and circumventing the restrictions on expansion of building envelopes. The proposed bylaw contains a number of other minor limitations to the creation of ADUs, but those described above form the foundation of the proposed regulations.

Background

There is some history to accessory dwelling units in Brookline that is worth noting. Up until the Fall 2013 Special Town Meeting, accessory dwelling units were allowed in all districts for domestic employees or members of the families of such employees. At the Fall 2013 Special Town Meeting, a zoning amendment was passed that prohibited this accessory use in all districts except the S-40 zoning district and only by Special Permit on lots greater than 40,000 sf and for accessory buildings not exceeding 1,200 sf. This represented a very significant reduction in allowances for ADUs. Some years prior to that, at the Spring 2009 Annual Town Meeting, a zoning amendment was proposed that would have allowed ADUs in a manner similar to the current proposal. The 2009 ADU proposal was more restrictive, in that it limited ADUs to lots with at least 10,000sf and only by Special Permit and only in single residence zoning districts. With a vote of 115-84, that proposal failed to achieve a 2/3 majority at Town Meeting.

It is also worth noting that the Massachusetts State Legislature is considering updates to the General Laws that would affect ADUs and the Town's ability to regulate them. The Housing Choice Bill (Bill H. 4290) would reduce the required vote (from 2/3 majority to a simple majority) at Town Meeting for any zoning amendment that would allow ADUs by right (and other housing-related proposals). The Great Neighborhoods Bill (Bill H. 4397)

would prevent any zoning ordinance or by-law from prohibiting or requiring a Special Permit for an ADU notwithstanding that municipalities would be allowed to subject ADUs to reasonable dimensional requirements.

Recommendation

Throughout the Commonwealth, accessory dwelling units are quickly becoming a favored strategy for increasing a municipality's housing stock. New ADUs are a relatively simple housing unit to create and many already exist unregistered. Introducing zoning provisions that allow the creation of new ADUs and allow for the legalization of existing ADUs can be an effective tool for housing production. ADUs can provide an important element that helps diversify a municipality's housing stock, and address the needs of many otherwise unserved members of a community, including: seniors seeking to age in place; young adults caring for aging parents while simultaneously needing independence/privacy; families with disabled family members; renters with limited economic means; and frequent travelers. Due to their nature, ADUs tend to be fairly affordable, so while the units do not strictly increase the Town's subsidized housing inventory, ADUs do improve the Town's housing stock from an economic equity perspective.

The Planning Board believes that ADUs are a smart housing production tool, and the Town recognized this by addressing ADUs in the 2016 Housing Production Plan. Listed as an issue affecting the production of affordable housing, "*Brookline's zoning* […] *has no provision for accessory dwelling units.* […] *A bylaw allowing ADUs could help create some alternatives to diversify the existing housing stock and generate rental income that could help seniors remain in their homes. To be effective, an ADU bylaw should accommodate alterations for accessory apartments to include expansion of the principal building (not just confining alterations to the existing building envelope) and provide for accessory apartments in new construction, at least in some designated areas.*" An ADU bylaw is again mentioned under the HPP's housing goals and a specific strategy for achieving the Plan's housing goals. Given that the HPP is a community-informed planning document, the Planning Board naturally supports the conclusions of the Plan and the goals and strategies laid out by the Plan, including an ADU bylaw.

Therefore, the Planning Board recommends FAVORABLE ACTION on the revised version of Article 19 (dated October 4, 2019), with recommendations on the following provisions of the article:

- **Section 4.05.3.2.3, "Building Envelope":** The Planning Board felt very strongly that the language "or conversion of the garage" should be added after "An expansion of the building envelope" to ensure that both space in the primary building and a garage are treated in the same way as it relates to the limits on floor area ratio present in the article.

- **Section 4.05.3.2.1,"Maximum Square Footage":** The Planning Board suggested that requiring documentation of the need of a resident caregiver to obtain a special permit for an ADU was unnecessary because while considering a special permit the Planning Board and Zoning Board of Appeals must find that

that the conditions for a special permit are met. These include, among other factors, a judgment as to whether the specific site is an appropriate location for such a use or structure, that the use will not adversely affect the neighborhood, and that adequate and appropriate facilities will be provided for the proper operation of the proposed use. Stating that an additional off-street parking space may be required is also unnecessary since this is already permitted under a special permit, if deemed necessary.

- **Section 4.05.3.2.5, "Exterior Alterations":** The Planning Board suggested that "keeping with the architectural integrity of the structure" did not need further explanation, because materials, roof pitch, trim and windows is typically included in an analysis of design.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on 10/23/2019. By a vote of 7-0-1, the CDICR recommends FAVORABLE ACTION on Warrant Article 19.

DISCUSSION

Warrant Article 19 seeks to amend the Town's Zoning By-Law to allow Accessory Dwelling Units. The need for Affordable Housing is at a crisis level in the Greater Boston Region, and a Governor's Committee has made it very clear that the towns surrounding Boston have to do their share in addressing the problem. It will take a multi-pronged approach to even come close to meeting the need, and WA19 proposes one small but worthwhile opportunity to provide a modest increase in local affordable units. Defined as a self-contained apartment in an owner-occupied single-family home, and conforming to several specified size and other limits, ADUs in the Commonwealth are being viewed as a strategy for increasing much needed housing stock. While It does not provide for an increase in the Town's availability of subsidized Affordable Housing units, the ADU has potential for a modest increase in availability of affordable (small "a") units that would, for example, help a senior age in place by providing housing for a care giver; or for young adults caring for aging parents while maintaining some sense of privacy; or for families with a disabled family member; or for providing a unit for a renter with limited economic means. It would provide flexibility to home owners; increase the diversity of housing choices; provide a non-subsidized form of housing that is less costly; and add housing units to stock with minimal adverse physical effect on existing neighborhoods.

The CDICR reviewed the warrant article on 10/23/19. By a vote of 8-0, CDICR recommends FAVORABLE ACTION on Warrant Article19.

SELECT BOARD'S RECOMMENDATION

Article 19 proposes to add accessory dwelling units (ADUs) to the Zoning By-Law as a use allowed in all zoning districts except the Business and Professional Offices district and the Industrial district. While the use would be purportedly allowed by-right according to the By-Law's use table, this warrant article would strictly limit ADUs in size, as well as in a variety of other ways including owner-occupancy, exterior appearance, and location in the existing building. Furthermore, any ADU that involves an expansion of the building envelope or a conversion of interior space causing an increase in floor area ratio beyond a certain extent would require a Special Permit. Therefore, the practical effect of this warrant article will be fairly minimal based on the experience of neighboring communities and based on the considerable limitations placed on the creation of ADUs in this warrant article.

The petitioner, Roger Blood, submitted this article to the warrant with the support of the Housing Advisory Board and several members of the Planning Board. He contends that allowing ADUs, even in this limited form, will help serve a variety of unmet housing needs. It provides a solution for seniors who would like to age-in-place, it can accommodate expanded and more inclusive definitions of "family", and generally provides a non-subsidized yet more affordable type of housing to the Town's housing stock without significantly affecting the character of the Town's single-family neighborhoods. The petitioner highlights the popularity, success, and support for ADUs from a variety of sources including neighboring communities, the Boston Foundation, and the AARP. The petitioner also notes that Town Meeting was a few votes short of the required 2/3 majority to pass a similar warrant article at the 2009 Annual Town Meeting. The current proposal is similar to the 2009 proposal but has been updated to be slightly more permissive and to incorporate lessons learned by neighboring communities (especially Newton) during the intervening 10 years.

The Select Board recognize housing as an issue requiring special attention in the Town and view this proposal as a low-impact and effective way to help address this problem. It is recognized nation-wide as a highly-recommended strategy to alleviate housing needs and appears as a recommendation on the Town's Housing Production Plan. Ms. Heller noted that she had concerns about the ADU warrant article proposed in 2009 but had not had the opportunity to review this version to ensure her concerns have been addressed; she abstained from the vote.
Therefore, with a vote of 4-0-1, the Select Board recommend FAVORABLE ACTION on Article 19 as follows:

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

Add, a new subsection c. to <u>§2.01 - "A" DEFINITIONS</u>, 1. ACCESSORY

c. Accessory dwelling unit "ADU": A separate and self-contained dwelling unit located in a single family detached building, or in a detached building located on the same lot as a single family building as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit

has been established pursuant to the provisions of Brookline Zoning By-Law, Section 4.05 Paragraph 3.2.

Add a new sub section 5. to §2.15 - "O" DEFINITIONS

5. OWNER-OCCUPIED – Serving as the principal or year-round residence of the property owner of record as defined by the Town Assessor and as further documented in §4.05, Paragraph 3.2.

Add at the end of the sentence in sub section1. of §4.04 - LIMITATION OF AREA OF ACCESSORY USES

, except that an accessory dwelling unit may occupy up to the lesser of 750 square feet of habitable space or 30 per cent of the floor area of the principal building by right or, by Special Permit, up to the lesser of 950 square feet of habitable space or 30 percent of the floor area of the principal building.

After "No accessory use" in sub section 3. of §4.04 – LIMITATION OF AREA OF ACCESORY USES, add

, except accessory dwelling units,

To change the title of §4.05 to ACCESSORY USES IN RESIDENCE DISTRICTS; ACCESSORY DWELLING UNITS

To add the following new Section 3 in §4.05, after Section 2, and increase each subsequent section number by 1.– ACCESSORY DWELLING UNITS

3. Accessory Dwelling Units

a. Intent: Accessory dwelling units are an allowed accessory use where they are, by design,
clearly subordinate to the principal dwelling unit and meeting the requirements of this Section. Accessory dwelling units are intended to advance the following:

1. To provide flexibility for families as their needs change over time and, in particular, provide options for older adults to be able to stay in their homes and for households with disabled persons;

2. To increase the diversity of housing choices in the Town while respecting the residential character and scale of existing neighborhoods;

3. To provide a non-subsidized form of housing that is generally less costly to produce and more affordable than similar units in multifamily buildings;

4. To add housing units to Brookline's total housing stock with minimal adverse effects on Brookline's neighborhoods.

b. Accessory dwelling units in single family owner-occupied buildings shall conform to all
the following provisions:

1) Maximum square footage. An accessory dwelling may be created with up to 30 percent of the existing habitable space on the property or 750 square feet of habitable space, whichever is less.

An accessory dwelling unit which exceeds 750 square feet of habitable space or 30 percent of the existing habitable space on the property, whichever is less, may be approved by Special Permit, provided that it does not exceed 950 square feet of habitable space and provided further that documentation is submitted showing that a permanent household member with a handicap or illness, not of a temporary nature, requires the aid of a resident caregiver to aid a family member. This Special Permit may require an additional off-street parking space.

2) Owner-occupancy. A property containing an accessory dwelling unit shall be owner-occupied, which requirement may be met via either the principal or the accessory dwelling unit. Qualifying owner-occupancy must be certified as a precondition for receiving a Certificate of Occupancy for the accessory dwelling unit and not less than once per calendar year thereafter, by an affidavit, in a form to be provided by the Building Department and signed by the owner-applicant. Copies of the completed Affidavits of Owner-Occupancy shall be retained by the Building Department.

Owner-occupancy shall be further certified by inclusion of the subject property in the listing of residential property tax exemptions as maintained by the Town Assessor, beginning not more than 24 months following, as applicable, the issuance of a Certificate of Occupancy for a new accessory dwelling unit or the transfer of ownership for a pre-existing accessory dwelling unit, and continuing for each Fiscal Year thereafter.

An owner-applicant for an accessory dwelling unit building permit or Special Permit must provide documentation satisfactory to the Building Commissioner or Zoning Board of Appeals, as applicable, that the owner-applicant has occupied the subject property for not less than five years prior to the application date.

3) Building envelope. An accessory dwelling unit may be created in an existing building or accessory building if the building envelope is not expanded and any increase in FAR stemming from the creation of the accessory dwelling unit does not produce a resultant FAR greater than 120% of the allowed FAR in the current Zoning By-Law. An expansion of the building envelope or conversion of the garage to create an accessory dwelling unit shall only be allowed by Special Permit and only if the resultant FAR is no greater than 120% of the allowed FAR in the current Zoning By-Law and all other dimensional requirements are met. The provisions of subsection 1.a.and e. of Section 5.22 shall not apply to the creation of accessory dwelling units.

4) Exterior appearance. A building containing an accessory dwelling unit must exhibit no exterior evidence of occupancy by more than one family, including, but not limited to the following:

a) Having no more than one means of access/egress facing the street upon which the property faces;

b) Having no more than one street number address; if the accessory dwelling unit has a second mailbox or mail delivery slot, it shall not be visible from the street;

c) Having no electric, gas, water meters, or sub-meters other than those serving the principal dwelling unit of the building in which it is situated, unless required by the utility service provider, unless required by the utility service provider.

5) Exterior alterations are permitted, provided they are in keeping with the architectural
integrity of the structure, including but not limited to:

a) The exterior finish material should be the same or visually consistent with the exterior finish material of the remainder of the building;

b) The roof pitch should be consistent with the predominant roof pitch of the

remainder of the building;

c) Trim should be consistent with the trim used on the remainder of the building;

d) Windows should be consistent with those of the remainder of the building in proportion and orientation.

6) Parking. A single family property with a by right accessory dwelling unit will conform to parking requirements as applicable to single-family homes with no accessory dwelling unit. Existing setback requirements will apply to all parking.

7) Maximum number of occupants. The total number of individuals residing in the principal and accessory dwelling units combined may not exceed the number allowed in the principal dwelling unit alone, under Section 2.06 "F" definitions for family.

8) Minimum age of principal dwelling unit and additions thereto. The creation of an accessory dwelling unit shall only be allowed on properties where the most recent Certificate of Occupancy was granted at least five years prior to the date of application to create the accessory dwelling unit.

9) Conversion of garage space. An accessory dwelling unit that is created by conversion of a pre-existing garage, including an existing garage in a separate structure from the primary residential building, may be approved only by Special Permit. Garage space eligible for conversion to an accessory dwelling unit must have been constructed five or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by an original building permit or other documentation satisfactory to the Board of Appeals**.** The provisions of Section 5.22, Exceptions to Maximum Floor Area Ratio Regulations for Residential Units 1.e prohibiting replacement of garage parking to a location exterior to the house does not apply to this subsection.)

10) Conversion of accessory structures. An accessory dwelling unit may not be created in an accessory structure, except in a detached garage, as set forth in paragraph 9 of this section.

11) Allowable means of egress. An accessory dwelling unit must have two means of egress that conform to the applicable requirements of the Building Code. If the second means of egress requires an exterior stairway, any such stairway will

require a Special Permit and may not exceed more than one story in height nor be visible from a public way.

12) One accessory dwelling unit per lot. No more than one accessory dwelling unit shall be allowed per lot.

13) No separate ownership. No accessory dwelling unit shall be held in separate ownership from the principal structure/dwelling unit; at no time shall an accessory dwelling unit, or the building of which it is a part, be deeded as a condominium unit.

14) Curb cut limit. Accessory dwelling units may not be located on any lot which is accessed from any public or private street by more than one curb cut, except for lots having more than one pre-existing curb cut for a period of at least five years.

15) Minimum rental period. Rental of either the accessory dwelling unit or its associated primary dwelling unit shall be for a term of not less than six (6) months and shall be subject to a written rental or lease agreement.

16) Historic districts. Where a building is located within a local historic district and therefore subject to the procedures required under Article 5.6 of the General By-Law, any decisions of the Brookline Preservation Commission shall take precedence over the criteria and procedures set forth above, but the Preservation Commission may be guided by the provisions of this Section in addition to its own criteria and procedures.

17) Recording at Registry of Deeds. Before a Certificate of Occupancy is issued, the property owner of any accessory apartment shall record with the Norfolk County Registry of Deeds or with the Land Court a certified copy of the approval, in a form prescribed by the Building Commissioner or, if required, the Special Permit. Certified copies of the recorded documents shall be filed with the Building Department.

18) Change of ownership. When ownership of any residential property containing an existing accessory dwelling unit changes, the new property owner shall within 30 days of the title transfer, file with the Building Commissioner a sworn affidavit attesting to continued compliance with the requirements of this section and all

applicable public safety codes, at which time the Building Commissioner shall conduct a determination of compliance with this Section.

The new property owner shall certify annually thereafter on the first business day of January, or upon transfer to a new owner as provided above, continued compliance with the requirements of this section in a form acceptable to the Building Commissioner.

19) Termination. A property owner who chooses to discontinue an accessory dwelling unit shall notify the Building Commissioner in writing within 30 days following such action.

20) Enforcement. A property owner who fails to recertify as required an accessory dwelling unit or otherwise comply with all provisions of this section shall be subject to regulatory enforcement by the Building Commissioner.
The Building Commissioner shall seek advice and counsel from the Director of Planning and Community Development when there is any question in the application of the criteria contained in this Section and in the approval of any permit for accessory dwelling unit approval.

The Building Commissioner may re-inspect the property for compliance with the Zoning By-Law and health and safety regulations, including but not limited to when there is a change of ownership.

21) Public listing of approved units. A listing of all accessory dwelling units shall be maintained by the Town in such a manner as to be accessible on the Town of Brookline website.

c.. Pre-existing unauthorized accessory dwelling units may be approved by the Building Commissioner subject to the following requirements:

(1) The property owner shall submit an application request in a form prescribed by the Building Commissioner;

(2) The property owner must provide evidence, in a form satisfactory to the Building Commissioner, that the accessory dwelling unit was constructed five or more years prior to the date of adoption of this Bylaw section.

(3) The pre-existing accessory dwelling unit must comply with all requirements of the accessory dwelling unit section of the Zoning Bylaw; however, the Building Commissioner may approve an accessory dwelling unit with

habitable space not exceeding 30 percent of the floor area of the principal building.

(4) Before approval of an existing accessory dwelling unit, the Building Department shall conduct an onsite inspection for compliance with all applicable Building Code requirements and other applicable provisions of this Section.

To add the following to §4.07 – TABLE OF USE REGULATIONS, following Accessory Uses 51A:

Accessory Uses	Residence				Business			Industry
	S	SC	T F	M	L	G	0	I
51B. Within a detached single-family owner-occupied dwelling in all zones or within an existing garage accessory to that dwelling, an Accessory Dwelling Unit as further defined and limited in Section 4.05, paragraph 3.	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*No*	*No*

To add, to §5.22- EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS,

at the end of Section 1. General Provisions, a, before "."

, except for accessory dwelling units per Section 4.05(2)

at the end of 2 b.,

For purposes of this subsection only, an accessory dwelling unit, as per Section 4.05 paragraph 2 shall not be considered a separate unit.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 19 would amend the Brookline Zoning By-Law to permit Accessory Dwelling Units ("ADU"). ADUs are:

> A separate and self-contained dwelling unit located in a single-family detached building, or in a detached building located on the same lot as a single-family building as an accessory or subordinate use to the primary residential use of the property.

The Advisory Committee recommends FAVORABLE ACTION on Article 19.

BACKGROUND:
The article will both permit the construction of new ADUs and provide a mechanism for legalizing existing ADUs currently in violation of the Zoning By-Laws.

DISCUSSION:
The Petitioner identified four benefits to creating ADUs:

1) Flexibility for families as their housing requirements and financial resources change such as creating income or assistance opportunities for older adults and households with disabled persons.
2) Increase diversity of housing choices.
3) Creation of a less costly but non-subsidized type of housing.
4) Creation of additional housing units with a minimal impact on neighborhoods.

Only owner-occupied homes, in which the owner-occupant has been in residence for a minimum of 5 years, will qualify to construct an ADU. The Warrant Article will limit the size of new ADUs to the lesser of 750 square feet or 30% of the principal building's habitable space. There is a mechanism to permit ADUs of up to 950 square feet when there is a family member requiring a resident caregiver. Existing ADUs will be limited to 30% of the principal building's habitable space.

The Advisory Committee's discussion centered on understanding the mechanisms of the Warrant and what would be allowed under different scenarios. Members expressed concern about WA 19's effectiveness in blocking developers' ability to construct multiple units in areas zoned single family. The Warrant contains a multitude of protections including:

1. An annual certification of owner-occupancy including upon sale of the primary residence.
2. A prohibition against separate ownership.
3. A minimum of 5 years since issuance of the most recent Certificate of Occupancy for the primary residence.

In Subcommittee, the Petitioner agreed to modifications to Sections 3.2.2 and 3.2.4.(3) to further strengthen the Warrant's protections.

In Section 3.2.2 a clarification was provided regarding how long the applicant must have owned the property. A third paragraph has been added to this section as follows:

> An owner-applicant for an accessory dwelling unit building permit or Special Permit must provide documentation satisfactory to the Building Commissioner or Zoning Board of Appeals, as applicable, that the owner-applicant has occupied the subject property for not less than five years prior to the application date.

In Section 3.2.4.(3) the protections against an ADU becoming an independent dwelling unit were strengthened as follows:

> (3) Having no electric, gas, ~~or~~ water meters***, or sub-meters*** other than those serving the principal dwelling unit of the building in which it is situated;

The Warrant also addresses concerns about units being built with the intention of being utilized for short-term rentals (Airbnb). The Warrant requires a minimum rental period of 6 months for both the ADU and the primary residence.

In the Advisory Committee meeting the Warrant Article was further amended in Section 3.2.3 and 3.2.20 as noted below.

> Section 3.2.3 was clarified to specify that the conversion of a garage into an ADU will also be covered by the Special Permit process:
>
> An expansion of the building envelope <u>or conversion of the garage</u> to create an accessory dwelling unit shall only be allowed by Special Permit . . .
>
> Section 3.2.20 dealing with enforcement was further clarified so the Building Commissioner will consult with the Director of Planning and Community Development in all questions regarding the permitting of ADUs:
>
> **. .** any question in the application of the criteria contained in this Section and in the approval of any ~~special~~ permit for accessory dwelling unit approval.

Section 3.3 which enables the Building Commissioner to approve pre-existing, unauthorized ADUs. The Petitioner explained this section is at the request of the Building Commissioner who is seeking the ability to inspect these units for both health-safety and building code matters. The Subcommittee requested, and the Petitioner agreed to, a modification to Section 3.3.(3) to clarify the intent of this section as follows:

(5) The pre-existing accessory dwelling unit must comply with all requirements of the accessory dwelling unit section of the Zoning Bylaw; however, the Building Commissioner may approve an accessory dwelling unit with habitable space ~~exceeding~~

~~950 sq. ft., but~~ not exceeding 30 percent of the floor area of the principal building.

The Petitioner noted that Newton and Lexington permit ADUs under their zoning by-laws and the use of the provision has been limited. The Petitioner will view this program a success if a few dozen ADUs are eventually built and anticipates only that magnitude of new units under the proposed zoning provision.

RECOMMENDATION:
Following discussion, the Advisory Committee recommends FAVORABLE ACTION by a vote of 24-0 on Article 19 as amended by the Planning & Regulation Subcommittee in Section 3.2.2, Section 3.2.4(3), and Section 3.3.(3), and by the full Advisory Committee in Sections 3.2.3 and 3.2.20 as follows:

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

Add, a new subsection c. to §2.01 - "A" DEFINITIONS, 1. ACCESSORY

d. Accessory dwelling unit "ADU": A separate and self-contained dwelling unit located in a single family detached building, or in a detached building located on the same lot as a single family building as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of Brookline Zoning By-Law, Section 4.05 Paragraph 3.2.

Add a new sub section 5. to §2.15 - "O" DEFINITIONS

5. OWNER-OCCUPIED – Serving as the principal or year-round residence of the property owner of record as defined by the Town Assessor and as further documented in §4.05, Paragraph 3.2.

Add at the end of the sentence in sub section1. of §4.04 - LIMITATION OF AREA OF ACCESSORY USES

, except that an accessory dwelling unit may occupy up to the lesser of 750 square feet of habitable space or 30 per cent of the floor area of the principal building by right or, by Special Permit, up to the lesser of 950 square feet of habitable space or 30 percent of the floor area of the principal building.

After "No accessory use" in sub section 3. of §4.04 – LIMITATION OF AREA OF ACCESORY USES, add

, except accessory dwelling units,

To change the title of §4.05 to ACCESSORY USES IN RESIDENCE DISTRICTS; ACCESSORY DWELLING UNITS

To add the following new Section 3 to §4.05 – ACCESSORY DWELLING UNITS

3.1 Intent: Accessory dwelling units are an allowed accessory use where they are, by design,
clearly subordinate to the principal dwelling unit and meeting the requirements of this Section. Accessory dwelling units are intended to advance the following:

5. To provide flexibility for families as their needs change over time and, in particular, provide options for older adults to be able to stay in their homes and for households with disabled persons;

6. To increase the diversity of housing choices in the Town while respecting the residential character and scale of existing neighborhoods;
7. To provide a non-subsidized form of housing that is generally less costly to produce and more affordable than similar units in multifamily buildings;
8. To add housing units to Brookline's total housing stock with minimal adverse effects on Brookline's neighborhoods.

3.2. Accessory dwelling units in single family owner-occupied buildings shall conform to all
the following provisions:

1. Maximum square footage. An accessory dwelling may be created with up to 30 percent of the existing habitable space on the property or 750 square feet of habitable space, whichever is less.

An accessory dwelling unit which exceeds 750 square feet of habitable space or 30 percent of the existing habitable space on the property, whichever is less, may be approved by Special Permit, provided that it does not exceed 950 square feet of habitable space and provided further that documentation is submitted showing that a permanent household member with a handicap or illness, not of a temporary nature, requires the aid of a resident caregiver to aid a family member. This Special Permit may require an additional off-street parking space.

2. Owner-occupancy. A property containing an accessory dwelling unit shall be owner-occupied, which requirement may be met via either the principal or the accessory dwelling unit. Qualifying owner-occupancy must be certified as a precondition for receiving a Certificate of Occupancy for the accessory dwelling unit and not less than once per calendar year thereafter, by an affidavit, in a form to be provided by the Building Department and signed by the owner-applicant. Copies of the completed Affidavits of Owner-Occupancy shall be retained by the Building Department.

Owner-occupancy shall be further certified by inclusion of the subject property in the listing of residential property tax exemptions as maintained by the Town Assessor, beginning not more than 24 months following, as applicable, the issuance of a Certificate of Occupancy for a new accessory dwelling unit or the transfer of ownership for a pre-existing accessory dwelling unit, and continuing for each Fiscal Year thereafter.

An owner-applicant for an accessory dwelling unit building permit or Special Permit must provide documentation satisfactory to the Building Commissioner or Zoning Board of Appeals, as applicable, that the owner-applicant has occupied the subject property for not less than five years prior to the application date.

3. Building envelope. An accessory dwelling unit may be created in an existing building or accessory building if the building envelope is not expanded and any increase in FAR stemming from the creation of the accessory dwelling unit does not produce a resultant FAR greater than 120% of the allowed FAR in the current Zoning By-Law. An expansion of the building envelope or conversion of the garage to create an accessory dwelling unit shall only be allowed by Special Permit and only if the resultant FAR is no greater than 120% of the allowed FAR in the current Zoning By-Law and all other dimensional requirements are met. The provisions of subsection 1.a.and e. of Section 5.22 shall not apply to the creation of accessory dwelling units.

4. Exterior appearance. A building containing an accessory dwelling unit must exhibit no exterior evidence of occupancy by more than one family, including, but not limited to the following:

(1) Having no more than one means of access/egress facing the street upon which the property faces;

(2) Having no more than one street number address; if the accessory dwelling unit has a second mailbox or mail delivery slot, it shall not be visible from the street;

(3) Having no electric, gas, water meters, or sub-meters other than those serving the principal dwelling unit of the building in which it is situated;

5. Exterior alterations are permitted, provided they are in keeping with the architectural integrity of the structure, including but not limited to:

(1) The exterior finish material should be the same or visually consistent with the exterior finish material of the remainder of the building;

(2) The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;

(3) Trim should be consistent with the trim used on the remainder of the building;

(4) Windows should be consistent with those of the remainder of the building in proportion and orientation.

6. Parking. A single family property with a by right accessory dwelling unit will conform to parking requirements as applicable to single-family homes with no accessory dwelling unit. Existing setback requirements will apply to all parking.

7. Maximum number of occupants. The total number of individuals residing in the principal and accessory dwelling units combined may not exceed the number allowed in the principal dwelling unit alone, under Section 2.06 "F" definitions for family.

8. Minimum age of principal dwelling unit and additions thereto. The creation of an accessory dwelling unit shall only be allowed on properties where the most recent Certificate of Occupancy was granted at least five years prior to the date of application to create the accessory dwelling unit.

9. Conversion of garage space. An accessory dwelling unit that is created by conversion of a pre-existing garage, including an existing garage in a separate structure from the primary residential building, may be approved only by Special Permit. Garage space eligible for conversion to an accessory dwelling unit must have been constructed five or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by an original building permit or other documentation satisfactory to the Board of Appeals**.** The provisions of Section 5.22, Exceptions to Maximum Floor Area Ratio Regulations for Residential Units 1.e prohibiting replacement of garage parking to a location exterior to the house does not apply to this subsection.)

10. Conversion of accessory structures. An accessory dwelling unit may not be created in an accessory structure, except in a detached garage, as set forth in paragraph 9 of this section.

11. Allowable means of egress. An accessory dwelling unit must have two means of egress that conform to the applicable requirements of the Building Code. If the second means of egress requires an exterior stairway, any such stairway will require a Special Permit and may not exceed more than one story in height nor be visible from a public way.

12. One accessory dwelling unit per lot. No more than one accessory dwelling unit shall be allowed per lot.

13. No separate ownership. No accessory dwelling unit shall be held in separate ownership from the principal structure/dwelling unit; at no time shall an accessory dwelling unit, or the building of which it is a part, be deeded as a condominium unit.

14. Curb cut limit. Accessory dwelling units may not be located on any lot which is accessed from any public or private street by more than one curb cut, except for lots having more than one pre-existing curb cut for a period of at least five years.

15. Minimum rental period. Rental of either the accessory dwelling unit or its associated primary dwelling unit shall be for a term of not less than six (6) months and shall be subject to a written rental or lease agreement.

16. Historic districts. Where a building is located within a local historic district and therefore subject to the procedures required under Article 5.6 of the General By-Law, any decisions of the Brookline Preservation Commission shall take precedence over the criteria and procedures set forth above, but the Preservation Commission may be guided by the provisions of this Section in addition to its own criteria and procedures.

17. Recording at Registry of Deeds. Before a Certificate of Occupancy is issued, the property owner of any accessory apartment shall record with the Norfolk County Registry of Deeds or with the Land Court a certified copy of the approval, in a form prescribed by the Building Commissioner or, if required, the Special Permit. Certified copies of the recorded documents shall be filed with the Building Department.

18. Change of ownership. When ownership of any residential property containing an existing accessory dwelling unit changes, the new property owner shall within 30 days of the title transfer, file with the Building Commissioner a sworn affidavit attesting to continued compliance with the requirements of this section and all applicable public safety codes, at which time the Building Commissioner shall conduct a determination of compliance with this Section.
The new property owner shall certify annually thereafter on the first business day of January, or upon transfer to a new owner as provided above, continued compliance with the requirements of this section in a form acceptable to the Building Commissioner.

19. Termination. A property owner who chooses to discontinue an accessory dwelling unit shall notify the Building Commissioner in writing within 30 days following such action.

20. Enforcement. A property owner who fails to recertify as required an accessory dwelling unit or otherwise comply with all provisions of this section shall be subject to regulatory enforcement by the Building Commissioner.

The Building Commissioner shall seek advice and counsel from the Director of Planning and Community Development when there is any question in the application of the criteria contained in this Section and in the approval of any permit for accessory dwelling unit approval.

The Building Commissioner may re-inspect the property for compliance with the Zoning By-Law and health and safety regulations, including but not limited to when there is a change of ownership.

20. Public listing of approved units. A listing of all accessory dwelling units shall be maintained by the Town in such a manner as to be accessible on the Town of Brookline website.

3.3. Pre-existing unauthorized accessory dwelling units may be approved by the Building Commissioner subject to the following requirements:

(6) The property owner shall submit an application request in a form prescribed by the Building Commissioner;

(7) The property owner must provide evidence, in a form satisfactory to the Building Commissioner, that the accessory dwelling unit was constructed five or more years prior to the date of adoption of this Bylaw section.

(8) The pre-existing accessory dwelling unit must comply with all requirements of the accessory dwelling unit section of the Zoning Bylaw; however, the Building Commissioner may approve an accessory dwelling unit with habitable space not exceeding 30 percent of the floor area of the principal building.

(9) Before approval of an existing accessory dwelling unit, the Building Department shall conduct an onsite inspection for compliance with all applicable Building Code requirements and other applicable provisions of this Section.

To add the following to §4.07 – TABLE OF USE REGULATIONS, following Accessory Uses 51A:

Accessory Uses	Residence				Business			Industry
	S	SC	T F	M	L	G	0	I
Within a detached single-family owner-occupied dwelling in all zones or within an existing garage accessory to that dwelling, an Accessory Dwelling Unit as further defined and limited in Section 4.05, paragraph 2.	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*No*	*No*

To add, to §5.22- EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS,

at the end of Section 1. General Provisions, a, before "."

, except for accessory dwelling units per Section 4.05(2)

at the end of 2 b.,

For purposes of this subsection only, an accessory dwelling unit, as per Section 4.05 paragraph 2 shall not be considered a separate unit.

XXX

ARTICLE 20

TWENTIETH ARTICLE

Submitted by: Robert Zuker

To see if the Town will amend the Zoning By-Law as follows (proposed new language is underlined and deletions are noted with a strike through):

1. By amending the Table of Use Regulations, Section 4.07, Principal Uses, Section 6D. Dwelling, Micro Unit as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
RESIDENCE USES									
6D. Dwelling, Micro Unit *Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j. **Permitted by Special Permit in the G-1.75(CC) in accordance with 5.06.4.b.	No	No	No	No	No	No	No**	No	No*

2. By amending Section 5.01 – Table of Dimensional Requirements and the Footnotes to the Table by adding a footnote 21 as follows (new language is underlined):

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI NB ONLY	LOT WIDTH MINIMUM (feet)	MAXIMUM HEIGHT	PBI		MINIMUM YARD			OPEN SPACE (% of gross floor area)	
							B	NB	Front	Side	Rear	Landsc.	Usable
G-1.75[21]	Any structure or principal use (dwelling – footnote 5)	None [4]	1.75	2.25	none	45	NA	70 (CC)**	none	none	10+ L/10	none	none[5]

FOOTNOTES:

21. For property in the G-1.75 (CC) see also Section 5.06.4.b.

3. By amending Section 5.06.4.b Coolidge Corner General Business District paragraph 2 as follows (new language is underlined):

2) For such applications, the Board of Appeals may grant by special permit an increase in gross floor area subject to the procedures, limitations, and conditions of Table 5.01 and §5.21~~.~~, however, in the case of an application for a building that contains seventy-five percent (75%) or more Micro Unit Dwellings, the requirement set forth in §5.21.2.b requiring that the lot or part of the lot be 20,000 square feet or more in order to qualify for Public Benefit Incentives shall not apply.

4. By amending Section 5.06.4.b Coolidge Corner General Business District paragraph 5 as follows (new language is underlined):

5) For such applications, residential development shall be permitted above the first floor. Notwithstanding anything to the contrary in this By-Law, common areas, lobby or amenity space for a building that contains seventy-five percent (75%) or more Micro Unit Dwellings shall be considered non-residential space for the purposes of complying with Section 4.07.6 with respect to the requirement that in L and G districts no more than 40% of frontage may be devoted to residential use, so long as such space does not front on Harvard or Beacon Street.

5. By amending Section 5.32.2(b)(1) by adding the following language (new language underlined):

Section 5.32.2(b)(1):

In M-1.5, M-2.0, M-2.5, G-1.75, and O-2.0(CH) Districts, the setback requirement from any street lot line on which the lot fronts shall be one-half of the width of the street right-of-way, up to a maximum requirement of 50 feet. Notwithstanding the foregoing, this setback requirement shall not apply to Public Benefit Incentives for Micro Unit Dwellings in the G-1.75 (CC) district.

6. By amending Section 6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS by adding another paragraph as Note #3 after Note #2 below the Table as follows (new language is underlined):

3. For Use 6D (Micro Unit Dwellings) the maximum number of spaces for each Micro Unit Dwelling shall be 0.5, and no additional spaces shall be required for floor areas used for common areas, lobby or amenity space.

7. By amending Section 6.02.2.i by adding language as follows:
   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 1 for studio units, 1.4 for one-bedroom units, 2 for two bedroom units, 2 for dwelling units of three or more bedrooms. For Micro Unit Dwellings no parking is required.

or act upon anything else relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Currently, Micro Unit Dwellings as defined in the Zoning By-Law are residential units no greater than 500 square feet in gross floor area per unit. *See,* Section 2.04 (3)(f) of the Brookline Zoning By-Law. Micro Unit Dwellings have been recognized by the town as a useful way to provide housing for individuals at a relatively affordable cost. In addition, because of the smaller size of these units they have a smaller ecological footprint than larger 1 bedroom units. Several years ago when the Town approved the Emerald Island Special Overlay District (EISD) Micro Unit Dwellings were allowed in the EISD. However, no other zoning district in town permits the development of Micro Unit Dwellings. To date, no Micro Unit Dwellings have been developed or proposed in the EISD. This article seeks to allow Micro Unit Dwellings in the G-1.75 (CC); the Coolidge Corner General Business District with a special permit from the Zoning Board of Appeals. This article also seeks to provide more flexibility for Micro Unit Dwellings to use Public Incentive Benefits by eliminating the requirement that the lot contain a minimum of 20,000 square feet. In addition to providing much needed housing to individuals, Micro Unit Dwellings can also provide a boost to the nearby retail businesses. The Coolidge Corner General Business District is a suitable spot for Micro Unit Dwellings due to the existing density, many nearby retail and civic establishments and public transit options.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article Description:
Article 20 was submitted by citizen petitioner Robert Zuker. It would allow micro unit dwellings, defined as units no greater than 500 square feet per unit, in the G-1.75 (CC) district by Special Permit.

The article would institute a maximum of 0.5 parking spaces per micro unit dwelling, with no minimum parking requirement, and no parking spaces required for common areas or amenity space.

Background:
The original version of the article submitted by the petitioner included more exceptions for micro units than the current version of the article. The original article eliminated vehicular parking requirements in the TPOD without requiring bicycle parking, and waived the following requirements in the Zoning By-law if more than 75% of the units in a building in the CC district were micro units:

1) the need to meet the minimum lot size of 20,000 s.f. in order to use the Public Benefit Incentives (PBIs) for extra height and FAR, per Sec. 5.01, Table of Dimensional Requirements. (In this district, the additional buildable area for projects that are able to utilize the public benefits provisions are: (i) an increase in height from 45' to 70'; and (ii) a Floor Area Ratio increase from 1.75 to 2.25, and in the case of residential use to 2.5.)
2) having no more than 40% of the building frontage devoted to residential use, including associated parking or lobby (unless the building fronts on Beacon or Harvard Streets); and
3) setting back additional height allowed under PBIs from the street lot line by one-half the width of the street right-of-way, up to a maximum of 50 feet.

A Planning & Community Development Department report generally supported allowing micro units in Brookline, as they present the opportunity to expand both the amount and diversity of the housing stock. However, the Planning Department had concerns with the original warrant article which waived the minimum lot size and allowed any lot, no matter how small, to utilize the Public Benefit Incentives currently restricted to larger lots. These PBIs would have allowed greater height, greater FAR, and fewer setbacks and there had been no analysis of the appropriateness of the larger building on the surrounding neighborhoods. Also the Planning Department felt that there should be an analysis of whether or not micro units should also be allowed in other zoning districts. Currently, micro units are allowed only in the Emerald Island Zoning Overlay District (EISD).

At its September 11th meeting, members of the Zoning Bylaw Committee were generally supportive of the idea of micro units but had questions about the implications of allowing PBI benefits without minimum requirements. Some members noted that this article was submitted to benefit one particular site in Coolidge Corner.

Similarly, at the September 25th meeting of the Planning and Regulatory Subcommittee of the Advisory Committee, members had questions about the potential implications for the area of allowing more than 40% of the frontage to be devoted to residential uses, even though the area is zoned for commercial uses. The limitation that the 40% maximum would continue to apply to Beacon and Harvard Streets did not fully satisfy their concerns. The Subcommittee decided to continue consideration of the article until the Planning Board issues its report and recommendation.

In response to all of these concerns, the Petitioner submitted a revised article to the Planning Board before its October 17th hearing, which satisfied most of its concerns. Some Planning Board members, however, were not supportive because they felt that a broader look should be undertaken before this article is approved for just one area of town.

Recommendation:
The Planning Board voted to recommend FAVORABLE ACTION by a 3-2 vote on the petitioner's revised version of the warrant article. The majority agreed that greater density in Coolidge Corner was appropriate and that this zoning could be expanded to other zoning districts in the future. The revised version of the article would keep any development of buildings with micro units within the existing zoning parameters of the CC district, and therefore not exceed the permitted density of the Coolidge Corner area. The minority felt that there should be more evaluation of allowing micro-units in other zoning districts now and that if this article were used to develop multi-story buildings on Harvard and Beacon Streets (micro-units over storefronts with no parking), the character of the area would change.

SELECT BOARD'S RECOMMENDATION

Article 20 proposes to allow Micro Unit Dwellings in the G-1.75(CC) district. Micro Unit dwellings are dwelling units smaller than 500 s.f. of gross floor area. The article reduces the amount of parking that is required and, in some cases, allowed for buildings where more than 75% of the units are micro units.
The citizen petitioner believes that this warrant article, if approved, would result in a more diverse and affordable housing stock in Coolidge Corner. The petitioner noted that the Planning Board, HAB, EDAB, and Zoning By-law Sub-Committee have expressed support for the article in the current revised form that is before the Select Board.

The Select Board was generally in favor of allowing micro units in Coolidge Corner and noted that if micro units have a place anywhere in Brookline, Coolidge Corner is a prime location due to transit proximity and density.

One Select Board member expressed some concerns about micro units potentially changing the character of the neighborhood, and so suggested referring the article to a study committee. However, the rest of the Select Board members were supportive with the revisions that were made to the article. These changes eliminated waivers that would have allowed micro units on lots less than 20,000 s.f. to take advantage of public benefit incentives allowing more height and greater floor area. The Select Board , however, was supportive of the elimination of a parking requirement for buildings with at least 75% micro units.

Therefore, the Select Board voted 4-1 to recommend FAVORABLE ACTION of the revised warrant article, as follows:

To see if the Town will amend the Zoning By-Law as follows (proposed new language is underlined and deletions are noted with a strike through):

1. By amending the Table of Use Regulations, Section 4.07, Principal Uses, Section 6D. Dwelling, Micro Unit as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
RESIDENCE USES									
6D. Dwelling, Micro Unit *Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j. **Permitted by Special Permit in the G-1.75(CC) in accordance with 5.06.4.b.	No	No	No	No	No	No	No**	No	No*

2. By amending Section 5.01 – Table of Dimensional Requirements and the Footnotes to the Table by adding a footnote 21 as follows (new language is underlined):

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI NB ONLY	LOT WIDTH MINIMUM (feet)	MAXIMUM HEIGHT	PBI		MINIMUM YARD			OPEN SPACE (% of gross floor area)	
							B	NB	Front	Side	Rear	Landsc.	Usable
G-1.75[21]	Any structure or principal use (dwelling – footnote 5)	None [4]	1.75	2.25	none	45	NA	70 (CC) **	none	none	10+L/10	none	none[5]

FOOTNOTES:

21. For property in the G-1.75 (CC) see also Section 5.06.4.b.

3. By amending Section 5.06.4.b Coolidge Corner General Business District paragraph 5 as follows (new language is underlined):

5) For such applications, residential development shall be permitted above the first floor. Notwithstanding anything to the contrary in this By-Law, common areas, lobby or amenity space for a building that contains seventy-five percent (75%) or more Micro Unit Dwellings shall be considered non-residential space for the purposes of complying with Section 4.07.6 with respect to the requirement that in L and G districts no more than 40% of frontage may be devoted to residential use, so long as such space does not front on Harvard or Beacon Street.

4. By amending Section 6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS by adding another paragraph as Note #3 after Note #2 below the Table as follows (new language is underlined):

3. For Use 6D (Micro Unit Dwellings) the maximum number of spaces for each Micro Unit Dwelling shall be 0.5, and no additional spaces shall be required for floor areas used for common areas, lobby or amenity space.

5. By amending Section 6.02.2.i by adding language as follows:

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 1 for studio units, 1.4 for one-bedroom units, 2 for two bedroom units, 2 for dwelling units of three or more bedrooms. For Micro Unit Dwellings in a building with seventy-five percent (75%) or more Micro Unit Dwellings no vehicular parking is required, however, space to park one bicycle shall be provided for each Micro Unit Dwelling.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's report and recommendation will be included in the supplemental mailing.

XXX

ARTICLE 20

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
WA 20 would change the Zoning By-Law to permit the construction of Micro-Unit Dwellings by special permit from the Zoning Board of Appeals within the G-1.75 Coolidge Corner General Business District. Micro Unit residences are defined as living spaces no larger than 500 square feet of gross floor area. A Micro Unit Dwelling would be a building in which at least 75 percent of residential units would be Micro Units. Other space would be devoted to commons areas. No parking spaces would be required. Such a building would be subject to other current Zoning By-Laws in G-1.75 (CC), including a requirement of retail units on the ground floor on major commercial streets and that 15 percent of the units must be affordable. An initial proposal by the petitioner sought special considerations for Micro-Unit buildings, including exceptions for height, set-back, and FAR regulations based on Public Benefit Incentives. Hearing objections from member of the public and from several government bodies that held hearings on WA 20, the petitioner introduced a revised Warrant Article that made no claim for special zoning relief. The discussion below and the Advisory Committee's vote are reflective of that revised version.

The Advisory Committee recommends FAVORABLE ACTION on Article 15.

BACKGROUND:
Micro Unit residences are defined as living spaces no larger than 500 square feet of gross floor area. A Micro Unit Dwelling would be a building in which at least 75 percent of residential units would be Micro Units. Other space would be devoted to commons areas. No parking spaces would be required. Such a building would be subject to other current Zoning By-Laws in G-1.75 (CC), including a requirement of retail units on the ground floor on major commercial streets and that 15 percent of the units must be affordable.

An initial proposal by the petitioner sought special considerations for Micro-Unit buildings, including exceptions for height, set-back, and FAR regulations based on Public Benefit Incentives. Hearing objections from member of the public and from several government bodies that held hearings on WA 20, the petitioner introduced a revised Warrant Article that made no claim for special zoning relief. The discussion below and the Advisory Committee's vote are reflective of that revised version.

DISCUSSION;
Micro Units had been permitted under Brookline zoning prior to the Fall of 2016, at which time Town Meeting approved the Emerald Isle Special Overlay District (EISD), which comprises eight adjoining commercial properties between Brookline Avenue and River Road on Brookline's eastern border, and included special provisions for the development of Micro Unit Dwellings. Town authorities have since ruled that the particular language

used in deliberately approving Micro Units in the EISD precluded—perhaps inadvertently—the development of similar units anywhere else in Brookline. No Micro Unit Dwellings have to date been developed in the Town, including in the EISD, though some individual Micro Units, as defined by the size noted in the proposed by-law, do exist.

Views of Micro Unit buildings voiced at the Advisory Committee meeting were generally positive, with such development seen as a way to bring elements of housing diversity to the Town. It was also noted that the addition of new (carless) residents to Coolidge Corner would benefit local businesses.

Issues that emerged had to do with the following concerns:

1) That the opening of the Coolidge Corner Business District to Micro Unit development could invite additional projects that would stress the urban ecology or character of Coolidge Corner, particularly given the number of other construction projects that are currently being proposed for, or developed in, the District.

2) That prior to the approval of by-laws relating to the development of any Micro Unit Dwelling, it would be prudent for the Town to consider the benefits and challenges such housing would present, both in Coolidge Corner and in other suitable—i.e., urbanized areas of the Town served by public transportation—and to develop a set of zoning standards for the Town generally and each relevant area if appropriate.

3) That Micro Unit Dwellings would attract undergraduate students, effectively becoming dormitories. The petitioner noted in response to this concern that he does not rent to undergraduate students in his other properties in Brookline. It's also worth noting that residence hall fees charged by Boston College and Boston University run well below the petitioner's projected rent of about $2,500 per month. Notwithstanding the petitioner's rental policies, the revised By-Law would apply to all future Micro Unit Dwellings in the District under consideration, whoever owned them, and whatever their commercial practices.

The Advisory Committee concluded that Micro Unit residences seemed to make sense in Coolidge Corner; that the Coolidge Corner Business District was sufficiently buttressed by zoning regulations to keep it from being "over-run" by Micro Unit projects; and that residents of Micro Unit Dwellings would likely support Coolidge Corner businesses. It was also noted that experience with the Webster Street project that is the *raison d'etre* for Article 20 could provide the Town with knowledge that would aid in the development, if required, of further policies on Micro Unit development in Coolidge Corner and elsewhere.

<u>RECOMMENDATION:</u>
By a vote of 18-3 with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on 20 as published on Pages 20-6 and 20-7 pf the November 19, Special Town Meeting Combined Reports.

ARTICLE 21

TWENTY-FIRST ARTICLE

Submitted by: Jesse Gray[1] (TMM-10), Werner Lohe (TMM-13), Alan Leviton, Lisa Cunningham (TMM-15), Diane Sokal, Daria Mark, Cora Weissbourd, Kathleen Scanlon (TMM-3), Heather Hamilton (SB), Raul Fernandez (SB), and Nancy Heller (SB)

To see if the town will amend the General By-Laws by adopting a new article 8.39 entitled "Prohibition on New Fossil Fuel Infrastructure in Major Construction" as set forth below.

8.39.1 Purpose

This By-Law is adopted by the Town of Brookline, under its home rule powers and its police powers under Massachusetts General Laws, Chapter 40, Sections 21 (clauses 1, 18) and 21D, and Chapter 43B, Section 13, to protect the health, safety and welfare of the inhabitants of the town from fuel leaks and explosions and from air pollution, including that which is causing climate change and thereby threatens the Town and its inhabitants.

8.39.2 Definitions

"On-Site Fossil Fuel Infrastructure" is defined as fuel gas or fuel oil piping that is in a building, in connection with a building, or otherwise within the property lines of premises, extending from a supply tank or from the point of delivery behind a gas meter.

"New Building" is defined as a new building or new accessory building (a building devoted exclusively to a use accessory to the principal use of the lot) that is associated with a valid building permit application on or after the effective date of this article.

"Significant Rehabilitation" is defined as a renovation in which the work area, not including any added space, is more than 50% of the building floor area prior to the project, and that is associated with a valid building permit application on or after the effective date of this article.

8.39.3 Applicability

A. The requirements of this article shall apply to all permit applications for New Buildings and Significant Rehabilitations proposed to be located in whole or in part within the Town.

[1] Point of contact

B. The requirements of this article shall not apply to the use of portable propane appliances for outdoor cooking and heating, or to fuel pipes whose exclusive purpose is to fuel backup electrical generators.

C. The requirements of this article shall not apply to utility service pipe connecting the grid to a meter, or to a gas meter itself.

D. The requirements of this article shall not apply to any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, as described in Section 5.06.4.k of the Zoning By-Law.

8.39.4 Effective Date and Enforcement

Effective June 1, 2020, no permits shall be issued by the Town for the construction of New Buildings or Significant Rehabilitations that include the installation of On-Site Fossil Fuel Infrastructure, except as otherwise provided in section 8.39.3.

8.39.5 - Severability

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Summary

This by-law will prohibit installation of fossil fuel piping in new buildings and in major renovation of existing buildings. Consequently, this policy will require heat, hot water, and appliances that are installed during new construction and gut renovation to be all-electric. For situations in which electric is not practical or cost effective, this by-law provides for exemptions, including for fuel piping for backup generators. An exception is also included for the Waldo-Durgin development, because it is the only major commercial project requiring a zoning change that has not yet pulled a building permit.

Rationale

We are facing a global climate crisis. This climate crisis directly affects Brookline residents and businesses. Massachusetts is one of the fastest-warming states in the country[2]. We have seen a rapid increase in extreme heat events that threaten the health of our children, our

[2] https://www.washingtonpost.com/graphics/2019/national/climate-environment/climate-change-america/

seniors, and those who need to work outside, not to mention our fragile ecosystem, our plants and wildlife. Rising seas and increased flooding threaten Boston and coastal communities[3]. Public health risks include an increase in heat-related illnesses and deaths, as well as outbreaks of insect-borne and waterborne diseases[4]. As natural ecosystems change or collapse, Massachusetts farmers, fishermen, and residents will suffer[5].

In its Climate Action Plan, Brookline has committed to reducing its carbon emissions to zero by 2050[6]. Every new building constructed with fossil fuel infrastructure makes this goal harder to achieve, by lighting a new fire that will burn, on and off, for thirty years or more. To meet our climate goal, each of these fires will need to be put out through the retrofitting of buildings, which account for 60-70% of our Town emissions[7]. It is unfair to the next generation to continue to install infrastructure that we already know will need to be replaced in a very short time.

Worsening gas leaks in underground pipes constitute their own significant dangers. Recent gas explosions in the Merrimack Valley[8], which killed one person and injured many more, and non-injurious explosions in Brookline[9], have put citizens at risk. 25% of the natural gas pipelines in Massachusetts are leak-prone and need repair and replacement[10]. Gas utilities, including in Brookline, are not adequately maintaining natural gas infrastructure by fixing unsafe leaks. Gas leaks have also killed trees in many places in Brookline.

In addition, the burning of fossil fuels inside buildings produces harmful indoor emissions[11] that emit nitrogen dioxide (NO_2), carbon monoxide (CO), and formaldehyde (HCHO),

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[3] https://ss2.climatecentral.org/#13/42.3232/-71.1423?show=satellite&projections=0-K14_RCP85-SLR&level=5&unit=feet&pois=hide

[4] https://www.annualreviews.org/doi/full/10.1146/annurev.publhealth.21.1.271

[5] https://www.mass.gov/service-details/climate-change-in-massachusetts-and-its-impacts and https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-ma.pdf and https://www.massaudubon.org/our-conservation-work/climate-change/effects-of-climate-change

[6] https://www.nature.com/articles/s41586-019-1364-3

[7] https://www.brooklinema.gov/ArchiveCenter/ViewFile/Item/628 (see footnote on sidebar)

[8] https://en.wikipedia.org/wiki/Merrimack_Valley_gas_explosions

[9] https://boston.cbslocal.com/2019/05/26/brookline-hammond-street-closed-manhole-fire-explosions/, https://patch.com/massachusetts/brookline/manhole-explosion-coolidge-corner-shuts-down-area, https://www.youtube.com/watch?v=Rbc11T8Vynw .

[10] https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber (search by number for 18-GLR-01)

[11] Additional footnotes for statement on indoor emissions from:
https://healthyindoors.com/2018/07/cooking-indoor-air-pollution-emissions-natural-gas-stoves/
1. Klug VL, et al. Cooking Appliance Use in California Homes—Data Collected from a Web-based Survey. LBNL-5028E. Berkeley, CA:Lawrence Berkeley National Laboratory (August 2011). Available: http://homes.lbl.gov/sites/all/files/lbnl-5028e-cooking-appliance.pdf [accessed 5 December 2013].
2. Jarvis D, et al. The association of respiratory symptoms and lung function with the use of gas for cooking. Eur Respir J 11(3):651–658 (1998); http://www.ncbi.nlm.nih.gov/pubmed/9596117.
3. Jarvis D, et al. Association of respiratory symptoms and lung function in young adults with use of domestic gas appliances. Lancet 347(8999):426–431 (1996); http://dx.doi.org/10.1016/S0140-6736(96)90009-4.
4. EPA. Formaldehyde: Hazard Summary [website]. Washington, DC:U.S. Environmental Protection Agency (updated 18 October 2013) Available: http://www.epa.gov/ttnatw01/hlthef/formalde.html[accessed 5 December 2013].

each of which can cause various respiratory and other health ailments[12,13]. Cooking with gas has been linked to asthma and other adverse health effects, with children and low-income households particularly affected[14,15]. Nitrogen dioxide from gas stoves is linked to increased asthma rates among low-income preschoolers, and gas stoves are especially dangerous in smaller apartments with poor ventilation[16] and when they are used for supplemental heat. If the Clean Air Act applied inside homes, the air quality produced by cooking with gas would be illegal[17].

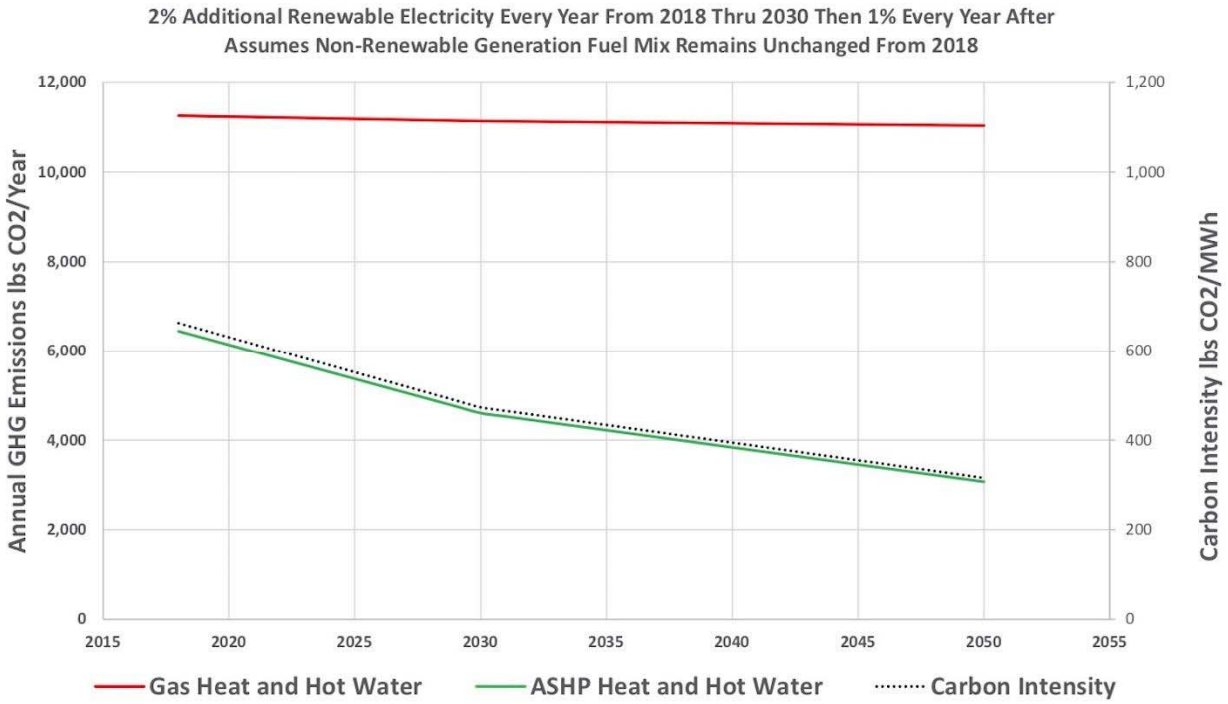

Figure 1: Comparing the Greenhouse Gas Emissions of an All-Electric House With Air Source Heat Pumps to a House With Natural Gas Heat and Hot Water

All-electric buildings are healthier and can operate immediately with zero emissions through the purchase of 100% renewable electricity with programs like Brookline Green Electricity[18]. Even buildings using the default New England electrical grid mix become greener every year as the electrical grid incorporates more and more renewable electricity

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12 https://www.nytimes.com/2019/05/01/opinion/climate-change-gas-electricity.html
13 https://www.nytimes.com/2019/05/01/opinion/climate-change-gas-electricity.html
14 https://www.sciencedaily.com/releases/2014/09/140929180523.htm and https://www.ncbi.nlm.nih.gov/pubmed/22082993 and https://scopeblog.stanford.edu/2018/03/06/use-your-range-hood-for-a-healthier-home-advises-indoor-air-quality-researcher/ and http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.277.9376&rep=rep1&type=pdf
15 https://www.nytimes.com/2019/05/01/opinion/climate-change-gas-electricity.html
16 http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.277.9376&rep=rep1&type=pdf
17 https://well.blogs.nytimes.com/2013/07/22/the-kitchen-as-a-pollution-hazard/ and http://rebuildgreenexpo.com/wp-content/uploads/2019/06/ElectricMFGuide.pdf
18 https://www.brooklinema.gov/1340/Brookline-Green-Electricity

generation, with a state-mandated minimum 60% renewable energy by 2050[19,20]. Figure 1 compares projected carbon emissions for a single family home built in Massachusetts using air-source heat pumps to provide electric heat and hot water with a similar home that uses gas heat and gas hot water. This projection assumes the home uses the default provider of electricity, which will become more renewable overtime. An all-electric home that elects to use 100 percent renewable electricity will have no carbon emissions from heat and hot water.

All-electric construction is practical and feasible now. Numerous all-electric buildings have been built recently in Massachusetts (Appendix D), demonstrating the feasibility and practicality of all-electric construction. Assuming that 0.5% of the building stock in Brookline is rebuilt or significantly renovated per year, this by-law would decarbonize 15% of our buildings by 2050. Decarbonizing in this manner, during new construction or major renovations is by far the most cost-effective way to decarbonize.

Practicality of all-electric buildings

All-electric construction is, in most cases, highly practical and essentially cost neutral. For example, one model commissioned for MassSave estimates a $754 construction cost premium for a 2,500 sq ft all-electric single family home[21], compared to the same home fitted with the most efficient gas heat and hot water systems and electric central air conditioning[22]. This premium is less than a 0.1% increase in cost for a typical new home like this in Brookline[23].

A relevant cost operations comparison comes from the same MassSave model cited above. Under this model, operation of a brand-new all-electric home in Massachusetts would be slightly more expensive than that of a brand-new gas home (by $41 per month). However, this $41 per month cost premium must be put into context. First, it is less than 1% of expected monthly costs on a newly built 2,500 sq ft Brookline home, including utilities, mortgage, and real estate tax payments. Second, if an electric ground source heat pump were used instead of an air source heat pump, the all-electric home would actually be less expensive to operate than the gas home. Third, when a new all electric building is compared with an existing building, the new all-electric one will be significantly less expensive to operate than gas, due to the far better air sealing and insulation required in new buildings.

Notably, building operation costs vary widely depending on building type, whether a building is new or retrofitted, whether a ground source or air source heat pump is used, whether solar is installed, the extent of air sealing and insulation, and other variables. To cite one example, buildings that are air sealed and insulated to Passive House standards can use less than 90% of the energy of buildings built to the minimal air sealing and insulation standards in the Massachusetts building code.

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[19] https://www.greenribboncommission.org/wp-content/uploads/2019/01/Carbon-Free-Boston-Report-web.pdf

[20] blog.greenenergyconsumers.org/blog/rps-res-in-plain-english

[21] built to the Massachusetts stretch energy code (a requirement in Brookline for new construction).

[22] http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC_17-14_MiniSplitCost_27NOV2018_Final.pdf

[23] Assumes $1,000,000 purchase price.

Space heating and cooling

Heat pumps are air conditioners that can operate in reverse. Even in cold weather, they extract heat from outside air and move it into the building. Because they move heat rather than generating it, they are very efficient. Dramatic improvements in heat pump technology and building envelope technology now make it practical and cost-effective to heat new buildings with electricity in our climate[24]. (Electric heat pump heating should not be confused with electric resistance heat, which is inefficient and expensive[25].)

Buildings are becoming better insulated and more tightly sealed every year. As this happens, less and less heating and cooling is needed, and the cost of the HVAC systems decreases. Because more and more buildings are being built with air conditioning, heat pumps save money in two ways. First, only a single system needs to be installed rather than separate air conditioning and heating systems. Second, heat pumps are more efficient than old-fashioned air conditioning and save on electricity costs.

Cooking -- additional benefits of modern electric induction cooktops

Induction cooking has additional benefits beyond improved indoor air quality, health, and emissions reductions. Induction cooking is safer, more precise, and faster than cooking with gas.[26] Local professional Chef Ming Tsai of Blue Ginger and Blue Dragon fame has been using induction cooking for 20 years[27]. Local chef Barbara Lynch has one in her professional home kitchen[28]. Induction cooking keeps the kitchen cooler -- a major advantage in commercial kitchens -- and it can be so finely regulated that it can be used to melt chocolate without a double-boiler.[29]

Hot water heating. An electric heat pump hot water heater can be purchased from local home improvement stores and costs about the same to buy and operate as a gas-fired hot water heater. Costs of gas, electric resistance, and electric heat pump hot water heaters are described in Appendix B.

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[24] http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC_17-14_MiniSplitCost_27NOV2018_Final.pdf

[25] Most electric heat in existing Brookline buildings is baseboard resistance heat, in which heat is generated, not moved. Electric resistance heat costs about three times as much to operate as a modern heat pump. In the past, heat pumps in MA were typically installed with electric resistance backup for the very coldest days of the year. Due to continual improvement of heat pump technology, the cold climate heat pumps recommended for use in New England either no longer include resistance heating elements or only use it a few days each year.

[26] https://www.consumerreports.org/electric-induction-ranges/pros-and-cons-of-induction-cooktops-and-ranges/

[27] http://sponsored.bostonglobe.com/frigidaire/induction/

[28] https://www.nytimes.com/video/dining/100000004082419/in-the-kitchen-with-barbara-lynch.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer

[29] Induction cooking should not to be confused with the dramatically inferior but often very similar-looking electric resistance cooking.

Clothes dryers. Many buildings already use electric resistance dryers. An alternative option, less expensive to operate, is the heat pump electric dryer. Compared to gas or most electric resistance dryers, heat pump dryers have the advantage of not requiring any outside venting. Costs of gas, electric, and electric heat pump dryers are described in Appendix C.

Appendix A -- Frequently Asked Questions

Q: If Brookline bans new fossil fuel infrastructure in major construction, do I get to keep my gas stove?

A: Yes. You can even replace it with a new one. You just can't install a new one in a brand new building or as part of a gut renovation. By 2050, 15% of Brookline's buildings would lack gas infrastructure, so even at that point there would under this policy be a lot of choice.

Q: Does this bylaw apply if I want to build an addition to my house?

A: It applies only if the project also includes major renovations to the existing part of your house AND if the renovated portion exceeds 50% of the area of the original building.

Q: Will this measure be effective (even if adopted beyond Brookline), or will the consequence simply be that more fossil fuels will be consumed in electricity generation?

If the occupant of a new all-electric building chooses to buy 100% renewable electricity, that all-electric building will be carbon-free from the moment it begins to operate.

Assuming the occupant relies on the standard grid mix, a new all-electric building built today would have lower overall emissions than an otherwise identical building with gas heat and appliances in the first year of operation (see chart above). These emissions savings will increase each additional year, as the grid greens through an existing statewide legislative mandate that requires a minimum 60% carbon-free grid by 2050. This grid greening is likely to be accelerated further at the state level and through Brookline's Green Electricity program. Thus, the emissions savings are very large compared to a building that burned natural gas over the course of those 31 years.

Q: Is there a good alternative for gas cooking, particularly in commercial settings?

Induction cooking is amazing. Many chefs who've tried it don't ever want to go back to gas, particularly in commercial settings[30,31]. It's safer, faster, and easier to control. It keeps the kitchen much cooler. The entire Bradley wing of LAX is all-electric[32], and the 24

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[30] http://sponsored.bostonglobe.com/frigidaire/induction/

[31] Drifter's Wife in Portland ME is recommended for best new restaurant that focuses on natural wines. "The entire kitchen is two induction burners and an oven," Li said. "The food they're putting out is amazing, and the wine experience overall is fantastic." https://www.boston.com/travel/travel/2017/04/22/this-new-england-city-is-a-favorite-food-destination-for-boston-chefs

[32] https://www.urwairports.com/lax/retailer-category/dine/

restaurants there have induction and electric cooking but no gas ovens, stoves, or other gas infrastructure.

Q: What happens if the electricity goes out ? Will we be able to have gas back-up generators? Do you have exemptions or waivers for certain facilities that would need back-up systems such as nursing homes or daycares?

In short this policy would not affect what happens when the power goes out, which is that most buildings would lose their heat. The reason is that today's boilers and furnaces typically require both the gas AND the electrical grid, because they have electronic ignition systems that lack battery backups. Therefore, most buildings in Brookline are already fully dependent on the electrical grid for their heat.

For the few buildings, including schools and nursing homes, that need or want backup heating, the proposed policy includes an exemption for fuel pipes for backup generators.

Q: In light of the heat wave and the power outages in NYC, if we go all electric what happens to the stress or overloading of the Grid? Will there be more power outages as a result?

Electrical demand is currently declining in New England due to solar panels on building roofs and gains in energy efficiency (e.g., LEDs). There are declines in both annual and peak demand, and these declines are expected to continue[33]. The proposed bylaw policy affects too few buildings, too slowly, to affect the electrical grid significantly. It is the job of the utilities and the grid operator ISO-NE to keep the electricity flowing, and they should be capable of it -- and held to it. Nonetheless, both the gas and electrical grids do fail sometimes, as we saw last winter with the explosions and fires caused by the Columbia Gas infrastructure failure in the Merrimack Valley.

Our electrical grid is currently adding a lot of renewable generation -- utility-scale wind and solar. This new building policy will affect such a small fraction of buildings on the grid (~1% turnover in any one year, even if adopted across the entire New England grid territory), that it should not have an appreciable impact on the power grid, which already has year-on-year variation exceeding 1%[34].

Peak consumption is already a significant challenge to manage. But right now peak consumption is a summer problem, when AC kicks in on hot days. In the winter the bigger problem is actually natural gas shortages, which should be slightly alleviated by this policy. Because winter heating and summer AC are the biggest consumers of electricity in buildings, the proposed all-electric requirement would not have a very large impact on summer peaks. (People already use electricity for AC.)

Q: If this by-law is challenged in court, will it pass muster?

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[33] https://www.iso-ne.com/about/key-stats/electricity-use/
[34] https://www.iso-ne.com/about/key-stats/electricity-use/

Like any ground-breaking law, this bylaw may be challenged. But its rationale has been carefully thought through, and it is based on several months of legal consultations and research. We consulted with 14 lawyers, including the Berkeley outside counsel and the head of the Massachusetts Attorney General's Municipal Law Unit. Brookline Town Counsel then also provided advice. We believe that it will withstand a challenge, but the only way to find out for sure is to pass it. A crucially important strategy in fighting the fossil fuel industry is to win in court in defending new legal approaches to decarbonization.

Q Will there be only a few contractors that can design build these systems? Will that drive cost up?

This is very simple technology and many HVAC contractors have significant experience installing ASHPs. Ground source heat pump systems (GSHPs, sometimes referred to as "geothermal systems") have also been installed all over Massachusetts and the country for several decades.

Q: What if this by-law triggered the need for a significant upgrade of the electrical service to an existing building? For example, a 50-unit building that has original wiring from the street to the building from the 1940's. What if the electrical upgrade costs $200,000?

If one were doing a significant rehab of such a building, one would be spending millions to tens-of-millions of dollars. The $200,000 must be considered in that context. This is precisely why the trigger is major rehabilitations and new construction.

Q: Renovations and expansions are the most problematic. Think of a situation where someone has previously installed efficient gas boilers, etc. and they are trying to add on to their house, but they want to just use the same infrastructure. Are we really telling them that half of their house can still be gas but they need all new equipment for the second half?

As currently written, the work area *in the original space* would have to be over 50% of the original structure to trigger the by-law in the context of an addition. Just an addition alone without major rehabilitation in the existing portions of the building would not trigger this by-law. The vast majority of additions, such as adding a porch or remodeling a kitchen, do not meet this threshold.

Even if the work area *in the original space* exceeded the 50% floor area threshold, it would still be permissible to keep the efficient gas boiler. In other words ducts or water/steam pipes could be extended from the existing boiler or furnace into the addition. However, in this instance, fuel piping could not be installed into the new addition.

Appendix B -- Comparing Hot Water Heater Options

Manufacturer	Model	Type	Description	Price	Annual Energy Cost
A O Smith	ATI 240H 101	Tankless	Gas: Condensing	$912	$280
Rinnai	(RU1601) REU-N2530FF-US	Tankless	Gas: Condensing	$1,460	$280
Rinnai	(RUR1991) REU-NP3237FF-US	Tankless	Gas: Condensing	$2,014	$280
Rinnai	REU-VC2025FFU-US	Tankless	Gas: Condensing	$687	$282
Westinghouse	WGR050**076	Tank	Gas: Condensing	$1,951	$290
Rheem	XE80T10HD50U1	Tank	Electric: ASHP	$1,700	$306
A O Smith	HPTU-50N	Tank	Electric: ASHP	$1,380	$346
A O Smith	HPTU-66N 120	Tank	Electric: ASHP	$1,679	$356
Rheem	XG50T12HE40U0	Tank	Gas: Non-Condensing	$689	$407
Rheem	XE50M09EL55U1	Tank	Electric: Resistance	$524	$796

Comparing the Price and Operating Cost of a Variety of Hot Water Options

New homes in Brookline typically have a water heater with an Energy Star rating from the US Department of Energy. High efficiency (condensing) gas hot water heaters are available as hot water tanks and on-demand (tankless) models. High efficiency air source heat pump (ASHP) hot water tanks are another option. This table compares various types of hot water heaters based on data from the US Department of Energy. The prices are from Home Depot or similar outlets. The energy costs are based on what Brookline customers would be charged by Eversource and National Grid

Appendix C -- Comparing Clothes Dryer Options

Make	Model	CEF				Drum Size, Cubic Feet	Annual Energy Use	Price
Miele	PDR980 HP	9.75	Electric	Heat Pump	Ventless	4.6	87 kWh/Yr	
Miele	TWB120 WP	6.37	Electric	Heat Pump	Ventless	4.1	133 kWh/Yr	
Miele	TWF160 WP	6.37	Electric	Heat Pump	Ventless	4.1	133 kWh/Yr	$1,499
Samsung	DV22N685*H*	5.85	Electric	Heat Pump	Ventless	4.0	145 kWh/Yr	
Whirlpool	WHD560CH**	5.2	Electric	Hybrid Heat Pump	Ventless	7.4	460 kWh/Yr	$1,259
Whirlpool	WHD862CH**	5.2	Electric	Hybrid Heat Pump	Ventless	7.4	460 kWh/Yr	
Whirlpool	WGD6620H**	3.48	Gas		Vented	7.4	687 Equivalent kWh/Yr	$900
Whirlpool	WGD9500EW*	3.48	Gas		Vented	8.2	687 Equivalent kWh/Yr	
Bosch	WTG86401UC	2.73	Electric	Condensing	Ventless	4.0	311 kWh/Yr	$1,125
Bosch	WTG86402UC	2.73	Electric	Condensing	Ventless	4.0	311 kWh/Yr	
Haier	QFT15ES*N***	2.68	Electric	Condensing	Ventless	3.1	317 kWh/Yr	

Price Range is roughly $600 to $1,000 for Conventional Electric Dryers
Price range is roughly $700 to $1,200 for Conventional Gas Dryers

Comparing the Price and Efficiency of Clothes Dryers

Stores have recently added a new option for buyers of clothes dryers: heat pump clothes dryers. The prices above are from Home Depot or similar outlets. Heat pump clothes dryers cost about the same to buy, but they are more efficient than gas dryers, so at current gas and electricity pricing, both cost about the same to operate. In addition, they don't have to be vented to the outside so they can be good for use in apartments and condominiums. The efficiency rating, CEF, is used by the US Department of Energy to rate the performance of clothes dryers. The higher the CEF, the higher the efficiency.

Appendix D - Partial list of buildings in New England with electric systems

Residential (up to 3 family)

Building name	*Heating and Cooling*	*Hot water*	*Location*
All-electric house, rehabilitated in 2018	*ASHP*	*Electric*	*Fisher Hill, Brookline, MA*
David Green's house	*ASHP*	*Electric*	*Dover, MA*
Holland House, Passive, LEED Platinum	*ASHP*	*Electric*	*Vineyard Haven, MA*
Torcellini residence	*ASHP, GSHP*	*Electric*	*Eastford, CT*
South End Row home by ZED	*ASHP*	*Electric*	*Boston, MA*
Dartmouth Oceanfront House by ZED	*ASHP*	*Electric*	*Dartmouth, MA*
Wellfleet modern house by ZED	*ASHP*	*Electric*	*Wellfleet, MA*
Thoughtforms Net positive farmhouse by ZED	*ASHP*	*Electric*	*Lincoln, MA*
Mediterranean style green home by ZED	*ASHP*	*Electric*	*Newton, MA*
Marshview house by ZED	*ASHP*	*Electric*	*Chatham, MA*

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

Office buildings

Building name	Heating and Cooling	Hot Water	Location
Walden Pond Visitor Center, LEED, Passive, 5,575 sf	ASHP	Electric	Concord, MA
Bennington Superior Courthouse, Net Zero ready	GSHP		Bennington, VT
Massachusetts Fish & Wildlife Headquarters, Net Zero	GSHP	Electric	Westborough, MA
The Studio for High-Performance Design and Construction, Passive	ASHP	Electric	Newton, MA
185 Dartmouth	Heat pumps		Boston, MA
Olympia Place	Heat pumps	Propane	Amherst MA

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

Educational facilities (including universities and schools)

Building name	Heating and Cooling	Hot water	Location
King Open School (middle school, elementary school, administrative offices, public pool)	GSHP	Electric	Cambridge, MA
Lexington Children's Place, Net Zero	Heat pumps	Electric	Lexington, MA
Hastings School, Net Zero	GSHP	Electric	Lexington, MA
The Putney School Field House, New Zero, LEED Platinum	ASHP	Electric	Putney, VT
R.W. Kern Center, Hampshire College	ASHP	Electric	Amherst, MA
Smith College, Bechtel Environmental Classroom	ASHP	Electric	Whately, MA
Trustees of Reservations, Powisset Net Positive Barn (demo kitchen with induction stoves, administrative offices, educational learning space, root cellar)	ASHP		Dover, MA

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

Housing projects (large-scale)[35]

Building name	Heating and Cooling	Hot water	Location
Auburn Court Lot C. 9	Heat pumps		Cambridge, MA
Concord Highlands ⋆	VRF ASHP		Cambridge, MA
Bayside Anchor, Passive House ⋆	Electric baseboard heating[36], electric		Portland, ME

[35] Some central hot water systems for very large buildings are serviced by gas or oil. Those are indicated with a blank space in the Hot Water column.
[36] While generally inefficient, resistance electric heating is highly affordable in Passive House buildings due to their extremely low heating load.

	ventilation		
Bristol Common, Lexington Gardens ⋆	ASHP		Taunton, MA
Highland Woods ⋆	ASHP		Williamstown, MA
Parsons Village ⋆	Heat pumps		Easthampton, MA
Millbrook Apartments	Heat pumps		Somerville, MA
Hyatt Centric Hotel	Heat pumps		Boston, MA
Distillery North	Heat pumps		Boston, MA
One East Pleasant	Heat pumps		Amherst, MA
Kendrick Place	Heat pumps		Amherst, MA
Whittier Street Apartments ⋆	Heat pumps		Boston, MA
Factory 63	Heat pumps		Boston, MA

⋆ = Affordable housing

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on 10/23/2019. By a vote of 8-0-0, the CDICR recommends FAVORABLE ACTION on Warrant Article 21.

DISCUSSION:
Warrant article 21 seeks to offer a new by-law which would impose a prohibition on the installation of fossil fuel piping for new construction and significant rehabs (those involving more than 50% of the building floor area), allowing for some exemptions and a waiver process for special considerations. The alarming climate crisis calls on our town to establish such regulations. Indeed, the long-term welfare of our planet demands that we build structures that decrease our dependence on fossil fuels. When we speak of the cost of adapting to the realities of a changing climate, we need to consider the future costs of failing to address the effects of this crisis on the future of the environment.

It is now practical to build all electric buildings that can use all green electricity, thereby lowering Brookline's emission of green house gases. This by-law change has received unanimous endorsement from both the BHA and the HAB, which are now negotiating the waiver process. Questions were raised about the possibility that such a by-law change would be a disincentive for building affordable housing. We were told that in reality, affordable housing has been leading the way in building green. In terms of older buildings, there are new options for energy retrofits and training programs for workers who can do the work. As an example, BHA has plans to replace electric baseboard heating with heat pumps.

Therefore, the commission voted FAVORABLE ACTION on the warrant article, by a vote of 8-0-0.

SELECT BOARD'S RECOMMENDATION

A report and recommendation on Article 21 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's report and recommendation on Article 21 will be included in the supplemental mailing.

XXX

ARTICLE 21

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 21 is a petitioned article asking the Town to create a new by-law that would prohibit the installation of fossil fuel infrastructure in new buildings and gut/significant rehabilitation projects in Brookline. For these types of construction projects, installing gas or oil piping would be prohibited. This will have the effect of preventing the installation of new major appliances (e.g., boilers, furnaces, clothes dryers) or other systems that require on-site combustion of fossil fuels (e.g., natural gas or oil) for these types of projects. Specific exemptions are outlined in the By-Law, and construction project can also seek a waiver from a to-be-created Sustainability Review Board.

Specific exemptions in the By-Law include exemptions for piping required to fuel backup electrical generators, cooking and related appliances, centralized hot water systems in buildings with floor areas of at least 10,000 square feet (provided that the Engineer of Record certifies that no commercially available electric hot water heater exists), any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a health care facility, among other exemptions.

The Sustainability Review Board will be a three or more member Town Board established and appointed by the Select Board with expertise in affordable housing; commercial development; high-performance sustainable design; architecture; mechanical, electrical, and plumbing engineering; or other technical areas as determined by the Select Board.

The effective date will be the later of (1) January 1, 2021, (2) 5 months after written approval is received from the Attorney General's Office, or (3) the date upon which the Sustainability Review Board and its procedures have been established.

Significant consensus has been built between various boards, committees, commissions, community stakeholders and co-petitioners during the vetting of this Article. The Board appreciates the efforts of the petitioners and the Advisory Committee to craft language that can be supported by a wide range of stakeholders.

The Select Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 21 is intended to be a major step towards achieving Brookline's goal of reducing its carbon emissions to zero by 2050. It would, with limited exemptions, prohibit the installation of new fossil fuel pipe infrastructure (natural gas, propane, fuel oil) in new construction and so called "Significant Rehabilitations".

The Advisory Committee recommends FAVORABLE ACTION on Article 21 in the form presented on November 5, 2019.

As of November 11, the petitioners were considering revisions to the article that have not been reviewed by the Advisory Committee. No recommendation should be inferred for any version submitted subsequent to the November 5, 2019 vote.

BACKGROUND:

Article 21 is sponsored by a team of petitioners which include architects, lawyers, members of various advocacy groups including Mothers Out Front and the Greenspace Alliance plus three members of the Select Board.

The proposal is intended to support the Brookline Climate Action Plan which states the Town's intention to reducing its greenhouse emissions to zero by 2050. One strategy is to begin requiring the complete electrification of new buildings and buildings undergoing significant renovations. While the short term greenhouse emissions effects of this strategy is dependent on the fuels used to generate electricity, it is Massachusetts state policy to increase the percentage of electricity generated from renewable sources over time. Additionally, Brookline sponsors a community aggregation program in which the default choice has a higher percentage of renewable sources than the Eversource default. Plus Town electric customers can opt up to the Brookline Green Option which has 100% renewable source. Lastly, individual electricity consumers can make additional renewable investments on their own using strategies such as installation of onsite solar panels or participation in community solar.

The bylaw would prohibit installation of new fossil fuel piping in new buildings and "significant rehabilitation" of existing buildings. The original proposal had limited exemptions for (1) portable appliances for outdoor cooking and heating (ie., propane barbeque grills), (2) backup electrical generators and (3) the Waldo Durgin project (since that was the subject of a separate negotiation with the Town.) The original proposed effective date was June 1, 2020, but that has been revised to the later of:

1. January 1, 2021
2. 5 months after the Attorney General approves the bylaw
3. The date upon which the SRB is appointed by the Select Board and after a public hearing publishes its procedures and decision criteria.

The proposal does not affect existing piping, boilers, stoves or water heaters. However, in a covered project, the bylaw as originally proposed would prohibit new piping to accommodate relocating any existing appliances. For example, in a covered "gut" renovation project (called a "Significant Rehabilitation" in the bylaw) that includes a kitchen renovation, the homeowner would not be able to install pipes to relocate a gas stove to the other side of the room or to even move it a few inches.

Under the version of Article 21 adopted by the Advisory Committee and accepted by the petitioners, proposal, residential cooking appliances such as ranges, ovens and stovetops would not be covered even in a "gut" renovation, thus allowing renovated kitchens to continue to have gas appliances, no matter where in the kitchen the homeowner wishes to place them.

The petitioners, the Planning and Community Development Department plus various Town Boards and commissions have sponsored or participated in a number of "community feedback" sessions in addition to the normal vetting hearings that take place for Town Meeting warrant articles. As a result of the feedback prior to the Planning and Regulation Subcommittee's public hearing, the petitioners added additional exemptions for (1) restaurant kitchens, (2) large central hot water systems (with an engineer's statement) and (3) added a waiver process where it would be otherwise impractical or financially infeasible to go with all electric systems.

Additionally, with input from the Building Commissioner, they have attempted to clarify the definition of significant rehabilitation to generally correspond to a "Level 3" renovation as defined in the Building Code for commercial buildings. Exemptions proposed by others which the petitioners did not accept were (1) an exemption for all cooking, (2) a broad exemption for commercial buildings; (3) including only single family homes, and (4) including only new construction.

<u>DISCUSSION;</u>
Electrification of our infrastructure is one strategy to reduce and eventually eliminate our reliance on fossil fuels. Currently, fossil fuels (mainly natural gas in New England) are used to generate a percentage of our electricity, which percentage will decrease over time as more renewable generating sources come on line. No one on the Advisory Committee took issue with the need to reduce our carbon emissions and the electrification strategy. This report will now focus on the details of the proposed bylaw and the practical aspects of the proposal.

When the bylaw was originally submitted, the petitioners listed two exclusions; outdoor cooking and heating appliances and the Waldo-Durgin project. Waldo-Durgin was excluded because it was the subject of a Memorandum of Understanding with the Town which specifically addressed how the approaches to energy efficiency are to be handled

including involving the Town's Sustainability Program Administrator during the design phase.

Note that the bylaw only applies to new construction and so called gut renovations. No one is required to replace any existing gas appliances. Even in a gut renovation, a gas appliance can be replaced; but no new piping can be installed unless there is an exemption. But, in order for this to work, we need to have a sense of reality as to what can be replaced by electric appliances.

Heating and Cooling

In New England, space heating consumes the most energy in buildings. In Brookline, the predominant fuel source is natural gas and fuel oil. Many factors contribute to the amount of energy consumed including the efficiency of the heating appliance (furnace, boiler, heat pump, etc.) and how well the building envelope is insulated and sealed. This bylaw only addresses the fuel source, which is only one piece of the equation.

Typically, we think of electric heat as utilizing baseboard resistance heaters, which are cheap to install but very expensive to operate. The preferred electric heat sources now are either ground source or air source heat pumps. Heat pumps can be used for both air conditioning in summer and heating in winter. In winter, the refrigerant absorbs heat from the air outside (or the ground) and uses it to warm the space. Ground source heat pumps use heat drawn from geothermal wells to facilitate heat transfer. Generally, heat pumps are extremely efficient to operate (however as the temperature drops, heat pumps become less efficient and there is a point where they stop working though with today's heat pump they will work to as low as -25F degrees. The Planning and Regulation Subcommittee heard testimony that the industry is moving towards heat pumps as the preferred space heating and cooling technology and it works well for most applications.

Given the variety of commercial building types and their uses, blanket claims of practicality and financial feasibility of the technology for all uses are difficult to substantiate. The Planning and Regulation Subcommittee heard testimony that at least laboratories and certain types of medical offices have higher air circulation and replacement requirements, which heat pumps may not always be able to handle. We also need to balance the Town's critical financial need to be competitive with other communities with respect to promoting development of buildings devoted to medicine and science with its overall goal of reducing greenhouse emissions. The Town is in a unique position to leverage its close proximity to one of the world's great medical/science complexes.

The Advisory Committee therefore proposed, and the petitioner accepted, an exemption for such uses given the difficulty of quantifying the requirements to a degree sufficient to write into a bylaw in the timeframe of this Town Meeting. The failure to have a lab/medical exemption could work to divert such development to other close-by communities.

Domestic Hot Water

For residential and smaller commercial uses, there are practical alternatives to a gas hot water heater. These include traditional resistance and the newer technology heat pump hot water heaters.

For large central hot water systems, there are currently no alternates to the traditional gas hot water heater. Many large buildings are moving away from central hot water to a distributed hot water system, (the water is heated just prior to the using fixture or for a floor or unit in a building.), For systems of this type, there are electric alternatives.

The proposed bylaw does not mandate moving away from a central hot water system, and it implicitly recognizes the lack of alternatives. However, if an alternative becomes available, there is an exemption in the proposal if the alternative is more than 150% of the capital or operating cost of a conventional gas water heater as certified by an engineer. While at first glance a 150% cost differential seems high, remember that the requirement is only in effect for new construction or a "significant rehabilitation," where hot water will be a very small fraction of the total project cost.

Cooking

Cooking is where residents have the most interaction with natural gas. The bylaw, as originally submitted would have prohibited new fossil fuel infrastructure for cooking appliances.

There are two electric alternatives to the traditional gas range and stove top; the standard resistance electric range and the induction electric stove top. While resistance stoves work, they deliver a different, less controllable cooking experience. Induction stoves deliver a controlled cooking experience similar to natural gas but require cookware to be made of a magnetic based material such as cast iron or magnetic stainless steel. Aluminum or copper cookware does not work.

The subcommittee received an email and heard testimony from Dr. Jeffrey Macklis, Professor of Stem Cell and Regenerative Biology, Harvard University, and Professor of Neurology [Neuroscience], Harvard Medical School. Dr. Macklis researched induction stoves when he was considering purchasing one.

> "In brief, I found that the EU regulations and analyses show that a single burner on is reasonably safe for an adult user if the pan is of "appropriate"-correct size (completely covering the burner) and is perfectly centered with precision, but that this safety disappears for a pregnant abdomen with fetal head (developing brain) closer than 1 foot away, or a small child whose head (developing brain) would get closer than 1 foot away from the front of a burner. The EU agencies all point out that pregnancy and small children position developing brains directly at the least safe position– adjacent to the cooktop and at its level. That is because the main risk is within a foot or so (30 cm) of a burner, and electromagnetic field strength from the induction cooktop is limited by EU/Swiss/now US recommendation to approximately 6 uT (microTesla). While essentially all modern residential cooktops meet this standard for a single burner on with an optimally sized pot/pan that is

> perfectly centered, they fail under "real world" scenarios. Unfortunately exposure with a differently sized pot/pan or one that is not optimally centered is often found to be ~5X higher (>30 uT!) than the regulatory agencies use as their acceptable limit! This even exceeds adult "occupational limits" set by the agencies. If more than one burner is on (e.g. for a normal meal or worst at a Thanksgiving dinner), the leakage around centered or uncentered pans is additive, though some will be further away than others."

Dr. Jesse Gray, disagreed with Dr. Macklis's assertions as follows:

> "The concern raised here is a hypothetical one, since induction cooktops have been in widespread global use for decades without any demonstrated adverse health effects. No health or consumer protection authorities have banned induction cooktops for health or any other reasons, and there isn't a single peer-reviewed epidemiological study implicating induction cooking in any negative health impact. The petitioners brought this proposed by-law forward for climate reasons, not health reasons. However, in considering health, the competing technologies must be weighed against each other, since all technology has risks, and people are going to cook with one technology or another. As it stands, there is more substantial evidence about the dangers of gas cooking than there is about induction cooking. Gas cooking kills about 8,000 people every year in the United States due to fire. There are also well-documented health impacts from combustion byproducts of gas cooking, including asthma, that should be weighed against any hypothetical health impacts of induction cooking. These impacts of gas cooking are supported by numerous peer-reviewed epidemiological studies, unlike the speculative induction concerns."

Given (1) the competing health arguments, (2) the strong feelings by some about gas as a cooking energy source and (3) the unintended effect of prohibiting even small relocations of gas appliances in some kitchen renovations, the Advisory Committee was not prepared to support a complete ban of gas cooking appliances in projects subject to the bylaw at this time, and the petitioner accepted a cooking appliance exemption that includes residential properties.

<u>Unsafe or Dangerous Condition Exemption</u>

As originally submitted, the bylaw would not have permitted the repair of unsafe or dangerous existing gas infrastructure. An exemption has been added and agreed to by the petitioners.

<u>Waivers and Appeals</u>

This is a new area with developing technology and an all-electric infrastructure may not be practical or financially feasible in all situations not explicitly exempted by the bylaw. The Advisory Committee proposal creates a waiver and appeal process for these situations.

The Planning and Regulation Subcommittee heard concerns from the Economic Development Advisory Board, with respect to commercial development, the Housing

Advisory Board with respect to affordable housing and the Brookline Housing Authority with respect to their properties. For affordable housing in particular, capital funds may be limited to make investing in systems with lower operating costs in the long run difficult.

For all these Boards, a robust and effective waiver and appeal process is an essential component in coming to support the bylaw. The proposal establishes a "Sustainability Review Board" (SRB) to hear and decide waivers and appeals. The bylaw specifies that members shall possess areas of expertise with regards to affordable housing, commercial development, high-performance sustainable design, architecture, and mechanical, electrical, and plumbing engineering plus other technical areas as determined by the Select Board. The bylaw sets a general standard of review but requires the SRB to adopt procedural requirements with regard to filing waivers and appeals and criteria to evaluate projects. And one of the prongs for the effective date of the bylaw is the establishment of SRB and adopting procedures and criteria of review.

Other Municipal Ordinances

The movement surrounding mandating fossil fuel free infrastructures by municipal ordinance is a new one with the first such ordinance being passed in Berkley, CA on July 16, 2019. To the best of our knowledge, in the United States, only three other municipalities, all located in California, have passed similar ordinances since then. Other municipalities are considering this kind of legislation. All enacted ordinances, to date, cover only new construction and have various exemptions. They are summarized in the chart below:

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
Brookline, MA (Proposed)	Article 21	Bans new fossil fuel infrastructure in all new construction and "Significant Rehabilitation(s)."	1. All cooking appliances 2. Backup generators 3. Outdoor cooking and heating 4. Large central hot water heaters 5.Waldo Durgin 6. Labs and certain medical offices 7. Repair unsafe conditions 8. Waivers if "financially infeasible or impractical"	Yes
Berkley CA	Ordinance No. 7.672–N.S.	The Berkley ordinance prohibits natural gas in **new** buildings. The ordinance is being rolled out gradually as the California Energy Commission (CEC) models different types of all-electric buildings. Currently, the ordinance bans installation of natural gas lines in low-rise residential buildings. As the CEC completes its modeling, the ordinance will expand to include additional building types.	Exemptions possible when a developer can demonstrate that all-electric isn't "physically feasible". There is also a general "public interest exemption" for cases where gas might be in the public interest to install vs. electric.	Eventually

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
San Luis Obispo, CA	Clean Energy Choice Program	The Clean Energy Choice Program "encourages" all-electric **new** buildings. "Unlike some cities that are banning natural gas entirely, the Clean Energy Choice Program will provide options to people who want to develop new buildings with natural gas. New projects wishing to use natural gas will be required to build more efficient and higher performing buildings and offset gas use by performing retrofits on existing buildings or by paying an in-lieu fee that will be used for the same purpose.	Commercial kitchens are exempt. Various exemptions for "public health and safety" (e.g. hospitals) and an exemption for manufacturing that requires gas (see page 39 of ordinance for full list). The Clean Energy Choice Program also includes a "Public Interest Exemption", which allows the permitting authority to exempt projects should unexpected or unintended effects of the program arise.	Yes
Windsor, CA	Ordinance Adopting All-Electric Reach Code	All-electric requirement for **new** single-family homes, detached accessory dwelling units, and multi-family buildings up to three stories (also referred to as “low-rise residential”)		No
San Jose. CA	Building Reach Code for New Constructi on	The passed ordinance will ban natural gas in the construction of **new** accessory dwelling units, new single family homes and new low rise and multifamily buildings.		Yes

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
Menlo Park, CA	Ordinance No. 1057	Heating systems in all **new** homes and buildings in the city must run on electricity, and all new commercial, office and industrial buildings, as well as high-rise residences, must rely entirely on electricity. Although new one- and two-story homes will be allowed to have natural gas stoves, they must be built "electric ready" with the proper wiring to enable all-electric operation in the future.	Life sciences buildings and public emergency operations centers (e.g. fire stations) need to apply for an exemption, but are eligible. For single family and three stories or less multifamily: Natural gas can still be used for stoves, fireplaces or other appliances if desired (but prewiring for electric appliances is required where natural gas appliances are used.). Nonresidential kitchens, such as for-profit restaurants and cafeterias, may appeal under certain conditions to an appointed body designated by the City Council if they want to use natural gas stoves. The advisory body's decision can be appealed to City Council.	Yes

<u>What renovations should be covered in addition to new construction?</u>
Other than the Brookline bylaw, all of the bylaws referenced in the chart above cover only new construction. With new construction, the entire project can be planned and designed to maximize energy conservation and take into account the design requirements of all electric systems. Renovations present a set of complications since an all electric system will need to be retrofitted into an existing building envelope which was, in all likelihood, designed around a fossil fuel infrastructure. This only begins to make sense if all the walls are open which would be the case in a so called "gut" renovation. The Advisory Committee worked with the Building Commissioner and other staff in coming up with a legal definition that is understandable, relatively easy to enforce and, hopefully, minimizes the

unintended consequence of creating a trigger where walls are not open to the degree necessary to perform a deep energy efficiency retrofit.

For buildings subject to the commercial building code (residential buildings with 3 or more families plus commercial buildings), there is already a well-defined trigger called a Level 3 renovation when triggered, requires a high degree of code compliance. Building professionals plus the Town Building Department are familiar with this trigger and it is easily computed. For those properties, it makes sense to incorporate a Level 3 renovation into the definition of "Significant Rehabilitation."

In the residential building code, there is no parallel concept to a Level 3 commercial renovation. Our intent is to use the existing definition of Gross Floor Ratio in the zoning bylaw as the denominator to compute the percentage to define a "Significant Rehabilitation." Since we do not want to have an inadvertent trigger, we are opting to set the trigger percentage to a very high 75%. As we gain experience with the bylaw and gather data on how it is working, the percentage trigger can be adjusted at a future Town Meeting, if appropriate.

Legal issues

In Massachusetts, municipal ordinances cannot supersede the state building code which covers plumbing and other aspects of the building envelope and components. This proposed bylaw is constructed in way that attempts not to supersede the code but it is breaking new ground. As such, according to Associate Town Counsel Jonathan Simpson, there is no history or case law that directly speaks to the legal analysis of whether this bylaw is preempted. However, Mr. Simpson has cautioned that there could be several statutes that may preempt what this bylaw is attempting to do. The Office of the Attorney General (OAG), which reviews bylaws passed at Town Meeting, will not issue preliminary opinions, so the only way to know for sure whether OAG will approve a By-Law such as this, is to pass it at Town Meeting and submit it for OAG review. Even if we receive a rejection from the OAG, we will have gained some clarity as to how to approach this issue in the future. Note that even if the Attorney General approves the bylaw, it would still be subject to challenge by other parties.

Effective Date

As noted above, sufficient lead time for homeowners and developers has been provided to adjust their plans to comply with this bylaw.

RECOMMENDATION:

By a vote of 21-4 with four abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 21 as follows:

Voted: That the Town amend the General By-Laws by adopting a new article 8.39 entitled "Prohibition on New Fossil Fuel Infrastructure in Major Construction" as set forth below.

8.39.1 Purpose
This By-Law is adopted by the Town of Brookline, under its home rule powers and its police powers under Massachusetts General Laws, Chapter 40, Sections 21 (clauses 1, 18) and 21D, and Chapter 43B, Section 13, to protect the health and welfare of the inhabitants of the town from air pollution, including that which is causing climate change and thereby threatens the Town and its inhabitants.

8.39.2 Definitions
"New Building" is defined as a new building or new accessory building (a building devoted exclusively to a use accessory to the principal use of the lot) that is associated with a valid building permit application on or after the Effective Date.
"On-Site Fossil Fuel Infrastructure" is defined as fuel gas or fuel oil piping that is in a building, in connection with a building, or otherwise within the property lines of premises, extending from a supply tank or from the point of delivery behind a gas meter (customer-side of gas meter).
"Significant Rehabilitation" is defined as a renovation project associated with a valid building permit application on or after the Effective Date of this article that:

(1) For existing structures regulated by the current edition of the Massachusetts State Building Code 780 CMR 51.00, Massachusetts Residential Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 75% of the Gross Floor Area as defined in the Brookline Zoning By-Law;
(2) For existing structures regulated by the current edition of the Massachusetts State Building Code 780 CMR 34, the Massachusetts State Basic/Commercial Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 50% of the building floor area prior to the project, as defined by the Massachusetts Building Code.

"Sustainability Review Board" (SRB) is defined as a Town Board established and appointed by the Select Board whose members shall, to the extent possible, possess areas of expertise with regards to affordable housing, commercial development, high-performance sustainable design, architecture, and mechanical, electrical, and plumbing engineering and other technical areas as determined by the Select Board. The SRB shall have at least three members with three year staggered terms. The mission charge of the SRB shall be set by the Select Board. The mission charge shall be broad enough to perform the requirements of Sections 8.39.5 and 8.39.6.
"Work Area" is defined as the portions of a building affected by renovations for the reconfiguration of space and/or building systems, as indicated in the drawings associated with a building permit application. Areas consisting of only repairs, refinishing, and/or incidental work are excluded from the Work Area.

8.39.3 Applicability

The requirements of this article shall apply to all permit applications for New Buildings and Significant Rehabilitations proposed to be located in whole or in part within the Town as follows.

A. The requirements of this article shall not apply to utility service piping connecting the grid to a meter, or to a gas meter itself.
B. The requirements of this article shall not apply to piping required to fuel backup electrical generators.

C. The requirements of this article shall not apply to piping required for cooking appliances and related appliances.

D. The requirements of this article shall not apply to the use of portable propane appliances for outdoor cooking and heating.

E. The requirements of this article shall not apply to the piping required to produce potable or domestic hot water from centralized hot water systems in buildings with floor areas of at least 10,000 square feet, provided that the Engineer of Record certifies that no commercially available electric hot water heater exists that could meet the required hot water demand for less than 150% of installation or operational costs, compared to a conventional fossil-fuel hot water system.

F. So long as new fossil fuel piping is not installed, the requirements of this article shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping.

G. The requirements of this article shall not apply to any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, as described in Section 5.06.4.k of the Zoning By-Law.

H. The requirements of this article shall not apply to research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a health care facility.

I. The requirements of this Article shall not apply to repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.

8.39.4 Effective Date and Enforcement

Upon the Effective Date, no permits shall be issued by the Town for the construction of New Buildings or Significant Rehabilitations that include the installation of new On-Site Fossil Fuel Infrastructure, except as otherwise provided in Sections 8.39.3, 8.39.5, and 8.39.6. As used herein, “Effective Date” shall be the later of (1) January 1, 2021, (2) 5 months after written approval of Article 8.39 is received from the Attorney General’s

Office, or (3) the date upon which the SRB has been appointed and, after a public hearing, has adopted procedural requirements with regard to filing waivers and appeals and criteria to evaluate projects under Sections 8.39.5 and 8.39.6.

8.39.5 Waivers
A waiver from Article 8.39 may be sought from the SRB on the grounds of financial infeasibility supported by a detailed cost comparison, inclusive of available rebates and credits, or impracticality of implementation. A waiver request may be made at any time and may be based upon submission of conceptual plans. The SRB shall apply its criteria to evaluate whether particular portions of a project are financially infeasible or impractical to implement under the requirements of Section 8.39 and shall issue waivers narrowly for those portions, where appropriate, rather than for an entire project. Particular consideration for waivers will be given to projects sponsored by the Brookline Housing Authority (BHA), given the BHA's limited sources of capital funds.

8.39.6 Appeals
An appeal may be sought from the SRB following a denial of a building permit on the grounds that Article 8.39 is not applicable to a project pursuant to Section 8.39.3. Any appeal shall be supported by detailed information documenting the basis of the appeal.

ARTICLE 21

PETITIONER'S SUPPLEMENTAL EXPLANATION

Summary

This by-law will prohibit installation of fossil fuel piping in new buildings and in major renovation of existing buildings. Consequently, this policy will require heat, hot water, and appliances that are installed during new construction and major renovations to be all-electric. This by-law is intended to facilitate a practical transition to fossil fuel free buildings, and it thus provides for some exemptions including for fuel piping for backup generators, for cooking, and for central domestic hot water systems in large buildings.

Rationale

We are facing a global climate crisis. This climate crisis directly affects Brookline residents and businesses. Massachusetts is one of the fastest-warming states in the country. We have seen a rapid increase in extreme heat events that threaten the health of our children, our seniors, and those who need to work outside, not to mention our fragile ecosystem's plants and wildlife. Rising seas and increased flooding threaten Boston and coastal communities. Public health risks include an increase in heat-related illnesses and deaths, as well as outbreaks of insect-borne and waterborne diseases. As natural ecosystems change or collapse, Massachusetts farmers, fishermen, and residents will suffer.

In its Climate Action Plan, and consistent with state direction in the Green Communities Act, Brookline has committed to reducing its carbon emissions to zero by 2050. More recently, the United Nations International Panel of Climate Change announced in 2018 that we must reduce our carbon emissions by 50% by the year 2030 in order to avoid the most catastrophic effects of climate change. Buildings account for 60-70% of Brookline's emissions. Every new building constructed with fossil fuel infrastructure makes our emissions goal harder to achieve by lighting a new fire that will burn, on and off, for thirty years or more. To meet our climate goal, each of these fires will need to be put out through the retrofitting of buildings. It is unfair to the next generation to continue to install infrastructure that we already know will need to be replaced in a very short time. This by-law is an essential step if we are to have any hope of reaching Brookline's climate goals of zero emissions by 2050.

Eliminating fossil fuel infrastructure during new construction or major renovations is by far the most cost-effective way to decarbonize. All-electric construction is practical and feasible now. Numerous all-electric buildings have been built recently in Massachusetts (see Appendix B), demonstrating the feasibility and practicality of all-electric construction. Assuming that 0.5% of the building stock in Brookline is rebuilt or significantly renovated per year, this by-law would decarbonize 15% of our buildings by 2050.

All-electric buildings can operate immediately with zero emissions by purchasing 100% renewable electricity via programs such as Brookline Green Electricity. Even electric buildings using the default New England electrical grid mix are greener now than gas buildings, and they become greener every year as the electrical grid incorporates more and more renewable electricity generation, with a state-mandated minimum of 60% renewable energy by 2050.

Figure 1: Comparing the Greenhouse Gas Emissions of an All-Electric House with Air Source Heat Pumps to a House with Natural Gas Heat and Hot Water

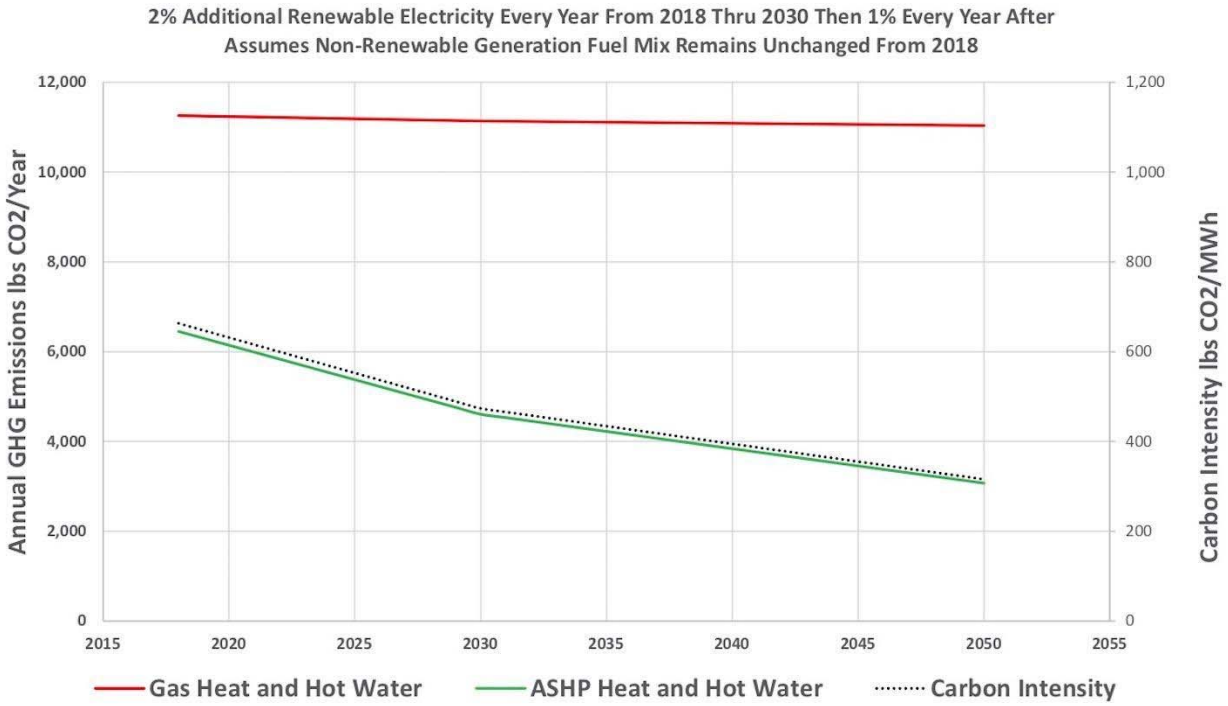

Figure 1 compares projected carbon emissions for a single-family home built in Massachusetts using air-source heat pumps to provide electric heat and hot water with a similar home that uses gas heat and gas hot water. This projection assumes the home uses the default electricity provider, which will include more renewable energy over time.

All-Electric Building Technology

Cost-effective and energy-efficient systems exist today for heating and cooling, domestic hot water, and other appliances for most buildings and applications.

Space heating and cooling. Heat pumps are air conditioners that can operate in reverse. Even in cold weather, they extract heat from outside air and move it into the building. Because heat pumps move heat rather than generating it, they are very efficient. Dramatic improvements in heat pump technology and building envelope technology now make it practical and cost-effective to heat new buildings with electricity in our climate.

Most new Brookline buildings have air conditioning. In buildings with both heating and air-conditioning, heat pumps save money in two ways. First, only a single system needs to be purchased and installed (rather than separate air conditioning and heating systems). Second, heat pumps are more efficient than air conditioners and save on electricity costs.

Hot water heating. An electric heat pump hot water heater can be purchased from local home improvement stores and costs about the same to buy and operate as a gas-fired hot water heater. The costs of gas, electric resistance, and electric heat pump hot water heaters are described in Appendix A.

Other Appliances. Clothes dryers, ovens, and cooktops are also available in all-electric options. Many buildings already use electric resistance dryers. An alternative option, less expensive to operate, is the heat pump electric dryer. Compared to gas or most electric resistance dryers, heat pump dryers have the advantage of not requiring any outside venting. In the kitchen, electric or induction cooktops and electric ovens provide alternatives to gas.

All-Electric Building Costs

Construction Costs: All-electric construction is, in most cases, highly practical and essentially cost neutral. For example, one model commissioned for MassSave estimates a $754 construction cost premium for a 2,500 sq. ft. all-electric single-family home, compared to the same home fitted with the most efficient gas heat and hot water systems and electric central air conditioning. This premium is less than a 0.1% increase in cost for a similar new home in Brookline, and it does not include available incentives that result in a net savings on construction of the all-electric home.

Operating Costs: Building operation costs vary widely depending on building type, whether a building is new or retrofitted, whether a ground source or air source heat pump is used, whether solar is installed, the extent of air sealing and insulation, and other variables. To cite one example, buildings that are air-sealed and insulated to Passive House standards can use less than 10% of the energy of many existing buildings, a difference in cost that is far greater than the differential cost of fuels.

A relevant operating cost comparison comes from the same MassSave model cited above. Under this model, operation of a brand-new all-electric home in Massachusetts would be slightly more expensive than that of a brand-new gas home (by $41 per month). However, this $41 per month cost premium must be put into context. First, this cost increase is less than 1% of expected monthly costs on a newly built 2,500 sq. ft. Brookline home, including utilities, mortgage, and real estate tax payments. Second, when new all-electric buildings are compared with older existing buildings, in which most of us in Brookline live, the new all-electric buildings are significantly less expensive to operate than the existing gas buildings, due to the far better air sealing and insulation required in new buildings.

Appendix A -- Frequently Asked Questions

Q: Will this measure be effective (even if adopted beyond Brookline), or will the consequence simply be that more fossil fuels will be consumed in electricity generation?

If the occupant of a new all-electric building chooses to buy 100% renewable electricity, that all-electric building will operate with low-carbon energy from the moment it begins to operate, which is a dramatic reduction in emissions.

Assuming the occupant relies on the standard grid mix, a new all-electric building built today would have lower overall emissions than an otherwise identical building with gas heat and appliances in the first year of operation (see Figure 1 above). These emissions savings will increase each additional year, as the grid greens through an existing statewide legislative mandate that requires a minimum 60% carbon-free grid by 2050. This grid greening is likely to be accelerated further at the state level and through Brookline's Green Electricity program. Thus, the emissions savings are very large compared to a building that burned natural gas over the course of those 31 years.

Q: In light of the heat wave and the power outages in NYC, if we go all electric what happens to the chance of overloading of the grid? Will there be more power outages as a result?

Electrical demand is currently declining in New England due to solar panels on building roofs and gains in energy efficiency. There are declines in both annual and peak demand, and these declines are expected to continue. In addition, our electrical grid is currently adding significant renewable generation -- utility-scale wind and solar.

The proposed bylaw policy affects too few buildings too slowly to affect the electrical grid significantly. This new building policy will affect such a small fraction of buildings on the grid (~1% turnover in any one year, even if adopted across the entire New England grid territory), that it should not have an appreciable impact on the power grid, which already has year-on-year variation exceeding 1%.

Peak consumption is already a significant challenge to manage. But right now peak consumption is a summer problem, when AC kicks in on hot days. Because winter heating and summer AC are the biggest consumers of electricity in buildings, the proposed all-electric requirement would not have a large impact on summer peaks, as people already use electricity for air conditioning.

Q: What happens if the electricity goes out? Will we be able to have gas back-up generators? Do you have exemptions or waivers for certain facilities that would need back-up systems such as nursing homes or daycares?

This policy would not affect what happens when the power goes out, which is that most buildings would lose their heat. The reason is that today's boilers and furnaces typically require both the gas AND the electrical grid, because they have electronic ignition systems that lack battery backups. Therefore, most buildings in Brookline are already fully dependent on the electrical grid for their heat. For the few buildings, including schools and nursing homes, that need or want backup heating, the proposed policy includes an exemption for fuel pipes for backup generators.

Q: If this by-law is challenged in court, will it pass muster?

Like any ground-breaking law, this by-law may be challenged. But its rationale has been carefully thought through, and it is based on several months of legal research. We consulted with many lawyers. We cannot guarantee that this by-law will withstand legal challenge, but we have made it as legally defensible as possible. The only way to find out if it will pass legal muster is to pass it.

Q Will there be only a few contractors that can design build these systems? Will that drive costs up?

Many HVAC contractors have significant experience installing air source heat pumps. Ground source heat pump systems (sometimes referred to as "geothermal systems") have also been installed state- and nation-wide for several decades.

Q: What if this by-law triggered the need for a significant upgrade of the electrical service to an existing building? For example, a 50-unit building that has original wiring from the street to the building from the 1940's. What if the electrical upgrade costs $200,000?

Major renovations to multi-unit buildings cost millions to tens-of-millions of dollars. The $200,000 electrical upgrade cost must be considered in that context. This is precisely why the proposed by-law trigger is major rehabilitations and new construction.

Q: Does WA21 apply if I want to build an addition to my house?

As currently written, the work area *in the original space* would have to be over 50-75% of the original structure to trigger the by-law in the context of an addition. Just an addition alone without major rehabilitation in the existing portions of the building would not trigger this by-law. The vast majority of additions, such as adding a porch or remodeling a kitchen, do not meet this threshold. Even if the work area *in the original space* exceeded the 50-75% floor area threshold, it would still be permissible to keep an oil or gas boiler. In other words, ducts or water/steam pipes could be extended from the existing boiler or furnace into the addition. However, in this instance, fuel piping could not be installed into the new addition.

Appendix A -- Comparing Hot Water Heater Options

Manufacturer	Model	Type	Description	Price	Annual Energy Cost
A O Smith	ATI 240H 101	Tankless	Gas: Condensing	$912	$280
Rinnai	(RU1601) REU-N2530FF-US	Tankless	Gas: Condensing	$1,460	$280
Rinnai	(RUR1991) REU-NP3237FF-US	Tankless	Gas: Condensing	$2,014	$280
Rinnai	REU-VC2025FFU-US	Tankless	Gas: Condensing	$687	$282
Westinghouse	WGR050**076	Tank	Gas: Condensing	$1,951	$290
Rheem	XE80T10HD50U1	Tank	Electric: ASHP	$1,700	$306
A O Smith	HPTU-50N	Tank	Electric: ASHP	$1,380	$346
A O Smith	HPTU-66N 120	Tank	Electric: ASHP	$1,679	$356
Rheem	XG50T12HE40U0	Tank	Gas: Non-Condensing	$689	$407
Rheem	XE50M09EL55U1	Tank	Electric: Resistance	$524	$796

Comparing the Price and Operating Cost of a Variety of Hot Water Options

This table compares various types of hot water heaters based on data from the US Department of Energy. The prices are from Home Depot or similar outlets. The energy costs are based on what Brookline customers would be charged by Eversource and National Grid.

Appendix B - Sample Buildings in New England with Electric Systems

Residential (up to 3 family)

Building name	Heating and Cooling	Hot water	Location
All-electric house, rehabilitated in 2018 by Byggmeister	**ASHP**	**Electric**	**Fisher Hill, Brookline, MA**
Holland House, Passive, LEED Platinum, Hutker Architects	**ASHP**	**Electric**	**Vineyard Haven, MA**
Torcellini residence, Paul Torcellini	**ASHP, GSHP**	**Electric**	**Eastford, CT**
South End Row home by Zero Energy Design	**ASHP**	**Electric**	**Boston, MA**
Dartmouth Oceanfront House by Zero Energy Design	**ASHP**	**Electric**	**Dartmouth, MA**
Wellfleet modern house by Zero Energy Design	**ASHP**	**Electric**	**Wellfleet, MA**
Thoughtforms Net positive farmhouse by Zero Energy Design	**ASHP**	**Electric**	**Lincoln, MA**
Mediterranean style green home by Zero Energy Design	**ASHP**	**Electric**	**Newton, MA**
Marshview house by Zero Energy Design	**ASHP**	**Electric**	**Chatham, MA**

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

Office buildings

Building name	Heating and Cooling	Hot Water	Location

Walden Pond Visitor Center, LEED, Passive, Maryann Thompson Architects	ASHP	Electric	Concord, MA
Bennington Superior Courthouse, Net Zero ready, Maclay Architects	GSHP		Bennington, VT
Massachusetts Fish & Wildlife Headquarters, Net Zero, Ellen Watts, Architerra	GSHP	Electric	Westborough, MA
The Studio for High-Performance Design and Construction, Passive, Studio HPDC	ASHP	Electric	Newton, MA
185 Dartmouth, Bargmann Hendrie + Archtype	Heat pumps		Boston, MA
Olympia Place, DiMella Shaffer and Holst Architecture	Heat pumps	Propane	Amherst MA

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

Educational facilities (including universities and schools)

Building name	Heating and Cooling	Hot water	Location
King Open School (middle school, elementary school, administrative offices, public pool), William Rawn Associates, Architects	GSHP	Electric	Cambridge, MA
Lexington Children's Place, Net Zero, DiNisco Design, Inc.	Heat pumps	Electric	Lexington, MA
Hastings School, Net Zero, DiNisco Design, Inc.	GSHP	Electric	Lexington, MA
The Putney School Field House, New Zero, LEED Platinum, Maclay Architects	ASHP	Electric	Putney, VT
R.W. Kern Center, Hampshire College, Bruner/Cott Architects	ASHP	Electric	Amherst, MA

Smith College, Bechtel Environmental Classroom, Coldham and Hartman Architects	ASHP	Electric	Whately, MA
Trustees of Reservations, Powisset Net Positive Barn (demo kitchen with induction stoves, administrative offices, educational learning space, root cellar), Zero Energy Design	ASHP		Dover, MA

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.
GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

Housing projects (large-scale)

Building name	Heating and Cooling	Hot water	Location
Auburn Court Lot C. 9, Goody Clancy Architects	Heat pumps		Cambridge, MA
Concord Highlands, ICON Architecture	VRF ASHP		Cambridge, MA
Bayside Anchor, Passive House, Kaplan Thompson Architects ⭑	Electric baseboard heating, electric ventilation		Portland, ME
Bristol Common, Lexington Gardens, The Architectural Team ⭑	ASHP		Taunton, MA
Highland Woods, Dietz and Company Architects	ASHP		Williamstown, MA
Parsons Village, Dietz and Company Architects	Heat pumps		Easthampton, MA
Millbrook Apartments, Bargmann Hendrie + Archetype Inc.	Heat pumps		Somerville, MA
Hyatt Centric Hotel, Arrowstreet	Heat pumps		Boston, MA
Distillery North, ICON Architecture	Heat pumps		Boston, MA

One East Pleasant, Holst and DiMella Shaffer	Heat pumps		Amherst, MA
Kendrick Place, Holst and DiMella Shaffer	Heat pumps		Amherst, MA
Whittier Street Apartments, The Architectural Team	Heat pumps		Boston, MA
Factory 63, Gerding Edlen	Heat pumps		Boston, MA

⋆ = Affordable housing

ASHP = Air Source Heat Pump, an all-electric technology for cooling and heating a building that is similar to an air conditioner but can also function in reverse to provide heat.

GSHP = ground source heat pump, similar to an ASHP but is more efficient due to its use of the ground, rather than the air, for heat transfer to and from the building.

ARTICLE 22

TWENTY-SECOND ARTICLE

Submitted by: Donald Warner

To see if the Town will vote to amend Section 8.31.3.a of Article 8.31 of the Town's General By-laws (Leaf Blower Control - Limitations on Use), as follows (language to be deleted in strike through):

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 five acres of open space.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The exhaust of gasoline-powered leaf blowers contributes to air pollution, including carbon monoxide, nitrogen oxides, particulate matter and carbon dioxide. While auto emissions have been on the decline, the emissions from gas-powered leaf blowers have stayed the same or increased. Electric leaf blowers have no emissions.

The Center for Disease Control has identified gas leaf blowers as a source of harmful noise. The noise from gasoline-powered leaf blowers is not only damaging to the hearing of the operator and those standing nearby, but the strong low frequency component of that noise travels over long distances, and penetrates walls and windows. Electric leaf blowers do not have that low frequency component.

This proposed amendment to the General Bylaw would prohibit the use of gasoline-powered leaf blowers, except for leaf blowers operated by Town employees or contractors while performing work for the Town.

SELECT BOARD'S RECOMMENDATION

The petitioner indicated that he no longer wants to move Article 22, therefore the Select Board unanimously voted NO ACTION under this Article.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 22 proposes amending our current bylaw to ban completely the use of gas-powered leaf blowers, removing the seasonal allowance, with the exception of leaf blowers operated by Town employees or contractors while performing work for the Town.

The Advisory Committee was advised by the petitioner that after the hearings and consultation with Town staff, he decided not to move this article. As a result, NO VOTE was taken.

BACKGROUND:
Brookline has a long and unsettled history in dealing with leaf blowers. After several years of effort (including a Moderator's Study Committee on Leaf Blowers), emotion and debate, Town Meeting codified constraints around leaf blower use in the Town's bylaws (Article 8.31 Leaf Blowers). Specifically, leaf blowers may not operate at a noise level greater than 67 decibels (db). And, in the current bylaw, gas powered leaf blowers can only be operated from October 1st to December 31st and from March 15th to May 15th – periods of heavy leaf fall and cleanup needs. Also, leaf blowers may only be operated between 8 a.m. and 8 p.m. during the week and 9 a.m. and 6 p.m. on weekends and holidays.

DISCUSSION:
The petitioner brought this article forward to address three concerns: health (leaf blowers throw up dust/particulates and emit exhaust), climate change (leaf blowers are carbon emitters), and noise. The petitioner conceded that it was the third item, noise, that is the primary concern. The petitioner, and others, related stories of overly loud leaf blowers and gas powered leaf blowers being used out of season. Accounts were also given of approaching violators only to be mocked or ridiculed. Furthering the frustration was the Town's seeming lack, inability or disinterest in enforcing the existing bylaw in a timely or meaningful way.

The Advisory Committee heard and understood the first two concerns but had differing interpretations on the impact of the leaf blowers. There was a general understanding that dust clouds are potentially unhealthy and dangerous to some. However, a ban on gas powered leaf blowers will likely not have a meaningful effect as other types create the same dust if used uncourteously or irresponsibly. As to carbon footprint, while this may be a symbolic gesture, it is not significantly impactful as the MassDEP data estimates that leaf these blowers (statewide) would account for 0.1% of volatile organic compounds (VOC) emissions.

Noise was by far the greatest concern, as gas powered leaf blowers are generally louder and of a sound quality that projects farther. And while there are other (permitted) tools that are louder, leaf blowers are more pervasive – especially seasonally.

We also heard from members of the landscaping industry in town, and members of Town staff – principally DPW Commissioner Andrew Papastergion and Parks & Open Space Director Erin Gallentine. They described the tools they use and their practical and seasonal limitations.

Unlike towns in California that have very light leaf loads and a dry climate, Brookline has a very significant tree canopy. In addition to private trees, there are many Town trees that deposit tons of leaves onto streets, sidewalks, yards, and parks each year. Additionally, the heavy leaf seasons of fall and spring are often accompanied by wet weather. Leaves need to be removed, not simply for convenience or aesthetics but for safety and storm management reasons.

The petitioner originally posited that electric leaf blowers were sufficient for removal of even heavy loads of leaves and debris, and with manageable levels of convenience and cost. Members of the landscaping industry and Town staff testified that while there are times and locations during the year when electric blowers would suffice, and are in fact used, there are other times when only the more powerful gas powered blowers will work. Without these tools, the jobs simply cannot be done. They also expressed that it was naive to think it was possible to simply hire a crew sufficiently large enough to do all that work by hand – especially in any affordable way. The Town maintained it could not do without the more powerful units at certain times, and the landscapers maintained they simply could not have a business without them during peak seasons.

Specific battery powered electric models were discussed. Generally they are more expensive when including batteries, considered harder to work with, have short lived batteries, and are considered ineffective in many situations. The petitioner accompanied Town staff to hear and see various units. The landscapers allowed that they do use electric blowers in their tools mix and look forward to better options in the future, and the petitioner conceded that it may be a bit premature to rely completely on electric blowers.

While there were differing levels of agreement and appreciation on this issue, both sides listened to and heard each other.

The focus of discussions then became less about the current bylaw and specific models of blowers (or whether an outright ban was reasonable at this point), to one of enforcing our current requirements.

Enforcement
Everyone agreed that enforcement is lacking. When Town Meeting established our current legislation, it did not budget additional positions to aid in enforcement. Enforcement primarily falls on the DPW (between 7 and 4 on weekdays) – specifically, one person who already has other duties. The Brookline Police Department is responsible for responding at all other times, though they cannot simply leave a scene immediately.

Enforcement is complaint driven, resulting in minimal and late responses. By the time someone arrives, the offender has long stopped. Both the DPW and Police maintain call and response logs, though it was unclear whether there is sufficient or well-structured sharing of the data. It was contended that the number of complaint calls has decreased, but it is not clear that the data is robust enough to support that claim, or if this is an artifact of the public simply saying "why bother" because the response is ineffective.

This created great concern.

The Advisory Committee's Human Services Subcommittee spent much time discussing this with Commissioner Papastergion and Director Gallentine. The petitioner also met independently with the Commissioner and Director to discuss his concerns and ideas for better enforcement.
What transpired was a testament to cooperation, collaboration and communication. The Town took these concerns very seriously and responded to the ideas of the petitioner.

The Commissioner has proposed a new framework for enforcement (a portion of his memorandum appears below).

"Current Enforcement
Due to the limited resources provided by the current Bylaw, enforcement has been "complaint driven" and provided by one Code Enforcement Inspector within the DPW who also provides enforcement for sanitation violations. Generally, when complaints are received during business hours, they are documented and investigated and then either resolved or enforced. In many instances by the time the inspector arrives on scene, the alleged violator has already moved on and the complaint cannot be substantiated. The Inspector will then attempt to reach out to both the contractor and property owner to provide educational materials and discuss the penalties for further violations. Complaints received after business hours are handled by the Police Department who also report that in most cases the violator has left the site prior to their arrival. These complaints are then reported to the DPW the next business day for documentation and further follow up by the Inspector for resolution.

The Inspector has also reported that on many occasions the complaints were due to other types of landscape equipment such as mowers, chain saws and weed trimmers that are not controlled by either the Leaf Blower Bylaw or the Noise Bylaw. Although our statistics indicate that overall, complaints have decreased since the latest revisions to the Bylaw were made in 2016, the DPW recognizes that increased efforts are needed in both education and enforcement to further reduce violations with or without a complete ban.

Proposed Changes in Education and Enforcement
The DPW strongly believes that successful enforcement of the current Bylaw can be achieved by utilizing both an increase in dedicated resources and a change in methodology. Instead of using a complaint-driven approach we would propose to use a more pro-active seasonal approach for both education and enforcement as follows:

* *Provide seasonal press releases in local media outlets as a public service announcement*
* *Update the current Leaf Blower brochure and highlight it seasonally on the Town's website and social media*
* *Maintain a current list of all landscapers in the local area and provide brochures each year to remind them of the local requirements for use times and noise limits*
* *Utilize the current Code Enforcement Inspector, Sanitation Foreman, Environmental Health Inspector, General Foremen and Operations Managers in Highway and Parks and the Park Ranger as enforcement officers increasing the personnel available from one to eight*
* *Enlist additional assistance from the Health Department for enforcement during business hours and reaffirm the commitment of the Police Department for after-hours enforcement and increased issuance of citations"*

The Commissioner has voiced his full-throated support and asks that we allow him time to try this new approach, and the petitioner is supportive of this, in addition to developing other approaches (as discussed with the Commissioner) going forward.

The Committee was impressed by the passion and focus of the petitioner, the Town's response, the productive collaboration between the petitioner and Town, and the members of the landscaping industry who appeared and spent as much time listening as they did respectfully expressing their concerns.

It is the Advisory Committee's belief that we have a reasonably balanced bylaw in place (given the current state of technology), but that enforcement has been lacking. We suggest the new framework of enforcement be adopted, that the Police Department becomes more actively engaged, that data acquisition and sharing becomes cleaner, and that we recognize more resources may need to be provided in the enforcement effort. Finally, the landscaping industry must recognize that it does have to "be its brother's keeper", and that an "it wasn't me, it was them" response will not suffice as the community may eventually lose all patience. -

<u>RECOMMENDATION:</u>
The Advisory Committee was advised by the petitioner that after the hearings and consultation with Town staff, he decided not to move this article. As a result, NO MOTION WAS MADE and vote was taken.

XXX

ARTICLE 23

TWENTY-THIRD ARTICLE

Submitted by: Donald Warner

To see if the Town will vote to amend Section 8.31.3 of Article 8.31 of the Town's the General By-laws (Leaf Blower Control- Limitations on Use), as follows (additions in **bold underline**, deletions in ~~strike through~~):

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 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 nonrefundable) 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.

e. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property not under their control, including but not limited to the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower on private property without the authorization or permission of the Property Owner or Property Manager.

f. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers in a manner that intentionally blows leaves or other debris onto public or private property not under their control, without the express consent of the owner or manager of such property.

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
Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Currently, it is common practice for leaves to be blown onto public sidewalks, tree lawns and ways, from private properties. This often results in air borne debris impacting the general public. Besides, leaves and other yard waste, this debris contains many unwanted and toxic pollutants, including, but not limited to, dust, lead, pesticides, fertilizers and fecal matter which exacerbates asthma, emphysema and allergies. This practice also results in unnecessary carbon emissions and undesired noise.

The proposed amendment to the General Bylaw would restrict the use of leaf blowers from the blowing of leaves, yard waste and other debris onto public sidewalks, tree-lawns and ways.

SELECT BOARD'S RECOMMENDATION

Article 23 is a petitioned article that asks the Town to amend its general by-law pertaining to the use of leaf blowers in order to restrict the use on public ways. The current by-law on leaf blowers was the result of an extensive review and public process that unfolded over a 10-year period. The Board heard from staff about the concern additional changes to the by-law could cause unintended consequences including less clean-up of the public way that is often accomplished by homeowners in front of their respective properties.

The Board commends the petitioner, the Commissioner of Public Works, and the Advisory Committee for working on language that satisfies the needs of the Town while addressing the concerns expressed by the petitioner. The Select Board unanimously voted FAVORABLE ACTION on the motion made by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY

Warrant Article 23 is meant to restrict leaf blowers from blowing leaves or debris onto public ways, or private property without expressed consent. The article as presented, however, undermines its own intent. By striking mention of sidewalks in the bylaw, it leaves our laws silent on the issue, and therefore no constraints exist. The added language labeled "e. "essentially prohibits the use of a blower on the sidewalk unless a property owner or manager approves it (an exercise in self-granting authority). This is clearly not the intent of the petitioner.

The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 23 as amended.

BACKGROUND

It is not uncommon in Brookline for leaf blowers to be used on a public way (e.g. blow leaves off of a sidewalk). Commercial landscapers will also blow leaves forward to the street where they collect them with a vacuum truck, as one cannot drive a vacuum truck up onto a lawn and not every location has a driveway.

The petitioner expressed frustration with several aspects of this, particularly noting dust clouds in the public domain as a result of blowing, and concern over people and companies depositing leaves or debris on private or public property (without consent). Current bylaws do not sharply define what is and is not permitted.

> 8.26.1 in our Storm Management section states:
>
> 2. Definitions….
> m. POLLUTANT: Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or *may be* introduced into any storm drain system, waters of the United States, and/or Commonwealth.
>
> Pollutants shall include without limitation:....4) refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
>
> And,

SECTION 7.5.11 OBSTRUCTIONS states:

> No person shall place or cause to be placed in any street or upon any sidewalk of the town, any lumber, coal, iron, trunk, bale, box, crate, cask, package, article, or anything whatsoever so as to obstruct a free passage for travelers, nor allow any of the same to remain more than one hour after being notified by a police officer to remove it, except that nothing herein contained shall be construed to prevent the use of streets and sidewalks for building purposes upon obtaining a permit from the Board of Selectmen.

While these may allow for interpretive prohibitions, they do not address directly the issue of yard debris on the public way, and certainly not the use of blowers thereon.

DISCUSSION

The petitioner wants to restrict blowers from being used on public ways. He cites public nuisance and health issues.

They can blow up particulate debris that is unhealthy. This issue was previously considered by the Moderator's Committee on Leaf Blowers and the Brookline Health Department. MassDEP monitors dust particulates at levels of 2.4 microns or less as this has been associated with disease. Most dust plumes generated by leaf blowers are on the order of 10 microns, which fall back down reasonably quickly. The Moderator's Committee cited a study by Fitz, et el at the University of California that found dust plumes dissipated to background levels in 5 to 10 minutes and did not travel more than 20 to 30 feet from the source. This recognition, though, should not be seen as an excuse for inconsiderate use of blowers that result in dust clouds that readily affect those in the immediate area. The petitoner rightly contends that we should not be expected to have to cross the street to avoid dust clouds.

The petitioner also objects to debris being deposited in the public way, and on other people's property.

The Advisory Committee shares these concerns. The Committee also recognizes, though, there are times when blowing leaves to the public way may, in practical terms, be unavoidable. Landscapers moving leaves to the street to use vacuum trucks is effective and need not be obstructive and damaging to the air quality. Likewise, it may make sense for people to blow their leaves out to where they can be easily collected and placed in containers or bags for removal, or blow sidewalks clear for safety.

Brookline has a tremendous tree canopy, much of it being public trees. We expect property owners to keep their walkways clear of snow. Leaves, especially wet, can be equally hazardous on walkways. Blowing those leaves off can provide a public good.

The frivolous use of leaf blowers is certain to continue at times. Regulating poor behavior is always a challenge. The Committee does not believe the proposed warrant article, as written or envisioned, will accomplish eliminating that sort of behavior. It could,

however, affect the common good by reducing the level of sidewalk clearance and prohibit an effective and important means of removing leaves (vacuum trucks). There are times where the use of a blower on a public way may be beneficial.

We fully concur that there is no excuse for dumping one's debris, whether with a blower or other means, on someone else's property.

Given that there is no direct reference to depositing yard debris in the current Leaf Blower section of the Town's bylaws, we recommend a specific reference be added. During our public hearings, Director Gallentine allowed how this specific reference would help them with guidance in enforcement efforts. Additionally, it was felt that it made understanding our bylaw a bit easier as it did not require cross referencing or interpreting the applicability of prohibitions or allowances.

The amended language offered by the Advisory Committee permits what is currently practiced and legal, but adds new explicit language requiring the removal of debris advanced onto a public way as a result of blowing, and prohibits the blowing of debris on to other's property without consent. We would have prefered to add additional language that would have required due care with regards to the safety of pedestrians and motorist, as well as having this include raking, sweeping or other means of depositing debris onto public or private property. But, that would go beyond the scope of this warrant article, so such refinements must wait for the future.

RECOMMENDATION

The Advisory Committee recommends keeping the current language of the existing bylaw and adding a new provision.

The Advisory Committee, by a vote of xx-xx-xx, recommends FAVORABLE ACTION on Warrant Article 23 AS AMENDED (bold) :

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 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 nonrefundable) 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.

e. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers in a manner that intentionally blows leaves or other debris onto private property not under their control, without the express consent of the owner or manager of such property, or onto a public way except for immediate removal.

XXX

ARTICLE 23

MOTION OFFERED BY THE PETITIONER

VOTED, that the Town amend Section 8.31.3 of the General By-laws, as follows (additions in **bold underline**, deletions in ~~strike through~~):

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 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 nonrefundable) 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.

e. Other than pursuant to the "immediate removal" exception in paragraph f. below, no Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property or onto property not under their control, including but not limited to the sidewalks and ways contiguous to such properties, and no person shall operate a leaf blower except on private property with the authorization or permission of the Property Owner or Property Manager.
f. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers in a manner that intentionally distributes leaves or other debris to property not under their control, without the express consent of the owner or manager of such property, except for immediate removal.

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

SUPPLEMENTAL EXPLANATION

As amended, petitioner's motion provides significant relief from the frivolous use of leaf blowers and the airborne debris, unnecessary carbon emissions, and undesired noise that result from such use. At the same time, petitioner recognizes the expressed need of the landscaper community to move leaves across sidewalks for removal from private property. Petitioner's amended motion, in paragraph "f." provides an exception (essentially the exception language proposed by the Advisory Committee) that would allow landscapers, in the words of the Advisory Committee (Combined Reports, 23-3) to "blow leaves forward to the street where they collect them with a vacuum truck, as one cannot drive a vacuum truck up onto a lawn and not every location has a driveway."

In the Combined Reports, the Advisory Committee's stated that, "The added language labeled "e." essentially prohibits the use of a blower on the sidewalk unless a property owner or manager approves it (an exercise in self-granting authority). This is clearly not the intent of the petitioner." With all due respect to the Advisory Committee, prohibiting the use of leaf blowers on sidewalks, as well as streets, was exactly the intent of the petitioner!

ARTICLE 24

TWENTY-FOURTH ARTICLE

Submitted by: Arthur Wellington Conquest III, TMM6

To see if the Town will amend the General by-laws to provide for a citizen complaint procedure as follows (the amended language is in bold):

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This By-law establishes the Commission for Diversity, Inclusion, and Community Relations ("Commission" or "CDICR") and the Office of Diversity, Inclusion, and Community Relations ("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 ("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) the substance of community is the recognition of human rights principles as applicable to all persons who come in contact with the Town; (3) 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) 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 shall be called Commissioners. Commissioners shall be appointed by the Select Board 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 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 Select Board 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 Select Board may appoint additional non-voting associate 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 Select Board 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 Select Board 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 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 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 Select Board candidates to fill such vacancies.

SECTION 3.14.2 APPOINTMENT, ROLES AND RESPONSIBILITIES OF THE DIRECTOR AND CHIEF DIVERSITY OFFICER

There shall be an Office of Diversity, Inclusion and Community Relations ("Office"), which shall be a unit of the Select Board's Office, and led by 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 ("Director"), 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 Select Board 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 Bylaw giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out the Director's duties. The Office shall be physically situated in whatever department the Town Administrator determines would 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 Select Board in the event that person believes, in their professional judgment, that a particular situation so warrants. The CDO 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 Select Board 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 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 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 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, provided, however, 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 Select Board, 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 Select Board, 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, 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 3.14.2), and after notifying the Town Administrator, ~~review and summarize the complaint 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 shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board, Library Trustees or Moderator as appropriate within 90 days of receipt of the complaint. The Commission/CDO, may in addition ~~(1) present its summary and concerns to the Town Administrator and the Select Board for consideration of further action and/or (2)~~ provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This 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, 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 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 shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Superintendent and/or School Committee as appropriate within 90 days of receipt of the complaint. 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 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:, according to procedures developed by the Commission and as approved by the Select Board, 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 complainant's options to bring proceedings at the Massachusetts Commission 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 Select Board, in an appropriate case, for action;~~

(vii~~i~~) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) ~~and (vii)~~ 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 annual report filed with the Board pursuant to
Section 3.14.6 of this By-law.

(viii~~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 to the extent not inconsistent with the procedures set forth in paragraphs (v) and (vi);

(ix) 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 in relation to its Fair Housing responsibilities, as authorized by law, under Bylaw 5.5;

(x~~i~~) 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 changes that will reduce and eliminate violations of rights;

(xi~~i~~) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xii~~i~~) 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 Select Board 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 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 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) At least every two years, prepare written organizational goals for the Commission ("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) 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 Select Board at a public meeting and posted on the Town's website. The Commission shall receive and consider the comments of the Select Board 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 By-law, the Commission, with the approval of the Select Board, 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. 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 Select Board, after review by Town Counsel. Such rules and regulations may further provide for the governance of the Commission with respect to matters such as the appointments of 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 of all complaints 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 Commission shall submit an annual report to the Select Board, the School Committee, and the Board of Library Trustees, detailing its activities and the results thereof. 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 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 and any other related Town by-laws, in consultation with other pertinent departments, and propose changes if necessary, by preparation of appropriate Warrant Articles for consideration by Town Meeting. <u>The Commission shall prepare a written report summarizing its review and proposing any changes no later than February 1, 2020.</u>

PETITIONER'S ARTICLE DESCRIPTION

The purpose of this article is to have the Town of Brookline take responsibility for rectifying racial discrimination (and other discrimination) complaints by requiring a Town board to investigate such complaints and make written findings as to their merit and to recommend appropriate actions to resolve such complaints. The existing procedures do not go far enough in ameliorating the complaints and concerns of people who feel they have been disrespected and aggrieved.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 23, 2019. By a vote of 6-2-0, the CDICR recommends FAVORABLE ACTION on Warrant Article 24 as amended.

DISCUSSION

CDICR had an extended discussion about this warrant article which fully covered the issues of acting upon it in the near term. Discussion included guidance read by the School Committee liaison that she had received from outside counsel with the schools-specific issues to implementation, and the issues from the Town's HR department (provided by the HR director) regarding implementation. Members also expressed the view that they did not have the necessary background to effectively carry out the proposed changes, and that they might need to resign to ensure that new members could be appointed who did have the necessary background.

Although the CDICR recognized these challenges, we also recognized that **to vote no action was to accept the Town's insufficient method for dealing with citizen complaints**. The CDICR felt that this is an opportunity for those who are not satisfied with the Town's lack of methods to appropriately and holistically address citizen complaints **to apply pressure and create a sense of urgency**. Therefore, the CDICR voted in favor of the warrant article with the amendment that it will not take effect until July 1, 2021. This allows sufficient time for the Town to respond to the planned change and either enact a separate citizen complaint review process that would replace the proposed bylaw changes (there are many examples of such citizen complain review boards nationally), or it would allow the Town and CDICR to plan to exercise this function as written, perhaps through appointment of individuals with appropriate backgrounds to a CDICR subcommittee on this topic. **In short, taking no action fits into longer systems of compliance.**

Therefore, the commission voted FAVORABLE ACTION on the warrant article amended as follows, by a vote of 6-2-0.

"To see if the Town will amend the General by-laws**, effective July 1, 2021,** to provide for a citizen complaint procedure as follows…"

SELECT BOARD'S RECOMMENDATION

A report and recommendation from the Select Board on Article 24 will be provided in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 24 will be included in the supplemental mailing.

XXX

ARTICLE 24

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

WA 24 proposes to again amend Article 3.14 of the General By-Laws pertaining to the powers and duties of the Commission for Diversity, Inclusion and Community Relations (CDICR), and Office of Diversity Inclusion and Community Relations (Diversity Office). WA 24 proposes to require the CDICR investigate discrimination complaints against the Town and recommend "appropriate action" to the relevant governing body within 90 days of the complaint. The warrant article does not propose to amend the current by-law's exception for complaints by Town or School employees but would include complaints against Town and School employees and elected and appointed officials.

The Select Board is concerned that asking volunteer town residents to serve in this capacity would open CDICR members up to liability and also provide a contradiction by asking members to be both advocate and investigator. These duties are typically covered by human resources and legal professionals who undergo countless hours of training and experience in investigative procedures and expertise in privacy, labor relations, and employment law. The Board reiterated their earlier position that a volunteer appointed body subject to the open meeting law should not be involved in specific matters that implicate complex privacy rights, labor law or other factors that could compromise the Town's interests.

The Board did note that CTOS identified some areas where the CDIRC has authority to review and receive complaints that may not be fully implemented. The HR Director also indicated a willingness to work with the petitioner on making the process more transparent. The Select Board agreed that referring the matter back to CDICR for review would be favored over an overhaul of the by-law, especially where it appears there is a mechanism already in place to address complaints. The Select Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: To refer Warrant Article 24 to the Diversity Inclusion Community Relations Commission (DICR) for review of the DICR existing complaint policy, with Petitioner Arthur Conquest and/or a designee, and the Chief Diversity Officer, and the Director of Human Resources for the purpose of improving the regulations and effectiveness of the current citizen complaint process.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Article 24 proposes to amend the General By-law establishing the Commission for Diversity, Inclusion and Community Relations and the Office of Diversity, Inclusion and Community Relations.

The Advisory Committee recommends REFERRAL to a Moderator's study committee.

BACKGROUND:
The purpose of Article 24 is "to provide for a citizen complaint procedure." When the Commission on Diversity, Inclusion and Community Relations (CDICR) was established by Town Meeting in 2014, consideration was given to providing it with the power to investigate citizen complaints of discrimination. At that time, Town Meeting decided not to include those powers in the Commission's brief, Article 24 would modify the General By-law that established the Commission to give it that power.

DISCUSSION:
Despite state laws against discrimination, members the groups identified in those statutes and in the Town By-law that covers the CDICR and the associated Department of Diversity, Inclusion and Community Relations encounter mistreatment that they perceive as being based on bias. This affects people of color, as well as seniors and members of the LGBQT community. Perception is often reality, and in many cases the perception of bias is indeed correct. The petitioner wishes to provide an effective mechanism to investigate such instances and – most important – create some mechanism to respond to them.

When both DICR and the CDICR were established, the study committee that developed the enabling by-law cautioned that:

"…a volunteer appointed body subject to the open meeting law should not be involved in specific matters that implicate complex privacy rights, labor law or other factors that could compromise the Town's interests. Should this Commission be assigned this quasi-judicial role, persons appearing before them would have to be advised that they had a right to bring legal counsel and that any statements they made could later be used to their detriment. The Commission would also require extensive training and a set of procedural rules to ensure fairness in such proceedings. We believe that the CDO, under the general advice and policy direction of the Commission, is better suited for this task."

While this remains true, when someone encounters bias in the ordinary course of day-to-day life, they usually do not have a clear way to ask Town government to help them respond. A public hearing by the ad hoc subcommittee assigned to review Article 24 heard ample proof of the problem. Many people of color need no such affirmation; they have experienced instances of bias in their encounters with both Town staff and with members of the general public.

The Advisory Committee recognizes that instances of bias occur, and it agrees that there should be a way for victims to channel their desire for help. Not all complaints of discrimination processed by the DICRC (and subsequently by the MCAD) have been resolved, and referral of relatively minor instances of bias are not given priority by the Massachusetts Commission Against Discrimination, which does have quasi-legal powers.

As well, the DICRC is nearing completion of its own (required) 5-year report on its activities and review of its bylaw. It is hoped that the DICRC 5-year review will take into consideration some of the complaints made in public testimony.

The cautions that were articulated in 2014 about giving a volunteer commission quasi-legal powers remain valid. However, there are potentially suitable models elsewhere, and the Advisory Committee concluded that a Moderator's Committee should review those models and report back on possible solutions for Brookline.

RECOMMENDATION:
By a vote of 22-0 with 2 abstentions, the Advisory Committee recommends REFERRAL to Moderator's committee and concurs with the motion offered by the Committee on Town Operations and Structure, as follows:

MOVED: to refer the subject matters raised by Article 24 to a Moderators Committee that shall include members with appropriate expertise and qualifications, to report no later than to the Annual Town Meeting for 2021.

ARTICLE 24

COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE
REPORT AND RECOMMENDATION

Motion to Refer to a Moderator's Committee

MOVED: to refer the subject matters raised by Article 24 to a Moderator's Committee that shall include members with appropriate expertise and qualifications, to report no later than the Annual Town Meeting for 2021.

EXPLANATION

Overall, the goal of this Article is to establish a new civilian complaint investigation procedure -- in addition to various existing procedures mentioned below -- to provide a timely and appropriate response to individuals involved in complaints. As submitted, it would amend Article 3.14 of the Town's By-laws pertaining to the Commission for Diversity, Inclusion and Community Relations and Citizen Complaints ("CDICR" or the "Commission") to add authority to investigate, make factual determinations, and recommend appropriate action regarding allegations of "discrimination or bias" committed by (1) Town officials or employees or (2) School officials or employees.

Currently, as enacted in 2014 after a year-long and diverse study committee, the Commission is empowered by §3.14 to review and summarize complaints "*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*." (A separate similar section applies to School employees and referral of complaints to the Superintendent and/or School Committee.)

Mr. Conquest stated that his proposal was actually not intended to replace or delete the existing investigation procedures of current By-law §3.14(A)(vii) "Receive Other Complaints"; i.e. the deletion was inadvertent. In fact, §vii may be the only Town forum for complaints by a private citizen against another private citizen, which seems a valuable option. Therefore, CTOS believes that section (vii) should be retained in the Town's By-Laws.

CTOS members discussed the proposed changes in detail at three meetings: a public hearing on Oct. 17, then also Oct. 24 and Nov. 5. Petitioner Arthur Conquest was present and spoke at each meeting. He, and on one occasion another individual, made several allegations of incidents of misconduct by Town employees and private residents, and of inadequate Town investigations. CTOS was in no position to review those allegations, let alone how common they are. Committee members also received written comments from attorneys representing the Town and Schools with regard to both specific and more global issues in the proposed changes; and we met with the Town's Director of Human Resources.

The Committee has some overall concerns about the well-intentioned Art. 24: First, its (unstated but implicit) interaction and/or parallelism with existing Town and School complaint procedures; second, many issues relating to state and federal laws (and court decisions) involving specific types of complaints and existing regulations; and third, the qualifications of the volunteer members of the Commission to act in a quasi-judicial role, as well as the need for ample staff support with the appropriate resources and skill-sets.

As we understand, the following are the current Town and School complaint procedures:

1. Certain specified citizen complaints about Town employees should be referred to the Human Resources Director under a 2011 investigation process that was revised in 2016, entitled "*Policy Against Discrimination, Sexual Harassment & Retaliation*."

2. Complaints about disability access should be referred to the ADA Coordinator (a staff position located within CDICR).

3. A detailed Police Dept. citizen complaint process, with optional appeals for Select Board further review, has been in effect since 1987, and is currently under review by the Select Board. A draft of those proposed changes is online at www.brooklinema.gov/DocumentCenter/View/20608/Marked-Up-Edits-to-Select-Board-Civilian-Complaint-Policy-; and a summary is at www.brooklinema.gov/DocumentCenter/View/20431/Report-on-the-Review-of-the-Police-Complaint-Process?bidId= At a recent Select Board public hearing, questions arose as to some proposals, and some additional factual data that might be helpful -- for example a finding, without statistics, "we found that not all complainants making appeals to the Select Board were granted the right to be heard by the Select Board." The full process was last reviewed by a large, broad, and diverse citizen committee in 2008, issuing a 72-page Final Report 1/7/09.

4. Complaints about School employees are, we understand, subject to a separate set of laws and procedures, and should be referred to the PSB Administration, and students are under the oversight of various separate laws and procedures for public schools.

5. Further, CTOS was told that in 2016, the CDICR voted procedures for their current responsibilities for citizen complaints. We also understand that those procedures have not yet been implemented.

While we have seen #'s 1, 3, and 5, we have not closely examined them or their performance record, nor for #'s 2 and 4, all of which seem timely to now do in a comprehensive way and coordinated for all of #'s 1-5.

The existing CDICR bylaw also states in §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 By-law and any other related Town bylaws, in consultation with other pertinent departments, and suggest changes if necessary." Again, we are not aware of any such review, which could of course propose specific changes related or analogous to Art. 24.

Citizen complaint review under the proposed By-law would invest the Commission and its Chief Diversity Officer (CDO) with authority and responsibilities that would require compliance with various privacy laws, union and contracting rules, Civil Service laws, the state's Open Meeting Law, and numerous other factors. Diversity Commission members -- and staff -- charged with implementing the proposed/amended bylaw would need a skill set and understanding of legal matters as well as knowledge of the numerous existing (Brookline, state, and even federal) laws, agencies, regulations, procedures, and remedies.

CTOS members strongly agree that the Town must strive for the best possible procedures for investigating citizen complaints, particularly complaints alleging racial/ethnic or gender bias, and that there must be an accessible, transparent process for making and adjudicating every complaint, with ultimate leadership and implementation responsibility falling on the Select Board. We need truly open doors; fair, timely, and responsive review processes; adherence to numerous other laws; appropriate due process for every complainant and every accused person; and timely and appropriate responses -- sometimes at the highest level of Town government. From what we have seen and heard, we are concerned that present procedures can be significantly improved, and surely merit examination.

At the same time, imposing adjudicative responsibility (and potential liability) on a volunteer commission whose members were not appointed for that purpose is not a step that should be taken lightly, nor should members of CDICR be put into a position where they could feel pressured to impose that responsibility on themselves. Indeed, we have seen that CDICR, while voting to support article 24, also stated in its "Discussion," consistent with one CTOS concern:

> … Members also expressed the view that they did not have the necessary background to effectively carry out the proposed changes, and that they might need to resign to ensure that new members could be appointed who did have the necessary background.

Similarly, a prospective study should be undertaken by a diverse committee with considerable specialized knowledge, not only of existing Town procedures, but also of potential interactions with federal and state laws, as well as regulatory agencies -- including privacy rights, and requirements of civil rights, civil service, and employment laws and procedures.

Therefore, CTOS voted unanimously to refer the goals and substance of Article 24 to a Moderator's Committee with appropriate expertise and qualifications, and with appropriate staff assistance (coordinated by/with the Town Administrator). CTOS recommends that the following be included in that committee's examination:

- a review of all existing Brookline complaint regulations, policies, and procedures, including the recent proposals to amend the 2017 Police Department (and Select Board appeals) process;
- a review of any other municipal complaint models that it deems instructive;

- recommendations for improvements in all current complaint procedures, striving for both maximum feasible consistency, as well as maximum effectiveness, fairness, and lawfulness; and with appropriate staffing; and
- any other recommendations that it deems relevant to the foregoing.

ARTICLE 24

SCHOOL COMMITTEE REPORT AND RECOMMENDATION

On October 24, 2019, the Brookline School Committee voted, with 6 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Ms. Charlupski, Ms. Ditkoff, Ms. Monopoli, and Mr. Pearlman), 1 opposed (Mr. Glover), and 1 abstention (Dr. Abramowitz) to recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 24: Amend Article 3.14 of the Town's General By-laws pertaining to the Commission for Diversity, Inclusion and Community Relations and Citizen Complaints. Some members expressed concern about the Warrant Article's applicability to children in the schools.

Please see the attached legal opinion prepared by Attorney John Foskett, Valerio Dominello & Hillman, LLC.

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October 23, 2019

VIA EMAIL

Julie Schreiner-Oldham
Chair
Brookline School Committee
333 Washington Street
Brookline, MA 02445

RE: Warrant Article 24 – Public Schools of Brookline

Dear Chair Schreiner-Oldham:

The Brookline School Committee has asked our firm in our capacity as school district counsel for an opinion that can be made available to the public regarding the above matter.

As we understand it, Warrant Article 24 if adopted by the Special Town Meeting would amend the Town's General By-laws, Art. 3.14, sec. 3.14.3(A)(vi), such that the Town's Commission for Diversity, Inclusion and Community Relations ("CDICR) would be responsible for investigating "discrimination" complaints against the Public Schools of Brookline ("PSB") by interviewing the complainant and witnesses, issuing findings, and recommending "appropriate action" to the Superintendent and/or School Committee. It appears that the amendment proposed in Article 24 would apply to all school-related "discrimination" complaints against PSB except those made by employees. Accordingly, as drafted it would not exclude from the CDICR process complaints by or against PSB students.

Based on these facts, we believe that Article 24 is probably not valid and also is highly inadvisable to the extent that it applies to complaints involving PSB students.

These complaints generally arise under "Title IX", 20 U.S.C., § 1681, the federal statute which bars gender discrimination (including sexual harassment) in the public schools, and under "Title VI", 42 U.S.C., § 2000d, the federal statute which for our purposes bars discrimination based on race, color, or national origin in the public schools. The Office for Civil Rights ("OCR") in the U.S. Department of Education has made it clear that the responsibility for

preventing, investigating, and remedying these types of discrimination is placed directly on the schools and on their employees.

For example, the guidance which currently sets forth OCR's interpretation of the law regarding sexual harassment provides that "[a] school has a responsibility to respond promptly and effectively to sexual harassment"; requires that schools must adopt grievance procedures that enable the schools to discover harassment "as early as possible" and to "effectively correct[] problems"; and mandates that the school as part of its investigation take "immediate and appropriate steps to investigate" and take corrective steps promptly, including stopping the harassment and preventing its recurrence. *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, January 2001 at 9, 14-15, 19. Moreover, OCR requires that schools designate a Title IX Coordinator who is responsible for overseeing the school's Title IX compliance, including investigations and resolutions, *id.* at 21, and that school staff be trained in Title IX requirements and procedures. Because the responsibility for all of this is placed squarely on PSB, we do not believe that OCR would consider delegation of this important task to a non-PSB entity – either initially or as a further step in the process - as adequate compliance with the obligations of PSB under the law.

We note that if the CDICR process is a further step to the PSB investigation this would create an additional legal problem. These investigations must take place and conclude with a resolution expeditiously. Adding another investigatory layer would interfere with that.

This is further complicated if the investigation involves students who are placed on individualized education plans ("IEP's") or so-called "504 plans" in compliance with the federal laws that govern special education. The schools are staffed with employees who are familiar with the requirements of these laws and how they may apply to an investigation where the complainant, the victim, or both may be on such a plan. That is an additional reason to require that the investigation and outcome be handled and completed by PSB.

Frequently a complaint involving students under Title IX or Title VI will also involve what is defined as "bullying" under Massachusetts law, G.L. c. 71, § 37O. That law requires that the school district establish a bullying prevention and intervention plan that, among other things, contains procedures for "promptly responding to and investigating reports" of bullying, §37O(a)(1) and (2). The law specifies that upon receipt of a report, "the school principal or designee shall promptly conduct an investigation", § 37O(g). We therefore do not believe that

this role can be delegated to a third party – again, whether initially or as a further step. In addition, as with the Title IX/Title VI process, bullying investigations must occur and be resolved expeditiously.

Often these investigations will result in student discipline of some sort. Article 24 apparently would involve the CDICR recommending "appropriate action". Student discipline is clearly the province of PSB officials under G.L. c. 71, §§ 37H, 37H ½, and 37H ¾, as well as 603 CMR 53.00. Getting input from the CDICR as to student discipline would also seem improper under the law.

Finally, most of the information involved in these investigations will constitute personally identifiable education information for the specific students involved. As such it is protected from unauthorized disclosure to third parties without the consent of parents or of eligible students both by Massachusetts law, G.L. c. 71, §§ 34D and 34E and 603 CMR 23.00, as a "student record" and by federal law, "FERPA", 20 U.S.C., § 1232g, as an "education record". Members of the CDICR are not "authorized school personnel" under 603 CMR 23.02 and do not meet the narrow exceptions for disclosure set forth in 603 CMR 23,.07(4). Likewise, they do not meet the exceptions for disclosure under FERPA as set forth in 34 CFR § 99.31.

We therefore believe that the amendment proposed by Article 24 as it would affect discrimination claims by or against PSB students would be neither valid nor advisable.

Valerio Dominello & Hillman, LLC
By:

John Foskett

JF:ham

cc: Elizabeth B. Valerio, Esq.
Joslin Murphy, Esq.

ARTICLE 24

AMENDMENT OFFERED BY MARIAH NOBREGA, TMM4

VOTED:

1. To have the amendments set forth in this motion effective July 1, 2021.

2. To strike the sentence proposed to be added at the end of Section 3.14.7.

ARTICLE 24

MOTION OFFERED BY THE PEITITONER

MOVED: The language of the article as originally filed with the following amendment to section vii: (deletions ~~struck~~, additions in **bold and underlined**- marked against the existing by-law)

(vii) Receive Other Complaints~~:, according to procedures developed by the Commission and as approved by the Select Board, 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. **After receiving such a complaint, the Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board within 90 days of receipt of the complaint.** ~~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 complainant's options to bring proceedings at the Massachusetts Commission 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 Select Board, in an appropriate case, for action;~~ **The Commission/CDO may in addition provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies.**

Clean version:
(vii) Receive Other Complaints from any person who comes in contact with the Town, concerning allegations of discrimination or bias against a member of a Brookline Protected Class. After receiving such a complaint, the Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board within 90 days of receipt of the complaint. The Commission/CDO may in addition provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies.

Additional commentary from petitioner:

If Warrant Article #24 is referred to a Moderator's Committee, I would like to see that committee consist of the following members

1. One member from the Advisory Committee

2. " " " " CTOS
3. " " " " CDICR
4. " " " " Human Resources Department
5. " " " " Select Board
6. " " " " School Committee
7. " " " " Person from the People of Color Caucus
8. The Petitioner (Ex-Officio)

ARTICLE 24

FULL PETITIONER MOTION

VOTED: That the Town amend the General by-laws to provide for a citizen complaint procedure as follows (the amended language is in **bold underline** deletions are ~~struck~~):

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This By-law establishes the Commission for Diversity, Inclusion, and Community Relations ("Commission" or "CDICR") and the Office of Diversity, Inclusion, and Community Relations ("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 ("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) the substance of community is the recognition of human rights principles as applicable to all persons who come in contact with the Town; (3) 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) 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 shall be called Commissioners. Commissioners shall be appointed by the Select Board 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 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 Select Board 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 Select Board may appoint additional non-voting associate 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 Select Board 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 Select Board 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 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 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 Select Board candidates to fill such vacancies.

SECTION 3.14.2 APPOINTMENT, ROLES AND RESPONSIBILITIES OF THE DIRECTOR AND CHIEF DIVERSITY OFFICER

There shall be an Office of Diversity, Inclusion and Community Relations ("Office"), which shall be a unit of the Select Board's Office, and led by 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 ("Director"), 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 Select Board 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 Bylaw giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out the Director's duties. The Office shall be physically situated in whatever department the Town Administrator determines would 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 Select Board in the event that person believes, in their professional judgment, that a particular situation so warrants. The CDO 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 Select Board 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 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 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 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, provided, however, 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 Select Board, 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 Select Board, 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, 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 3.14.2), and after notifying the Town Administrator, ~~review and summarize the complaint 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 shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board, Library Trustees or Moderator as appropriate within 90 days of receipt of the complaint.** The Commission/CDO, may in addition ~~(1) present its summary and concerns to the Town Administrator and the Select Board for consideration of further action and/or (2)~~ provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This 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, 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 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 shall (1)**

investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Superintendent and/or School Committee as appropriate within 90 days of receipt of the complaint. 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 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~~:, according to procedures developed by the Commission and as approved by the Select Board, 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. **After receiving such a complaint, the Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board within 90 days of receipt of the complaint.** ~~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 complainant's options to bring proceedings at the Massachusetts Commission 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 Select Board, in an appropriate case, for action;~~ **The Commission/CDO may in addition provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies.**

(vii~~i~~) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) ~~and (vii)~~ 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 annual report filed with the Board pursuant to
Section 3.14.6 of this By-law.

(viii~~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 **to the extent not inconsistent with the procedures set forth in paragraphs (v) and (vi);**

(i~~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 in relation to its Fair Housing responsibilities, as authorized by law, under Bylaw 5.5;

(x~~i~~) 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 changes that will reduce and eliminate violations of rights;

(xi~~i~~) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xii~~i~~) 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 Select Board 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 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 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) At least every two years, prepare written organizational goals for the Commission ("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) 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 Select Board at a public meeting and posted on the Town's website. The Commission shall receive and consider the comments of the Select Board 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 By-law, the Commission, with the approval of the Select Board, 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. 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 Select Board, after review by Town Counsel. Such rules and regulations may further provide for the governance of the Commission with respect to matters such as the appointments of 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 of all complaints 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 Commission shall submit an annual report to the Select Board, the School Committee, and the Board of Library Trustees, detailing its activities and the results thereof. 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 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 and any other related Town by-laws, in consultation with other pertinent departments, and propose changes if necessary, by preparation of appropriate Warrant Articles for consideration by Town Meeting. **The Commission shall prepare a written report summarizing its review and proposing any changes no later than February 1, 2020.**

ARTICLE 25

TWENTY-FIFTH ARTICLE

Submitted by: Amy Hummel, TMM12

To see if the Town will adopt the following version of a new Article 8.39 of the Town By-Laws,

ARTICLE 8.39
BAN ON TOWN USE OF FACE SURVEILLANCE

SECTION 8.39.1 DEFINITIONS

1. "Face surveillance" shall mean an automated or semi-automated process that assists in identifying an individual, or in capturing information about an individual, based on the physical characteristics of an individual's face.
2. "Face surveillance system" shall mean any computer software or application that performs face surveillance.
3. "Brookline" shall mean any department, agency, bureau, and/or subordinate division of the Town of Brookline.
4. "Brookline official" shall mean any person or entity acting on behalf of Brookline, including any officer, employee, agent, contractor, subcontractor, or vendor.

SECTION 8.39.2 BAN ON TOWN USE OF FACE SURVEILLANCE

1. It shall be unlawful for Brookline or any Brookline official to:
    a. obtain, possess, access, or use (i) any face surveillance system, or (ii) information derived from a face surveillance system;
    b. enter into a contract or other agreement with any third party for the purpose of obtaining, possessing, accessing, or using, by or on behalf of Brookline or any Brookline official, (i) any face surveillance system, or (ii) data derived from a face surveillance system; or
    c. issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, possess, access, or use (i) any face surveillance system, or (ii) information derived from a face surveillance system.

SECTION 8.39.3 ENFORCEMENT

1. Face surveillance data collected or derived in violation of this By-Law shall be considered unlawfully obtained and shall be deleted upon discovery, subject to applicable law.
2. No data collected or derived from any use of face surveillance in violation of this By-Law and no evidence derived therefrom may be received in evidence in any Town proceeding.

3. Any violation of this By-Law constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this By-Law. An action instituted under this paragraph shall be brought against the respective Town department, and the Town and, if necessary to effectuate compliance with this By-Law, any other governmental agency with possession, custody, or control of data subject to this By-Law.
4. Violations of this By-Law by a Town employee shall result in consequences that may include retraining, suspension, or termination, subject to due process requirements and provisions of collective bargaining agreements.
5. Nothing in this Article shall be construed to limit any individual's rights under state or federal law.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Summary

- Face surveillance technology is an affront to a free society, effectively forcing everyone to wear a permanent ID badge in public;
- The software disproportionately misclassifies women and people of color;
- Face surveillance technology poses unprecedented threats to civil liberties; examples include:
    - Creating due process harms, such as shifting the current principle of "presumed innocent" to "people who have not been found guilty of a crime, yet;"
    - Normalizing the elimination of practical obscurity; and
    - Chilling the exercise of constitutionally protected free speech.
- There is no state or federal law regulating government use of face surveillance technology, meaning there are no civil rights protections in place.
- Facial surveillance supports and amplifies surveillance capitalism and the monetization of individuals' privacy.
- This warrant article furthers the goals of bills currently before the Massachusetts House and Senate (Senate Bill 1385, and House Bill 1538) which seek to place a moratorium on government use of face surveillance technology statewide. Senator Cindy Creem is the lead sponsor of the Senate bill.

Explanation

1. Facial Recognition Technology is an affront to a free society

The fundamental effect of facial recognition technology is that it is tantamount to forcing **everyone** to **wear a personal ID badge at all times**. Free people do not and

should not be compelled to wear ID badges, let alone ones that are permanent, immutable and biometric.

Ordinary people who want to seek treatment for substance use disorder, visit AA meetings, seek reproductive health care, visit friends and family, attend political protests, and more cannot leave their faces at home. This technology makes it easy to track every person's public movements, habits, and associations—with the push of a button.

Facial recognition technology uses statistical measurements of people's facial features to digitally identify them in still photos, videos and in real-time footage. Tech companies claim these systems can also determine age, gender, mood, and other personal characteristics. The data gathered can easily be stored, shared and aggregated to map out individuals' activities, liaisons, patterns and preferences.

These capabilities are an anathema in a free society.

2. The Software is badly flawed and disproportionately misclassifies women and people of color

Compounding the problems inherent in facial recognition technology is that it is also highly inaccurate in classifying the faces of women, young people, and people of color. These inaccuracies disproportionately put some individuals and groups at a greater risk of harmful and traumatic "false positive" identification. The problem is exacerbated by the fact that racial and other biases are often already baked into existing databases. For example mugshots images, which are taken upon arrest, include the faces of individuals who may be entirely innocent. Moreover, when there are false positives, the trauma and the stigma impacting victims of the mistake continues long after errors are officially corrected.

3. Legislation and policies are either wholly absent or inadequate.

Like many new and emerging technologies, the use of facial recognition software is quickly becoming ubiquitous in both public and private sectors, long before most communities are able to respond with legislation. And, the monetization and ease of acquisition of surveillance technology, including facial recognition technology, make the spread of unregulated use not only certain, but swift. For example, Ring doorbell, now owned by Amazon, has partnerships with a variety of police departments, which is turning many communities in police surveillance surrogates, without meaningful civil rights and civil liberties protections. This past summer, at least one police department raffled off Ring doorbells in exchange for information sharing. The surveillance infrastructure, created entirely outside of any regulatory oversight or framework, is bad enough in-and-of-itself. Permitting unregulated facial recognition —for which Ring already has a patent—only compounds this problem, encouraging the proliferation of a surveillance state, predicated on suspicion and distrust of everyone in our community.

4. Facial recognition technology unequivocally threatens civil liberties

According to privacy scholars Woodrow Hartzog and Evan Selinger: "facial recognition technology enables a host of other abuses and corrosive activities:

- Disproportionate impact on people of color[1] and other minority and vulnerable populations[2].
- Due process harms, which might include shifting the ideal[3] from "presumed innocent" to "people who have not been found guilty of a crime, yet."
- Facilitation of harassment[4] and violence.
- Denial of fundamental rights and opportunities, such as protection against[5] "arbitrary government tracking of one's movements, habits, relationships, interests, and thoughts."
- The suffocating restraint[6] of the relentless, perfect enforcement of law.
- The normalized elimination of practical obscurity[7],[8].
- The amplification of surveillance capitalism[9]."[10]

It's also important to know that the federal government has access to over 400 million non-criminal photos, which include state DMV and State Department photos. A 2016 Georgetown Law Center on Privacy & Technology publication, entitled The Perpetual Line-up, reported that one in two adults in America appear in government face recognition networks.[11]

How we protect our civil rights and civil liberties is up to us. By banning the Town's use of facial surveillance technology, we act to meaningfully protect our civil rights and civil liberties, and protect our fundamental freedoms to come and go about our lives in relative anonymity, free from overreaching surveillance and without a compulsory biometric ID badge.

5. What Brookline Can Do: Ban facial recognition technology in our town – and support state legislative action

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[1] https://www.law.georgetown.edu/privacy-technology-center/events/color-of-surveillance-2017/
[2] https://www.theatlantic.com/technology/archive/2016/04/the-underlying-bias-of-facial-recognition-systems/476991/
[3] https://www.project-syndicate.org/commentary/dangers-of-biometric-data-by-anne-marie-slaughter-and-stephanie-hare-2018-07
[4] https://arstechnica.com/tech-policy/2016/04/facial-recognition-service-becomes-a-weapon-against-russian-porn-actresses/
[5] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2394838
[6] http://www.businessinsider.com/how-china-uses-facial-recognition-technology-surveillance-2018-2
[7] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2439866
[8] https://idlewords.com/2019/06/the_new_wilderness.htm
[9] http://www.shoshanazuboff.com/new/recent-publications-and-interviews/big-other-surveillance-capitalism-and-the-prospects-of-an-information-civilization/
[10] https://medium.com/s/story/facial-recognition-is-the-perfect-tool-for-oppression-bc2a08f0fe66
[11] https://www.perpetuallineup.org

Without a ban on facial recognition**,** the technology is likely to become entrenched without meaningful public knowledge or input, and it will become increasingly difficult to legislate and regulate the longer it is unfettered.

Some communities are beginning to respond and Brookline should be among these leaders. This particular technology threatens civil rights and civil liberties so profoundly that the tech hub of San Francisco in May became the first city in the nation to ban its government from using it; Somerville followed shortly after, and Cambridge is now considering a ban, which seems likely to pass this fall. Other forward thinking communities are working to do the same.

The Massachusetts state legislature is currently considering Senate Bill 1385, (an Act Establishing A Moratorium On Face Recognition and Other Remote Biometric Surveillance Systems), and House Bill 1538, (an Act Relative To Unregulated Face Recognition and Emerging Biometric Surveillance Technologies). The bills would make it unlawful for government entities in the Commonwealth to acquire, possess, access, or use face recognition or any at-a-distance biometric surveillance system, or acquire, possess access, or use information derived from a facial recognition system or from biometric surveillance systems operated by another entity.

These bills also create a private right of action with both legal and equitable remedies, as well as sanctions against government officials who violate the provisions contained therein.

By passing a similar law locally, we can join our neighbors who recognize the dangers the technology presents to a free society, and demonstrate our support for the aforementioned House and Senate Bills seeking to do the same. We do not have to wait for digital dystopia; we can and must act now to protect and preserve our freedoms for the next generation of Brookline residents.

WOMEN'S COMMISSION RECOMMENDATION

The Brookline Commission for Women considered Article 25 in particular because of the data on gender-related problems associated with facial recognition software. As reported in numerous research studies, facial recognition technology currently in use can result in significant errors in the identification of people of color, and particularly women of color. The Commission agrees with the petitioner that the possibility of misidentification of individuals and/or mistakes concerning interpretation of emotion from facial recognition are serious enough to merit extreme caution in the use of this technology, including a ban on its adoption in Brookline.

Commissioners noted in particular the already troubling over-representation of women of color in our female prison population and the possibility that the problems associated with the technology noted above could exacerbate that and other racially-driven inequities in the criminal justice system.

Some commissioners were concerned that language in the original article about the ability to use recorded data from cameras, especially that from third parties, to help solve serious crimes could unduly tie the hands of law enforcement. Commissioners felt those concerns were satisfactorily addressed by the petitioner's removing language from the article pertaining to use of "information derived from a face surveillance system."

The BCW voted unanimously to urge favorable action by Town Meeting on the amended version of Warrant Article 25.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 23, 2019. By a vote of 6-0-2, the CDICR recommends FAVORABLE ACTION on Warrant Article 25.

DISCUSSION

WA 25 would ban town use of face surveillance technology by the Town. Despite the concerns expressed by the police department that such a ban would limit the type of evidence it is able to access, the CDICR is deeply concerned about the use of facial surveillance technology and the potential for disparate impact. In particular, significant evidence world-wide shows high failure rates when identifying people of color - especially black women – as well as children. The CDICR is further deeply concerned about the civil liberties implications of such invasive and largely unregulated technology.

The CDICR voted FAVORABLE ACTION on Warrant Article 25, by a vote of 6-0-2.

REVISED EXPLANATION OFFERED BY THE PETITIONER

Summary

This proposed ban seeks to prevent use of face surveillance by the Town, throughout the Town in order to preserve our civil rights and civil liberties.

This warrant article **furthers the goals of Massachusetts Senate Bill 1385, sponsored by Senator Cindy Creem**, and HB 1538, which seek to place a moratorium on government use of face surveillance technology statewide.

There are **NO state and federal regulations** to protect us from it, meaning there are **no civil rights or civil liberties protections** in place.

Brookline doesn't currently use face surveillance so it is the perfect time to maintain the status quo, put a stake in the ground to **protect civil rights and civil liberties, and push back** against **surveillance capitalism.**

Facial recognition technology unequivocally threatens civil liberties, **turning our faces into ID badges** that we are forced to wear every time and all the time we are in public. With it, our whereabouts, habits, and associations through time and space can easily be aggregated, analyzed and shared with a push of a button.

It presents real due process and First Amendment concerns, and in the absence of law can be tantamount to a warrantless search.

The **technology is deeply flawed**, prone to misidentifying minorities, women and children at an alarmingly high rate, and misgendering individuals.

The proposed **ban does not prevent** Brookline or any Brookline official from **collecting evidence or exchanging information** with other departments or agencies.

Brookline needs a by-law not a policy, because hoping that everyone does the right thing is not enough when it comes to protecting us from this dystopian and flawed technology. Town Meeting learned this the hard way, as evidenced by the current and ongoing disregard of both of its camera policy resolutions.

We should not permit department-specific exemptions. A current and active request for an exemption to this proposed By-Law, at a time when we do not use face surveillance technology, is concerning, alarming and out-of-step with protecting civil liberties, and is exactly the reason Town Meeting needs to firmly legislate against it.

The by-law **serves to act as Brookline's moratorium o**n face surveillance; it maintains the status-quo and prevents normalization of face recognition use.

1. **Face Surveillance in the Absence of Law and implications in Brookline**

Like many new and emerging technologies, the use of face recognition software is quickly becoming ubiquitous in both public and private sectors, long before most communities are able to respond with legislation. The monetization and ease of acquisition of surveillance technology, including face recognition technology, make the spread of unregulated use not only certain, but swift.

For example, doorbell camera company Ring, owned by Amazon, has bragged about its partnerships with hundreds of police departments, which give officers potential access to camera footage taken at the front doors of private homes. This is turning communities into police surveillance surrogates, without meaningful civil rights or civil liberties protections. Police departments across the country, including in Massachusetts, have encouraged this sharing of video surveillance, and blurring the lines between public and private surveillance, by raffling off doorbells donated by the company.

The surveillance infrastructure, currently being created entirely outside of any regulatory oversight or framework, is bad enough in-and-of-itself. Permitting unregulated facial

recognition, which Amazon and hundreds of other companies are focused on deploying and profiting from, only compounds this problem, encouraging the proliferation of a surveillance state predicated on suspicion and distrust of everyone in our community.

Supercharging the Brookline camera infrastructure already in place: Brookline currently has 246 cameras in and around its public facilities **excluding** the Department of Homeland Security cameras (CIMS cameras), and the Brookline Police Department (BPD) cameras – for which the Surveillance Technology and Military Type Equipment (STMTE) Committee has yet to receive a count. That number also does not include all of the private camera footage available to the BPD through a program they announced on Facebook, and any other footage any business or individual may supply.

Providing department-specific exemptions for the use of face surveillance could supercharge any of these sources, and would green-light the adoption of this pernicious technology. To Brookline's credit, Town departments are not currently using face surveillance. We should preserve this status quo, and certainly **should not pave the way** for adopting face surveillance **by providing any Town department with a special exemption**. It is critical to implement a prohibition before the use of face surveillance is normalized, and to do our part to help prevent any such normalization.

Policy isn't enough: Twice Town Meeting voted for policies to remove and/or regulate the CIMS cameras. Those votes and those policies proved ineffective, and have been and are now being ignored. This is why a by-law, and not a resolution or policy, is in order now.

NB: This warrant article will not prevent the use of any cameras, their proliferation or the ability of anyone to look at a picture or footage; but it will guard against Brookline's use of face surveillance on those stored or live images.

2. Facial Recognition Technology is an affront to a free society

The fundamental effect of facial recognition technology is that it is tantamount to forcing **everyone** to **wear a personal ID badge at all times**. Free people do not and should not be compelled to wear ID badges let alone ones that are permanent, immutable and biometric. This compounded by the fact that facial recognition is inherently digital, churning out personal data can be stored indefinitely, readily shared, and combined with all manner of data that companies and government agencies already have and continue to collect about individuals.

Ordinary people who want to seek treatment for substance use disorder, visit AA meetings, seek reproductive health care, visit friends and family, attend political protests, and more cannot leave their faces at home. This technology makes it easier to track individuals' public movements, habits, and associations—with the push of a button.

Facial recognition technology uses statistical measurements of people's facial features to digitally identify them in still photos, videos and in real-time footage. Tech companies tout that these systems can determine not only identity, but also age, gender, mood, and other personal characteristics. This data is gathered, generated and used, typically without an individual's knowledge or consent. In an environment devoid of any legal protections, it is easily stored, shared and aggregated to map out individuals' activities, liaisons, patterns and preferences.

The use and exploitation of these capabilities are an anathema in a free society.

3. **The Software is badly flawed, disproportionately misidentifying trans people, people of color, women and children**

Compounding the problems inherent in facial recognition technology is that it is also highly inaccurate in classifying the faces of women, young people, trans people and people of color. These inaccuracies disproportionately put these individuals and groups at a greater risk of harmful and traumatic "false positive" identification.

The problem is exacerbated by the fact that racial and other biases are often already baked into existing databases. For example, mugshots images, which are taken upon arrest, include the faces of individuals who may be entirely innocent and never charged with a crime. Moreover, when there are false positives, the trauma and the stigma impacting victims of the mistake continues long after errors are officially corrected.

Moreover, individuals who have been misidentified may not even be aware that the technology was used to identify them, and as a result are not able to mount an appropriate defense by seeking information about how many other people were identified, and by what algorithm or from what dataset. This is a fundamental **due process** issue that **even the courts are prevented from weighing in on** because they do not know when and how evidence derived from face surveillance is used. This, along with the technology's disproportionately high error rate for marginalized communities and protected classes, further compounds issues of equity and racism.

4. **What the Privacy Scholars have to say**

According to privacy scholars Woodrow Hartzog and Evan Selinger: "facial recognition technology enables a host of … abuses and corrosive activities:

- Disproportionate impact on people of color[12] and other minority and vulnerable populations[13].
- Due process harms, which might include shifting the ideal[14] from "presumed innocent" to "people who have not been found guilty of a crime, yet."
- Facilitation of harassment[15] and violence.
- Denial of fundamental rights and opportunities, such as protection against[16] "arbitrary government tracking of one's movements, habits, relationships, interests, and thoughts."
- The suffocating restraint[17] of the relentless, perfect enforcement of law.

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[12] https://www.law.georgetown.edu/privacy-technology-center/events/color-of-surveillance-2017/
[13] https://www.theatlantic.com/technology/archive/2016/04/the-underlying-bias-of-facial-recognition-systems/476991/
[14] https://www.project-syndicate.org/commentary/dangers-of-biometric-data-by-anne-marie-slaughter-and-stephanie-hare-2018-07
[15] https://arstechnica.com/tech-policy/2016/04/facial-recognition-service-becomes-a-weapon-against-russian-porn-actresses/
[16] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2394838
[17] http://www.businessinsider.com/how-china-uses-facial-recognition-technology-surveillance-2018-2

- The normalized elimination of practical obscurity[18,19]."

It's also important to know that the federal government has access to over 400 million non-criminal photos, which include state DMV and State Department photos. **A 2016 Georgetown Law Center on Privacy & Technology publication, entitled The Perpetual Line-up,** reported that one in two adults in America appear in government face recognition networks.

The ACLUM sued the **Massachusetts RMV** for information regarding current practices of using license pictures, after the RMV refused to respond to FOIA requests. It is now clear that the state RMV has provided law enforcement with unfettered access to our own state drivers license photos – **photos taken for a civil purpose, with no process, policy or oversight,** and has done so for **13 years** with **no auditing.**

NB: Should the by-law fail, or should an amendment pass that actively enables use by the BPD to use face surveillance, the RMV is a likely resource for the BPD. The FOIA litigation revealed that the BPD has proactively used RMV face surveillance in the past, but not currently per department assurances.

5. What Brookline Can Do: Ban facial recognition technology in our town – and support state legislative action

Without a ban on facial recognition**,** the technology is likely to become entrenched without meaningful public knowledge or input, and it will become increasingly difficult to legislate and regulate the longer it is unfettered.

Some communities are beginning to respond, and Brookline should be among these leaders. Our voice should be included among those seeking to prevent the normalization of government use of face surveillance.

This particular technology threatens civil rights and civil liberties so profoundly that the tech hub of San Francisco, in May, became the first city in the nation to ban its government from using it; Berkeley and Oakland California have followed, as well as Somerville. Cambridge is considering a ban, and other forward-thinking communities are working to do the same.

The Massachusetts state legislature is currently considering Senate Bill 1385, sponsored by Senator Creem, (an Act Establishing A Moratorium On Face Recognition and Other Remote Biometric Surveillance Systems), and House Bill 1538, (an Act Relative To Unregulated Face Recognition and Emerging Biometric Surveillance Technologies). These bills would make it unlawful for government entities in the Commonwealth to acquire, possess, access, or use face recognition or any at-a-distance biometric surveillance system, or acquire, possess access, or use information derived from a facial recognition system or from biometric surveillance systems operated by another entity.

The proposed bills create a private right of action with both legal and equitable remedies.The success, timing and rigor of any state legislation are all unknowns, which is why we should act resolutely now, to protect Brookline.

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[18] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2439866

[19] https://idlewords.com/2019/06/the_new_wilderness.htm

By passing a law locally, we can join our neighbors who recognize the dangers the technology presents to a free society, and demonstrate our support for the aforementioned House and Senate Bills seeking to do the same. We do not have to wait for digital dystopia; we can and must act now to protect and preserve our freedoms for the next generation of Brookline residents.

MOTION OFFERED BY THE PETITIONER

MOVED: That the Town will adopt the following version of a new Article 8.39 of the Town By-Laws,

ARTICLE 8.39
BAN ON TOWN USE OF FACE SURVEILLANCE

SECTION 8.39.1 DEFINITIONS

1. "Face surveillance" shall mean an automated or semi-automated process that assists in identifying an individual, or in capturing information about an individual, based on the physical characteristics of an individual's face.
2. "Face surveillance system" shall mean any computer software or application that performs face surveillance.
3. "Brookline" shall mean any department, agency, bureau, and/or subordinate division of the Town of Brookline.
4. "Brookline official" shall mean any person or entity acting on behalf of Brookline, including any officer, employee, agent, contractor, subcontractor, or vendor.

SECTION 8.39.2 BAN ON TOWN USE OF FACE SURVEILLANCE

1. It shall be unlawful for Brookline or any Brookline official to:
   a. obtain, possess, access, or use any face surveillance system;
   b. enter into a contract or other agreement with any third party for the purpose of obtaining, possessing, accessing, or using, by or on behalf of Brookline or any Brookline official any face surveillance system; or
   c. issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, possess, access, or use (i) any face surveillance system, or (ii) information derived from a face surveillance system based on photographic, video or other images originally captured within the Town of Brookline.

2. Nothing in Section 8.39.2(1) shall prohibit Brookline or any Brookline official from:
   a. using evidence relating to the investigation of a specific crime that may have been generated from a face surveillance system; or
   b. obtaining or possessing (i) an electronic device, such as a cell phone or computer, for evidentiary purposes, or (ii) an electronic device, such as

a cell phone or tablet, that performs face surveillance for the sole purpose of user authentication;

c. using face recognition on an electronic device, such as a cell phone or tablet, owned by Brookline or by such official, for the sole purpose of user authentication;
d. using social media or communications software or application for communicating with the public, provided such use does not include the affirmative use of any face surveillance;
e. using automated redaction software, provided such software does not have the capability of performing Face surveillance; or
f. complying with the National Child Search Assistance Act.

SECTION 8.39.3 ENFORCEMENT

1. Face surveillance data collected or derived in violation of this By-Law shall be considered unlawfully obtained and shall be deleted upon discovery, subject to applicable law.
2. No data collected or derived from any use of face surveillance in violation of this By-Law and no evidence derived therefrom may be received in evidence in any Town proceeding.
3. Any violation of this By-Law constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this By-Law. An action instituted under this paragraph shall be brought against the respective Town department, and the Town and, if necessary to effectuate compliance with this By-Law, any other governmental agency with possession, custody, or control of data subject to this By-Law.
4. Violations of this By-Law by a Town employee shall result in consequences that may include retraining, suspension, or termination, subject to due process requirements and provisions of collective bargaining agreements.
5. Nothing in this Article shall be construed to limit any individual's rights under state or federal law.

SECTION 8.39.4 SEVERABILITY

1. If any portion or provision of this By-Law is declared invalid or unenforceable by a court of competent jurisdiction or by the Office of the Attorney General, the remaining provisions shall continue in full force and effect.

SELECT BOARD'S RECOMMENDATION

A report and recommendation under Article 25 will be provided in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 25 will be provided in the supplemental mailing.

XXX

ARTICLE 25

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On November 12 the Select Board voted FAVORABLE ACTION on the motion offered by the petitioner. More detail on the Board's position on these articles will be provided in the supplement to be distributed in the aisles the first night of Town Meeting.

ARTICLE 25

SCHOOL COMMITTEE REPORT AND RECOMMENDATION

On October 24, 2019, the Brookline School Committee voted, with 4 in favor (Ms. Federspiel, Ms. Charlupski, Mr. Glover, and Mr. Pearlman), 0 opposed, and 4 abstentions (Ms. Schreiner-Oldham, Dr. Abramowitz, Ms. Ditkoff, and Ms. Monopoli) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 25: Adoption of New General By-law Prohibiting the Town from using Face Surveillance.

The School Committee unanimously agrees that the Brookline Public Schools should not make use of facial recognition technology for any administrative, disciplinary or similar purposes.

The members who voted to recommend favorable action on Warrant Article 25 feel that the potential impact of the Town's use of facial recognition technology could adversely impact students to an extent that justifies a Townwide ban on such technology. These members are concerned, among other things, about the impact of such technology on the civil liberties of students and the potential for students to be misidentified by such technology, particularly students of color.

The members of the School Committee who chose to abstain from the vote did so for differing reasons. For some, there was concern that opining on warrant articles that do not directly impact the Public Schools of Brookline is outside of the purview of the School Committee and, therefore, should not be done. For others, there were concerns that there could be some legitimate pedagogical uses of facial recognition technology that could be prohibited by Warrant Article 25 and that the School Committee's ability to independently prohibit the use of such technology for surveillance within the Public Schools of Brookline was a preferable approach.

ARTICLE 25

**AMENDMENT OFFERED BY CASEY HATCHETT, TMM12
ON BEHALF OF THE SURVEILLANCE TECHNOLOGY AND MILITATRY – TYPE EQUIPMENT STUDY COMMITTEE**

VOTED: To amend the petitioner's motion as follows:

Add as subsection (3) under SECTION 8.39.2 BAN ON TOWN USE OF FACE SURVEILLANCE:

3) Not withstanding section 8.39.2(1), the Brookline Police Department may use (but not acquire or deploy) face surveillance technology for specific and narrow purposes approved by the Select Board. (a) The Select Board may attach conditions to such uses. (b) In the absence of an approved list of authorized purposes, use is permitted before Jan 1, 2021 provided notice of the nature of the use is provided within 30 days to the Select Board, with quarterly reporting to the Surveillance Technology and Military-Type Equipment Study Committee.

ARTICLE 25

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Warrant Article 25 proposes adding a new Article 8.39 to the Town's General By-Laws that would ban the use of facial recognition technology (FRT) by all municipal departments and Town officials, with exceptions for its use by Brookline officials to authenticate their identity on cell phones owned by them, and to comply with the National Child Search Assistance Act.

The Advisory Committee recommends FAVORABLE ACTION ON A SUBSTITUTE MOTION to refer the subject matter of Warrant Article 25 to a Moderator's Committee to make recommendations in time to bring a warrant article to the November 2020 Town Meeting.

BACKGROUND:

Description of Facial Recognition Technology

Facial Recognition Technology (FRT) is a type of pattern recognition technology that uses software to analyze patterns of a person's face from their image either on a photograph or video frame or from a real-time scan to develop a template of the face. The template can then be compared with other images to see whether they match. The number of matches and the accuracy of the matches will vary depending on the confidence level that the user will set for the comparison, with accuracy and potential matches inversely related. For example, an 80% confidence level will generate more potential matches than a 99.5 % confidence level. The technology uses "machine learning," whereby training data of facial images are analyzed by the software to create templates for matching these images to identified images in a database . The accuracy of the software increases as more and more samples of facial images are provided to be analyzed, and will vary for different types of faces, depending on the volume of faces that have been provided in the training data.

Uses of FRT

FRT is used to identify or verify the identity of an individual by comparing the template created by the pattern analysis of a photo (or other image) with other photos of persons in a particular database. It is used for a variety of purposes and by a variety of users. Individuals might use the software when they have Google Photos or iPhoto to locate all the photos of a specific friend or family member in their photo collections or, like a fingerprint, to authenticate their identity on their cellphone. The State's Registry of Motor Vehicles uses FRT when an individual applies for a replacement driver's license. Their

photo is compared with the photo from the original license to verify their identity and thereby curb identity fraud.

Police Departments use FRT to compare a photo of a suspect with photos of persons in databases (e.g., a sex offender registry, Registry of Motor Vehicles databases, mugshot databases, and social media databases such as Facebook) to obtain leads for investigations. FRT is also being used for surveillance purposes by commercial and governmental entities. It may be installed in cameras in public places, such as public ways, stadiums, and shopping centers to scan faces in real time and compare those with faces in a database to make identifications. For example, it was used during the 2001 Super Bowl to identify possible terrorists. Law enforcement agencies that have identified a particular suspect may track their movements using FRT. The most extreme example of using FRT for surveillance purposes is in China, where FRT installed in cameras is particularly pervasive, allowing the government to monitor the movements, locations, and associations of persons in many public spaces.

Issues with the Use of FRT

While there has been increasing use of this relatively new area of technology and for more and more purposes - commercial, personal, and governmental - it also is largely an unregulated area of technology. For example, there are no requirements regarding minimum levels of accuracy required for the selection of an FRT system or for use in identifying persons. Racial and gender biases have been identified in the systems, largely because the training data did not use equal numbers of faces by sex and race. There are no regulations to restrict usage of systems that incorporate bias. (The most recent evaluation of fifty-one FRT systems by the federal National Institute of Standardization and Technology, published this year, however, suggests that at least for these systems, such biases have become negligible or non-existent, as training data for those systems have been adjusted to correct for unequal representations in prior training data.[1])

There also are no guidelines or penalties in place for appropriate and inappropriate use of FRT in law enforcement (for example, designating allowable systems based on measures of accuracy and demonstrated lack of biases, setting confidence intervals, providing guidelines for use as evidence, etc.). First and Fourth amendment threats are of special concern when FRT is used in public spheres for surveillance purposes, since persons can be identified and tracked with or without any suspicion of wrongdoing, while 5th and14th amendment due process concerns are implicated when FRT is used in criminal proceedings.

Brookline and FRT

[1] For those of you with statistical savvy and time on your hands, see https://www.nist.gov/sites/default/files/documents/2019/10/16/frvt_report_2019_10_16.pdf).

Brookline does not possess an FRT system, either for photo matching or for surveillance purposes, and has no current plans to purchase one. The Police Department, however, obtains information from a variety of sources derived with FRT, for example, social media apps and websites, such as Facebook; databases of missing persons; the Registry of Motor Vehicles database; and data from individuals or other jurisdictions obtained by those third parties with the use of FRT. The information is used for numerous purposes, including criminal investigations, locating missing persons, identifying children used in sex trafficking rings, and death identifications.

Article 25 Provisions for Limited Use in Brookline

If Article 25 is passed, Brookline police would be allowed to use evidence that may have been derived from the application of FRT by a third party (e.g., private parties or other governmental entities) for the purpose of investigating a specific crime if no prior agreement has been made with that third party for the use of FRT to obtain the evidence. It would also allow the Town to obtain electronic devices, such as cell phones, for evidentiary purposes, whether or not the device has FRT capacity; to use social media or otherwise communicate with the public so long as FRT is not affirmatively used; and to use software to redact faces from photos and videos so long as the software does not use FRT to do so.

The Article provides an enforcement provision for violations of the By-Law, including 1) the deletion of data collected by the Town and the prohibition of its use in evidence, and 2) a cause of action against the Town for violations, and disciplinary measures for employees violating the By-Law.

Massachusetts Legislation

With no federal, state, or municipal framework to regulate its use in Massachusetts, Senator Creem has filed Senate Bill 1385 (an Act Establishing A Moratorium On Face Recognition and Other Remote Biometric Surveillance Systems), which, in conjunction with House Bill 1538, provides for a moratorium on the use of FRT and other biometric data collection until a statutory framework is implemented that establishes allowable and prohibited uses; standards for use and management of the collected data, including retention, sharing, and access; auditing requirements; standards for minimum accuracy rates, and accuracy rates by gender, skin color, and age; and protections for due process, privacy, free speech and association, and racial, gender, and religious equity; and mechanisms to ensure compliance.

DISCUSSION:

The Advisory Committee agrees with the Petitioner that the lack of regulation could lead to problematic and potentially dangerous use of the technology, even if inadvertent; and that the use of FRT for surveillance purposes, even if done according to regulatory requirements, has inherent dangers, with negative consequences for privacy and freedoms of speech and assembly. At the same time, the majority of the Advisory Committee

believes that for a variety of reasons, as outlined below, the subject matter of the article should be referred to a Moderator's Committee:

- While the use of the term "face surveillance" in the article implies that the ban is on the use of FRT solely for the purpose of surveillance, its definition incorporates all uses of FRT. Yet there are other applications of FRT that do not involve surveillance that would nonetheless be prohibited under a comprehensive ban on all FRT. Whether and to what extent each of these applications of FRT should be prohibited or regulated deserves separate analysis.

- Uses of FRT that do not involve surveillance that are readily available to lay people would be prohibited as a police tool to investigate crimes under the By-Law. For example, a recent victim of a home burglary in Brookline identified the burglar on a Facebook post, which helped lead to an arrest. If a police officer were to have used Facebook's newly introduced auto tagging app to identify the suspect, the officer would have been out of compliance with the By-Law and subject to disciplinary actions, while any layperson with a Facebook account could use the app to make identifications.

- Police Chief Andrew Lipson expressed the concern that although the Town does not have its own facial recognition system, the implementation of this warrant article, which institutes a total ban, will prohibit the valuable uses to which the technology is applied by the police currently. Because he was not consulted in the drafting of the article prior to its submission, and because there was a lack of collaboration with others in town who are knowledgeable about the uses of FRT, the Police Chief believes that the Petitioner's article does not adequately balance the risks with the benefits of the technology.

  Aside from the use of FRT to assist in criminal investigations generally, he noted that FRT has been particularly useful in identifying perpetrators of hate crimes, who often make use of social media; breaking up underage sex trafficking rings, again making use of social media to identify the children who are being trafficked; locating missing children; identifying lost persons, especially those with illnesses such as Alzheimer's; preventing identity theft; and investigating unexplained and unattended deaths. The Police Chief also highlighted due process concerns with eliminating the ability to use a widely-used tool of evidence collection to help identify the perpetrator of a crime and/or exonerate someone who is falsely accused of a crime, especially given that eyewitness identifications, which are susceptible to error, are the primary reason for wrongful convictions.

- Some of the concerns of the Police Chief have been addressed by amendments to the article, but others have not, and those that have been added are narrow ones and may not fully address concerns. For example, the Petitioner added an exception for compliance with the National Child Search Assistance Act to address the Police Chief's concern about the lack of ability to use FRT to locate missing children. According to

Patty Correa, First Assistant Town Counsel, this may not be a sufficient exception to enable the Town to make use of tools available with FRT to locate missing children.

- The By-Law is unclear as to the circumstances under which the Brookline Police would be able to work together with other law enforcement agencies on a criminal investigation. For example, would the Police be allowed to provide a photo of a suspect of a crime that occurred in Brookline and captured by a private camera located in Brookline to the FBI, knowing that the FBI will use FRT to compare the photo with an FBI database in its investigation? And would the Town then be unable to use the information obtained by the FBI for its own investigation? It is unclear whether this arrangement would be allowed under the By-Law. The Police Chief also noted that the Town works with the State Fusion Center to make death determinations and identifications of persons in cases of unattended deaths. The Fusion Center makes use of FRT for these purposes. The Petitioner and the Police Chief disagreed as to whether the ban would prohibit the Town from working with the Fusion Center.

- Town Counsel Correa outlined several concerns with provisions of the By-Law in her letter to the Advisory Committee. Among these are the following: (1) The creation of a cause of action (COA) against the Town for violations of the By-Law exceeds the Town's constitutional authority, an assessment confirmed by the Director of the Municipal Law Unit of the Attorney General's Office. The provision for a COA will thus result in frivolous lawsuits, which will add an extra burden to the Town's legal staff without providing a remedy. (2) The objectives of the By-Law would be better accomplished by implementing policy, which would lend itself to language improvements found necessary during implementation, and given that this is an evolving technology, to modifications over time, given some of the possible salutary uses for facial recognition technology and its potential for being made the subject matter of litigation (e.g., by persons accused of crimes for mistaken identification; by persons convicted of crimes who claim destruction of exculpatory face recognition technology-related evidence). (3) Since it will not always be clear to town personnel when FRT is being used to identify persons, the lack of a "knowingly" standard places town personnel at risk of inadvertently violating the By-Law.

- Clearly, FRT has complicated technical, ethical and pragmatic elements that need to be considered.

Since the Town does not possess facial recognition software at this time and does not use FRT for surveillance, the majority of the Advisory Committee felt that the Town should not rush to pass the warrant article for an outright ban without first examining the issues in a more comprehensive manner. The Town could take various approaches to address the issues highlighted by the article, e.g., develop a more thoroughly vetted version of an across-the-board ban; draft an outright ban on FRT for surveillance purposes; mirror the proposed State legislation by implementing a moratorium on all or on surveillance uses until a regulatory framework has been established; establish a regulatory framework while allowing the police to use FRT for the purposes it currently is being used.

The Town should be provided with an analysis of the applications of the technology, both those currently used by the Town and those that might be implemented in the near future, and determine which of these should be allowed and which should be prohibited, and what types of regulations should be implemented to guide allowable uses. The findings of a committee to study these issues should report back its findings in time for the drafting of a warrant article for the November 2020 Town Meeting. Although the Town currently has an active Surveillance Technology and Military-type Equipment Committee that would, in general, be the appropriate committee to study the substance of WA 25, it has met infrequently. The Advisory Committee thus felt that it would make sense to establish a Moderator's Committee that would be specifically tasked to address facial recognition software that could both provide a fresh look and also complete their study by the fall.

For a minority of the Advisory Committee, an immediate outright ban of FRT is viewed as the better approach, primarily because the threats to personal privacy and freedom of speech and assembly when FRT is used for surveillance purposes is great enough to warrant taking measures to reduce the likelihood that such uses will be put into practice. It was felt that the Town has functioned without the use of FRT in the past and so could manage without FRT in the future, and that if the police made note of particular tools that they were no longer able to use as a result of the general ban, the By-Law could be modified. Use of FRT without adequate safeguards, especially those that would ensure lack of bias by the systems being used and restrictions on how long the data is maintained, and a mistrust of government's use of potentially powerful surveillance tools absent adequate oversight were other reasons cited for supporting the immediate outright ban provided for in WA 25.

RECOMMENDATION:

By a vote of 14-9 with two abstentions, the Advisory Committee recommends FAVORABLE ACTION ON A SUBSTITUTE MOTION to refer the subject matter of Warrant Article 25 to a Moderator's Committee to make recommendations in time to bring a warrant article to the November 2020 Town Meeting.

ARTICLE 25

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 25 is a petitioned article asking the Town to amend its By-laws, by adding a new Article 8.39, that would ban the use of facial recognition technology and surveillance by Town departments and Town officials. As well as provides an enforcement provision for violations of the By-Law.

During the discussion of this article, the Select Board noted that facial recognition technology is currently undergoing review throughout the global community in some areas where it is currently employed. The Board felt that the Town needs to fully understand the security and privacy risks involved with the use of this technology and that a regulatory framework needs to be developed to investigate the possibility of using this technology responsibly while some Board members indicated that they were concerned about the usage of this technology, altogether. The concern being that this is unreliable technology that has the potential to discriminate. The Select Board ultimately decided that until further examined that a ban on this technology was warranted.

On November 5, 2019, the Board recommended FAVORABLE ACTION, by a unanimous vote, on the motion offered by the petitioner.

ARTICLE 25

Statement of Bernard Greene, Chair of the Select Board and Chair of the Surveillance Technology and Military-Type Equipment Study Committee (the "Surveillance Committee"), but speaking for himself.

I take no position on the Petitioner's Warrant Article or the amendment to be presented by Casey Hatchett on behalf of the Surveillance Committee. But I do urge Town Meeting to reject the Advisory Committee's recommendation to refer the subject of Warrant Article 25 to a new Moderator's Committee. Referral is unnecessary as the Surveillance Committee, as acknowledge by the Advisory Committee in its Supplemental Recommendation, is the appropriate committee and, in any event, has face surveillance as part of its Charge. Irrespective of whether the Petitioner's ban or the Hatchett amendment is adopted, the necessary deeper study and recommendation of appropriate face surveillance usage and the required regulatory over-sight of such usage will be undertaken by the Surveillance Committee. In the meantime, Police Chief Lipson has stated that the Police Department neither possesses nor has any plans to acquire face surveillance technologies. This gives us time to address face surveillance comprehensively.

* * *

Warrant Article 25 would impose a ban on "Face Surveillance," which the article defines as "an automated or semi-automated process that assists in identifying an individual, or in capturing information about an individual, based on the physical characteristics of an individual's face."

The subject of face surveillance is complex and is not adequately addressed with a simple ban. One consequence of failing to acknowledge that complexity is not distinguishing face identification technologies from face surveillance. We know and fear face surveillance based in part on news reporting of its use in China for political repression purposes. And we also fear such use in the United States under the current political conditions and its actual use in mass attendance events such as the 2001 Super Bowl where it was used for the purported purpose of identifying terrorists. Face identification, on the other hand, has many potential legitimate uses, but Warrant Article 25 would (based on the above quoted definition) ban, with some exceptions, any "process that assists in identifying an individual."

The Advisory Committee's Supplemental Recommendation lists examples of the use of face identification that may be appropriate if accompanied by tough regulatory controls to prevent misuse. There may be other uses and some of the listed uses may be too easily used for improper purposes to be permitted in Brookline. The Advisory Committee's Supplemental Recommendation also provides a good summary of some of the concerns

expressed by Town Counsel and the Police Chief that the Advisory Committee noted may not have been fully addressed by the Petitioner. I won't repeat those here, but I do urge Town Meeting Members to review them before voting on Warrant Article 25.

The amendment that was voted favorably by four members of the Surveillance Committee, including myself, solely for the purpose of having a broader discussion, would permit, "face surveillance technology for specific and narrow purposes approved by the Select Board." However, if the Select Board fails to approve such purposes before January 1, 2021 any use would be permitted with some minor controls, including reporting to the Select Board and the Surveillance Committee.

The Advisory Committee is recommending a Moderator's Committee to examine the complexities of Face Surveillance and come up with findings for the November 2020 Town Meeting. The Advisory Committee noted that the Surveillance Committee "would, in general, be the appropriate committee to study the substance of WA 25..." but it dismissively asserted that the Surveillance Committee "has met infrequently." It is unfortunate that this statement appears in the Advisory Committee's Supplemental Recommendation. It is not an accurate statement and, therefore, not an appropriate basis for bypassing the Surveillance Committee.

The Surveillance Committee was on a monthly meeting schedule addressing the broad subject matter assigned to it beginning **May 30**. Petitioner states that she noted at the **July 25** meeting her intention to bring a warrant article on face recognition. On **September 12** the Petitioner's warrant article was presented. The committee had a discussion at that meeting and it became clear that there was little agreement among committee members. The Surveillance Committee next met on **October 10** for its regular meeting to work on the many tasks on its work-plan. Chief Lipson attended this meeting and expressed his concerns with Warrant Article 25 and the committee discussed those concerns and how to proceed on the warrant article. It then met for a special meeting the next week on **October 18** to allow the Petitioner to present a revised article following consultations with the Police Chief. At that meeting Chief Lipson expressed his continuing concerns and committee members suggested various amendments and articulated other concerns. Committee member Scott Ananian agreed try to incorporate the concerns of the members and Chief Lipson into a proposal that could be presented at a public hearing of the committee and possibly presented as the Surveillance Committee's recommendation to Town Meeting. Mr. Ananian was unable to come up with a consensus proposal and committee member Casey Hatchett presented an amendment to the committee at a public hearing held on **October 23**. The Surveillance Committee also actively participated in the **October 23** public hearing of the Advisory Committee Subcommittee on Public Safety. The next week on **October 30** the Surveillance Committee met to consider the results of the two hearings and other information from Town bodies and its own deliberations. The committee voted 4 in favor of the Hatchett amendment, 1 in favor of the Petitioner's article, with 1 abstention.

The Surveillance Committee currently has surveillance, including face surveillance technologies as part of its work plan. Its Charge directs it to study the issues associated with surveillance technology including the use of such technology in Brookline and any local, state, or federal policies or regulations governing them. The Surveillance Committee's Charge could be expanded by the Select Board to address face surveillance with additional members with specialized expertise and with time lines for completion of specific tasks. The Surveillance Committee's Charge is attached hereto.

So Warrant Article 25 either in the form as moved by the Petitioner or as amended by the Surveillance Committee will be only the first step in addressing face surveillance. Because the Police Chief says that the Department neither possesses nor has no plans to acquire or use face surveillance, other than the uses excluded by the Petitioner's article, we have time to address the broader issues presented by this new and complex technology. This task will be undertaken by the Surveillance Committee and where appropriate will present recommendations for Select Board action or, if necessary, proposed Warrant Articles for a future Town Meeting.

CHARGE
Warrant Articles 28, 29, and 30
May 2018 Annual Town Meeting

At the May 2018 Annual Town Meeting (the "Annual Town Meeting"), the body voted to establish a Select Board committee to study (1) the technology that is being, or could be used by Brookline police and other governmental and private bodies to monitor and surveil Brookline citizens, (2) the actual or potential acquisition by the Brookline police department of military-type equipment, and (3) related issues raised by Warrant Articles 28, 29, and 30 of the Annual Town Meeting. The Annual Town Meeting voted to direct the committee to present recommendations to the Select Board to address any problems or issues identified in its study.

The Annual Town Meeting recognized that surveillance technology and military-type equipment that may be offered to the Town by the federal government or surveillance technology and military-type equipment that the Town acquires by other means may offer many benefits. But the Annual Town Meeting also recognized that it would be naïve to fail to distinguish those benefits from the potential threat to the civil liberties and values of Brookline residents.

To implement the purposes of Warrant Articles 28, 29, and 30, the Select Board hereby establishes a Surveillance Technology and Military-type Equipment Study Committee (the "Committee") to study and prepare a report with recommendations and suggestions for implementation ("Report") to the Select Board on the use and risks associated with such technology and equipment. The Committee shall be organized as follows:

a. The Committee shall be comprised of five residents of Brookline appointed by the Select Board. The Select Board may appoint additional resident voting members to the Committee upon the request of the Committee.
b. The Brookline Chief of Police, or the police chief's designee, the head of the Information Technology Department, or said department head's designee, and the Chair of the Critical Infrastructure Monitoring System Oversight Committee, or said chair's designee, shall also be voting members of the Committee.
c. A majority of the voting members shall be a quorum for the conduct of business.
d. A member of the Select Board shall chair the Committee.

The Committee shall study the issues associated with surveillance technology and military-type equipment, including the use of such equipment in Brookline and any local, state, or federal policies or regulations governing them. Warrant Articles 28, 29, and 30 should not be the starting point of the study, rather the committee will start fresh, looking at the often different issues presented by surveillance technology and military-type equipment as they

relate to the particular realities of Brookline not scenarios that may unfold in other less progressive jurisdictions. The Committee's tasks shall include:

1. To produce "an inventory of all surveillance technology and military-type equipment" used or available for use by the police department or other Town departments, including (i) type, (ii) purpose and uses, (iii) capabilities, including, without limitation, picture resolution and mobility of surveillance devices, (iv) required training, (v) location of, and period of time any video or other images are retained, (vi) location of military-type equipment and who has access to such equipment, (vii) accessibility rights or restrictions on access by the public of surveillance products, and (viii) any other information that the Committee determines to be necessary for the preparation of its Report.
2. To distinguish technologies and equipment that need high level oversight from those that require less or no oversight, such as security cameras in the library or schools or computer monitoring software that is used to protect students.
3. To review surveillance and data gathering by regional or national organizations, such as the Boston Regional Information Center, and determine whether Brookline's voluntary or involuntary relationships with such organizations needs additional oversight, transparency, or controls.
4. To examine existing state laws and regulations and Town bylaws governing private cameras and existing practices in Brookline and include in its recommendations any suggested protections that the Town can provide against their misuse.
5. To review police department policies and procedures, bylaw provisions, and any union or other contract provisions as they relate to surveillance technologies, including body cameras, cruiser mounted cameras, and street surveillance cameras, and military-type equipment.
6. To collect and review explanatory and technical information as necessary in the performance of the Committee's tasks and consult with experts or other knowledgeable persons on the subjects of this Charge.
7. To produce the Report for submission to the Select Board. In preparing its Report, the Committee shall (i) hold at least one public hearing and take for its consideration the comments of the public, (ii) prepare a draft of the Report with a preliminary list of recommendations, incorporating any appropriate comments from the public hearing, (iii) present the preliminary recommendations to the Chief of Police, Town Counsel, and the Town Administrator for their comment as to feasibility and compliance with Town bylaws, contractual obligations, or federal or state requirements, and (iv) meet to vote on the final Report, including recommendations that incorporate any agreed comments of the Chief of Police, Town Counsel, and the Town Administrator.

If, in connection with the above tasks, the Chief of Police, Town Administrator, or Town Counsel raises a concern that any information sought by the Committee is exempt from disclosure under the Massachusetts Public Records Law or for some other reason should not be disclosed or discussed in a public meeting of the Committee, the Committee's chair shall meet with the person raising the concern to be briefed on the reasons for the concern and discuss alternative information or alternative ways of sharing such information with the Committee, including redacted information or information provided in an executive session meeting of the Committee.

Following the Committee's vote on the final Report, the Committee shall present the Report to the Select Board.

Following acceptance of the Report by the Select Board, the Committee shall disband.

ARTICLE 26

TWENTY-SIXTH ARTICLE

Submitted by: School Committee; Deborah Brown, TMM1; Anne Greenwald, TMM8; Maya Norton

To see if the Town will vote to name the PK-8 school located at 345 Harvard St., Brookline, MA 02446 the "Florida Ruffin Ridley School", effective September 1, 2020, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In May of 2018, Town Meeting voted favorably on a Warrant Article advanced by Deborah Brown and Anne Greenwald to change the name of the Edward Devotion School. Edward Devotion, for whom the school had been named, was a slave holder. It was the will of Town Meeting as reflected by that vote that individuals who held human beings in bondage should not be honored with schools bearing their name. To continue to name a school after a slave holder would violate the core values of equity, respect, and inclusion that our public schools strive to impart to our students.

Since the beginning of the 2018-19 school year, the school formerly known as Devotion has operated temporarily under the name Coolidge Corner School, after the geographic neighborhood in which it is located. In the fall of 2018, the School Committee, the Superintendent, educators, Coolidge Corner School students, Devotion alumni, and members of the community at large collaborated jointly to create a naming process. From December 10, 2018 to January 23, 2019, the student-led "Bee-lievers in Change" accepted over 250 nominations for new names from the public. The student group met regularly with the Principal, Assistant Principal, District Leaders, as well as special expert guests, to thoroughly research the nominees, develop summaries about each one, and discuss the suitability of each name based on a rubric that included the town naming criteria, the school's core values, and restorative justice principles. After providing the students with this general information, the students began the candidate review and selection process.

During the months that followed, the Bee-lievers in Change narrowed the field from 119 unique submissions to 15 finalists. 3 public events were held to learn about the 15 finalists and provide feedback. Based on the feedback they narrowed the finalists from 15 to 4. On May 24, 2019, the final four choices were presented to the School Committee. Another series of public meetings followed, where the School Committee solicited input about what to recommend as a final name. The School Committee voted 7-0-1 on June 19, 2019 to recommend that the Florida Ruffin Ridley School become the permanent name of the PK-8 school at 345 Harvard St.

Of the eleven school buildings in Brookline, only one is named for a woman, and none for a person of color. Florida Ruffin Ridley (1861-1943) was a Brookline resident who became the second AfricanAmerican teacher in Boston. A leading African-American civil rights activists, suffragist, educator, writer, and editor, Mrs. Ridley co-founded the Society for the Collection of Negro Folklore, the Association of Colored Women Clubs (NACWC), and the League of Women for Community Service, Inc. (LWCS), the latter of which still exists today., She served as editor of the Woman's Era newspaper and worked as an , anti-lynching activist. Mrs. Ridley and her husband are believed to be the first African-American homeowners in Brookline. They lived at 131 Kent St. and attended the Second Unitarian Church on Sewall Avenue, which Mrs. Ridley co-founded.

Ridley was a life-long learner and teacher. Through her work, she hoped to connect an understanding of history with social justice. She believed all races deserved an equal place in society.

NAMING COMMITTEE REPORT AND RECOMMENDATION

Introduction

On October 16, 2019, the Brookline Naming Committee held a public meeting to consider its recommendation to Town Meeting to rename the Coolidge Corner School. The Committee voted to support Warrant Article 26 (Florida Ruffin Ridley) by a vote of six in favor and one opposed, with no abstentions. With regard to Warrant Article 27 (Ethel Weiss), the Committee voted against the article by a vote of four opposed and three in favor with no abstentions, and with regard to Warrant Article 28 (Robert I. Sperber), the Committee voted against the article by a vote of five opposed, zero in favor and two abstentions.

Naming Committee Process

The Naming Committee met on September 11, 2019, to elect a new chair and to determine its procedural next steps regarding its recommendation to Town Meeting concerning renaming the Coolidge Corner School (CCS). The Committee members were very committed to ensuring a process for public input that would be as inclusive as possible in light of the high interest on the part of the public in the renaming of the school. As such, the Committee decided to schedule a three-hour meeting to allow sufficient time for all members of the public who wished to be heard, and determined that the best setting to do so to maximize public accessibility would be at the CCS itself, rather than at Town Hall. Arrangements were made with the School Department to make that venue available. Also, the Committee provided community members with an email link to facilitate the submission of written testimony in advance of the hearing. A total of 23 written submissions were received. Notice of the meeting was given well in advance of the minimum legal requirement to get the word out to the public as widely as possible.

Warrant Article petitioners were informed in advance of the October hearing that each would have ten minutes within which to testify in favor of their article. Other members of the public were afforded 3 minutes each to share their views in public comment.

Of the written submissions received before the meeting, 17 were in favor of Florida Ruffin Ridley (FRR) and 2 in favor of Ethel Weiss (EW). The other four were about the process in general. During the 3-hour public hearing, a total of 31 people testified, including the petitioners. Of that total, 22 spoke in support of FRR, 5 in support of EW, and 1 in support of Robert I. Sperber (RIS). Three members of the public raised concerns about the selection process but did not speak in support of any name. Thus, a little more than 70 percent of the public who testified in public favored FRR as their choice. Of the written submissions, the percentage in favor of FRR was close to 90%.
In accordance with the bylaw governing the Naming Committee, the decision regarding naming or renaming is to be determined by a simple majority. The Committee's vote in favor of FRR was a strong endorsement of this choice—7 in favor and one opposed. We would be remiss not to mention the level of support for Ethel Weiss, as also reflected in the Committee's vote. Though Article 27 failed to win a majority of support, it is clear that some members of the Committee affirmatively expressed their support for EW in their vote. Nonetheless, this was not the majority view.

Substance of the Decision

The majority of the speakers in public comment as well as in written testimony made the following points:

The selection process by which the final name was chosen was thoughtful, deliberate, lengthy, and inclusive. The amount of time that the CCS students put into their research and deliberations was extraordinary and represented a unique educational and civic engagement experience.

It would be a terrible message to send to the hard-working and dedicated committee of CCS students that all the efforts that they had put into the process of reviewing and researching the 119 names submitted by the community would be reversed. They have the most at stake in this process, as it is their school.

It was entirely appropriate to select a heroic African American woman as the new name for the school since the circumstances that led to the prior Town Meeting decision to rename the school was the result of racial injustice, i.e., the owning of a slave by Edward Devotion. Several also felt that because only one Brookline school is named after a woman, it was time to right that inequity as well.

It was appropriate and laudatory to select a person who was generally unknown in the history books in a conscious effort to tell the story of outstanding local citizens by elevating their public status. The students, by way of example, specifically rejected the late President Kennedy as they felt that he already was widely known and appreciated, with many sites already named after him.

FRR was, in the opinion of the speakers, an outstanding role model, an educator, and a leader in political activism and social justice. Moreover, she had Brookline roots.

Those who favored Ethel Weiss spoke of her unique and loving commitment to the CCS community over many decades, and her inspiration to many. They also criticized the

selection process noting in particular that in the initial set of nominations, EW received multiple nominations. However, as one of the speakers in favor of FRR noted, part of the goal of the selection process was to learn about many unknown heroic historic figures. JFK and Ethel Weiss were well known to the community, which explains in part why they originally received more nominations.

Other than the petitioner on behalf of Article 28, no one from the public spoke in support of Dr. Sperber. In fact, according to the guidelines of the Naming Committee, a candidate who is employed by the Town can only be nominated if he/she was employed for 25 years or more. Dr. Sperber was Superintendent of Schools for 18 years, which appeared to disqualify him automatically.

Rationale Behind the Naming Committee Recommendation

Six of the seven members of the Naming Committee concluded that FRR was a person of excellent reputation and character who has made exemplary contributions to society. Several of the members of the Committee specifically addressed the fact the FRR's selection was an important symbol of racial justice to counter the injustice of the past association of the school with slavery. Three of the members of the Committee—all of whom enthusiastically supported FRR—are themselves alumni of the former Devotion School.

Most importantly, the majority of the Committee members felt that the selection process was a good one—thorough, equitable, and inclusive. Any imperfections in this first-of-a-kind renaming process were not seen by the majority as any cause for concern in its overall fairness. Appreciation was expressed for the work of the students, parents, school staff and the School Committee. The final decision to rename the school for Florida Ruffin Ridley, who was selected by the students from a group of four finalists, was, of course, made by the Brookline School Committee by a vote of 7 to 0 with one abstention.

On a final note, it is unclear if the Naming Committee had the authority to approve Articles 27 and 28 under any circumstances. According to the bylaw governing the Committee procedures, "the Committee shall not recommend any name changes of any school unless the School Committee votes to approve such change." The Committee, in the spirit of fairness to the public, took public testimony and weighed in on all three warrant articles nonetheless. In the end, the Naming Committee enthusiastically endorsed the School Committee selection, having given a full hearing to all three proposals. If anything, this endorsement only serves to strengthen the Committee's support for FRR as the Committee listened attentively to all of the arguments in favor of each of the three proposals and deliberated thoughtfully. The Committee respectively submits its recommendation to Town Meeting after having performed due diligence in this matter and having conducted an inclusive public process to arrive at its recommendation.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 16, 2019 and recommended FAVORABLE ACTION on Warrant Article 26 by a vote of 7-0-0, with the further recommendation that the School consider honoring the additional individuals within the school itself.

DISCUSSION

Warrant Article 26 proposes the Renaming of the Coolidge Corner School. Having a street, a bridge or a building named after a person is one way a community honors an individual. Who a community honors in this way says something important about what that community values. After learning that the Devotion School was named after a slave owner, a group of Brookline residents organized to rename the Devotion School after someone more in line with Brookline's values of diversity, inclusion and equity. An inclusive School Renaming process for renaming was designed by the School. It was not a perfect process, but it offered multiple opportunities for input at multiple points, and included an the important innovative of having a number of students as core participants in researching, reviewing, and evaluating a significant number of potential names. Working through the process, the final name chosen by the renaming process was Florida Ruffin Ridley. Ms. Ridley was the first African American woman to own a home in Brookline, she was active in anti-lynching activities, was a suffragette, and a member of the National Association of Colored Women (a pre-cursor to the NAACP), and an activist for social and racial justice.

It was also deemed extremely important that we honor the inclusive engagement process that was set up, as well as the name it produced: failure to do so would send a very negative message to all those involved - especially the students - that active engagement on community issues was a waste of time - a message felt to be the opposite of what we hope students would learn about democratic engagement.

While there were two additional WAs proposing alternative names, neither of those petitioners appeared at the CDICR hearing. There was one amendment offered asking that the school retain the thus-far temporary name of Coolidge Corner, and name different rooms in the building after the various names proposed, but the amendment was not accepted.

There was also concern due to the current TM plan on voting on Warrant Articles 26, 27, 28 such that the last of the 3 Warrant Articles to receive a majority would be the winning Article, even if that article did not receive the largest number of votes.

CDICR recommended FAVORABLE ACTION on Warrant Article 26 by a vote of 7-0-0, with the further recommendation that the School consider honoring the additional individuals within the school itself.

SELECT BOARD'S RECOMMENDATION

Article 26 is an article submitted by the School Committee to rename the Coolidge Corner School, the "Florida Ruffin Ridley School." This article completes a process to rename the school formerly named the "Edward Devotion School." After Town Meeting voted favorably to rename the school in 2018, the School Committee, the Superintendent, Coolidge Corner School students and staff, Devotion alumni, and members of the community collaborated to create a naming process, and this is their recommendation after a thorough public process.

The Select Board is largely supportive of this article and notes the effort that the students who participated in this process undertook in consideration of potential names. Members of the Board noted that the discussion around the renaming was very divisive, and comments in regards to the renaming of the Coolidge Corner School the "Florida Ruffin Ridley School" concerned them and were inflammatory. In regards to opposition to this article, the Board believes that a renaming process was followed, and a recommendation was made, and discussions about the process, its merits or deficiencies is best held at Town Meeting. The Select Board voted favorable action on this article based on the recommendations from the School Committee and the Naming Committee.

The Board recommended FAVORABLE ACTION, by a vote of four in favor and one abstention taken on October 22, 2019 on the following motion:

VOTED: That the Town name the PK-8 school located at 345 Harvard St., Brookline, MA 02446 the "Florida Ruffin Ridley School", effective September 1, 2020.

ROLL CALL VOTE:

Aye:	Abstain:
Greene	Heller
Franco	
Hamilton	
Fernandez	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Each of Articles 26, 27 and 28 proposes a specific candidate for whom the Coolidge Corner School should be renamed to honor: Florida Ruffin Ridley, Ethel Weiss, and Robert I. Sperber.

The Advisory Committee initially voted to offer No Recommendation on each Article by votes of 18-9-1 for Article 26, 22-4-1 for Article 27 and 22-4-1 for Article 28. Subsequently, reconsideration of Article 26 resulted in the failure of an amendment to

propose the name Ridley-Weiss by a vote of 7-7-11, leaving in place the original vote of No Recommendation.

BACKGROUND:
In the Spring of 2018, Town Meeting voted to temporarily change the name of the Edward Devotion School to the Coolidge Corner School and to begin the process to identify a permanent name. The specific language passed by Town Meeting was: "That the Town hereby requests that the School Committee propose a new name for the Edward Devotion School after receiving public input through a process to be determined by the School Committee, and hereby requests the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be the Coolidge Corner School."

Such a process was instituted by the School Committee, and it eventually led to the selection of Florida Ruffin Ridley as the name to be proposed to the Naming Committee. The timeline of the process presented to the Advisory Committee and posted on the website of the school department (see https://www.brookline.k12.ma.us/renameccs) suggests an extensive and inclusive community process. The Advisory Committee was informed of a complaint alleging that the implementation of the process violated the Commonwealth's Open Meeting Laws and separate concerns alleging the process established by the School Committee had been manipulated to achieve a predetermined outcome.

Warrant Article 26: Submitted by: School Committee; Deborah Brown, TMM 1; Anne Greenwald, TMM 8; Maya Norton. To see if the Town will rename the current Coolidge Corner School as the Florida Ruffin Ridley School.

Warrant Article 27: Submitted by: Larry Rutman. To see if the Town will rename the current Coolidge Corner School as the Ethel Weiss School.

Warrant Article 28: Submitted by: Lee L. Selwyn, TMM 13. To see if the Town will rename the current Coolidge Corner School as the Robert I. Sperber School.

Article 26 Deborah Brown and Anne Greenwald, two of the petitioners, gave a brief presentation on behalf of Florida Ruffin Ridley. To summarize their presentation: Florida Ruffin Ridley was born in 1861 and died in 1943. She and her family lived in Brookline for more than 20 years and may have been the Town's first African American homeowners. Her children went to the Lawrence School and Brookline High School. She was a suffragist (helped organize the country's first national women of color conference), civil rights activist (helped found a predecessor group to the National Association Of Colored Women's Clubs), anti-lynching advocate, teacher (2nd African American teacher in Boston), writer, publisher and religious leader (founder of the Second Unitarian Church, which is now Temple Sinai). The comments of Ms. Brown and Ms. Greenwald also covered the previous discussions at Town Meeting that led to the current naming process, the timeline for the nominations, a review of the involvement of students from the Coolidge Corner School and details of Florida Ruffin Ridley, her life,

history, accomplishments and connection to Brookline. For additional information, see the Document Center: https://www.brooklinema.gov/DocumentCenter/Index/1426

Article 27 Larry Rutman, petitioner, and Joyce Jozwicki (TMM P9, former School Committee member and Devotion parent) spoke in favor of renaming the school for Ethel Weiss. Briefly, Ethel Weiss was born in 1914 and died in 2015. Along with her husband, she owned and operated Irving's Toy and Card Shop from 1939 until her passing. Ms. Weiss was a neighborhood icon and an individual who served and mentored children who attend(ed) what is now the Coolidge Corner School. She is considered by many to have been an integral part of the former Devotion community for close to 70 years. Mr. Rutman highlighted these details and his own recollections of Ms. Weiss. Ms. Jozwicki discussed her perspectives on racism, populations under-represented specifically with regard to school names in Massachusetts, and perspectives contained on the Principal's blog from the Devotion/CCS school. For additional information, see the Document Center: https://www.brooklinema.gov/DocumentCenter/Index/1426.

Article 28 Lee Selwyn, petitioner, advocated for Dr. Robert Sperber. Briefly, Dr. Sperber was born in 1929 and died in 2016. He was Superintendent of Brookline Schools from 1964 to 1982 and served as a specialist in urban education at Boston University for 20 years thereafter. Dr. Sperber was instrumental in the founding of the Metropolitan Council for Educational Opportunity, or METCO. He also implemented innovative curriculum and support programs, including the Brookline Early Education Project or BEEP; Facing History and Ourselves, a Holocaust education program; and the town's Extended Day Advisory Council and its Education Foundation. Dr. Sperber instituted educational equity within the Brookline elementary schools, eliminating distinctions between schools he described as "haves" and "have nots". Mr. Selwyn suggested Dr. Sperber most closely meets the Town's naming criteria, (specifically the first, (reputation/character/set an example/contribution). Mr. Selwyn also discussed his concerns with the process and its implementation.

DISCUSSION:
The Committee's discussion began with questions.

1. How did the process get from list of approximately 119 unique names to 15? Suzanne Federspiel, Vice Chair of the School Committee provided some clarity about the decision-making process. Students whittled the list of 119 unique names down to 15, and then had public hearings and presentations of their research. Each student on the committee was given responsibility for one of the 15 names. At subsequent public meetings, they showed posters that they had made and answered questions. The list of 15 was subsequently reduced to four nominees. The list of four was then brought to the School Committee for a vote.

2. What will the cost be to rename the school? There had been no analysis done by the subcommittee on this question. Changing from Coolidge Corner School to any other name would incur the same costs. It was noted that the School Department did not place any permanent markings on the current facility and that there were not items such as uniforms for athletic teams that would require any modification.

Additional discussion by Advisory Committee members centered primarily on three topics: the process by which names were vetted and chosen, particularly going from the initial list of approximately 119 unique names to 15; the name preferences of individual committee members; and the question of whether a recommendation should be made at all.

The process comments ranged from 'there was a process and we need to remind TM what they voted for' to 'there was a process but that doesn't mean it should be followed if it wasn't adequate one'.

Several members expressed a preference for one or another of the names. Four members specifically addressed, in one form or another, the importance of Florida Ruffin Ridley to many people from a restorative justice perspective. Other members expressed a preference to retain the existing name and avoid the heavily charged discussion about the process, with the additional suggestion that within the school itself, different rooms could be named for different people. Others opined that all three candidates were qualified.

The Committee then discussed the Schools Subcommittee's recommendation that the Advisory Committee offer no recommendation under Articles 26, 27 or 28. There were two broad views on the issue. Several committee members spoke in support of no recommendation because in their view, as evidenced by the individual comments, the question of which name to choose for the school ultimately comes down to personal preference and that the situation is an example of one into which the Committee should not insert itself because it can add nothing to the discussion or analysis of the three different proposals.

Other members took the position that even if the Advisory Committee could add nothing to the debate, until there is a definitive and common understanding of when the Committee will not take a position, members should not vote to offer no recommendation (perhaps in particular with this Article because of the risk of misinterpretation of that vote).[1]

It was noted that the Town's by-law (Sec. 2.2.5) calls for the Advisory Committee to "consider any and all municipal questions, including appropriation requests and proposed action under all articles in the warrant for a Town Meeting, for the purpose of making reports and recommendations to the Town." Several members pointed out that the Committee did consider the three articles, both at the Subcommittee and full Committee levels. A vote to make no recommendation reflects the view that the Committee can offer no particular insight, analysis or additional information to a discussion of the articles and that Town Meeting should use its own judgment in making a determination.

<u>ORIGINAL RECOMMENDATION:</u>

[1] It should be noted that this was not the first time that Advisory members have suggested 'no recommendation' votes on individual articles. In the past, those motions have been defeated.

Motions to recommend 1) referring Articles 26, 27, and 28 to a Moderator's Committee to develop a public and fair naming process, 2) retaining of the name "Coolidge Corner School" and 3) renaming the Coolidge Corner School the Florida Ruffin Ridley School failed.

By a vote of 18-9-1, the Advisory Committee voted to offer No Recommendation on Article 26.
By a vote of 22-4-1, the Advisory Committee voted to offer No Recommendation on Article 27.
By a vote of 22-4-1, the Advisory Committee voted to offer No Recommendation on Article 28.

SUBSEQUENT VOTES:
On a date subsequent to the original votes, a motion was made to reconsider and re-debate Article 26, and only Article 26.

In the process of reconsideration, the Committee was given a lengthy presentation of the process the School Committee instituted, information that was not provided by the Schools when we had our initial vote. The explanation and answers to several questions from many members of the Committee, were offered by Interim Superintendent Ben Lummis, School Committee member David Pearlman the Vice Chair of the School Committee Susan Federspiel.

The broad issue of restorative justice was raised in two areas. The first was the question of whether restorative justice was a criterion that was mentioned to the public when names from the community were solicited. The second was whether, when the discussion of restorative justice was reviewed with students, there was a broad presentation of all communities in Brookline's history that might appropriately be considered.

An amendment was offered that would have named the school Ridley-Weiss. That amendment prevailed by a vote of 8-7-10 and became the main motion. As the main motion, however, it failed by a vote of 7-7-11, meaning the original vote of No Recommendation stood. There were no motions to reconsider the other two articles.

It should be noted that the large number of abstentions reflected the view of members that the Committee should stick with its original decision of no recommendation. And that is where we ultimately settled. The Advisory Committee has no more expertise than any member of Town Meeting with regard to these articles. While one name has been put through a selection process that, flawed or not, was rigorous and involved both the public and students of the school, all three names are worthy.

XXX

ARTICLES 26-28

SUBSTITUTE MOTION UNDER ARTICLES 26, 27 AND 28
OFFERED BY BETH KATES, TMM9
AND LEE SELWYN, TMM13

VOTED: That Warrant Articles 26, 27 and 28 shall be REFERRED to a Moderator's Committee whose membership shall include, but not be limited to, one (1) Petitioner or the Petitioner's designee for each of the three Articles, one member of the School Committee, one member of the Naming Committee, one member of the Advisory Committee, and such other members as the Moderator at his discretion may appoint. The Committee shall develop an open public process to solicit nominations from the entire Brookline community, hold public hearings and meetings all of which are duly noticed and open to the public, and shall issue a Report and Recommendation to Town Meeting for consideration at the November 2020 Special Town Meeting. The Coolidge Corner School shall continue to bear that name until such time as Town Meeting, in consideration of the Moderator's Committee Report and Recommendation, adopts an alternate name.

PETITIONER'S EXPLANATION

The renaming of the Edward Devotion School has polarized our community. It has been a divisive force that has driven us to question our neighbors' values. Discussions have become ugly, filled with personal accusations and threats to reputation and even livelihood. We need to reconcile our differences and come together as a community.

This MOTION would apply to all three of the renaming warrant articles – 26, 27 and 28. It would retain the Coolidge Corner School name in the interim, while creating a new opportunity for an inclusive and transparent renaming process that would allow for meaningful public participation and discussion.

The concept of "diversity and inclusion" means just that -- diversity of views and inclusion of all segments of the Brookline community. Getting it done right is far more important than getting it done quickly. There is no harm in retaining the Coolidge Corner School name until the process that is proposed in this Motion can be successfully completed.

ARTICLES 26-28

SCHOOL COMMITTEE REPORT AND RECOMMENDATION

Article 26

On October 17, 2019, the Brookline School Committee voted, with 7 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Ditkoff, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto), 0 opposed, and 1 abstention (Ms. Charlupski) to recommend that Town Meeting vote favorably on 2019 Special Town Meeting Article 26: Rename the Coolidge Corner School the "Florida Ruffin Ridley School."

The selection of Florida Ruffin Ridley as the new name for the Coolidge Corner School represents the culmination of an 18 month public process that included nine public hearings, and several additional public meetings. Although the nomination of names for town buildings has typically been decided by a small number of elected individuals and departmental staff, the process that yielded the recommendation of Florida Ruffin Ridley included a broad cross-section of Brookline residents, past and present, all across the demographic spectrum. In August of 2018, the School Department engaged in a comprehensive outreach to families and staff of the Coolidge Corner School community, Devotion alumni, the Town Naming Committee, the Select Board, the Ad Hoc Task Force on School Names, and the general public. The School Committee settled on a process only after these stakeholders provided input.

In response to public interest in student participation with the school name change, a student group of 14 students (ten between grades 3 and 8, and four from the high school) were selected by a double blind lottery to serve on the student naming committee called the Bee-lievers in Change. Educational training sessions for the students were held on December 5, 2018 ("Presentation by the Petitioners"), December 12, 2018 ("Team Building and Group Decision Making Processes"), December 19, 2018 ("Hidden Brookline Walking Tour"), January 9, 2019 ("Difficult Conversations"), and January, 16, 2019 ("Launch"). Presenters to the student naming committee included the petitioners of the Warrant Article that unnamed the Edward Devotion School (December 5, 2018), historian Barbara Brown (December 19, 2018), and Director of Educational Equity Dr. Kalise Wornum (December 5, 2018). The student naming committee was facilitated by Coolidge Corner School Principal Jennifer Buller and Coolidge Corner School Vice Principal Saeed Ola.

From December 10, 2018 through January 23, 2019, the students received 119 unique nominations for the new school name through a web-based form available online and at Brookline school buildings, public libraries, and Town Hall. Each of the 119 nominations were reviewed and evaluated by the students in accordance to the four elements of the

Town's Naming Criteria[1], the three elements of the school motto "Work Hard, Be Kind, Help Others" and restorative justice. As the Edward Devotion School name had been removed by Town Meeting on May 29, 2018 by a vote of 171-19 after learning details of Edward Devotion's history as a slave holder, it seemed appropriate for restorative justice to be one of the eight criteria from which to consider the 119 nominations.

After narrowing the 119 unique submissions to 15 semi-finalists, all of the students who had originally applied to join the Bee-lievers in Change were invited to participate in the semi-finalist phase of the selection process. Teams of 4-5 students further researched and prepared print media presentations on each of the semi-finalists. The presentations were delivered to the public on three Renaming Nights that convened on April 3, April 11, and April 23, 2019 at the Coolidge Corner School, Brookline High School, and the Main Public Library. The public was able to interact with the student teams, learn more about each of the semi-finalists, and provide feedback. Based on the input received, the Bee-lievers in Change reconvened and came to a consensus on four names to recommend to the School Committee. On June 6, 2019, the School Committee held a public hearing to solicit feedback on the finalist names and also heard from supporters of other names.

Following a robust public deliberation on June 19, 2019, the School Committee voted 7-0-1 in favor of finalist Florida Ruffin Ridley. Believed to be the first African-American homeowner (along with her husband) in Brookline history, Mrs. Ridley (1861-1943) was a long-time resident on 131 Kent Street whose children attended the Brookline Public Schools. A teacher by profession, and only the second African-American female teacher in Boston history, Mrs. Ridley enjoyed a distinguished career as a leading civil rights activist, anti-lynching activist, suffragist, writer, and editor. She co-founded several national organizations and newspapers, as well as a local Brookline institution, the Second Unitarian Church on Sewall Avenue.

Out of the eleven school buildings in Brookline, only one is named after a woman, and none after a person of color. By renaming the Coolidge Corner School the Florida Ruffin Ridley School, we honor ourselves as a town by recognizing an individual whose underrepresented background as an African-American, as a woman, as a teacher, could have left her extensive contributions forgotten and overlooked. We honor the diligent efforts of our students whose months' long work and scholarship helped produce a name worthy of their pride. We honor a local Brookline legend whose legacy deserves immortalization.

<u>Article 27</u>
On October 17, 2019, the Brookline School Committee voted unanimously, with 8 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Ms. Ditkoff, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto), 0 opposed, and 0 abstentions, to

[1] (1) A person/organization of excellent reputation and character who/which has set an example of outstanding citizenship and/or has made an exemplary contribution of time, service, or resources to or on behalf of the community; (2) A national noteworthy public figure or official; (3) An event of historical or cultural significance; (4) A significant donation or bequest, establishment of a trust, or other similar action.

recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 27: Rename the Coolidge Corner School the "Ethel Weiss School."

While the School Committee recognizes the widespread affection for Ethel Weiss in the Coolidge Corner neighborhood, and appreciates her contributions to the former Edward Devotion School and its alumni, the 18 month public process yielded a different result: Florida Ruffin Ridley. The School Committee's recommendation of no action on Warrant Article 27 by no means seeks to minimize the legacy of Ethel Weiss.

Article 28

On October 17, 2019, the Brookline School Committee voted unanimously, with 8 in favor (Ms. Schreiner-Oldham, Ms. Federspiel, Dr. Abramowitz, Ms. Charlupski, Ms. Ditkoff, Ms. Monopoli, Mr. Pearlman, and Ms. Scotto), 0 opposed, and 0 abstentions, to recommend that Town Meeting vote no action on 2019 Special Town Meeting Article 28: Rename the Coolidge Corner School the "Robert I. Sperber School."

Although the School Committee profoundly respects the enduring legacy of its former superintendent, another town space already bears his name: The Robert I. Sperber Education Center, located at 88 Harvard St. The School Committee instead chooses to respect the 18 month public process that produced a different result: Florida Ruffin Ridley.

Coolidge Corner School Naming Process
Overview and Timeline

Overview

In May 2018, Brookline Town Meeting Members voted to change the name of the Edward Devotion School.

This effort grew from the understanding that Edward Devotion was a slaveholder and that part of his wealth resulted from holding another human in bondage. Town Meeting Members determined that upholding such a name undermined the core values of equity and mutual respect that Brookline strives for, and charged the Brookline School Committee to develop a process to select a new, permanent name for the school.

In June 2018, the "Coolidge Corner School" was adopted as a temporary name until a new, permanent name could be recommended by the School Committee, considered by the Town Naming Committee, and approved by a vote of Town Meeting.

Timeline

<u>May 2018</u>

- By a vote of 171-19, Brookline Town Meeting approves Warrant Article 23:
    - VOTED: That the Town hereby requests that the School Committee propose a new name for the Edward Devotion School after receiving public input through a process to be determined by the School Committee, and hereby requests that the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be the Coolidge Corner School.

- The Brookline School Committee is charged with developing a community-wide, inclusive process to identify a permanent name during the next school year.

<u>June - August 2018</u>

- The Coolidge Corner School is adopted as a temporary name.

- The Public Schools of Brookline begins developing the naming process by gathering input from:
    - Members of the School Committee;
    - The petitioners of Warrant Article 23;
    - Coolidge Corner School Principals and PTO leadership;
    - Educators who serve on Coolidge Corner School's Access and Equity Team;
    - The Town of Brookline's Office of Diversity, Inclusion and Community Relations; and
    - Members of the public who were able to provide input at three School Committee meetings and through electronic means.

September - November 2018

- The School Committee finalizes the Naming Process.

- The Public Schools of Brookline announces the first call for student participation through the nominations committee.
    - Interested students may submit applications online or by completing a paper form at the Coolidge Corner School's main office.

December 2018

- The Public Schools of Brookline announces the official call for nominations for a new, permanent name for the Coolidge Corner School.
    - All PSB students, staff, alumni, as well as all Brookline residents and the community-at-large, are eligible to submit a name.
    - Interested parties may submit nominations online through the PSB website, the Town of Brookline website, or by completing a paper form available at the District Office at Brookline Town Hall or in any of the public library branches in town.

- The Nominations Committee is formed, comprised of six 3rd-5th grade students, eight 6th-8th grade students, and four BHS students who are CCS alumni.
    - These students meet with PSB staff and community members to learn more about the naming process and begin developing the guidelines to review community submissions.

January - February 2019

- The nomination window closes, with over 250 total entrants received.

- The Nominations Committee rename themselves the "Bee-lievers in Change" and, with support from PSB staff and community members, begins reviewing the 119 unique names that were submitted. The rubric used by the Bee-lievers in Change to research and vet each of the 119 names is built on the following guidelines:
    - Whether or not the name meets general criteria set forth by the Town Naming Committee;
    - Whether or not the name meets the school's Core Values of "Work Hard, Be Kind, Help Others," and;
    - Whether or not the name meets any restorative justice criteria, as stated in the original Warrant Article that led to the renaming.

March 2019

- The Bee-lievers in Change, by consensus, selects fifteen semi-finalist names from the 119 unique names submitted by the community.
    - The students begin researching and developing presentations for each semi-finalist name.

April 2019

- The Bee-lievers in Change present their selection of fifteen semi-finalist names.
    - Three Renaming Nights are held for the committee to receive feedback from the public and provide an opportunity for the Brookline community to learn more about each semi-finalist.

May - June 2019

- After processing input from the Brookline community, the Bee-lievers present four finalist names to the School Committee for consideration.

- The School Committee holds three Listening Sessions with the community for additional public feedback.
    - The School Committee, at their meeting on June 19, recommends moving forward with the name: Florida Ruffin Ridley School.

- In a separate school-wide vote, Coolidge Corner School students recommend moving forward with Florida Ruffin Ridley out of the four finalists.

July 2019 - Present

- The School Committee submits Warrant Article 26 to the 2019 Fall Town Meeting:
    - *"To see if the Town will vote to name the PK-8 school located at 345 Harvard St., Brookline, MA 02446 the "Florida Ruffin Ridley School", effective September 1, 2020, or act on anything relative thereto."*

- After separate public hearings, both the Town Naming Committee and the School Committee vote to recommend Warrant Article 26 to Town Meeting Members at their next meeting in November 2019.

The Bee-lievers in Change Nominations Committee
Coolidge Corner School Naming Process
Summary of Work & Timeline

Summary & Overview

In developing a comprehensive and inclusive naming process, the Public Schools of Brookline (PSB) supported an approach that placed students at the center of the nomination process. As a result, the Nominations Committee was formed, consisting of Coolidge Corner Students from 3rd through 8th grade and high school students who had graduated from the Devotion School.

The Nominations Committee was formed in December 2018. Over the next few weeks, the students met with PSB staff and community members to learn about the impetus behind the name change and to prepare for their work in reviewing the submitted names. As a result of these workshops, the Nominations Committee renamed themselves the "Bee-lievers in Change - Students Making a Difference" in January 2019 and developed a rubric to review all 119 nominated names. This rubric, used to review and vet each name submitted by the community, was built from the following guidelines:

- Whether or not the name meets general criteria set forth by the Town Naming Committee;
- Whether or not the name meets the school's Core Values of "Work Hard, Be Kind, Help Others," and;
- Whether or not the name meets any restorative justice criteria, as stated in the original Warrant Article that led to the renaming.

In keeping with the spirit of the original warrant article, the students decided that the school's new name should serve to lift up those who have been forgotten, or highlight those whose contributions have been overlooked.

Working in small groups, the Bee-lievers in Change researched and reviewed all 119 submitted names. Each nomination was discussed individually by the students and assessed for how well it fit their guidelines. In March 2019, they selected fifteen semi-finalist names by consensus. Each group proceeded to more fully research and developed a summary/presentation on each of the semi-finalist names, to be presented to their classmates, teachers, families, and the community-at-large. In April 2019, the Bee-lievers in Change hosted three *Renaming Nights* to showcase their semi-finalist names to the general public. Feedback received from these sessions were used by the Bee-lievers in Change to develop a shortlist of four finalist names that were sent to the School Committee for review.

Bee-lievers in Change
Timeline and Detailed Summary

Team Development Phase

- *December 5, 2018: Presentation by the Petitioners*
    - The Petitioners shared with students the impetus behind the renaming, explain why it is important for the Town of Brookline, describe how the process has unfolded thus far, and explain the vision the Petitioners had in creating the warrant article.
- *December 12, 2018; Team Building and Group Decision Making Processes*
    - The group works together to build its collaboration and teamwork and learn about group decision making processes. This work was led by Principal Jen Buller and Vice Principal Saeed Ola.
- *December 19, 2018; Hidden Brookline Walking Tour*
    - Student Nominating Committee members learn about the history of slavery in Brookline to allow them to consider it as part of the context and history related to the renaming process and purpose of the original warrant article.
- *January 9, 2019; Difficult Conversations*
    - PSB's Senior Director for Educational Equity Dr. Kalise Wornum led a workshop on how to have difficult conversations including role playing on how to respond when responding to questions or comments they receive from fellow students or from members of the public.
- *January 16, 2019; Launch*
    - Superintendent Andrew Bott speaks with students about the powerful and deeply important work they are embarking on and the leadership opportunity they have before them.

Reviewing and Narrowing of Name Submissions Phase

- Weeks of January 21st - March 4th
    - Using the experience they gained during the Team Development Phase, the team reviews every submission individually and assesses the submission. As necessary, the teams do research on nominations to be more fully informed about them.
    - The Bee-lievers in Change reviewed all submitted nominations and came to consensus on 15 semifinalists
    - Working in small groups, the team did additional research on all 15 semifinalists and created one page summaries about each one

Semi-Finalist Phase

- Weeks of March 11th - April 10th
    - All applicants to the process will be re-engaged and invited to participate to help review presentations and materials to help educate the public about the semifinalists.

    - Mini-committees of 4-5 students created to research and develop a presentation for each semi-finalist
    - PSB developed posters and flyers for each semifinalist to be used for public awareness
    - Practice and preparation for three public Renaming Nights where the entire Brookline community is invited to learn about the semifinalists from the Bee-lievers in Change and provide input. Includes practicing presentations with teachers.
- April 3, 23, and 29, 2019 - Renaming Nights Open to all Community Members
    - The Brookline community invited to participate on three Naming Nights, to learn more about the semifinalists and provide input on nominees they support.
    - This open event will be set up for families and community members to drop in, interact with each of the mini-committees to learn more about each semi-finalist and view the printed media created about each semi-finalist

Finalists Phase

- May 2019
    - The student nominations committee reconvened, process feedback from the three Renaming Nights and came to consensus on 4 names to move forward to the School Committee
    - The most consistent and repeated feedback received by the committee on the semifinalists was that the finalists should have a strong connection to Brookline.
    - Bee-lievers in Change lead presentations to all students in each grade to educate them about the finalists. Each class votes on finalists.
    - Coolidge Corner School students recommend moving forward with Florida Ruffin Ridley out of the four finalists.
    - Bee-lievers in Change recommend the four finalists to the School Committee at a public meeting.

ARTICLE 27

TWENTY-SEVENTH ARTICLE

Submitted by: Larry Ruttman

"To see if the Town will change the name of the Coolidge Corner School, formerly known as The Edward Devotion School, to The Ethel Weiss School, or to act on anything related thereto as Town Meeting shall decide.

PETITIONER'S ARTICLE DESCRIPTION

The former Devotion School should be named after the amazing late centenarian Ethel Weiss, who nurtured Devotion School children for seventy-six years from 1939 to practically her dying day in 2015. Ethel Weiss' life was that school, and its life was heavily indebted to her influence. Ethel Weiss was endowed with a singular spirit of moral uprightness, helpfulness, and natural wisdom which she generously shared with the tens of thousands of kids who passed through her tiny store over that enormous span of time. Indeed, she was the heart of the whole surrounding North Brookline community. No person, no matter how famous or honored, can match Ethel Weiss' right to have this legendary school bear her name. It is unlikely that Ethel Weiss' seventy-six continuous years of service to a public school and its children has ever been matched. That service is factually described in a chapter entitled, Ethel Weiss, Guardian Angel, in the book, Voices of Brookline (2005), by Larry Ruttman, which ends with the words, "In August 2004, Ethel Weiss turned ninety, and is still flying around her shop as a guardian angel, with no plans to alight." In fact, Ethel continued to fly around her shop guarding Devotion School children for over another decade until she reached the age of one hundred and one.

SELECT BOARD'S RECOMMENDATION

Article 27 is a petitioned article that asks Town Meeting to rename the Coolidge Corner School, the "Ethel Weiss School."

The Select Board voted favorable action on the article submitted by the School Committee to rename the Coolidge Corner School, the "Florida Ruffin Ridley School," based on the recommendations from the School Committee and the Naming Committee. Thus, they felt the need to vote no action on this article, which in no way detracts from Ms. Weiss' contributions to the community.

The Board recommended NO ACTION, by a vote of four in favor and one abstention taken on October 22, 2019.

No action:	Abstain:
Greene	Heller
Franco	
Hamilton	
Fernandez	

ADVISORY COMMITTEE'S RECOMMENDATION

Please see the Advisory Committee's write-up under Article 26 for a comprehensive report on Articles 26-28.

XXX

ARTICLE 28

TWENTY-EIGHTH ARTICLE

Submitted by: Lee L. Selwyn, TMM13

To see if the Town will change the name of the former Edward Devotion School, now known as the Coolidge Corner School, to the "Robert I. Sperber School." or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

At the Annual Town Meeting in May 2018, Town Meeting adopted the following Motion with respect to Article 23:

> SUBSTITUTE MOTION OFFERED BY STANLEY SPIEGEL, TMM2
> VOTED: That the Town hereby requests that the School Committee propose a new name for the Edward Devotion School after receiving public input through a process to be determined by the School Committee, and hereby requests the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be the Coolidge Corner School.

However, no recommendation was offered by the School Committee at the 2019 Annual Town Meeting.

Following the adoption of Article 23, the School Committee initiated a process for selecting a new name for what was then being referred to as the Coolidge Corner School. Nominations were solicited "from all Public Schools of Brookline students, families, and staff; members of the Brookline community; and former students and staff of the Devotion School." A set of specific "Criteria to consider when nominating a person" was provided to those offering nominations:

(1) A person of excellent reputation and character who has set an example of outstanding citizenship and/or has made an exemplary contribution of time, service, or resources to the Brookline community;
(2) A national noteworthy public figure or official who represents one or more of the core values of the school (Work Hard, Be Kind, Help Others);
(3) A person who has made a significant donation or bequest to the town;
(4) A noteworthy artist, writer, public figure or official who represents Brookline's core values of racial equity and restorative justice;
(5) An individual who contributed to racial and/or gender justice and equity.

Approximately 104 nominations were submitted, including the name of Dr. Robert I. Sperber. With the exception of item (3), Robert Sperber easily satisfies all of these criteria. The Boston Globe noted just some of his accomplishments in a lengthy obituary: "As superintendent in Brookline from 1964 to 1982, Dr. Sperber was instrumental in the founding of the Metropolitan Council for Educational Opportunity, or METCO. He also implemented innovative curriculum and support programs, including the Brookline Early Education Project; Facing History and Ourselves, a Holocaust education program; and the town's Extended Day Advisory Council and Education Foundation."

Robert Sperber was the Superintendent of the Brookline Public Schools for eighteen (18) years and remained active in Brookline school and national public education affairs for more than three decades following his retirement as Brookline Superintendent. He was a Town Meeting Member from Precinct 6, and regularly attended Town Meeting and frequently spoke on matters relating to school affairs up until his death in 2017. For many years, Dr. Sperber served as founding chair or co-chair of Brookline's Economic Development Advisory Board (EDAB), a primary objective of which was to provide for a healthy tax base to support Town and School services. Following his retirement from the Brookline School System, Dr. Sperber spent the next 20 years at Boston University as a specialist in urban education and as a professor of urban education.

Dr. Sperber was a nationally recognized leader in the field of public education and made lasting contributions to the Town and to our Schools. The Boston Globe described an event in April 2016 when Dr. Sperber was honored for his Lifetime Achievement at the Brookline Teen Center, where he was a board member. "'He was an inspiration to me and many others,' said community activist Anne Turner, who chaired the event. 'It was a special and poignant thank you, and it meant a lot to us and to him.'" The event highlight some of Dr. Sperber's core beliefs: a commitment to equality for all students, the importance of creating innovative ideas that last, and using education as an instrument of social justice. Barbara Senecal, who had chaired the Brookline School Committee during Dr. Sperber's tenure (she is currently a Precinct 13 Town Meeting Member), was quoted by the Globe as recalling that "people were standing in line to just have a moment with him" at the celebration, and that "he was the most ethical and moral straight-talking person I ever knew.'"

The scope and extent of Dr. Sperber's intimate connection with the Public Schools of Brookline is without parallel, and it is fitting and appropriate that he should be honored by naming the school for him.

Brookline has a long tradition of naming our schools in honor of people who have made significant and permanent contributions to the nation and to public education in Brookline. For example, the Runkle School is named for John Daniel Runkle, who was Chairman of the Brookline School Committee and an early advocate of mathematics and technical education. Runkle was also a founder of the Massachusetts Institute of Technology and served as MIT's second president. The Lincoln School's namesake, William H. Lincoln, was a trustee of both Wellesley College and MIT. Lincoln had a great impact on the Town of Brookline. He had a passion for education and contributed to it through his involvement with the Brookline School Committee, both as member and Chair. He served as a member

and was chosen chairmen for sixteen consecutive elections, serving on the Brookline School Committee for 22 years in all. Both William Lincoln and John Runkle were strong advocates for manual studies/industrial education (i.e., "shop" and "domestic science"), and the Lincoln School was the site at which this course of studies was inaugurated in 1888. The Driscoll School is named after Michael Driscoll, who served on the Brookline School Board (later the School Committee) from 1874 until his death in 1926. During his 52 years of service to the Brookline Schools, Driscoll oversaw the construction of four new school buildings, and played a key role in the rapid expansion of the Brookline schools that occurred in the first few decades of the 20th century.

The extraordinary contributions of Dr. Robert Sperber to public education, to the Brookline School System, to racial equality and diversity, and to the Town of Brookline are easily comparable to the achievements of the namesakes of other Brookline School buildings. These contributions and achievements on behalf of our Town and our Schools easily exceed those of others whose names are being recommended for this honor. It is both fitting and appropriate for the Coolidge Corner School to bear the name of Robert I. Sperber.

SELECT BOARD'S RECOMMENDATION

Article 28 is a petitioned article that asks Town Meeting to rename the Coolidge Corner School, the "Robert I. Sperber School."

The Select Board voted favorable action on the article submitted by the School Committee to rename the Coolidge Corner School, the "Florida Ruffin Ridley School," based on the recommendations from the School Committee and the Naming Committee. Thus, they felt the need to vote no action on this article, which in no way detracts from Mr. Sperber's contributions to the community.

The Board recommended NO ACTION, by a vote of four in favor and one abstention taken on October 22, 2019.

No action:	Abstain:
Greene	Heller
Franco	
Hamilton	
Fernandez	

ADVISORY COMMITTEE'S RECOMMENDATION

Please see the Advisory Committee's write-up under Article 26 for a comprehensive report on Articles 26-28.

XXX

ARTICLE 29

TWENTY-NINTH ARTICLE

Submitted by: Donelle S. O'Neal Sr.

Resolution: calling for a creation of an Economic-Equity Advancement Fund to be funded by all marijuana establishments in the Town of Brookline, Massachusetts.

To see if the Town will adopt the following Resolution:

Whereas: Town endeavors to bring about equitable opportunities in all aspects of life within the Town of Brookline.

Whereas: Although there is a strong desire by the Brookline citizenship to bring about racial equity in all aspects of Brookline life, a. An essential area identified as a priority is economic equity.

Whereas: A comprehensive and systematic process to achieve economic equity remains in its infancy stage, there are concurrent steps that can be taken to ensure that equity processes have the financial means and community support to be implemented.

Whereas: The Town can use its leverage to request that large businesses seeking to do business in the Town of Brookline , to provide funding for projects, programs and community impact mitigation.

Whereas: Marijuana businesses already established in Brookline have formal commitments to giving back to the Brookline community , but these commitments do not include funding or support for small minority business entrepreneurs.

Whereas: Creating this fund will help minority business owners get the funding they need that they might not have been able to acquire due systemic barriers in banks and other financial institutions.

Whereas: We need a fund to assure equal and equitable opportunities for all the under-served residents of Brookline Massachusetts.

Whereas: Because Marijuana Corporations such as those that exist or will exist in Brookline have Capital Financial advantages and other businesses do not have such advantages, they are in position to provide financial support to fund a minority-own business program with the Town of Brookline.

Whereas other Towns and Cities have instituted programs to assist MBE Such as: □ Happy Valley and the Town of Amherst:Donation to the town in the amount of $75,000 made in 3 payments of $25,000 each. □ Apical Inc and City of Easthampton
A Payment of $75,000 or 3% of revenue, Whichever is Greater

Payment of $15,000 in 2 payments of $7,500 when Provisional License is approved
Also donated $2,500 to 4 different entities JOLO CAN LLC and City of Chelsea
3% of revenue.$60,000 donation to the City of Chelsea Non-profits

Whereas: The Town, through the Office of Diversity, Inclusion and Community Relations in collaboration with its various committees, should steward the program as they represent the populations that would be eligible for the program.

Whereas: If the program is successful Brookline will have more minority business ownership within its boundaries. It has the potential to increase the Town's commercial tax-base. It has the potential to better the economic status of some of our residents and perhaps lead to home ownership- which leads to more diversity in Brookline's community. Therefore: The Town requests that all current and future marijuana establishments that conduct business in Brookline, Ma be required to provide funds to the EEAF fund the Town in the amount no less than First year, : $1.5 million dollar first donation to the EEAF fund and years 2-5: 3% of gross revenue during years 2-5. The funds will be placed in a designated Town account and such funds will be used to support Residents who are Under Served, small MBE, WBE, VOB, LGBTQ entrepreneurs seeking to establish businesses within and around the Town of Brookline. We require that these establishments actively support and engage in programs that work to achieve equity for all marginalized groups within the Town and that they report such activities annually to the Select Board.

The Office of Diversity, Inclusion and Community Relations and the Community Planning Department and their corresponding Boards will work with the community to develop policies and procedures for the fund and administer the fund to eligible applicants.

Note Brookline will be the first in the State to implement this sort of Fund. And hopefully Brookline's EEAF if passed hopefully it will be a Model for other Towns Cities to follow giving Equal Opportunities back into their communities.

Select Board will review boards and commission's ability to establish and incorporate community engagement plans in its critical work and make necessary personnel changes.
Effective Date: January 1, 2020

The Town of Brookline will ensure that the program always provide the funds necessary to sustain the program.

Make an arrangement with BCF to manage the funds, with oversight and program management established by the Town.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Such as: Happy Valley and the Town of Amherst:

Donation to the town in the amount of $75,000 made in 3 payments of $25,000 each. Apical Inc and City of Easthampton
A Payment of $75,000 or 3% of revenue, Whichever is Greater
Payment of $15,000 in 2 payments of $7,500 when Provisional License is approved
Also donated $2,500 to 4 different entities JOLO CAN LLC and City of Chelsea
3% of revenue.
$60,000 donation to the City of Chelsea Non-profits

Note Brookline will be the first in the State to implement this sort of Fund. And hopefully Brookline's EEAF if passed hopefully it will be a Model for other Towns Cities to follow giving Equal Opportunities back into their communities. Select Board will review boards and commission's ability to establish and incorporate community engagement plans in its critical work and make necessary personnel changes.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on 10/23/2019. By a vote of 8-0-0, the CDICR recommends FAVORABLE ACTION on Warrant Article 29.

DISCUSSION

Raul Fernandez presented the new language for this warrant article. It has been approved by the Moderator. The article urges the Select Board to create a Racial Equity Advancement Fund to be funded by 35% of the revenue received from the local 3% tax on recreational marijuana sales within Brookline. The Office of Diversity, Inclusion and Community Relations and the CDICR will jointly develop funding guidelines, distribute funds and report annually to the Select Board. It is important to understand that these funds will not be derived from the community impact fee. Funds could be used for programs within the School Department, as well as within the Town.

The issue of funding for someone to administer such a large program within the Office of Diversity was raised. The Office has other needs for an expansion of staff and another staff person will likely be requested under the funding line of the Office. Lloyd Gellineau, Chief Diversity Officer, is supportive of this warrant article and feels that the issue of funding for this position should not be an impediment to the adoption of this warrant article. In addition, the issue has been discussed with the Town Administrator and the Assistant Town Administrator.

Therefore, the commission voted FAVORABLE ACTION on the warrant article, by a vote of 8-0-0.

SELECT BOARD'S RECOMMENDATION

A report and recommendation from the Select Board under Article 29 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 29 will be included in the supplemental mailing.

XXX

ARTICLE 29

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 29 is a petitioned warrant article that seeks a non-binding Resolution of Town Meeting to fund Racial Equity projects and programs. Initially crafted as a separate financial assessment on marijuana establishments, the Resolution was revised to encourage the use of up to 35% from the local excise tax on marijuana sales. These funds would be appropriated by Town Meeting for racial equity programming as approved by the Select Board and/or the Diversity Inclusion and Community Relations Commission.

The new state law legalizing non-medical marijuana sales authorized a community impact fee that can be negotiated with a marijuana establishment as part of a Host Community Agreement (HCA). The Town has negotiated a community impact fee equivalent to 3.0% of all sales with each of the four current/prospective marijuana vendors. The proceeds of this fee must be expended in accordance with state law and Cannabis Control Commission (CCC) guidance, which stipulates that expenditures must be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment. It was unlikely that the original proposal to assess a fee, whether part of the community impact fee or otherwise, to fund racial equity programming would comply with state law or CCC guidance. As a result, the Resolution was modified to encourage the appropriation from the separate 3% local excise tax on the sale of non-medical marijuana. This tax revenue is not restricted and can be appropriated by Town Meeting for any legal purpose. The Resolution calls for expenditures of up to 35% of this revenue to fund the Racial Equity program. The Town has conservatively projected $325,000 in Fiscal Year (FY) 2020 from the local marijuana excise tax. 35% of that sum is $113,750.

While the Select Board prefers that these expenses be funded through the community impact fee or through special state funding, it acknowledges that the current law and CCC guidance will not permit it. The Board is also concerned that the marijuana excise tax is general municipal revenue which is used to fund the operational budget of the public schools and other municipal departments. During the last Tax Override proposal, the Board committed to raising $2,057,619 in non-property tax revenue in FY 2021. Any portion of the taxes from marijuana sales that gets appropriated for specific purposes will require other fee increases to meet this budgetary commitment, including but not limited to the trash fee or parking meter rates. However, the Board acknowledges that the legalization of marijuana was partly intended to address the unequal treatment of racial minorities during government's historical enforcement activities (the war on drugs), and that the state's desire to redress this by empowering minority businesses to benefit from legalization lacks resources and commitment. Some members expressed support of the concept, but were hesitant to vote for the language without a better understanding of the program contemplated. The Select Board voted to recommend favorable action on Article 29 with the understanding that programs and projects funded by the excise tax will be carefully reviewed by them within the overall context of the Town's budgetary needs.

The Select Board voted 3-2 FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution urging the Select Board to support an appropriation for Racial-Equity Advancement to be funded by up to 35% of the revenue received from the Local Option Tax on marijuana revenue.

WHEREAS Brookline residents are committed to bringing about racial equity in all aspects of life, including educational, health, and economic equity.

WHEREAS the Town can use its marijuana revenue to provide funding for programs that would result in greater racial equity within Brookline.

WHEREAS a funding mechanism is needed to ensure the consistent funding of such programs.

WHEREAS the Office of Diversity, Inclusion and Community Relations in collaboration with the Commission for Diversity, Inclusion and Community Relations can steward this fund as they have close contact with the people and organizations that would be eligible for funding.

THEREFORE, be it resolved that Town Meeting requests that the Select Board establish an appropriation to support Racial-Equity Advancement to be funded by up to 35% of the revenue received from the Local Option Tax on marijuana revenue and to be managed by the Office of Diversity, Inclusion and Community Relations in collaboration with the Commission for Diversity, Inclusion and Community Relations, which will jointly develop funding guidelines and recommend specific projects for approval by the Select Board. The Office of Diversity, Inclusion and Community Relations, with approval from the Commission for Diversity, Inclusion and Community Relations, may also use a portion of these funds for new programs which advance racial equity.

ROLL CALL VOTE:

Aye:	No:
Greene	Franco
Fernandez	Heller
Hamilton	

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 29 as originally proposed outlined the establishment of a loan fund to support the establishment and capital needs of small business in Brookline operated by members of disadvantaged minorities.

The article has been amended to include revenues from the marijuana sales tax as a source of funding.

The Advisory Committee recommends FAVORABLE ACTION ON A SUBSTITUTE MOTION to offer an appropriation for Racial Equity Advancement as part of the Town's annual operating budget cycle.

BACKGROUND:

The petitioner brought Warrant Article 29 because despite potentially significant revenues coming to the Town from marijuana dispensaries, there are nonetheless no programs for the economic advancement of minorities and women, and, in particular, in assisting them in starting or expanding businesses in Brookline. Petitioner asks that a fund be created to assure equal and equitable opportunities for all the underserved residents of Brookline.

Small businesses require modest amounts of capital to start up or expand, and access to capital is often nonexistent or severely limited by the entrepreneur's lack of a track record. Banks often require that the business show profitable operations for three years, so a person who wants to start a business has to look outside the commercial banking industry for funds.

There are a handful of nonprofits that loan to startups. For example, Accion East is active in the Boston metropolitan area, and the US Small Business Administration supports a number of nonprofit neighborhood development corporations that make loans of up to $15,000 with limited paperwork and more than that amount through a traditional loan committee review.

Nonetheless, these nonprofit lenders charge a moderately high interest rate – currently 7% -- and require repayment within five years, and they charge loan fees over and above the interest. As a result, friends and family are often the first and last resort. That may be adequate for starting a small service business, but if the startup requires renting and building out a storefront or if it requires capital equipment such as a vehicle, family and friends often cannot offer enough money.

Thus an equity fund supported by the Town and drawing funds from marihuana sales taxes has an almost reflexive appeal to those who look to the development of minority-owned small business as a matter of economic and social justice.

In accordance with a Host Community Agreement between New England Treatment Access ("NETA") and the Town, the Town receives an aggregate of 6% of NETA's revenues in taxes and fees. Similar fees will be received from other Brookline marijuana dispensaries as they are licensed and open. Currently, no portion of such taxes and fees are earmarked for the economic advancement of minorities and women.

Article 29, a resolution, asks that marijuana dispensaries operating in Brookline be required to provide funds to a to-be-established Economic-Equity Advancement Fund ("EEAF"), in such amounts as are expressed in the Article. As articulated in Article 29, funds received would be managed by the Brookline Community Foundation, with oversight by the Town. Policies and procedures would be developed by the Town's Office of Diversity, Inclusion and Community Relations and the Community Planning Department, and their corresponding Commission or Board, and they would administer the EEAF to serve eligible applicants. Further, the Article asks that the Town ensure that the program "always provide the funds necessary to sustain the program."

DISCUSSION:

Advisory Committee members were in general agreement with the stated objectives of the warrant article and the objective of an economically level playing field. There was considerable discussion of how the actual process of appropriation of funds would work, what the roles of the various parties identified in Article 29 would be, and whether the Town had sufficient staff resources to manage this program. There were also questions from a small number of Advisory Committee members whether the concept of restorative justice that is the basis for Article 29 is a valid one.

One concern is that people wishing to start a small business often need assistance in preparing estimates of the amount of funding they need, and they can benefit from ongoing technical assistance from existing sources of mentoring. How would a fund incorporate such assistance into its loan program?

Another point was that a loan fund is built on the assumption that the loan will be repaid, so it can become a revolving fund. The resolution seems to envision ongoing support from marijuana sales taxes. But if the funding does not stop after a reasonable base is built, that may generate far more money than can be reasonably loaned out to eligible Brookline businesses, and it would divert the funds from other important uses.

Advisory members were also very concerned about earmarking marijuana sales tax revenue for a specific use. There are other important good uses for that money, and members were unhappy with the idea that a substantial slice of it should be dedicated to just one purpose, however meritorious the purpose.

That led the Advisory Committee to conclude that Brookline should indeed support funding to help provide economic equity, but that the way to do so proper to do so is through an annual appropriation from the Town's annual operating budget. The mechanism for applying those funds would be determined by the Select Board based on circumstances from year to year.

RECOMMENDATION:

By a vote of 24-0 with 4 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the following motion

Resolve: That Town Meeting urge the Select Board to offer an appropriation for Racial Equity Advancement as part of the Town's annual operating budget cycle.

ARTICLE 30

THIRTIETH ARTICLE

Submitted by: Deborah Brown, TMM1, Mariah Nobrega, TMM4, and Samuel Botsford

To see if the Town will vote to create a new Article 3.XX in the Town's General By- laws, as follows:

Article 3.XX: BROOKLINE COMMUNITY ENGAGEMENT PLAN

SECTION 3.XX.1: ESTABLISHMENT AND PURPOSE

The purpose of this article is to complement Articles 3.21 (Readily Accessible Electronic Meeting Notices, Agendas and Records) and 3.22 (the Public's Right to Be Heard on Warrant Articles) with a formal Community Engagement Plan (CEP) for the Town of Brookline.

Community engagement is essential for a robust and transparent community because it fosters more meaningful interactions between the Town and its inhabitants; frequently enables greater agreement among all stakeholders; and creates true ownership across the Town.

The Town of Brookline has a responsibility to engage its inhabitants in a robust and equitable manner in order to effectively carry out the key functions of government, such as crafting and implementing laws, budgets, plans, directives, and strategic visions.

At a minimum, the purpose of the community engagement plan is to:

1. Engage community inhabitants and community resources as part of the solution.
2. Engage the broader diversity of the community–especially inhabitants who have not been engaged in the past including, without limitation, the poor, people of color, disabled and other politically disenfranchised groups.
3. Increase public understanding of and support for public policies and programs.
4. Increase the legitimacy and accountability of government actions.
5. Ensure that the Town proactively and more effectively responds to the needs and priorities of its inhabitants.

Section 3.XX.2 Definitions

For purposes of this By-law, the definitions set forth in Article 1.1, Section 1.1.4 of the Town's General By-laws shall apply, the most relevant being the definitions of "Committee", "Inhabitant", and "Municipal officer."

Section 3.XX.3 Development

The Office of Diversity, Inclusion and Community Relations will develop the initial CEP and prepare it for public use, with input from the Commission for Diversity, Inclusion and Community Relations and other departments and entities as appropriate.

Section 3.XX.4 Design of Plan

The Community Engagement Plan shall include, at minimum:

1. Guidelines that are consistent with the best practices for municipal community engagement.
2. Indicators that provide qualitative and/or quantitative information that can be used to determine if the Town is implementing community engagement practices improving over time. Indicators shall be:
    a. 'SMART': Specific, Measurable, Attainable, Relevant, and Timely,
    b. developed for each department and committee,
    c. reported on at least annually in the budget report for departments, and on the respective webpage for departments and committees.
3. A formal CEP evaluation process. On an annual basis, the Office of Diversity, Inclusion and Community Relations shall submit to Select Board, Town Meeting Members and the general public an analysis of the previous year's community engagement programming and outcomes and provide recommendations for improving the CEP itself, as well as the programming. The relevant results of said evaluation shall be included in the performance/reappointment review for each municipal officer.

The CEP shall be structured so as to not conflict with Massachusetts Open Meeting Law.

Section 3.XX.5 Applicability

The CEP will apply to all municipal officers, Town employees, and Town departments and committees.

Section 3.XX.6 Effective Date
Barring an extension to this effective date by Town Meeting through subsequent action, the community engagement plan shall take effect by June 1, 2020.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The purpose of this warrant article is to develop the formal structure and mandate for a community engagement plan for the Town of Brookline. Brookline, like all local governments, has a responsibility to engage its community members in order to effectively carry out the key functions of government, such as crafting and implementing laws, budgets, plans, directives, and strategic visions. Brookline is strongest when its residents work well with government as full partners. A community engagement plan that is not only meaningful, robust, and effective, but also equitable and inclusive is critical to our growth and sustainability.

An equitable, inclusive community engagement approach to public decisions ensures that everyone, especially those who have been historically left out of these conversations (e.g., low-income people, people of color, recent immigrants, speakers of English as a second

language), has a say in the decisions that affect their lives. Inclusive community engagement results in government processes, practices, and decisions that are more responsive to community priorities, avoid many unforeseen consequences, and create relationships that hold local governments accountable. Inclusive community engagement can also lead to decisions that result in a more equitable distribution of resources, like where public transit infrastructure is located or investments in neighborhood parks, schools, or housing. With a greater commitment to intentionally increasing community engagement efforts and specifically equitable community engagement, Brookline will be in a better position to make better decisions, address social inequities and promote access to resources, services, and programs that help people lead healthier, happier lives.[1]

The proposed Community Engagement Plan includes three components.

1. Guidelines. This bylaw does not attempt to proscribe too closely the exact format of the plan, instead providing latitude to the Select Board and Town employees. As noted in the bylaw, the guidelines are not envisioned to be static but rather a living, breathing document that reflects progress against goals and best practices. Brookline will have many reference resources for the development of community engagement plans, including nationally recognized documents like the National Institutes of Health's Principles of Community Engagement[2], and locally produced documents like the Metropolitan Area Planning Council's Community Engagement Guide.[3] The guidelines may complement and extend existing bylaws; for example, although currently Bylaw Article 3.21 states that all electronic meeting notices must be posted 48 hours in advance, the Community Engagement Plan could recommend that meeting notices and agendas be posted at least 5 days (or more) in advance.
2. Indicators that will allow for public review of whether the programming that is being enacted to meet the goals of the Community Engagement Plan is successful. The bylaw requires that at minimum those indicators be available for use in the annual budget process, in the performance evaluations of department heads, and in the reappointment reviews of committee chairs.
3. Evaluation of the CEP itself as well as the programming resulting from the CEP.

The department head for the Office of Diversity, Inclusion and Community Relations has reviewed this warrant article and affirmed that the department would take the lead in developing the initial community engagement plan as well as the annual review process.

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[1] Inclusive Community Engagement & Equitable Participation to Improve 4 Core Functions of Local Government, Katie Hannon Michel, Cesar De La Vega, & Tina Yuen, ChangeLab Solutions Follow, Oct 15, 2018, https://medium.com/@changelabsolutions

[2] PRINCIPLES OF COMMUNITY ENGAGEMENT SECOND EDITION, NIH Publication No. 11-7782, https://www.atsdr.cdc.gov/communityengagement/

[3] https://www.mapc.org/wp-content/uploads/2017/08/MAPC-Community-Engagement-Guide-2016.pdf

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 16, 2019. By a vote of 8-0-0, the CDICR recommends FAVORABLE ACTION on Warrant Article 30.

DISCUSSION

The CDICR is enthusiastic about the ability of the proposed Community Engagement Plan to provide a more coordinated and effective way to engage and respond to the community. Effectively implementing community engagement through town government will not necessarily mean new technology but rather using the systems we have now in a more consistent manner, providing training in best practices. One example that was given of where community engagement was missing, and training to departments as part of the CEP would help, was the recently launched and then withdrawn police reporting app. Dr. Sharon Abramowitz (a member of the School Committee who was speaking on her own behalf as a community engagement expert who has co-authored internationally-used community engagement guidelines) noted that community engagement planning is a best practice internationally by governments and non-profit organizations.

Therefore, the commission voted FAVORABLE ACTION on the warrant article, by a vote of 8-0-0.

SELECT BOARD'S RECOMMENDATION

Article 30 is a petitioned article that asks the Town to establish a by-law creating a Community Engagement Plan (CEP). The Board is supportive of efforts to broaden the reach of community members so that there is increased public involvement in policy making. The Board agrees that a proper plan would allow for a stronger government where community members feel invested in the Town's decision making. The Board has acknowledged that there is a need to improve the process for appointments to Board and Commissions, a major component of the Town's community engagement. The Board believes that there will be noticeable improvements in the coming year now that there is a dedicated resource assigned to manage the coordination and maintenance of the appointment and term renewal process.

The Board agrees with the Advisory Committee that a draft plan is necessary in order to support the establishment of this by-law and understand the requirements of the Plan. The Board looks forward to learning how this plan will enhance existing efforts to engage with

members of the community. The Select Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 30 proposes amending the General By-Laws by creating a new article to establish a Community Engagement Plan (CEP) as a complement to Article 3.21 (Readily Accessible Electronic Meeting Notices) and 3.22 (the Public's right to be Heard on Warrant Articles). The Advisory Committee feels there is not enough information to support codifying a CEP into law as specified in the warrant article. The charge to the CDICR is to develop a draft CEP, analyze how CEPs have worked in other communities, and to provide a cost analysis.

The Advisory Committee recommends FAVORABLE ACTION ON A SUBSTITUTE MOTION to refer the subject matter of W.A. 30 to the Commission for Diversity, Inclusion and Community Relations (CDICR).

DISCUSSION:
Under W. A. 30, the Office of Diversity, Inclusion and Community Relations (ODICR) would be charged with developing and monitoring a Community Engagement Plan (CEP) that would, at minimum, increase public involvement in policy-making and more effectively respond to the needs and priorities of the wider community, especially groups that have not been engaged in the past. Such engagement, properly resourced, would increase public support and provide more government accountability and transparency.

A CEP would provide Town government with a template to solicit input, keep participants engaged, and publicize decisions and the rationale behind them. Many communities have instituted such plans, and the MAPC can provide a framework so the Town is not recreating the wheel. The proposed by-law includes provisions for measuring effective outreach and evaluating and updating the plan annually.

Petitioners are concerned about the growing lack of trust in government because of the lack of timely and widespread dissemination of information. Lots of different groups are doing outreach to constituents, and language related to community engagement is imbedded in the language for several Town departments already. A CEP will provide a standard blueprint to determine what people want to know, where they can find it, and how to improve engagement overall. Right now, there is too much miscommunication, cross communication, misinformation – and angry people who don't feel listened to or don't know how to be included in Town government.

The Advisory Committee had many concerns about codifying into law a plan that had not yet been developed and for which there was no estimation of cost. ODICR would require

additional staffing to design and implement a CEP, and in a zero-sum budget environment it is critical to know where the funds would come from.

The evaluation process for Town employees, stipulated in the proposed by-law, would require a level of recordkeeping that could be costly and cumbersome. Making this part of people's yearly evaluation and retention means each Department would need resources to maintain these records.

The proposed by-law applies to all department heads, appointed or elected officials, and members of boards, commissions, and committees. Many committees are run by volunteers who do not receive very much support. If there is a greater burden being placed on them, the Town needs to budget for help or risk people not volunteering. The Town has a responsibility to provide guidance for committee chairs if requirements are more extensive than currently required.

A CEP could be an excellent first step but we don't know why people are not engaged. Many people in the Town may just not have spare time and until a decision is made that they disagree with they don't pay attention. We do need to find creative ways to engage more people and that requires staff who know how to simplify difficult language and concepts.

Petitioners expressed concern that without a bylaw, there will be no community engagement plan. If Town Meeting supports this warrant article, it demonstrates that community engagement is a priority and needs to be funded appropriately. Town staff have discretion to make the plan onerous or not, and the proposal requires that the plan be revisited and updated regularly.

Overall, the Advisory Committee felt that more information was needed and a substitute motion was made to refer the substance of the warrant article to the CDICR to review how well CEPs have worked in other communities, create a draft plan for Brookline, and develop a cost analysis for its implementation.

RECOMMENDATION:
By a vote of 18 in favor, 6 opposed, and 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION ON THE SUBSTITUTE MOTION:

VOTED:
To refer the subject matter of article 30 to the Commission for Diversity, Inclusion and Community Relations (CDICR) to create a draft Community Engagement Plan (CEP) and analyze other communities' CEPs, analyze the budget requirements and processes, and report back to the Fall 2020 Town Meeting.

XXX

ARTICLE 31

THIRTY-FIRST ARTICLE

Submitted by: Jules Milner-Brage*, TMM12; Susan Helms Daley*; Scott Englander*, TMM6; Heather Hamilton, Select Board Member; Blake Cady; C. Scott Ananian, TMM10; Eileen Berger, TMM15; John Bowman; John Harris, TMM8; Linda Olson Pehlke, TMM2; Willy Osborn.

**Co-petitioners' point-of-contact.*

To see if the Town will adopt the following resolution:

WHEREAS climate change is a major existential threat to humanity and other life on our planet, with impacts felt especially by the poor and powerless;

WHEREAS greenhouse gas emissions are causing climate change, and transportation contributes 43% of these emissions in Massachusetts;

WHEREAS there are many negative health impacts from automobile use, such as serious injuries, air pollution and physical inactivity;

WHEREAS low-occupancy travel via automobile and parking of private automobiles require a disproportionate quantity of space relative to the quantity of people and goods moved;

WHEREAS Brookline public ways currently provide only limited accessibility to non-automobile uses;

WHEREAS traffic congestion and a lack of safe, accessible, reliable alternatives to automobile transportation impose substantial time burdens and costs on individuals;

WHEREAS the Town of Brookline has adopted a Climate Action Plan to prioritize planning to achieve zero greenhouse gas emissions by 2050, Town- and community-wide;

WHEREAS the Town of Brookline has adopted a Complete Streets Policy that seeks to shift use to more healthful and sustainable transportation modes by accommodating them equitably in public ways;

WHEREAS replacement of internal combustion-powered transportation with human- and/or electric-powered transportation (and supporting electric charging infrastructure) stands to reduce greenhouse gas emissions, especially when supplied with energy produced via non-fossil-fuel-combustion means; and

WHEREAS Brookline historically developed with a pattern of land use and public ways that are amenable to the use of public transit, walking, biking and other space- and

energy-efficient modes of transportation and has limited space for personal vehicle use and parking.

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls upon the Town of Brookline to *leverage its preexisting strengths*, to:

1) **Prioritize** safe, space-efficient, and energy-efficient movement of people and goods over the movement and parking of private vehicles when designing and improving our public ways, with particular focus on high-traffic routes, connectivity and directness. This should be accomplished in a manner that gives particular consideration to equity of access and safety for (i) people of a broad range of ages, abilities and financial means, and (ii) use of healthful and sustainable transportation modes.

2) **Demonstrate, pilot, and evaluate** new public way configurations that improve travel conditions to enable everyone to use healthful and sustainable transportation modes. Reconfigure street usage for temporary events (such as "open streets" and "Park(ing) Day") to demonstrate the community benefits of utilizing road space for people.

3) **Align** our planning and zoning regulations with our historical streetcar-, biking-, and walking-centric (less automobile-dependent) development pattern. Implement "transportation demand management" policies to realign incentives towards utilization of healthful and sustainable transportation modes.

4) **Encourage transition** of motorized travel to electric vehicles and operating behaviors that eliminate local greenhouse gas emissions, including support for increased electric vehicle charging. This should be accomplished with particular consideration for avoiding any conflicts or interference with healthful and sustainable transportation modes, or with improved travel facilities for these modes.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board, in consultation with the Advisory Committee and any other appropriate Boards, Commissions and Committees, to determine a course of action, applying the aforementioned four strategies, to:

5) Work towards a 2050 goal of a "75/25" sustainable transportation mode split, where approximately:
    - 75% of trips are by human power (e.g. foot, bike, wheelchair), electric micro-mobility (e.g. e-scooters, e-bikes, e-wheelchairs), or electric shared rides (e.g. electric public transit, electric car-pools), and
    - 25% of trips are by single-occupant or single-passenger electric cars or trucks;

    Work towards a 2030 "30 + 30" interim goal, where approximately:

- 30% of the progress needed to meet our 2050 mode split goal is achieved, and
- 30% of motor vehicles registered in Brookline are electric;

For the 2050 goal, 'electric' excludes vehicles that can use internal combustion engines, but for the 2030 goal 'electric' includes plug-in hybrids.

6) Develop and implement a strategic infrastructure network to realize these goals (e.g. safe routes to schools; inclusive, protected bike lanes for a diversity of users; electric vehicle charging facilities);

7) Measure and report progress towards these goals; and

8) Establish a Sustainable Transportation Engineer or Planner position to support the advancement of these goals.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board, et al., to report the details of this course of action no later than the 2020 Annual (May) Town Meeting.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Warrant Article contributors: Jules Milner-Brage*, TMM Pct. 12; Susan Helms Daley*; Scott Englander*, TMM Pct. 6; Heather Hamilton, Select Board Member; Anne Lusk; Blake Cady; C. Scott Ananian, TMM Pct. 10; David Kroop; David Trevvett; Eileen Berger, TMM Pct. 15; Jan Preheim; John Bowman; John Harris, TMM Pct. 8; Linda Olson Pehlke, TMM Pct. 2; Willy Osborn.

**Co-petitioners' point-of-contact.*

"*What we have is no longer a technological or economic problem, but a status quo bias problem*."
- Speaker at Asilomar Conference on Energy and Transportation (Dutzik, 2019)

Introduction

The goal of this Warrant Article is both to raise awareness in our Town regarding the immediacy of the climate problem and the outsized role that transportation plays in it, as well as to set forth specific suggestions we can follow to reduce our reliance on gas-powered vehicles by (1) providing appealing alternatives to individual car trips and (2) electrifying the remaining car trips.

Transportation emissions constitute not only the greatest component of Massachusetts' greenhouse gas footprint, but also the fastest growing (Commission, 2018). The vast majority of these emissions—and associated toxic pollutants—are from automobiles. At the same time, this year, the Greater Boston Area recently earned the dubious distinction of having the worst gridlock in the country (*Boston Globe*, 2019). Furthermore, the

population of Massachusetts is projected to increase by another 600,000 people, predominantly in the eastern part of the state, by 2040 (Commission, 2018).

We believe this Warrant Article is timely in addressing these critical issues, and also in keeping with other states and municipalities demonstrating climate leadership at this critical time, a partial list of which appears in Table 1:

Table 1. Sample of Carbon Emissions Reduction Targets in US

Boston Green Ribbon Commission	Aims to make City of Boston carbon-free by 2050
Massachusetts Global Warming Solutions Act	Mandate to reduce greenhouse gas emissions to 80% of 1990 levels by 2050
Connecticut	Mandate to reduce greenhouse gas emissions to 45% below 2001 levels by 2030
California	Goal to reduce the state's greenhouse gas emissions to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050
Hawaii	Commitment to becoming carbon neutral by 2045
US Climate Alliance (includes 25 states and growing)	Implement policies that advance the goals of the Paris Agreement, aiming to reduce greenhouse gas emissions by at least 26-28% below 2005 levels by 2025

There was wide consensus among the authors that Brookline historically was designed around public transit and walkable neighborhoods, and that those historical roots are in large part what makes the town so appealing *and* what gives us ample opportunities to reduce our greenhouse gas emissions from transportation. By the early 20th century, Brookline had electrified trolley lines on Beacon St., Harvard St., Washington St., Boylston St. / Huntington Ave., Commonwealth Ave., and more, plus multi-modal path systems with distinct bridleways for riding (then on horseback) on Beacon St., the Riverway, the Fenway, and western Commonwealth Ave. This kind of reasonably compact development pattern – these good urban "bones" – stand to become the envy of cities and towns around the country trying to decarbonize. We have it already! We need to recognize this inheritance for the gift that it is and decide to better reveal and reinvest in it.

Trends in Travel Modes and Vehicle Ownership

A look at current and recent trends in Brookline's journey-to-work and vehicle ownership data shows promising movement towards more active transportation and lower vehicle ownership rates. While these trends reveal somewhat modest change, they do speak to

the potential that, with continued efforts, the Town could sufficiently reduce greenhouse gas emissions and achieve the ambitious target reductions proposed in this Warrant Article through the adoption of healthier, more sustainable personal travel choices. During this time frame, the Town has begun to add bicycling infrastructure and has started to focus on improving travel conditions for pedestrians and public transportation riders.

As Table 2 below illustrates, Brookline's workers, between 2000 and 2017 are walking, biking and taking public transportation to work more and driving single-occupancy vehicles less. The percentage of SOV work trips has declined from 45.3% in 2000 to 35.3% in 2017. Additionally, over the same time period, the number of households that do not own a car has grown from 20% to 26% town-wide. The percentage of car free households is much higher for particular geographies and sub-populations; for instance an estimated 60% of renter households in Census Tract 4002 (Coolidge Corner) do not own a vehicle, as reported in the 2012-2017 American Community Survey.

Table 2. Means of Transportation for work trips by Brookline workers 2000 – 2017*

	2017	%		2010	%		2000	%
Total Workers	32,410			31,878			32,173	
Single-Occupancy Vehicle	11,441	35.3%		12,858	40.3%		14,571	45.3%
Carpool	1,483	4.6%		1,841	5.8%		2,310	7.2%
Public Transportation	9,942	30.7%		9,307	29.2%		9,242	28.7%
Walked	5,284	16.3%		4,290	13.5%		3,073	9.6%
Other (incl. biking)	2,077	6.4%		1,418	4.4%		770	2.4%
Worked at Home	2,183	6.7%		2,164	6.8%		2,207	6.9%

*Source: DPO3-Selected Economic Characteristics: Census Bureau and American Community Survey

Demonstration and Pilot Programs

Given that so much of the existing development in Brookline is at a walkable and bikeable scale around those old trolley routes (and boulevards with bridle paths) and given that we have sizable existing populations taking trains and busses, riding bikes, and walking for transportation, we could relatively inexpensively demonstrate and pilot installation of substantial public way improvements to the safety and quality of service for these naturally space- and energy-efficient travel modes as a means of finding the best practices for Brookline. We have recently begun to try this approach to exploring change and some of our counterparts in neighboring cities and towns have successfully taken it even further, as shown in Table 3. When combined with robust gathering of community feedback and (as needed) iterative design, these agile, limited programs have a reasonable

chance of building support for more comprehensive planning of more systematic and durable change in the future.

Table 3. Some Recent Transportation Pilot Programs in Greater Boston

Back Bay	Massachusetts Ave. protected bike lane; Beacon St. protected bike lane
Cambridge	Cambridge St. protected bike lane; Massachusetts Ave. protected bike and distinct dedicated bus lane; Mt. Auburn St. dedicated bus/bike lane. (Also, The Cycling Safety Ordinance requires streets undergoing significant roadwork to include protected bike lanes in their design if they are part of the city's priority bicycle route network.)
Brookline	1. Beacon Street Buffered Bike Lane 2. Greenline TSP on the C-line at Carlton Street 3. Electric Scooter Pilot Program
Concord and Cambridge	Electric school busses to transport students (demonstration of viability)
Everett	Broadway dedicated bus/bike lane
Roslindale	Washington St. dedicated bus/bike lane
Arlington	Massachusetts Ave. dedicated bus/bike lane
Allston	Brighton Ave. dedicated bus/bike lane

Economic, Health and Social Equity Benefits

> "*MassDOT, municipalities, and other roadway owners should redesign them to prioritize person-throughput rather than vehicle-throughput, so that limited corridor capacity is allocated to moving as many people as possible, while accommodating mobility alternatives.*"
> - Massachusetts Governor's Commission on the Future of Transportation in the Commonwealth (2018)

This greater people-moving efficiency referenced by the Governor's Commission stands to provide profound benefits beyond the reduction of greenhouse gas emissions,

especially when leveraged to provide "complete" (and perhaps efficient-mode "priority") travel facilities on streets, including:

- Increased accessibility for people of varied ages and abilities
- Increased individual affordability through reduced need for personal ownership of expensive vehicles
- Increased local retail and service business and sales tax revenue to local communities through increased access to commercial districts via travel modes where it is easier to stop and where people are more likely to frequent multiple establishments (foot, wheelchair, cycle and similar)[1]
- Increased capacity for people to work in town, which stands to provide customers to local businesses at a broader array of times of day and stands to increase commercial real-estate tax revenue to the Town (a higher rate than residential tax, and a type which we have rather little of currently, especially compared to peer communities)
- Increased social equity, as public transportation, walking, and bicycling disproportionately serve the poor and minorities
- Reduced costs associated with policing, ambulances, hospitals, and time wasted in traffic
- Less money spent by residents on health care associated with diabetes, coronary disease, hypertension, and other diseases
- Reduced traffic injuries and fatalities, which diminish with greater walkability, and disproportionately affect the poor, elderly, and non-white pedestrians[2]
- Reduced premature deaths due to air pollution, the leading cause of which is vehicle emissions[3]

Electric Vehicles

In the hierarchy of sustainable transportation alternatives, the highest priority is to reduce the number of individual car trips taken. But for those car trips that still must be taken, the priority is to enable and encourage those trips to be taken in electric vehicles (EVs).

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[1] "Economic benefits of walking and cycling: Reports, studies and evidence to present the economic benefits of investment in walking and cycling" collected by Transport for London (November 2018): <https://tfl.gov.uk/corporate/publications-and-reports/economic-benefits-of-walking-and-cycling>. Also: "Economic Impact Study of Bike Lanes in Toronto's Bloor Annex and Korea Town Neighbourhoods" by the Toronto Centre for Active Transportation (October 2017): <https://www.tcat.ca/resources/bloor-street-economic-impact-studies/>.

[2] Speck, Jeff, 2018, Walkable City Rules. Washington, DC: Island Press. Part I.

[3] Fabio Caiazzo, et. al., "Air Pollution and Early Deaths in the United States. Part 1: Quantifying the Impact of Major Sectors in 2005," (MIT 2013).

The automobile market in the US is on the threshold of a major shift away from internal combustion engine (ICE) vehicles to electric vehicles (EV – includes battery electric vehicle, fuel cell electric vehicle and plug-in hybrid electric vehicle). The world's largest carmakers now sell over 40 EV models, many with long electric-only range (>200 miles) and fast-charge capability, and they plan to double these offerings over the next 5 years. The fastest growing segment is the battery electric vehicle. Industry experts anticipate rapid increases in market share for EVs over the next 10-20 years. For example, Bloomberg New Energy Finance forecasts that by 2040 over 50% of new global passenger vehicle sales will be EVs. A major challenge for the rapid growth of EVs and the climate benefits they bring is the lack of charging infrastructure. Most communities committed to EVs are now focused on the accelerated installation of chargers in order to relieve the EV user of range anxiety and encourage accelerated vehicle turn over.

As part of their plans to reduce transportation emissions, many states have set targets for EVs in next two decades to help spur policies to accelerate EV adoption. The targets include both percentage of new car sales and share of overall registrations. The nine states that have adopted California's Zero Emission Vehicle (ZEV) program and EV sales mandate have all set mid-term targets for EV sales in their states (included in the ZEV program are Massachusetts, Connecticut, New York and New Jersey) based on the requirement under the program that 15% of sales in 2025 must be ZEV sales. In addition, many states have established targets for overall registration of EVs. The targets typically start relatively low – reflecting current low penetration rates – but then quickly climb to large numbers. California wants to see 5 million EVs on the road and 250,000 EV charging stations installed by 2030. New York is planning to achieve targets of 850,000 EVs in 2025 and 2 million in 2030. Massachusetts has a goal of 300,000 EV registrations by 2025.

Here is a snapshot of EV targets for several states in the ZEV Mandate group:

Near-Term State EV Targets (CA ZEV Mandate NE states)

	Current Vehicle Registrations (000's)	Current EV Registrations (000's)	Current EV %	New Car Yearly Sales (000's)	2025 15% mandate Vehicle sales Target (000's)	State Target EV Registrations ('000s) Target	Date
California	31,500	480	1.5	2,000	300	5,000	2030
New York	11,700	41	0.35	1,000	150	850	2025
						2,000	2030
New Jersey	7,200	23	0.32	580	87	330	2025
Mass	5,400	21	0.39	360	54	300	2025
Conn	3,200	9.8	0.33	170	26		

For Brookline, we are proposing a 2030 registration target of 30% EVs, equivalent to approximately 6,400 vehicles (extrapolating from statewide vehicle registration forecasts). This target requires higher growth in Brookline's EV share of registrations

than is projected for Massachusetts as a whole, and is expected to be met in part through a rapid acceleration in EV sales in Brookline, as projected in the table below.

Near-Term Brookline EV Registration Target (2030) with EV Forecast Model Results

	2020	2025	2030
Total EV Registrations			***30%***
EV Forecast Model Results			
Total vehicle Registrations	30,000	29,159	21,400
EV Registrations	780	2,563	6,360
EV % of total	1.2%	8.8%	29.7%
Annual vehicle sales	3,042	2,890	2,745
EV Annual Sales	230	463	1,014
EV % of Annual Sales	2.4%	16.0%	36.9%

Assumptions

1. Total vehicle registrations decline due to multi-modal shift from cars: 6% per year starting in 2023
2. 2020 EV registrations from Brookline population % of state adjusted upwards by local estimates
3. New car sales based on Brookline population % of state (might be higher due to faster turnover)
4. New car sales drop 5% over first 5 years and again in second 5 year period to reflect multi-modal shift
5. EV sales growth escalated at 15% per year in years 1-5 (exceeding our proportional share of the state's 15% sales goal 2025) and 18% per year in years 6-10

We believe the higher EV registration target number is achievable in Brookline for several reasons:

1) There are another 5 years in the target period (2025-2030) which can be used to accelerate the market.

2) The Town has a long history of leadership in climate advocacy and can continue this path by stepping up to promote higher numbers of EVs.

3) The EV market and technology are rapidly improving and yesterday's targets are becoming less relevant as rapid market acceleration appears realistic. Some governments – like California and Norway (a cold country where over 50% of new car sales are now EVs) – are increasing their targets and seeing success with policies designed to stimulate the market.

4) Brookline is a highly educated community and its citizens are well-informed about global warming and solutions. They also likely to turn over their vehicles at a faster rate than in other places (the average age of vehicles in Massachusetts is 9.8 years vs. 11.6 years for the nation as a whole). In addition, 27% of

households have more than one car and relatively short commutes. All of this stands to support high rates of adoption of EVs and shift of some trips to car-alternative transportation options.

5) An ambitious target will galvanize the community and advocates into developing and supporting innovative pilots and demonstrations for EVs and chargers that will contribute to faster adoption. It will also tend to attract the attention of grant makers and other financial supporters outside the community that might be interested in underwriting projects that fast-track EV adoption.

One final note, in addition to encouraging the transition to EVs, we also reference "operating behaviors." The term refers primarily to idling (which should be avoided) and to timely, regular charging of plug-in hybrids (necessary to maximize operation in electric-only mode).

Sources

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COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on 10/23/2019. By a vote of 7-0-1, the CDICR recommends FAVORABLE ACTION on Warrant Article 31.

DISCUSSION

The need to address our carbon footprint as a town grows more important with each passing day. We need to look at all possible avenues to reach our goals, realizing that transportation accounts for ~43% of all green-house gas emissions in Massachusetts and is responsible for significant contributions to air pollution. WA 31 provides us with strategic guidelines for our local approach to the issue of transit as we move away from a car-centric system. In addition, it is clear that concerns about equity are involved, in that the most vulnerable in our communities are hit the hardest with the effects of a warming climate although they likely have contributed the least. They can also least afford the cost of owning automobiles. It was pointed out that others in the state and country are moving forward with similar ambitious goals.

Therefore, the commission voted FAVORABLE ACTION on the warrant article, by a vote of 7-0-1.

SELECT BOARD'S RECOMMENDATION

A report and recommendation under Article 31 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 31 will be included in the supplemental mailing.

XXX

ARTICLE 31

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 31 asks the Select Board to adopt a 2050 goal of a "75/25" sustainable transportation mode split, where approximately 75% of trips are by human power (e.g. foot, bike, wheelchair), electric micro-mobility (e.g. e-scooters, e-bikes, e-wheelchairs), or electric shared rides (e.g. electric public transit, electric car-pools); and 25% of trips are by single-occupant or single-passenger electric cars or trucks. The Resolution also outlines a next-decade interim goal (i.e. by 2030) of "30 + 30," where approximately 30% of the progress needed to meet the 2050 mode split goal is achieved, and 30% of motor vehicles registered in Brookline are electric.

The Resolution outlines four specific strategies to leverage Brookline's preexisting strengths and (1) prioritize safety, equity of access, and the healthful and sustainable movement of people and goods; (2) demonstrate, pilot, and evaluate new public way configurations; (3) align planning, zoning and budgeting (to support the goals); and (4) encourage the transition to electric vehicles.

The Resolution calls for the development and implementation a strategic infrastructure network to realize these goals; and asks the Select Board to measure and report progress and consider establishing a Sustainable Transportation Engineer or Planner position to support these goals.

The Board is in agreement with the Advisory Committee and appreciated their edits which acknowledge the Town's budget process and funding constraints.

A unanimous Select Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 31 comes out of the Select Board Climate Action Summit held in June 2019. It is a resolution asking that the Town address the negative effects that fossil fuel powered transportation has on climate change. The article seeks to develop a comprehensive plan which would include reducing the use of gas powered single occupancy vehicles, encouraging EVs, and improving public ways for non-vehicular use, including walking, biking, and other mobility options.

The Advisory Committee recommends FAVORABLE ACTION on Article 31.

BACKGROUND:

The petitioners are focusing Article 31 on a message of climate change, health, and equity. There are three action areas that are stressed: Principles- (Prioritize, Demonstrate, Align Regulations, and Encourage Electric); Goals and Metrics- (a long-term goal to get the town to "75/25 by 2050", meaning 25% of trips are in autos and 75% are human powered or via electric shared rides, and a short-term goal of "30/30 by 2030", where 30% of the progress towards the 2050 goals is achieved and 30% of Brookline-owned cars are electric); and a Timeline- (asking the Select Board to report details of a program to achieve these goals no later than the 2020 Annual Town Meeting).

The resolution states that 43% of greenhouse gas emissions in Massachusetts come from transportation. The EPA data indicates that nationwide 29% come from the transportation sector. The petitioners said that Massachusetts has made progress in reducing greenhouse gases in other areas and the transportation sector has lagged behind, resulting in a larger percentage of Massachusetts emissions coming from transportation.

DISCUSSION:

Brookline is a town with two very different areas in terms of development, density, walkability, and public transit availability. Much of South Brookline was developed in the 1940s. That area of town lacks not only a reliable public transportation network but also the convenient commercial areas and compact residential neighborhoods that developed in North Brookline. Automobile parking, for example, does not cause the same headaches in South Brookline as it does in North Brookline. Solutions and strategies that come out of this effort will have to take different neighborhood needs into account. The requirements of residents with mobility issues (especially seniors and those with disabilities) will also have to be taken into account when redesigning streets, especially in dense North Brookline, where most seniors live.

One of the petitioners noted that the article aligns with the recommendation of Governor Baker's "Commission on the Future of Transportation" that urges "a focus on moving people over moving vehicles". The warrant article is an attempt to coordinate efforts and draw together different Town departments in a focused approach to combating climate change. One of the petitioners noted that the resolution is not prescriptive; rather, it charts a course of action. This is a first step.

The Brookline Chamber of Commerce and the Coolidge Corner Merchants Association were presented with the various "sustainability" articles in the current Warrant and chose to focus on WAs 15 and 21. The Brookline Chamber would like any plan to include thinking about the impacts on business, employees, and customers "including visitors and residents who do not have electric vehicles or bicycles and rely on gas fueled/hybrid cars".

The financial impact on the Town was a main focus of discussion. It is estimated that hiring a sustainable transportation engineer or planner would cost approximately $82,000 plus benefits. Transportation Administrator Todd Kirrane has indicated that he needs more staff to carry out the provisions of the article. Given the constraints of the Town budget and the structural deficit in the coming years, the Advisory Committee was not persuaded that this position will be funded anytime soon through the annual budgeting process. There is fierce competition for additional positions throughout Town departments and the Town is facing significant structural budget deficits in the coming years. Sustainability Program Administrator Zoe Lynn stated that, once a sustainable transportation engineer/planner was hired, the Town would be eligible for grants that could make the position revenue-neutral. Mr. Kirrane noted that there are some grants, Chapter 90 and other State funds that the Town could apply for.

Some Advisory Committee members expressed concerns about the timeline to issue the report (May 2020) as being too tight a window to pull a report together; however, Ms. Lynn stated that she has been doing some of the work involved already, and the Committee decided to leave the date as is. There was also a recognition that this has to be a regional effort to have any meaningful results.

Some members also expressed regret that more emphasis was not given to addressing needed public transportation improvements (the MBTA was not mentioned in the article). Brookline pays one of the highest assessments the T receives, yet it doesn't seem to have much influence in regard to getting better, more reliable service. The needs of our increasing senior population and of our residents with disabilities were also briefly discussed but is barely mentioned in the article.

Brookline is already ahead of much of the nation in being "green", and we are too small to have any meaningful impact on the rising levels of greenhouse gasses causing global climate. That said, this is a resolution and not a By-Law and the Town can work to implement it over time as resources allow. The Advisory Committee made some small changes in the resolution, recognizing that budget implications of this article will have to be discussed within the annual budget process, and focusing responsibility for this on the Select Board.

RECOMMENDATION:
By a vote of 17-1 with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 31 as amended (see below).

(Additions are in *italics* and underlined, with deletions indicated by ~~strikethrough~~)

VOTED: that the Town adopt the following resolution:

WHEREAS climate change is a major existential threat to humanity and other life on our planet, with impacts felt especially by the poor and powerless;

WHEREAS greenhouse gas emissions are causing climate change, and transportation contributes 43% of these emissions in Massachusetts;

WHEREAS there are many negative health impacts from automobile use, such as serious injuries, air pollution and physical inactivity;

WHEREAS low-occupancy travel via automobile and parking of private automobiles require a disproportionate quantity of space relative to the quantity of people and goods moved;

WHEREAS Brookline public ways currently provide only limited accessibility to non-automobile uses;

WHEREAS traffic congestion and a lack of safe, accessible, reliable alternatives to automobile transportation impose substantial time burdens and costs on individuals;

WHEREAS the Town of Brookline has adopted a Climate Action Plan to prioritize planning to achieve zero greenhouse gas emissions by 2050, Town- and community-wide;

WHEREAS the Town of Brookline has adopted a Complete Streets Policy that seeks to shift use to more healthful and sustainable transportation modes by accommodating them equitably in public ways;

WHEREAS replacement of internal combustion-powered transportation with human- and/or electric-powered transportation (and supporting electric charging infrastructure) stands to reduce greenhouse gas emissions, especially when supplied with energy produced via non-fossil-fuel-combustion means; and

WHEREAS *much of* Brookline historically developed with a pattern of land use and public ways that are amenable to the use of public transit, walking, biking and other space- and energy-efficient modes of transportation and has limited space for personal vehicle use and parking.

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls upon the Town of Brookline to leverage its pre-existing strengths, to:

1) Prioritize safe, space-efficient, and energy-efficient movement of people and goods over the movement and parking of private vehicles when designing and improving our public ways, with particular focus on high-traffic routes, connectivity and directness. This should be accomplished in a manner that gives particular consideration to equity of access and safety for (i) people of a broad range of ages, abilities and financial means, and (ii) use of healthful and sustainable transportation modes.

2) Demonstrate, pilot, and evaluate new public way configurations that improve travel conditions to enable everyone to use healthful and sustainable transportation modes. Reconfigure street usage for temporary events (such as "open streets" and "Park(ing) Day") to demonstrate the community benefits of utilizing road space for people.

3) Align our planning and zoning regulations *within Town budgeting priorities* with our historical streetcar-, biking-, and walking-centric (less automobile-dependent) development pattern. Implement "transportation demand management" policies to realign incentives towards utilization of healthful and sustainable transportation modes.

4) Encourage transition of motorized travel to electric vehicles and operating behaviors that eliminate local greenhouse gas emissions, including support for increased electric vehicle charging. This should be accomplished with particular consideration for avoiding any conflicts or interference with healthful and sustainable transportation modes, or with improved travel facilities for these modes.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board~~, in consultation with the Advisory Committee and any other appropriate Boards, Commissions and Committees,~~ *to engage in an inclusive process* to determine a course of action, applying the aforementioned four strategies, to:

5) Work towards a 2050 goal of a "75/25" sustainable transportation mode split, where approximately:

> •75% of trips are by human power (e.g. foot, bike, wheelchair), electric micro-mobility (e.g. e-scooters, e-bikes, e-wheelchairs), or electric shared rides (e.g. electric public transit, electric car-pools), and
> •25% of trips are by single-occupant or single-passenger electric cars or trucks;Work towards a 2030 "30 + 30" interim goal, where approximately:
> •30% of the progress needed to meet our 2050 mode split goal is achieved, and
> •30% of motor vehicles registered in Brookline are electric;
> For the 2050 goal, 'electric' excludes vehicles that can use internal combustion engines, but for the 2030 goal 'electric' includes plug-in hybrids.

6) Develop and implement a strategic infrastructure network to realize these goals (e.g. safe routes to schools; inclusive, protected bike lanes for a diversity of users; electric vehicle charging facilities);

7) Measure and report progress towards these goals; and

8) *Consider establishing* ~~Establish~~ a Sustainable Transportation Engineer or Planner position to support the advancement of these goals *as budget priorities permit*.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board~~, et~~

~~al.,~~ to report the ~~details of~~ *progress made toward* this course of action no later than the 2020 Annual (May) Town Meeting.

ARTICLE 31

Town of Brookline
Massachusetts

Department of Public Works
Engineering & Transportation Division

TRANSPORTATION BOARD
CHRISTOPHER DEMPSEY, CHAIR
JONATHAN KAPUST, PE
VICE CHAIR
CYNTHIA LEE
NANCY MOORE
ALI TALI, PE

November 18, 2019

Brookline Select Board
Brookline Advisory Committee
Brookline Town Meeting

RE: Warrant Article 31 Recommendation

Per Chapter 317 of the Acts of 1974, the Transportation Board for the Town of Brookline is the local governing body that has authority to make rules and regulations regarding the movement of vehicles, bicycles, pedestrians, and micro-mobility devices on the public way. As a community immediately outside the City of Boston, with both an urban and suburban mixture, we have worked hard to enact sustainable transportation regulations and support complete streets based programs that lead to a strong multi-modal transportation system that encourages the use of public transportation, walking, cycling, and micro-mobility devices over single occupancy vehicle commuting. Town Meeting has overwhelmingly supported these safety related, sustainable transportation initiatives for the last decade continuously voting to invest in and fund bike and pedestrian infrastructure projects.

Over the last 15 years the Transportation Board has been working to advance bicycle and traffic calming projects to slow down motor vehicle speeds and make the roadway safer for pedestrians and cyclists in order to make the community more walkable and bikeable. The Board has also supported initiatives to improve public transportation including the Rte 66 Improvement project, transit signal priority on the MBTA C-line, and new technology for direct point to point services like Bridj. Additionally the Board has supported and played an early role in introducing bike share

and pushing for the adoption of a parking & transportation demand management for town and private employees to incentivize use of 'alternative' modes of transportation and reduce reliance on single occupancy vehicle trips, and investing in senior transportation programs to ensure equity in our transportation system. In addition to this work, the Select Board has separately adopted a Complete Streets Policy, a Climate Action goal of carbon neutral by 2050, and micro-mobility share pilots. The reasoning behind all of these initiatives has been to create a multi-modal, climate friendly transportation system that seeks to create a mode shift by prioritizing 'alternative' modes of transportation in order to reduce congestion by moving people away from single occupant motor vehicle trips in personally-owned, gas powered motor vehicles.

Warrant Article 31 seeks to bring these separate initiatives together into one overarching town-wide healthy & sustainable transportation goal that will allow the Town to prepare for the carbon neutral deadline of 2050 and adequately address the threat of climate change that all elected and appointed officials and Town staff need to focus on. Specifically it establishes a climate action 2050 mode shift goal and interim 2030 goal of

- Work towards a 2050 goal of a "75/25" sustainable transportation mode split, where approximately:
    - 75% of trips are by human power (e.g. foot, bike, wheelchair), electric micromobility (e.g. e-scooters, e-bikes, e-wheelchairs), or electric shared rides (e.g. electric public transit, electric car-pools), and
    - 25% of trips are by single-occupant or single-passenger electric cars or trucks;

- Work towards a 2030 "30 + 30" interim goal, where approximately:
    - 30% of the progress needed to meet our 2050 mode split goal is achieved, and
    - 30% of motor vehicles registered in Brookline are electric.

In order to achieve these goals it calls on the Town, as a whole, to

1) Prioritize safe, space-efficient, and energy-efficient movement of people and goods over the movement and parking of private vehicles when designing and improving our public ways, with particular focus on high-traffic routes, connectivity and directness. This should be accomplished in a manner that gives particular consideration to equity of access and safety for (i) people of a broad range of ages, abilities and financial means, and (ii) use of healthful and sustainable transportation modes.

2) Demonstrate, pilot, and evaluate new public way configurations that improve travel conditions to enable everyone to use healthful and

sustainable transportation modes and reconfigure street usage for temporary events (such as "open streets" and "Park(ing) Day") to demonstrate the community benefits of utilizing road space for people.

3) Align our planning and zoning regulations with our historical streetcar-, biking-, and walking-centric (less automobile-dependent) development pattern. Implement "transportation demand management" policies to realign incentives towards utilization of healthful and sustainable transportation modes.

4) Encourage transition of motorized travel to electric vehicles and operating behaviors that eliminate local greenhouse gas emissions, including support for increased electric vehicle charging. This should be accomplished with particular consideration for avoiding any conflicts or interference with healthful and sustainable transportation modes, or with improved travel facilities for these modes.

Although not prescriptive on how to best achieve this mode split goal actions taken under the auspices of Warrant Article 31, it will have an impact on the transportation modes available to our disabled community members. The Town's Complete Streets Policy states "The needs and safety of the town's most vulnerable users shall be given special consideration during project planning. Users may be considered vulnerable by virtue of their mode of transportation, such as bicycling or walking, or because of their age or ability". The Transportation Board pledges to incorporate the needs of our most vulnerable residents in all 'sustainability' related plans, whether they be sight or mobility impaired pedestrians, handicap residents who commute via adaptive bikes, those who require services such as the RIDE, and those who require handicap parking spaces in our commercial or residential areas. We strongly encourage other Boards, Committees, and Commissions taking action to do the same.

Additionally it requests that the Town create a new Sustainable Transportation Planner or Engineer position to work within the Transportation Division to help the Town achieve these goals. From the Transportation Board's perspective, this is a crucial part of ensuring successful implementation of Warrant Article 31 because while other departments in Town have all seen increases in their staffing levels over the last 10 years, the programs/duties/projects that the Transportation Division has taken on has increased dramatically with no corresponding increase in technical staff. This is in spite of an annual request by individual members of the Transportation Board, the Board's advisory committees, and transportation advocates each budget season. The result is that the office cannot meet the demand of any additional programming or project development to successfully meet the goals of Warrant Article 31 without the addition of a Sustainable Transportation Planner/Engineer position. The Board supports Warrant Article 31 with the understanding that the Commissioner of Public Works will allow this new staff person to work on existing programs, such as Complete

Streets designs, Traffic Calming projects, Pedestrian & Bike Improvements, EV Charging, etc. that all fall under the banner of 'sustainability'.

Therefore, the Transportation Board, by a unanimous vote, recommends that the Select Board, Advisory Committee, and Town Meeting vote to approve Warrant Article 31 and commit to the creation of a new Sustainable Transportation Planner/Engineer position in the Department of Public Works Engineering & Transportation Division as part of the FY2021 budget.

Sincerely,

Christopher Dempsey, Chair
Brookline Transportation Board

ARTICLE 32

THIRTY-SECOND ARTICLE

Submitted by: Neil Gordon, TMM1, and Hadassah Margolis, TMM8

To see if the Town will vote to amend the Town's General Bylaws by substituting, in every case, "Chair" for "Chairman" and "Chairperson."

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In November, 2017, Town Meeting amended the General By-laws, changing all references to "Board of Selectmen" to "Select Board," and "Selectmen" to "Select Board members. Concurrently, Town Meeting passed a resolution calling for the use of gender-neutral language in the conduct of Town business.

The observed practice of many of the Town's boards, commissions and committees is to refer to their "Chair" as such, regardless of the language of the current By-law. It seems an appropriate time to amend the By-laws, accordingly.

WOMEN'S COMMISSION RECOMMENDATION

Commissioners agreed this article addresses an important issue of gender equity. It brings an overdue set of changes in the language of our bylaws to remove gendered language that contributes to sexist assumptions about the relative roles of men and women in our town.

The Brookline Commission for Women unanimously voted favorable action on Article 32.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 23, 2019. By unanimous vote, the CDICR supported Warrant Article 32.

DISCUSSION
In November 2017 Town Meeting passed warrant article 19 which required that gender neutral language be utilized in official documents of the Town. The term "Chairman" is not gender neutral and creates a conscious or unconscious bias that the individual leading a board, commission, committee, or meeting is, or should, be a man. The term "Chair" is a common, widely accepted title that is more inclusive. This modification to the Town's General Bylaws is overdue and should be implemented with immediate effect. Therefore, the commission recommends FAVORABLE ACTION on warrant article 32.

SELECT BOARD'S RECOMMENDATION

The Select Board agrees that the language change proposed by the petitioner should formally be incorporated into the Town's by-laws. The Board already uses "Chair" in practice, and is supportive of this change for every reference in the by-law. A unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: To amend the Town's General Bylaws by substituting, in every case, "Chair" for "Chairman" and "Chairperson."

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY & BACKGROUND:

Warrant Article 32 seeks to amend the wording in the General By-Laws to be consistent with the resolution passed by Town Meeting in November, 2017 calling for the use of gender-neutral language in the conduct of Town business. The proposal would bring the language of the By-Laws into conformity with the observed practice of many of the town's boards, commissions, and committees to refer to their "Chair."

The Advisory Committee recommends FAVORABLE ACTION on WA 32.

DISCUSSION:
Both Chief Information Office Kevin Stokes and Town Clerk Pat Ward indicated via e-mail that the change could be made through a "search and replace" mechanism as was done previously to replace "Board of Selectmen" with "Select Board."

RECOMMENDATION:
By a vote of 23 in favor, 1 opposed and 2 not voting, the Advisory Committee recommends FAVORABLE ACTION on WA 32.

ARTICLE 33

THIRTY-THIRD ARTICLE

Submitted by: Neil Gordon, TMM1

To see if the Town will vote to amend its General By-laws, by removing references to "inhabitants" and "citizens," and replacing such words with more appropriate terms, and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 1.1.4 DEFINITIONS:
In construing these by-laws the following words shall have the meanings herein given, unless a contrary intention clearly applies:
a. "Appointing authority", unless otherwise specifically provided by law, shall be the Select Board.
b. "By-laws" shall mean these by-laws, that do not include the zoning by-laws and the classification and pay plan, as amended from time to time.
c. "Committee" shall include an elected or appointed board, commission, council and trustees.
d. ~~"Inhabitant"~~ "Resident" shall mean a resident ~~in~~ **of** the town **of Brookline**.
e. "Legislative body" shall mean the Town Meeting.
f. "Law", "General Laws" Or "Chapter" shall mean the law, statute or act referred to, as amended from time to time.
g. "Municipal officer" shall mean an elected or appointed official or member of a committee and a department head but shall not include Town Meeting Members and Town employees.

SECTION 2.1.10 TOWN MEETING MEMBERS AT LARGE:
Pursuant to the authority contained in Section 5 of Chapter 43A of the General Laws (Ter. Ed.) the following officers are designated as Town meeting members at large: (1) ~~the members, inhabitants~~ **residents** ~~of the Town,~~ who are the elected representatives of the Town **or any part thereof** in the General Court of the Commonwealth of Massachusetts, (2) the moderator, (3) the town clerk, and (4) ~~the~~ Select Board **members**.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.3 DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT - subsection (C), item 10 and 21:
10. to provide the ~~town~~ **Town** with and, from time to time, amend Comprehensive Plans for land use, public and private transportation and parking, open space, recreation, urban renewal, telecommunications and utility services, economic development, housing, historic preservation and also for the future development and preservation of town resources consistent with its physical, social and economic requirements and the health, safety and welfare of ~~its inhabitants~~ **the public**.
21. to facilitate and maximize meaningful input to ~~town~~ **Town** boards and officials from ~~Brookline citizens~~ **the public** ~~civic associations and neighborhood organizations~~.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION – item (v):
(v) Receive Complaints Against the Town, 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 3.14.2), and after notifying the Town Administrator, review and summarize the complaint 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 Select Board for consideration of further action and/or (2) provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's ~~Citizen~~ **Civilian** Complaint Procedure or the Human Resources Office's procedures;

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

ARTICLE 3.21 READILY ACCESSIBLE ELECTRONIC MEETING NOTICES, AGENDAS AND RECORDS -
Section 3.21.1 Purpose and Applicability:
This by-law applies to the meetings of all Brookline governmental bodies subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, "meetings" and "OML"), and is intended (a) to take advantage of the internet and its increasing use; (b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful ~~citizen~~ **public** participation in the business of Town governmental bodies.
Section 3.21.3 Meeting Notices and Agendas – item (b):

(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to ~~citizens~~ **members of the public** who join the aforementioned notification list(s).

ARTICLE 4.1 ACCOUNTS AND AUDITS SECTION - SECTION 4.1.3 AUDIT REPORTS
All reports by the independent auditor shall be available for inspection by ~~citizens of the Town~~ **the public** during regular business hours at the Town's offices. The audit report shall also be made available at the Main Library.

ARTICLE 4.6 PUBLIC RELATIONS AND INFORMATION
The Town may appropriate a sum not to exceed $1,500.00 in any year to be expended by the Personnel Board, with the approval of the Select Board, for the purpose of furnishing information including, without limitation, the results of its investigations, its opinions and recommendations, to the ~~inhabitants of the Town~~ **public** or to Town Meeting members, pertaining to an article or articles in the Warrant for a town meeting which relate to wages, hours or other conditions of employment of ~~town~~ **Town** employees.

ARTICLE 4.8 LIVING WAGE BY-LAW - SECTION 4.8.6, item (c), first paragraph:
c. Enforcement Grievance procedures and nondiscrimination. Any covered employee who believes that his or her employer is not complying with requirements of this article applicable to the employer has the right to file a complaint with the town's Chief Procurement Officer or Select Board. Complaints of alleged violations may also be filed by concerned ~~citizens~~ **members of the public** or by a town official or employee. Complaints of alleged violations may be made at any time and shall be investigated promptly by or for the officer or board that received the Complaint. To the extent allowed under the Public Records Law, G.L.c.66, statements, written or oral, made by a covered employee, shall be treated as confidential and shall not be disclosed to the covered employer without the consent of the covered employee.

ARTICLE 6.6 DISCHARGING FIREARMS:
No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any ~~citizen~~ **person**.

ARTICLE 7.9 SNOW PARKING BAN:
No person shall allow any vehicle to remain in or within a street or way when a snow emergency parking ban has been declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member.
A Snow Emergency Parking Ban may be declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member, whenever there are indications that the threat of substantial snow is imminent, whenever there has been a substantial snow and snow removal operations are underway or are about to commence, or whenever a substantial snow creates conditions that require a vehicular driving or parking ban throughout the town. Upon the declaration of a Snow Emergency Parking Ban notice

thereof shall be given to the Town Clerk's office, the Police Department, the Fire Department and the Department of Public Works. Reasonable action shall also be taken to notify and warn the ~~inhabitants of the Town~~ **public** of the ban.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.4 NO DISTURBING THE PEACE:
No person hawking, peddling, or carrying or exposing any article for sale shall cry his wares to the disturbance of the peace and comfort of the ~~inhabitants of the Town~~ **public**, nor shall carry or convey such articles (in any manner that will tend to injure or disturb the public health or comfort nor) otherwise than in vehicles and receptacles which are neat and clean and do not leak.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.2 LICENSING
The Town Administrator shall have authority to grant such license to any person of good repute for morals and integrity ~~who is or has declared his intentions to become a citizen of the United States~~. Said license, unless sooner revoked by the board or officer granting the same, shall expire one year from the date of issue, and each person so licensed shall pay therefore a fee of twenty-five dollars.

ARTICLE 8.15 NOISE CONTROL:
SECTION 8.15.2 DECLARATION OF FINDINGS, POLICY AND SCOPE , item (a):

(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~~ **the public** or degrade the quality of life.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The applications required by (a) shall be on appropriate forms available at the office of the Select Board. The Select Board, 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~~ **the public**.

ARTICLE 8.16.1 COLLECTION AND RECYCLING OF WASTE MATERIALS - 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~~ **the public** 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.

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~~ **public**~~, 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.

ARTICLE 8.29 NUISANCE CONTROL - SECTION 8.29.1 PURPOSE:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town~~ **public**, this bylaw shall permit the Town to impose liability on Property Owners and other responsible persons for the nuisances and harm caused by loud and unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS - SECTION 8.30.1 PURPOSE/AUTHORIZATION:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town of Brookline~~ **public**, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Article 8.31 Leaf Blower Control – SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):
(b) The Select Board, 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~~ **the public**. (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 Select Board, 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 Select Board, or designee, to support this claim.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article is brought in an effort to make the Town's General By-laws more inclusive, and also for clarity and consistency.

Currently, the General By-laws include references to "voters," "citizens," "inhabitants," and "residents." Drafted by many hands, and over time, there is a marked lack of consistency, and an unnecessary, and likely unintended, narrowness of application.
The simple changes speak for themselves.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 23, 2019. By unanimous vote, the CDICR supported Warrant Article 33.

DISCUSSION
Language matters. In Warrant Article 33, the petitioner has done a thoughtful and thorough job in reviewing the Town's Bylaws and recommending appropriate edits to ensure that the bylaws are both inclusive and accurate in who is intended to be covered. In the current national political climate, the term "citizens" has a weighted and narrower interpretation than what is intended in the Town's Bylaws. The substitution of "civilians", "residents" and "the public" is much closer to the intended meaning and will help to avoid misinterpretation that could result in denial of rights or at minimum an impression of exclusion of non-citizens. We fully support the use of the more inclusive language. Therefore, the commission recommends FAVORABLE ACTION on warrant article 33.

SELECT BOARD'S RECOMMENDATION

The Select Board's report and recommendation on Article 33 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 33 seeks to amend the wording in the General By-Laws to be more inclusive and to provide clarity and consistency.

The Advisory Committee recommends NO ACTION on Warrant Article 33.

BACKGROUND
Currently, the By-Laws refer to "voters," "citizens," "inhabitants, and "residents," which the petitioner feels reflects the many hands involved in drafting the document over time. The petitioner was struck by the fact that depending on the language of the governing By-Law, boards, commissions, committees, and departments serve to protect citizens, residents or the public, and their members are either residents, citizens, or voters. In choosing the word "public," the petitioner is trying to find one word which is inclusive of residents, employees, business owners and other constituencies, without having to name them individually. There is no intent to change underlying policy, but to provide clarity and consistency to the language of the By-Laws and make it more reflective of inclusive public participation.

The Advisory Committee found the proposed changes to be too broad and sometimes confusing. Though parts of the proposal seemed to have merit, the overriding concern was that the changes were more substantive than the petitioner believed, and that passage of WA 33 could have too many unintended consequences.

DISCUSSION:
The petitioner explained that he did a careful review of the By-Law language in an attempt to provide clarity and inclusion. Particularly in today's political climate, the word "citizen" has taken on an exclusionary connotation. Use of the word "resident" in some situations, such as defining the harms of tobacco or undue noise, would imply that the By-Laws do not extend to Town employees or students who may not be considered residents while attending the area's colleges and universities.

The Advisory Committee expressed concern that generally substituting the word "public" for language that more specifically relates to Brookline could have unintended consequences, such as inadvertently providing legal standing. By a vote of 25-1-0, the warrant article was referred to Town Counsel to provide assurance that the proposed wording did not amount to substantive changes to underlying policy. Town Counsel's response, via e-mail, appears below:

"As a preliminary matter, I note that in instances where the words "inhabitant" or "citizen" is replaced with the word "resident," this change is not considered to be substantive, because these words have the same primary meaning. (See, Merriam-Webster's definition of "inhabitant" as "one that occupies a particular place regularly,

routinely, or for a period of time;" and of "citizen" as "an inhabitant of a city or town"). However, replacement of the words "inhabitant" or "citizen" with "the public" is, in many cases, considered to be a substantive change, because as modified, the class of interested or affected individuals in the affected by-law is significantly enlarged. See, for example, Article 3.12, which as modified would require the Planning Director to amend the Comprehensive Plan in a manner that focuses on the health, safety and welfare of the public instead of Town residents, and would require the Director to "facilitate and maximize meaningful input" from the public rather than from Town residents, civic associations and neighborhoods; Article 7.9, which would require the DPW Commissioner to extend notification of a snow parking ban to the public rather than to Town residents, etc. This may or may not be the petitioner's desired intent."

The Advisory Committee also had the benefit of the preliminary review of WA 33 by the Committee on Town Organization and Structure (CTOS). Their comments included:

- a suggestion to change the definition of "resident" proposed in Section 1.14 to mean a resident as defined in G.L. c. 62 §1(f): either someone who is "domiciled" in the Town (maintains or intends to maintain a true, fixed and permanent home or who maintains a permanent place of abode and spends at least 183 days or parts thereof in the Town)
- a concern that there might be unintended consequences if Article 3.12.3.10 were changed to expand the goals of the Comprehensive Plan to benefit "the public" (a concern also noted by Town Counsel, above)
- a suggestion to leave the phrase "including civic associations and neighborhood organizations" in article 3.12.3.21
- recognition that access to meeting notices and agendas is already available to the general public electronically on the Town's website (Article 3.21.1)
- recognition that non-residents can now access snow emergency parking ban notices either through the Town's website or by opting into DPW's "reverse 911" system (Article 7.9)

An Advisory Committee member wondered whether the proposed By-Law changes were a solution in search of a problem. The petitioner responded that while, as a practical matter, the current language is not problematic, words do matter. The By-Laws should reflect our values and be more inclusive than words like "citizen" and "resident." "Public" – defined in dictionaries as ordinary people in general; the community" – is best able to describe the multiple constituencies (e.g. people who live, work, or own businesses here) that the By-Laws are meant to address.

Overall, the Advisory Committee found the proposed changes to be too broad and sometimes confusing. Though some parts of the proposal seemed to have merit, as in expanding the snow emergency parking ban notification, the overriding concern was that there were more changes to underlying policy than the petitioner perceived, and that passage of WA 33 could have too many unintended consequences.

RECOMMENDATION:
By a vote of 13 in favor, 5 opposed and 7 abstentions, the Advisory Committee recommends NO ACTION on Warrant Article 33.

XXX

ARTICLE 33

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 33 is a petitioned article asking the Town to amend its By-laws, by removing references to "inhabitants" and "citizens" and replace them with more clarifying language to make the Town's General By-laws more inclusive, as well as improve clarity and consistency.

The Select Board supports efforts to bring clarity to the Town's By-laws. Furthermore, the Board supports the insertion of more inclusive language that will limit any misinterpretation that can be seen to limit rights or the inclusion of non-citizens.

On November 5, 2019, a unanimous Select Board recommended FAVORABLE ACTION on the motion offered by the petitioner.

ARTICLE 33

COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE
REPORT AND RECOMMENDATION

The Town By-Laws were drafted over many years by different individuals, departments and committees. The Petitioner for Warrant Articles 33 and 34 recognized that terminology across those By-Laws is inconsistent. For example, "inhabitant" is a defined term in the By-Laws, but an "inhabitant" is defined as a "resident" and then the terms "inhabitant" and "resident" are used interchangeably in the By-Laws. Similarly, the standards for appointment to and membership on Town boards, committees and commissions are inconsistent, with some referring to "members," others to "citizens," and others to "residents."

Petitioner also believes that the category of individuals protected or given privileges by a number of Town By-Laws is excessively narrow. For example, some provisions extend protections only to "citizens" or "inhabitants" in cases where Petitioner believes the protections should extend more generally to the "public."

Petitioner, accordingly, would modify the Town By-Laws in three general ways. First, the term "inhabitant" currently defined in the By-Laws would be changed to "resident" and then the term "resident" would be used more consistently throughout the By-Laws (this change affects both Warrant Articles 33 and 34). Second, other provisions of the By-Laws would be broadened by changing the terms "citizens" or "inhabitants" to "the public," thus broadening protections and privileges (these changes appears in Warrant Article 33). Third, the changes would make clear that membership on certain Town bodies is limited to residents of the Town (these changes appear in Warrant Article 34).

In general, the Committee on Town Organization and Structure agreed with Petitioner's suggested changes, although it had the questions, comments and concerns discussed below on Article 33 (Article 34 is addressed in a separate CTOS Report). Petitioner participated in the CTOS meetings regarding the two articles, agreed with the modifications proposed by CTOS, and will incorporate the modifications suggested below in an amended Warrant Article 33.

A. By-Law Section 1.1.4: In Section 1.1.4 of the By-Laws ("Definitions"), Article 33 changes the term "Inhabitant" to "Resident," but then gives "Resident" a circular definition ("Resident shall mean a resident of the Town of Brookline"). Members of CTOS found the circularity troublesome and considered recommending a more specific definition based on state law (e.g., Massachusetts General Laws Chapter 62, Section 1(f) more precisely defines "resident" for state tax purposes).

CTOS decided to support the circular definition contained in Section 1.1.4 of Article 33 for two primary reasons. First, any increased specificity would involve detailed additional cross-references to State statutes and rulings, and thus could well be beyond the scope of Article 33. Second, because term "resident" is utilized primarily to define the permissible membership of boards, commissions and committees in Article 34, it seemed reasonable to trust the appointing authority (e.g., the Select Board or the Moderator) to interpret the term "resident" sensibly without the need for detailed statutory guidance. Indeed, the term "Inhabitant" is currently defined as a "resident in the town," and that definition has not created problems.

B. By-Law Section 3.12.3.C.10: Article 33 would charge the Director of Planning & Community Development with ensuring that the Town's Comprehensive Plan was consistent with the welfare of "the public" rather than merely the Town's "inhabitants" as is now the case in By-Law Section 3.12.3.C.10.

CTOS accepted "the public" language change proposed by Warrant Article 33 for By-Law Section 3.12.3.C.10, but noted that the language should be applied with common sense. For example, while the "welfare" of MetroWest commuters driving through Brookline might be considered, since they are members of "the public," CTOS would not expect the Comprehensive Plan to suggest facilitating commutes between Boston and MetroWest suburbs either at the expense of Brookline residents by routing traffic onto Brookline neighborhood streets, or at the expense of Brookline businesses by removing parking on Route 9 to create an additional travel lane.

C. By-Law Sections 3.12.3.C.21 and 3.21.1.c: Two By-Law provisions cited in Warrant Article 33 deal with participation in the business of Town bodies. Both By-Law sections now limit such participation to "citizens." Warrant Article 33 originally suggested changing the language to "the public." CTOS recommends a middle ground, referring to "residents and other interested parties."

By-Law Section 3.12.3.C.21 charges the Director of Planning & Community Development with "maximizing" input to Town boards and officials. CTOS recommends the following language:

> 21. to facilitate and maximize meaningful input to Town boards and officials **to the extent reasonably practical from Residents and other interested parties, including civic associations and neighborhood organizations.**

Similarly, By-Law Section 3.21.1.c deals with participation in the business of Town governmental bodies. CTOS recommends the following language:

> (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful participation **by Residents and other interested parties** in the business of Town governmental bodies.

The changes recommended by CTOS would broaden the language of both provisions, which as noted currently refer to participation only by those who are "citizens." The CTOS language would also continue to recognize the important role of civic associations and neighborhood organizations, rather than deleting such phraseology as originally proposed in Warrant Article 33. At the same time, the language recommended by CTOS would not suggest that the general public, with no connection to Brookline, should have the same privileges as residents and other persons affected by Brookline governmental action. The term "and other interested parties" is intended to recognize the legitimate interests that persons such as business owners in Town, those working in Town, and property owners in Town, could have in Town decisions even if they are not residents of the Town.

While participation in Town affairs should not be narrowly limited to "citizens" as is now the case, CTOS believes that suggesting unlimited participation by any member of the "public" could discourage residents from participating in Town affairs and reduce willingness to serve on Town boards, committees and commissions. CTOS believed that chairs should exercise reasonable judgment in determining participation by "interested parties." To take an extreme example, members of a hate group from outside the Town need not be accorded the same privileges to participate in Town decisions as those with direct interests in those decisions. It should be noted that the Attorney General, though encouraging "as much public participation as time permits" in meetings, makes clear that "public participation is entirely within the chair's discretion." Open Meeting Law Guide, Commonwealth of Massachusetts, Office of Attorney General Maura Healey (October 6, 2017), at 15.

D. <u>By-Law Section 3.21.3.b and By-Law Article 7.9</u>: The proposed change in Warrant Article 33 with respect to By-Law Section 3.21.3.b would require public meeting notices, agendas and information regarding the contact person for the meeting to be disseminated to "members of the public" who join lists for "electronic notifications (such as by email)." The current By-Law language theoretically limits membership on such meeting notice lists to "citizens." Similarly, the proposed change in Article 7.9 of the By-Laws would provide for action to be taken to warn the "public" of snow emergency parking bans rather than merely "inhabitants of the town" as is now the case.

CTOS has consulted with the Town Clerk and Information Technology Department and determined that nothing prevents non-residents from adding their email addresses to the notification lists regarding public meetings under By-Law Article 3.21.3.b. (This is despite the facts that another current By-Law provision, Section 3.21.2, provides for such public notification lists to include "only Town Meeting Members and other Town residents," that Warrant Article 33 does not propose a change in that language, and that any such change at this point could well be beyond the scope of the warrant.)

CTOS also was informed by the Department of Public Works and the Information Technology Department that nothing precludes non-residents from adding their phone numbers to receive automated notification of snow emergency parking bans under By-Law Article 7.9.

CTOS thus determined that the changes proposed in Warrant Article 33 to broaden the scope of notifications under By-Law Section 3.21.3.b and By-Law Article 7.9 are feasible.

E. By-Law Section 8.23.1: With regard to Section 8.23.1 of the By-Laws ("Tobacco Control"), CTOS agrees that the purpose of tobacco control should be stated as the protection of the health, safety and welfare of the public, rather than merely inhabitants of the Town, but also believes that it is important to emphasize the importance of protecting the health of youth who may lack judgment with respect to tobacco and e-cigarette consumption. Therefore, CTOS would not eliminate the reference to the "younger population" as originally proposed by Warrant Article 33. CTOS recommends the following language incorporating the reference to "public" health but also retaining the current reference to the "younger population":

> In order to protect the health, safety and welfare of the **public, 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.

As noted above, where CTOS has recommended changes in certain provisions of Warrant Article 33, petitioner agreed with those changes and will incorporate those changes in a revised Article.

ARTICLE 33

PETITIONER'S SUPPLEMENTAL ARTICLE DESCRIPTION AND AMENDED MOTION

Article 33 proposes changes in the Town's general bylaws, for the most part away from using less inclusive terms such as "resident" and, more narrowly, "citizen," to using the inclusive term, "the public," where appropriate in the context of the bylaws

The words of our bylaws define us as a Town. They define how we view the role of Town government and whom Town government serves. Words matter, and especially our official words.

The words of our bylaws should express our efforts, as imperfect as they may be, to be a welcoming community, welcoming to those who live here, work here, and shop here, and to those who are just passing through, to those whose have birth certificates or naturalization papers, and to those who have no documents at all. That's not currently the case.

Subsequent to the filing of Article 33, CTO&S did a thorough, multi-meeting review (of both Articles 33 and 34). All of their recommended changes are incorporated into the following, which I intend to move at Town Meeting:

VOTED: That the Town amend its General By-laws, by removing references to "inhabitants" and "citizens," and replacing such words with more appropriate terms, and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 1.1.4 DEFINITIONS:

In construing these by-laws the following words shall have the meanings herein given, unless a contrary intention clearly applies:

a. "Appointing authority", unless otherwise specifically provided by law, shall be the Select Board.

b. "By-laws" shall mean these by-laws, that do not include the zoning by-laws and the classification and pay plan, as amended from time to time.

c. "Committee" shall include an elected or appointed board, commission, council and trustees.

d. ~~"Inhabitant"~~ **"Resident"** shall mean a resident ~~in~~ **of** the town **of Brookline**.

e. "Legislative body" shall mean the Town Meeting.

f. "Law", "General Laws" Or "Chapter" shall mean the law, statute or act referred to, as amended from time to time.

g. "Municipal officer" shall mean an elected or appointed official or member of a committee and a department head but shall not include Town Meeting Members and Town employees.

SECTION 2.1.10 TOWN MEETING MEMBERS AT LARGE:

Pursuant to the authority contained in Section 5 of Chapter 43A of the General Laws (Ter. Ed.) the following officers are designated as Town meeting members–at large: (1) ~~the members, inhabitants~~ **residents** ~~of the Town,~~ who are the elected representatives of the Town **or any part thereof** in the General Court of the Commonwealth of Massachusetts, (2) the moderator, (3) the town clerk, and (4) ~~the~~ Select Board **members**.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.3 DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT - subsection (C), item 10 and 21:
10. to provide the ~~town~~ **Town** with and, from time to time, amend Comprehensive Plans for land use, public and private transportation and parking, open space, recreation, urban renewal, telecommunications and utility services, economic development, housing, historic preservation and also for the future development and preservation of town resources consistent with its physical, social and economic requirements and the health, safety and welfare of ~~its inhabitants~~ **the public**.
21. to facilitate and maximize meaningful input to ~~town~~ **Town** boards and officials **to the extent reasonably practical** from ~~Brookline citizens~~ **Residents and other interested parties**, **including** civic associations and neighborhood organizations.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION – item (v):
(v) Receive Complaints Against the Town, 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 3.14.2), and after notifying the Town Administrator, review and summarize the complaint 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 Select Board for consideration of further action and/or (2) provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's ~~Citizen~~ **Civilian** Complaint Procedure or the Human Resources Office's procedures;

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

ARTICLE 3.21 READILY ACCESSIBLE ELECTRONIC MEETING NOTICES, AGENDAS AND RECORDS -
Section 3.21.1 Purpose and Applicability:
This by-law applies to the meetings of all Brookline governmental bodies subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, "meetings" and "OML"), and is intended (a) to take advantage of the internet and its increasing use; (b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful ~~citizen~~ participation **by Residents and other interested parties** in the business of Town governmental bodies.
Section 3.21.3 Meeting Notices and Agendas – item (b):
(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to ~~citizens~~ **members of the public** who join the aforementioned notification list(s).

ARTICLE 4.1 ACCOUNTS AND AUDITS SECTION - SECTION 4.1.3 AUDIT REPORTS
All reports by the independent auditor shall be available for inspection by ~~citizens of the Town~~ **the public** during regular business hours at the Town's offices. The audit report shall also be made available at the Main Library.

ARTICLE 4.6 PUBLIC RELATIONS AND INFORMATION
The Town may appropriate a sum not to exceed $1,500.00 in any year to be expended by the Personnel Board, with the approval of the Select Board, for the purpose of furnishing information including, without limitation, the results of its investigations, its opinions and recommendations, to the ~~inhabitants of the Town~~ **public** or to Town Meeting members, pertaining to an article or articles in the Warrant for a town meeting which relate to wages, hours or other conditions of employment of ~~town~~ **Town** employees.

ARTICLE 4.8 LIVING WAGE BY-LAW - SECTION 4.8.6, item (c), first paragraph:
c. Enforcement Grievance procedures and nondiscrimination. Any covered employee who believes that his or her employer is not complying with requirements of this article applicable to the employer has the right to file a complaint with the town's Chief Procurement Officer or Select Board. Complaints of alleged violations may also be filed by concerned ~~citizens~~ **members of the public** or by a town official or employee. Complaints of alleged violations may be made at any time and shall be investigated promptly by or for the officer or board that received the Complaint. To the extent allowed

under the Public Records Law, G.L.c.66, statements, written or oral, made by a covered employee, shall be treated as confidential and shall not be disclosed to the covered employer without the consent of the covered employee.

ARTICLE 6.6 DISCHARGING FIREARMS:
No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any ~~citizen~~ **person**.

ARTICLE 7.9 SNOW PARKING BAN:
No person shall allow any vehicle to remain in or within a street or way when a snow emergency parking ban has been declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member.
A Snow Emergency Parking Ban may be declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member, whenever there are indications that the threat of substantial snow is imminent, whenever there has been a substantial snow and snow removal operations are underway or are about to commence, or whenever a substantial snow creates conditions that require a vehicular driving or parking ban throughout the town. Upon the declaration of a Snow Emergency Parking Ban notice thereof shall be given to the Town Clerk's office, the Police Department, the Fire Department and the Department of Public Works. Reasonable action shall also be taken to notify and warn the ~~inhabitants of the Town~~ **public** of the ban.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.4 NO DISTURBING THE PEACE:
No person hawking, peddling, or carrying or exposing any article for sale shall cry his wares to the disturbance of the peace and comfort of the ~~inhabitants of the Town~~ **public**, nor shall carry or convey such articles (in any manner that will tend to injure or disturb the public health or comfort nor) otherwise than in vehicles and receptacles which are neat and clean and do not leak.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.2 LICENSING
The Town Administrator shall have authority to grant such license to any person of good repute for morals and integrity ~~who is or has declared his intentions to become a citizen of the United States~~. Said license, unless sooner revoked by the board or officer granting the same, shall expire one year from the date of issue, and each person so licensed shall pay therefore a fee of twenty-five dollars.

ARTICLE 8.15 NOISE CONTROL:
SECTION 8.15.2 DECLARATION OF FINDINGS, POLICY AND SCOPE , item (a):

(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~~ **the public** or degrade the quality of life.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The applications required by (a) shall be on appropriate forms available at the office of the Select Board. The Select Board, 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~~ **the public**.

ARTICLE 8.16.1 COLLECTION AND RECYCLING OF WASTE MATERIALS - 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~~ **the public** 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.

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~~ **public**, 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.

ARTICLE 8.29 NUISANCE CONTROL - SECTION 8.29.1 PURPOSE:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town~~ **public**, this bylaw shall permit the Town to impose liability on Property Owners and other responsible persons for the nuisances and harm caused by loud and unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS - SECTION 8.30.1 PURPOSE/AUTHORIZATION:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town of Brookline~~ **public**, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct

criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Article 8.31 Leaf Blower Control – SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):
(b) The Select Board, 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~~ **the public**. (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 Select Board, 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 Select Board, or designee, to support this claim.

ARTICLE 33

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Warrant Article 33 seeks to amend the wording in the General By-Laws to be more inclusive and to provide clarity and consistency.

By a vote of 16-0-7, the Advisory Committee amended its previous vote and recommends FAVORABLE ACTION on the petitioner's revised motion with the further deletion of any changes to section 4.8.6(c) (Living Wage By-Law).

Background

Subsequent to its original vote, the Advisory Committee received the full report and recommendations of the Committee on Town Organization and Structure (CTOS) which have been incorporated into the petitioner's revisions. In general, the proposed By-Law changes replace the word "citizen" with "resident" and broaden some protections and privileges delineated in the By-Laws to cover "the public" rather than "citizens" or "inhabitants."

Discussion

CTOS found these changes to be helpful and to meet the intent of the By-Laws, noting under section 3.12.3.C.10 that application of the word "public" should be applied with common sense. Under sections 3.12.3.C.21 (relating to the Department of Planning and Community Development) and section 3.21.1c (relating to participation in the business of Town governmental bodies), it recommended using the term "residents and other interested parties." Notification of public meetings (section 3.21.3.b) and snow emergencies (Article 7.9) are already open to the public though posting on the Town website and by non-residents asking to be included in e-mail or telephone notification lists. CTOS recommended retaining the phrase "including but not limited to its younger population" with regard to tobacco control (Section 8.23.1) to emphasize particular concern for this group. The full CTOS report was included in the supplemental mailing (Article 33 – Supplement No. 2).

A member of the Advisory Committee questioned extending the right to file a complaint under the town's living wage by-law (Secretion 4.8.6) to members of the public. CTOS did not address this particular section in its review. Though a common sense reading could limit the right to those with an intimate knowledge of the Town's By-Laws and their implementation, the Advisory Committee amended the petitioner's motion by eliminating any changes to section 4.8.6. All of the proposed By-Law changes will require the approval of the Attorney General.

Recommendation
By a vote of 16 in favor, 0 opposed and 7 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the petitioner's amended motion as further amended below.

VOTED: That the Town amend its General By-laws, by removing references to "inhabitants" and "citizens," and replacing such words with more appropriate terms, and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 1.1.4 DEFINITIONS:
In construing these by-laws the following words shall have the meanings herein given, unless a contrary intention clearly applies:
a. "Appointing authority", unless otherwise specifically provided by law, shall be the Select Board.
b. "By-laws" shall mean these by-laws, that do not include the zoning by-laws and the classification and pay plan, as amended from time to time.
c. "Committee" shall include an elected or appointed board, commission, council and trustees.
d. ~~"Inhabitant"~~ **"Resident"** shall mean a resident ~~in~~ **of** the town **of Brookline**.
e. "Legislative body" shall mean the Town Meeting.
f. "Law", "General Laws" Or "Chapter" shall mean the law, statute or act referred to, as amended from time to time.
g. "Municipal officer" shall mean an elected or appointed official or member of a committee and a department head but shall not include Town Meeting Members and Town employees.

SECTION 2.1.10 TOWN MEETING MEMBERS AT LARGE:
Pursuant to the authority contained in Section 5 of Chapter 43A of the General Laws (Ter. Ed.) the following officers are designated as Town meeting members ~~-~~at large: (1) ~~the members,~~ ~~inhabitants~~ **residents** ~~of the Town,~~ who are the elected representatives of the Town **or any part thereof** in the General Court of the Commonwealth of Massachusetts, (2) the moderator, (3) the town clerk, and (4) ~~the~~ Select Board **members**.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.3 DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT - subsection (C), item 10 and 21:
10. to provide the ~~town~~ **Town** with and, from time to time, amend Comprehensive Plans for land use, public and private transportation and parking, open space, recreation, urban renewal, telecommunications and utility services, economic development, housing, historic preservation and also for the future development and preservation of town resources consistent with its physical, social and economic requirements and the health, safety and welfare of ~~its inhabitants~~ **the public**.

21. to facilitate and maximize meaningful input to ~~town~~ **Town** boards and officials **to the extent reasonably practical** from ~~Brookline citizens~~ **Residents and other interested parties**, **including** civic associations and neighborhood organizations.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION – item (v):
(v) Receive Complaints Against the Town, 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 3.14.2), and after notifying the Town Administrator, review and summarize the complaint 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 Select Board for consideration of further action and/or (2) provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's ~~Citizen~~ **Civilian** Complaint Procedure or the Human Resources Office's procedures;

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

ARTICLE 3.21 READILY ACCESSIBLE ELECTRONIC MEETING NOTICES, AGENDAS AND RECORDS -
Section 3.21.1 Purpose and Applicability:
This by-law applies to the meetings of all Brookline governmental bodies subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, "meetings" and "OML"), and is intended (a) to take advantage of the internet and its increasing use;

(b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful ~~citizen~~ participation **by Residents and other interested parties** in the business of Town governmental bodies.
Section 3.21.3 Meeting Notices and Agendas – item (b):
(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to ~~citizens~~ **members of the public** who join the aforementioned notification list(s).

ARTICLE 4.1 ACCOUNTS AND AUDITS SECTION - SECTION 4.1.3 AUDIT REPORTS
All reports by the independent auditor shall be available for inspection by ~~citizens of the Town~~ **the public** during regular business hours at the Town's offices. The audit report shall also be made available at the Main Library.

ARTICLE 4.6 PUBLIC RELATIONS AND INFORMATION
The Town may appropriate a sum not to exceed $1,500.00 in any year to be expended by the Personnel Board, with the approval of the Select Board, for the purpose of furnishing information including, without limitation, the results of its investigations, its opinions and recommendations, to the ~~inhabitants of the Town~~ **public** or to Town Meeting members, pertaining to an article or articles in the Warrant for a town meeting which relate to wages, hours or other conditions of employment of ~~town~~ **Town** employees.

ARTICLE 4.8 LIVING WAGE BY-LAW - SECTION 4.8.6, item (c), first paragraph:
c. Enforcement Grievance procedures and nondiscrimination. Any covered employee who believes that his or her employer is not complying with requirements of this article applicable to the employer has the right to file a complaint with the town's Chief Procurement Officer or Select Board. Complaints of alleged violations may also be filed by concerned citizens or by a town official or employee. Complaints of alleged violations may be made at any time and shall be investigated promptly by or for the officer or board that received the Complaint. To the extent allowed under the Public Records Law, G.L.c.66, statements, written or oral, made by a covered employee, shall be treated as confidential and shall not be disclosed to the covered employer without the consent of the covered employee.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 6.6 DISCHARGING FIREARMS:
No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any ~~citizen~~ **person**.

ARTICLE 7.9 SNOW PARKING BAN:

No person shall allow any vehicle to remain in or within a street or way when a snow emergency parking ban has been declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member.

A Snow Emergency Parking Ban may be declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member, whenever there are indications that the threat of substantial snow is imminent, whenever there has been a substantial snow and snow removal operations are underway or are about to commence, or whenever a substantial snow creates conditions that require a vehicular driving or parking ban throughout the town. Upon the declaration of a Snow Emergency Parking Ban notice thereof shall be given to the Town Clerk's office, the Police Department, the Fire Department and the Department of Public Works. Reasonable action shall also be taken to notify and warn the ~~inhabitants of the Town~~ **public** of the ban.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.4 NO DISTURBING THE PEACE:

No person hawking, peddling, or carrying or exposing any article for sale shall cry his wares to the disturbance of the peace and comfort of the ~~inhabitants of the Town~~ **public**, nor shall carry or convey such articles (in any manner that will tend to injure or disturb the public health or comfort nor) otherwise than in vehicles and receptacles which are neat and clean and do not leak.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.2 LICENSING

The Town Administrator shall have authority to grant such license to any person of good repute for morals and integrity ~~who is or has declared his intentions to become a citizen of the United States~~. Said license, unless sooner revoked by the board or officer granting the same, shall expire one year from the date of issue, and each person so licensed shall pay therefore a fee of twenty-five dollars.

ARTICLE 8.15 NOISE CONTROL:

SECTION 8.15.2 DECLARATION OF FINDINGS, POLICY AND SCOPE , item (a):

(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~~ **the public** or degrade the quality of life.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The applications required by (a) shall be on appropriate forms available at the office of the Select Board. The Select Board, 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~~ **the public**.

ARTICLE 8.16.1 COLLECTION AND RECYCLING OF WASTE MATERIALS - 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~~ **the public** 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.

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~~ **public**, 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.

ARTICLE 8.29 NUISANCE CONTROL - SECTION 8.29.1 PURPOSE:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town~~ **public**, this bylaw shall permit the Town to impose liability on Property Owners and other responsible persons for the nuisances and harm caused by loud and unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS - SECTION 8.30.1 PURPOSE/AUTHORIZATION:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town of Brookline~~ **public**, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Article 8.31 Leaf Blower Control – SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The Select Board, 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~~ **the public**. (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 Select Board, 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 Select Board, or designee, to support this claim.

ARTICLE 33

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Warrant Article 33 seeks to amend the wording in the General By-Laws to be more inclusive and to provide clarity and consistency.

By a vote of 16-0-7, the Advisory Committee amended its previous vote and recommends FAVORABLE ACTION on the petitioner's revised motion with the further deletion of any changes to section 4.8.6(c) (Living Wage By-Law).

Background

Subsequent to its original vote, the Advisory Committee received the full report and recommendations of the Committee on Town Organization and Structure (CTOS) which have been incorporated into the petitioner's revisions. In general, the proposed By-Law changes replace the word "citizen" with "resident" and broaden some protections and privileges delineated in the By-Laws to cover "the public" rather than "citizens" or "inhabitants."

Discussion

CTOS found these changes to be helpful and to meet the intent of the By-Laws, noting under section 3.12.3.C.10 that application of the word "public" should be applied with common sense. Under sections 3.12.3.C.21 (relating to the Department of Planning and Community Development) and section 3.21.1c (relating to participation in the business of Town governmental bodies), it recommended using the term "residents and other interested parties." Notification of public meetings (section 3.21.3.b) and snow emergencies (Article 7.9) are already open to the public though posting on the Town website and by non-residents asking to be included in e-mail or telephone notification lists. CTOS recommended retaining the phrase "including but not limited to its younger population" with regard to tobacco control (Section 8.23.1) to emphasize particular concern for this group. The full CTOS report was included in the supplemental mailing (Article 33 – Supplement No. 2).

A member of the Advisory Committee questioned extending the right to file a complaint under the town's living wage by-law (Secretion 4.8.6) to members of the public. CTOS did not address this particular section in its review. Though a common sense reading could limit the right to those with an intimate knowledge of the Town's By-Laws and their implementation, the Advisory Committee amended the petitioner's motion by eliminating any changes to section 4.8.6. All of the proposed By-Law changes will require the approval of the Attorney General.

Recommendation
By a vote of 16 in favor, 0 opposed and 7 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the petitioner's amended motion as further amended below.

VOTED: That the Town amend its General By-laws, by removing references to "inhabitants" and "citizens," and replacing such words with more appropriate terms, and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 1.1.4 DEFINITIONS:
In construing these by-laws the following words shall have the meanings herein given, unless a contrary intention clearly applies:
a. "Appointing authority", unless otherwise specifically provided by law, shall be the Select Board.
b. "By-laws" shall mean these by-laws, that do not include the zoning by-laws and the classification and pay plan, as amended from time to time.
c. "Committee" shall include an elected or appointed board, commission, council and trustees.
d. ~~"Inhabitant"~~ **"Resident"** shall mean a resident ~~in~~ **of** the town **of Brookline**.
e. "Legislative body" shall mean the Town Meeting.
f. "Law", "General Laws" Or "Chapter" shall mean the law, statute or act referred to, as amended from time to time.
g. "Municipal officer" shall mean an elected or appointed official or member of a committee and a department head but shall not include Town Meeting Members and Town employees.

SECTION 2.1.10 TOWN MEETING MEMBERS AT LARGE:
Pursuant to the authority contained in Section 5 of Chapter 43A of the General Laws (Ter. Ed.) the following officers are designated as Town meeting members ~~-~~at large: (1) ~~the members,~~ ~~inhabitants~~ **residents** ~~of the Town,~~ who are the elected representatives of the Town **or any part thereof** in the General Court of the Commonwealth of Massachusetts, (2) the moderator, (3) the town clerk, and (4) ~~the~~ Select Board **members**.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.3 DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT - subsection (C), item 10 and 21:
10. to provide the ~~town~~ **Town** with and, from time to time, amend Comprehensive Plans for land use, public and private transportation and parking, open space, recreation, urban renewal, telecommunications and utility services, economic development, housing, historic preservation and also for the future development and preservation of town resources consistent with its physical, social and economic requirements and the health, safety and welfare of ~~its inhabitants~~ **the public**.

21. to facilitate and maximize meaningful input to ~~town~~ **Town** boards and officials **to the extent reasonably practical** from ~~Brookline citizens~~ **Residents and other interested parties**, **including** civic associations and neighborhood organizations.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION – item (v):
(v) Receive Complaints Against the Town, 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 3.14.2), and after notifying the Town Administrator, review and summarize the complaint 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 Select Board for consideration of further action and/or (2) provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's ~~Citizen~~ **Civilian** Complaint Procedure or the Human Resources Office's procedures;

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

ARTICLE 3.21 READILY ACCESSIBLE ELECTRONIC MEETING NOTICES, AGENDAS AND RECORDS -
Section 3.21.1 Purpose and Applicability:
This by-law applies to the meetings of all Brookline governmental bodies subject to the Open Meeting Law, now G.L. c. 39, §§23A et seq. (hereinafter, respectively, "meetings" and "OML"), and is intended (a) to take advantage of the internet and its increasing use;

(b) to better implement the spirit of the OML; and (c) to the extent reasonably practical, to improve opportunities for broader and more meaningful ~~citizen~~ participation **by Residents and other interested parties** in the business of Town governmental bodies.
Section 3.21.3 Meeting Notices and Agendas – item (b):
(b) With the assistance and direction of the Town Clerk and ITD, the information specified above shall be disseminated in a timely manner to ~~citizens~~ **members of the public** who join the aforementioned notification list(s).

ARTICLE 4.1 ACCOUNTS AND AUDITS SECTION - SECTION 4.1.3 AUDIT REPORTS
All reports by the independent auditor shall be available for inspection by ~~citizens of the Town~~ **the public** during regular business hours at the Town's offices. The audit report shall also be made available at the Main Library.

ARTICLE 4.6 PUBLIC RELATIONS AND INFORMATION
The Town may appropriate a sum not to exceed $1,500.00 in any year to be expended by the Personnel Board, with the approval of the Select Board, for the purpose of furnishing information including, without limitation, the results of its investigations, its opinions and recommendations, to the ~~inhabitants of the Town~~ **public** or to Town Meeting members, pertaining to an article or articles in the Warrant for a town meeting which relate to wages, hours or other conditions of employment of ~~town~~ **Town** employees.

ARTICLE 4.8 LIVING WAGE BY-LAW - SECTION 4.8.6, item (c), first paragraph:
c. Enforcement Grievance procedures and nondiscrimination. Any covered employee who believes that his or her employer is not complying with requirements of this article applicable to the employer has the right to file a complaint with the town's Chief Procurement Officer or Select Board. Complaints of alleged violations may also be filed by concerned citizens or by a town official or employee. Complaints of alleged violations may be made at any time and shall be investigated promptly by or for the officer or board that received the Complaint. To the extent allowed under the Public Records Law, G.L.c.66, statements, written or oral, made by a covered employee, shall be treated as confidential and shall not be disclosed to the covered employer without the consent of the covered employee.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 6.6 DISCHARGING FIREARMS:
No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any ~~citizen~~ **person**.

ARTICLE 7.9 SNOW PARKING BAN:

No person shall allow any vehicle to remain in or within a street or way when a snow emergency parking ban has been declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member.

A Snow Emergency Parking Ban may be declared by the Chairman of the Select Board, or in the absence of the Chairman, by a Select Board member, whenever there are indications that the threat of substantial snow is imminent, whenever there has been a substantial snow and snow removal operations are underway or are about to commence, or whenever a substantial snow creates conditions that require a vehicular driving or parking ban throughout the town. Upon the declaration of a Snow Emergency Parking Ban notice thereof shall be given to the Town Clerk's office, the Police Department, the Fire Department and the Department of Public Works. Reasonable action shall also be taken to notify and warn the ~~inhabitants of the Town~~ **public** of the ban.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.4 NO DISTURBING THE PEACE:

No person hawking, peddling, or carrying or exposing any article for sale shall cry his wares to the disturbance of the peace and comfort of the ~~inhabitants of the Town~~ **public**, nor shall carry or convey such articles (in any manner that will tend to injure or disturb the public health or comfort nor) otherwise than in vehicles and receptacles which are neat and clean and do not leak.

ARTICLE 8.12 HAWKERS AND PEDDLERS - SECTION 8.12.2 LICENSING

The Town Administrator shall have authority to grant such license to any person of good repute for morals and integrity ~~who is or has declared his intentions to become a citizen of the United States~~. Said license, unless sooner revoked by the board or officer granting the same, shall expire one year from the date of issue, and each person so licensed shall pay therefore a fee of twenty-five dollars.

ARTICLE 8.15 NOISE CONTROL:

SECTION 8.15.2 DECLARATION OF FINDINGS, POLICY AND SCOPE , item (a):

(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~~ **the public** or degrade the quality of life.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The applications required by (a) shall be on appropriate forms available at the office of the Select Board. The Select Board, 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~~ **the public**.

ARTICLE 8.16.1 COLLECTION AND RECYCLING OF WASTE MATERIALS - 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~~ **the public** 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.

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~~ **public**, 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.

ARTICLE 8.29 NUISANCE CONTROL - SECTION 8.29.1 PURPOSE:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town~~ **public**, this bylaw shall permit the Town to impose liability on Property Owners and other responsible persons for the nuisances and harm caused by loud and unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

ARTICLE 8.30 FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS - SECTION 8.30.1 PURPOSE/AUTHORIZATION:
In order to protect the health, safety, and welfare of the ~~inhabitants of the Town of Brookline~~ **public**, and as authorized by chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 8.30.2 below to submit to fingerprinting by the Brookline Police Department, b) the Police Department to conduct criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

Article 8.31 Leaf Blower Control – SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW, item (b):

(b) The Select Board, 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~~ **the public**. (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 Select Board, 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 Select Board, or designee, to support this claim.

ARTICLE 34

THIRTY-FOURTH ARTICLE

Submitted by: Neil Gordon, TMM1

To see if the Town will vote to amend its General By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

ARTICLE 2.2 ADVISORY COMMITTEE - SECTION 2.2.1 APPOINTMENT OF MEMBERS
The Moderator shall, in June of each year, appoint ~~citizens~~ **members** ~~to serve on~~ **of** the Advisory Committee (herein the Committee) established under G.L.c. 39, Section 16, and this Bylaw. Members of the Committee shall serve without compensation. The Committee shall consist of not fewer than twenty nor more than thirty ~~registered voters~~ **residents** of the Town. At least sixteen Committee members shall be elected Town Meeting Members at the time of their appointment. At least one elected Town Meeting Member shall be appointed from each precinct**, to the extent practicable**. No more than eight members shall be appointed who are not elected Town Meeting Members at the time of their appointment. No more than four members of the Committee shall reside in the same precinct. No member of the Committee shall be an employee of the Town or a member of any standing Board or Committee having charge of the expenditure of money; but, this restriction shall not disqualify from appointment to the Committee, members of special committees, which may be created from time to time by Town Meeting, the Moderator or the Select Board to report on specific matters.

ARTICLE 2.3 COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE - SECTION 2.3.1 APPOINTMENT OF MEMBERS
There shall be a Committee on Town Organization and Structure (CTO&S) to consist of seven ~~members~~ **residents,** appointed by the moderator for three year staggered terms.

ARTICLE 3.2 SCHOOL COMMITTEE
There shall be a School Committee, comprised of nine ~~residents~~ **members** elected for three year staggered terms.

ARTICLE 3.5 AUDIT COMMITTEE SECTION - 3.5.1 APPOINTMENT
There shall be an Audit Committee consisting of six **resident voting** members**,** with appointment not restricted to the ranks of the appointing bodies. The Select Board shall appoint one member, the Advisory Committee shall appoint one member, the School Committee shall appoint one member and the Town Moderator shall appoint three members. The membership shall elect a chairperson annually from among their number. Appointments shall be for a term of three years. All terms shall expire on August 31. Any vacancy occurring in the Committee shall be filled by the appropriate appointing body for the balance of the unexpired term.

ARTICLE 3.6 BOARD OF APPEALS
There shall be a Board of Appeals, as provided in General Laws Chapter 40A, Section 12, to consist of three ~~members~~ **residents** who shall be appointed by the Select Board, for terms of such length and so arranged that the term of one member shall expire each year. One member shall be an attorney and at least one of the remaining members shall be a registered architect, professional civil engineer or master builder. The Zoning By-laws may provide for the appointment of associate members.

ARTICLE 3.7 BUILDING COMMISSION; PROCEDURE FOR THE CONSTRUCTION AND ALTERATION OF TOWN BUILDINGS AND STRUCTURES SECTION - 3.7.1 APPOINTMENT OF MEMBERS
The Select Board shall appoint five ~~citizens~~ **residents** to serve as members of the Building Commission (the Commission), which shall have charge and direction of the construction, repair and alteration of all town buildings and all buildings and structures placed on town land. **So long as they remain residents, the**~~The~~ members of said Commission shall hold office from the 1st of September following his or her appointment for three year staggered terms, and until a successor is appointed. Commission appointments shall be made to preserve three year staggered terms, with two members appointed one year, two members appointed the following year and one member appointed the third year. They shall serve without compensation. The Commission shall comprise a registered architect, a registered engineer, a licensed builder, and two other ~~citizens~~ **residents**. The Building Commissioners shall act as Secretary of the Commission. The Select Board shall have the power to fill any vacancy in the Commission. With respect to the selection of an architect, engineer, or other consultant (the consultant) for building projects, the Commission shall by regulation, adopt procedures, by regulation which conform to the requirements of the laws of Massachusetts.

ARTICLE 3.9 BROOKLINE COMMISSION FOR WOMEN - SECTION 3.9.4 MEMBERSHIP, APPOINTMENT, TERM, item (a):
(a) The Commission shall consist of eleven ~~members~~ **residents**, all of whom shall be appointed by the Select Board to serve for a term of three years.

ARTICLE 3.10 COUNCIL ON AGING SECTION 3.10.1 ESTABLISHMENT - SECTION 3.10.2 MEMBERSHIP
The Council on Aging shall consist of the Chair of the Select Board, Chair of the Park and Recreation Commission, Chair of the Housing Authority, Director of Public Health, Superintendent of Schools, Head Librarian, or their respective representatives, and, in addition, fifteen ~~citizens~~**residents** reflecting the general composition of the ~~citizenry of Brookline~~ **town**. The ~~Citizen~~**resident** members shall be appointed by the Select Board after receiving recommendations from public and private agencies concerned with the welfare of older persons. Fifty-one percent of the members of the Council on Aging shall be composed of persons 60 years of age or over. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

SECTION 3.10.3 TERMS AND CHAIR
Length of term of ~~Citizen~~**resident** Members shall be determined in the following manner: Initial ~~Citizen~~**resident** Membership shall be split as evenly as possible into thirds. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a one year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a two-year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a three-year term. All subsequent ~~Citizen~~**resident** Members shall be appointed for a three-year term.

ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE
The Select Board shall appoint five residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered **terms and so long as they remain residents**. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.6 PLANNING BOARD:
The Select Board shall appoint seven residents to serve on the Planning Board for five year staggered terms **and so long as they remain residents**. At least one of the appointees must be qualified for such appointment by virtue or relevant and significant experience or training in the field of environmental or urban planning. The Planning Board is established under G.L.c. 41, §81A, and shall perform and discharge all of the statutory powers and duties required by law, including those set forth in The Zoning Act, G.L.c. 40A, in the Subdivision Control Act and other relevant sections in G.L.c. 41, Sections 81A to 81GG, inclusive, in Chapter 270 of the Acts of 1985 and in G.L.c. 41.

ARTICLE 3.13 HOUSING ADVISORY BOARD - SECTION 3.13.2 MEMBERSHIP:
The Housing Advisory Board shall consist of seven residents ~~of the town~~, five appointed by the Select Board for three year staggered terms, and a member each of the Planning Board and Brookline Housing Authority. Vacancies shall be filled for unexpired terms. Of the Select Board's appointees, one should be a low or moderate income tenant who demonstrates a knowledge of tenant issues. The other Select Board's appointees should have knowledge or experience in one or more of the following areas: government housing programs, housing or real estate finances, affordable housing development, design or urban planning, real estate law. The Select Board should ensure that all of these areas of expertise are represented on the Housing Advisory Board.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.1 ESTABLISHMENT AND PURPOSE:
The Commission shall consist of fifteen (15) residents ~~of the Town~~, who shall be called Commissioners.

ARTICLE 3.16 PARK AND RECREATION COMMISSION
There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms.

ARTICLE 3.23 BROOKLINE COMMISSION ON DISABILITY - SECTION 3.23.4 MEMBERSHIP
The Commission shall consist of seven (7) or nine (9) ~~volunteer members~~ **residents** appointed by the Select Board. The majority of members shall consist of people with disabilities. One member shall be a member of the immediate family of a person with a disability. One member shall be a member of the Select Board or a Department Head. All members shall serve three-year terms. Terms shall be staggered to preserve continuity. Resignations shall be made by notifying the Select Board and Town Clerk in writing. If any member is absent from three or more regularly scheduled meetings in any one calendar year, a recommendation shall be made by the chairperson to the Select Board that such member be removed from the Commission, unless any or all absences are excused for good cause by the chairperson. Good cause shall include, but not be limited to: illness, a death in the family, severe weather, and professional responsibilities. The Select Board shall fill any vacancy for the remainder of the unexpired term in the same manner as an original appointment. Any members of said Commission may, after a public hearing if so requested, be removed for cause by the Select Board. No member shall undertake to speak or act on behalf of the Commission without the approval of the Commission. All members, with the exception of the Town's ADA Coordinator, shall have full voting rights.

ARTICLE 4.9 ELECTION CAMPAIGNS – item (G):
(G) Committee on Campaigns (1) There shall be a Committee on Campaigns consisting of not less than five nor more than seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and not less than three nor more than five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman, School Committee, Library Trustee, Housing Authority, Moderator, Town Clerk or Constable shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

SECTION 5.6.4 MEMBERSHIP OF THE PRESERVATION COMMISSION
The Brookline Preservation Commission, hereinafter referred to as the Preservation Commission, shall consist of seven (7) ~~members~~ **residents** appointed by the Select Board. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE
(A) Appointment - The Select Board shall appoint a Committee of not less than five nor more than seven ~~members~~ **residents** for staggered three year terms **and so long as they remain residents** to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the

Advisory Committee, the Park and Recreation Commission, the Preservation Commission, the Commission for Diversity, Inclusion and Community Relations and the School Committee. In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Some time ago, the Petitioner was made aware of a former resident of the town who was continuing to serve on an appointed board. That led to a review of the By-law as it related to that particular board, and subsequently, to a broader review of the By-laws as they relate to appointments to Town boards, committees and commissions.

Currently, there is no consistent standard for appointment to a Town board, committee or commission. For example, the Audit Committee By-law refers only to the appointment of "members," as is the case for the Commission for Women. To serve on the Council on Aging, on the other hand, you need to be a "citizen." The By-laws are silent with respect to members of the Parks and Recreation Commission. "Residents" serve on the School Committee, but the By-laws are silent with respect to Select Board Members, the moderator and the town clerk.

The proposed By-law amendment (i) makes consistent the language with respect to town wide elected officials, and (ii) sets a consistent standard of "resident," which the Petitioner believes (subject to public hearings on this subject) is the appropriate requirement for appointment to and continued service on a Town board, committee or commission.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT AND RECOMMENDATION

The mission of the CDICR is 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 (i.e. visitors, residents, employers, employees etc.) by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The CDICR reviewed the warrant article on October 16, 2019. By unanimous vote, the CDICR supported Warrant Article 34.

DISCUSSION

Warrant Article 34, appropriately updates the Town's Bylaws to ensure they are both inclusive and accurate. In the current national political climate, the term "citizens" has a

weighted and narrower interpretation than what is intended in the Town's Bylaws. The substitution of "residents" is more accurate and non-political. The suggested edits will help to avoid misinterpretation that could result in denial of rights or at minimum an impression of exclusion of non-citizens. We fully support the clarity and inclusivity of the revised language. Therefore, the commission recommends FAVORABLE ACTION on warrant article 34.

SELECT BOARD'S RECOMMENDATION

The Select Board's report and recommendation on Article 34 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY

Warrant Article 34 proposes amending the General By-Laws to create standard wording for appointment to a Town board, commission or committee consistent with that for elected officials, generally by replacing the existing language in various articles with the term "resident."

The Advisory Committee recommends NO ACTION on Warrant Article 34.

BACKGROUND:

Currently, appointees can be "citizens" or "residents" or unspecified "members." In the case of Article 3.2 which establishes the School Committee, the word "residents" is replaced with "members" to be consistent with the language for the Select Board, Town Clerk and Moderator. The warrant article also inserts, under Article 3.16, a description of the Park and Recreation Commission whose duties are defined in subsequent sections of Article 3.16 but whose composition is not specified.

Most significantly, Section 2.2.1 of Article 2.2 would be amended to allow residents who are not voters to serve on the Advisory Committee, and to grant the Moderator leeway to appoint at least one member from each precinct "to the extent practicable." The latter change is intended to bring the By-Law into agreement with the current make-up of the Advisory Committee which has no TMM representing precinct 2.

The Advisory Committee found the proposed changes to be confusing and largely unnecessary and recommends no action.

DISCUSSION

Much of the discussion related to the substantive change to section 2.2.1 of Article 2.2 which governs the appointment of the Advisory Committee. The petitioner proposes including the phrase "to the extent practicable" at the end of the sentence which now reads "Members shall be appointed from each precinct." The amended language is intended to

provide some leeway for the Moderator in circumstances where TMM representation from each precinct is not possible, as is currently the case for precinct 2.

The Warrant Article was referred to Town Counsel for analysis of the substantive changes. Town Counsel indicated that the use of the phrase "to the extent practicable" could cause conflict by permitting "stacking the precincts" and suggested that there might be language that distributes representation more equitably. Members of the Advisory Committee found the language to be too vague and that the current lack of TMM representation from one precinct resulted in no undue harm. A proposal to eliminate the phrase from the warrant article was voted down by a vote of 15-4-6. A proposal to replace the phrase with the words "provided that someone from each precinct is able to serve" was defeated 11-9-5.

Town Counsel also noted that "replacing the word 'member' with 'resident' in Articles 2.3, 3.5, 3.6, 3.9, 3.23, 5.6, 6.8 appears to narrow the field of eligible candidates for the affected Town bodies; and replacement of the word 'resident' with 'member' in Article 3.2 purports to change the eligibility criteria for membership on the School Committee."

Members of the Advisory Committee were confused that the composition of the School Committee was changed from "voters" to "members" when other changes eliminated the term "members." The petitioner responded that the change is consistent with the language regarding the Select Board, Town Clerk and Moderator in other parts of the By-Laws. Some of the inconsistencies result from the attempt to retain as much of the existing language of various By-Laws as possible, while making Brookline residency a requirement for service.

There was an objection to limiting the membership for the Commission for Women (Article 3.9) to residents because of the need for expertise which might not be available within the Town. It was pointed out that the Commission could seek advice from outside parties even if they were not members. A proposal to leave Article 3.9.4 of the By-Law unchanged was defeated 11-9-5.

Input from the Committee on Town Organization and Structure (CTOS) was not available, though an Advisory Committee member who also serves on CTOS indicated that the only substantive changes seemed to be the insertion under Article 3.16 to establish the make-up of the Park and Recreation Commission and the changes to Article 2.2. Beyond that, the warrant article seems to substitute a consistent word for terms that appear to be used interchangeably.

Ultimately, the petitioner was unable to resolve the concerns raised or provide a convincing rationale for making the proposed changes.

RECOMMENDATION

By a vote of 15 in favor, 4 opposed, and 6 abstentions, the Advisory Committee recommends NO ACTION on Warrant Article 34.

XXX

ARTICLE 34

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 34 is a petitioned article asking the Town to amend its By-laws, by setting a consistent standard of "resident" as the requirement for appointment to and continued service on a Town board, committee, or commission.

The Select Board continues to support efforts to bring clarity to the Town's By-laws. The Board supports the insertion of the inclusive language of "resident" rather than "citizen" to limit any misinterpretation that can be seen to limit rights or the inclusion of non-citizens on serving on a Town board, committee, or commission, as allowable by law. Board members encouraged taking a look at changing the requirements for Town Meeting membership to allow other populations such as immigrants or refugees to participate and be represented in the local process.

On November 5, 2019, the Board recommended FAVORABLE ACTION, by a vote of three in favor and two abstentions, on the motion offered by the petitioner.

ROLL CALL VOTE:

Aye:	Abstention:
Greene	Franco
Hamilton	Heller
Fernandez	

ARTICLE 34

REPORT OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE

Warrant Article 34 attempts to reconcile inconsistent terminology in our by-laws regarding appointments to Town boards, committees, and commissions. Its intent is to ensure everyone serving is a current resident and that common, standardized terms are used. The article would also impose residency requirements where none currently exist. The Committee on Town Organization & Structure (CTOS) considered Article 34 at multiple meetings and had extended discussions with the petitioner. CTOS recommends FAVORABLE ACTION on a revised motion to be offered by the petitioner. We expect that the petitioner will include the full text of that revised motion in the supplement to the Combined Reports.

DISCUSSION

Various articles in Brookline's current by-laws were established over time and not always consistently, leaving us with a hodgepodge of terms. Throughout our by-laws, resident members of boards, committees, and commissions are variously referred to as "member", "citizen", "resident", and "volunteer member". Warrant Article 34 seeks to impart better clarifying and consistent language in these by-law articles. Viewed as a whole, our current by-laws can appear a bit dog-eared and in need of neatening up.

Consistency of terms has value. The term "citizen" can have a very broad interpretation and has probably come to be understood a bit differently than originally intended – potentially a citizen of the United States who is not even a resident of Brookline. Alternatively, and perhaps of more concern, it can be interpreted to exclude long-term or even permanent residents of Brookline who do not happen to be citizens of the United States.

While it is intended that some "members" of Town organizations be residents of our town, it is not true, or at least not explicitly expressed in our current by-laws in all cases.

In addition to providing common terms, many of the changes posited in Warrant Article 34 yield substantive structural changes of intent or changes in practice in our by-laws. Some of these changes may have implications that should be considered carefully.

For example, the term "citizens" is changed to "residents" in the COUNCIL ON AGING SECTION 3.10.1. Assuming we now use "citizen" to mean "resident", then the change is not substantive. Likewise, under ARTICLE 3.2 SCHOOL COMMITTEE a change from "residents" to "members" is consistent in that School Committee members are required to be elected – and are therefore residents.

In other cases, however, "members" becomes "residents" in the by-law's list of requirements for who is eligible to serve on a board, commission, or committee, and that

can be a change of substance and can narrow eligibility. Article 34, as it initially appeared in the Warrant, would institute a requirement that members of the following boards, commissions, and committees be residents: Commission for Women; Commission on Disability; CTOS; Audit Committee; Board of Appeals; Preservation Commission; and Naming Committee.

CTOS paid particular attention to the impact of Article 34's proposed changes on the Commission for Women and the Commission on Disability.

Currently, the Commission for Women only requires the appointment of "members", not that they necessarily be residents. This is true for the Commission on Disability as well. By adopting the changes initially proposed in this warrant article, we would require members to be residents. Warrant Article 34 implies a certain value judgment that it deems advisable, and worth changing, in all cases. That notion may not be embraced by everyone and can be potentially counterproductive in some cases.

In the opinion of CTOS, no changes should be made to the current by-law structure with regards to the Commission for Women or Commission on Disability. The CTOS heard voices from and for the Commission for Women with a strong conviction that there may well be instances where a non-resident of Brookline, with a certain contributory understanding of women's issues, could well serve on the Commission. Likewise, CTOS feels that there are members of our community, though non-residents, who may contribute significantly to the Commission on Disability. As an example, The Massachusetts Association for the Blind and Visually Impaired (MABVI) is located in Brookline. As a member of the Brookline community, MABVI (originally founded by Helen Keller) has contributed significantly with programming geared toward Brookline residents and has had a close working relationship with our Senior Center. There is undoubtedly a pool of talent and understanding in the MABVI staff. While not residents, they are community members. In addition, the current by-law indicates that one member of the Commission on Disability should be a member of the Select Board or a Department Head. Many Departments Heads are not residents of Brookline, and this is another reason not to impose a residency requirement.

Of the other Town organizations that would require member residency under this article, we believe it is a reasonable constraint. The other organizations (2.3 CTOS, 3.5 AUDIT COMMITTEE, 3.6 BOARD OF APPEALS, 5.6.4 PRESERVATION COMMISSION, 6.8 NAMING COMMITTEE) all have a more intimate relationship to the town and having members of these organizations be Brookline residents probably best serves our community. CTOS recognized that, in general, Brookline residents should have the responsibility of serving on Brookline's boards, commissions, and committees that make important decisions that affect the town. In discussions of the Audit Committee, CTOS noted that Brookline has many residents who can bring valuable experience and expertise to this committee, and that the auditor retained by the Town brings an external perspective to the committee.

In several instances, the change from "citizens" to "residents" is accompanied with the phrase "so long as they remain residents". This is to ensure that after the time of appointment, should a member move and no longer be a resident of Brookline, their term ends. It is a term not needed in every instance, but it is in some. Note that some of the current by-laws specify that members of a board, commission, or committee must be residents in order to serve on the relevant body, whereas others only stipulate such a requirement for members at the time of their appointment. By adding the phrase, "so long as they remain residents" in some places, Article 34 makes the by-law more consistent.

Under ARTICLE 3.16 PARK AND RECREATION COMMISSION, the following codifying language is added: "There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms." This is because, even though it has been occurring in practice, it has not been codified.

A proposed change of substance appears under ARTICLE 2.2 ADVISORY COMMITTEE by adding the phrase "to the extent practicable" after noting that at least one elected Town Meeting Member (TMM) shall be appointed from each precinct. Our current by-law requires at least one TMM from each precinct and no more than four. However, in practice, this is not always achievable, and from time to time there are unfilled openings in a precinct. This phrase recognizes that reality. We cannot require that a TMM, when asked, must serve on the Advisory Committee. Concern was raised that, in theory, this might allow for potential "stacking" within the Advisory Committee ranks. Some felt that should such sinister inclinations actually manifest themselves, Town Meeting, if not the electorate, would quickly rectify the situation. Moreover, in the absence of a TMM from a precinct, the Moderator has sought to appoint a precinct resident to the Advisory Committee to give voice to that precinct. We know that there are times when the TMM provision of the by-law cannot be fulfilled. By ignoring that reality, however, we tacitly accede to a violation of our by-law and thus CTOS believes that adding the "practicable" phrase proposed by Article 34 is warranted.

The other change of substance would allow the appointment of a "resident" who may not be a registered voter (though clearly this would not be the case for elected Town Meeting Members). The CTOS believes this is a change that may productively serve the Advisory Committee. While the majority of Committee members are registered voters and likely quite politically active, the intent of the Committee is to be deliberative and, to the extent possible, keep politics at bay. We are all advocates of sorts, but within the Advisory Committee one must serve as a steward. The propose change here is in keeping with that recognition, allowing for a slightly different voice from the community.

Summary

Below is a summary of the changes originally proposed in Warrant Article 34.

<u>Member vs Resident</u>

The substantive change here is that where membership in an organization does not necessarily require one to be a resident, the changes in WA 34 will now require it.

This is true for the following:

2.3 CTOS, 3.5 AUDIT COMMITTEE, 3.6 BOARD OF APPEALS, 3.9 COMMISSION FOR WOMEN, 3.23 BROOKLINE COMMISSION ON DISABILITY, 5.6.4 PRESERVATION COMMISSION, 6.8 NAMING COMMITTEE.

<u>"So long as they remain residents"</u>

This phrase is used in four places: 3.7 BUILDING COMMISSION, 3.11 INFORMATION TECHNOLOGY (ITAC), 3.12 PLANNING BOARD, 6.8 NAMING COMMITTEE.

There is consistency of the use of this phrase in these four cases, as members are appointed (as opposed to "shall consist of") and they may be residents at the time of appointment, but nothing indicates that they must continue to be residents. The new phrase would now require it.

<u>One-offs</u>

2.2 ADVISORY COMMITTEE: membership is by appointment. Committee members would no longer have to be registered voters, only "residents". The requirement that there be at least one (but no more than four) Town Meeting Member (at the time of appointment) from each precinct can be set aside at the discretion of the Moderator with the introduction of the phrase "to the extent practicable".

4.9 ELECTION CAMPAIGNS: membership is by appointment. The appointing authorities are the Town Clerk, the Select Board, and the Moderator. Only the Moderator is required to appoint "residents". Members appointed by the Town Clerk or Select Board need not be residents. This is currently the case in our by-laws, and WA 34 does not seek to change that.

CTOS Changes

The CTOS suggested not making changes to the current structure of the Commission for Women or Commission on Disability, Also, the CTOS suggest that no changes be made to the Committee on Campaigns as Town Meeting may well remove that provision this fall. The petitioner accepted our changes and incorporated them into his revised main motion under Article 34.

Conclusion

The broader question in all of this, aside from the use of common terms, is to what extent we want to require residency as a requirement for membership in various Town organizations. The CTOS believes the petitioner's revised motion strikes a solid balance. Other than the above mentioned, no objections were voiced to the CTOS regarding the

residency requirements, nor were any objections conveyed to us through the Select Board. The CTOS believes that the housekeeping proposed under Article 34 will be benign, though specific bodies may yet (even as late as the debate at Town Meeting) provide reasons why the limitation to resident members should not apply to them. As stated above, however, we feel there is a reasoned argument to require it in many if not most instances.

RECOMMENDATION

The changes offered in Warrant Article 34 help streamline and clarify our by-laws as such, by a unanimous vote taken on November 5th, the CTOS recommends FAVORABLE ACTION on the petitioner's revised motion.

ARTICLE 34

PETITIONER'S SUPPLEMENTAL ARTICLE DESCRIPTION AND AMENDED MOTION

Article 34 proposes changes in the Town's general bylaws, standardizing, to the extent practicable, the criteria by which we define who is eligible to serve on those boards, committees and commissions.

Currently, for the most part, you need to be a Brookline resident to serve on the Brookline boards, committees and commissions that are defined in the Town's general bylaws. On some, however, non-residents may serve, while others require members to be a citizen or a voter. Some measure status only at time of appointment or at time of nomination, raising questions as to the intent of the bylaws regarding continuing membership should that status change.

The proposed motion under Article 34 sets resident as the default criteria to serve as a member of a bylaw-defined board, committee or commission, except in those cases where broader eligibility is believed to be necessary and appropriate, or except where narrower eligibility is required by law and/or is implicit.

Subsequent to the filing of Article 34, CTO&S did a thorough, multi-meeting review (of both Articles 33 and 34). All of their recommended changes are incorporated into the following, which I intend to move at Town Meeting:

VOTED: That the Town amend its General By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

ARTICLE 2.2 ADVISORY COMMITTEE - SECTION 2.2.1 APPOINTMENT OF MEMBERS

The Moderator shall, in June of each year, appoint ~~citizens~~ **members** ~~to serve on~~ **of** the Advisory Committee (herein the Committee) established under G.L.c. 39, Section 16, and this Bylaw. Members of the Committee shall serve without compensation. The Committee shall consist of not fewer than twenty nor more than thirty ~~registered voters~~ **residents** of the Town. At least sixteen Committee members shall be elected Town Meeting Members at the time of their appointment. At least one elected Town Meeting Member shall be appointed from each precinct**, to the extent practicable**. No more than eight members shall be appointed who are not elected Town Meeting Members at the time of their appointment. No more than four members of the Committee shall reside in the same precinct. No member of the Committee shall be an employee of the Town or a member of any standing Board or Committee having charge of the expenditure of money; but, this restriction shall not disqualify from appointment to the Committee, members of special committees, which may be created from time to time by Town Meeting, the Moderator or the Select Board to report on specific matters.

ARTICLE 2.3 COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE - SECTION 2.3.1 APPOINTMENT OF MEMBERS
There shall be a Committee on Town Organization and Structure (CTO&S) to consist of seven ~~members~~ **residents,** appointed by the moderator for three year staggered terms.

ARTICLE 3.2 SCHOOL COMMITTEE
There shall be a School Committee, comprised of nine ~~residents~~ **members** elected for three year staggered terms.

ARTICLE 3.5 AUDIT COMMITTEE SECTION - 3.5.1 APPOINTMENT
There shall be an Audit Committee consisting of six **resident voting** members**,** with appointment not restricted to the ranks of the appointing bodies. The Select Board shall appoint one member, the Advisory Committee shall appoint one member, the School Committee shall appoint one member and the Town Moderator shall appoint three members. The membership shall elect a chairperson annually from among their number. Appointments shall be for a term of three years. All terms shall expire on August 31. Any vacancy occurring in the Committee shall be filled by the appropriate appointing body for the balance of the unexpired term.

ARTICLE 3.6 BOARD OF APPEALS
There shall be a Board of Appeals, as provided in General Laws Chapter 40A, Section 12, to consist of three ~~members~~ **residents** who shall be appointed by the Select Board, for terms of such length and so arranged that the term of one member shall expire each year. One member shall be an attorney and at least one of the remaining members shall be a registered architect, professional civil engineer or master builder. The Zoning By-laws may provide for the appointment of associate members.

ARTICLE 3.7 BUILDING COMMISSION; PROCEDURE FOR THE CONSTRUCTION AND ALTERATION OF TOWN BUILDINGS AND STRUCTURES SECTION - 3.7.1 APPOINTMENT OF MEMBERS
The Select Board shall appoint five ~~citizens~~ **residents** to serve as members of the Building Commission (the Commission), which shall have charge and direction of the construction, repair and alteration of all town buildings and all buildings and structures placed on town land. **So long as they remain residents, the**~~The~~ members of said Commission shall hold office from the 1st of September following his or her appointment for three year staggered terms, and until a successor is appointed. Commission appointments shall be made to preserve three year staggered terms, with two members appointed one year, two members appointed the following year and one member appointed the third year. They shall serve without compensation. The Commission shall comprise a registered architect, a registered engineer, a licensed builder, and two other ~~citizens~~ **residents**. The Building Commissioners shall act as Secretary of the Commission. The Select Board shall have the power to fill any vacancy in the Commission. With respect to the selection of an architect, engineer, or other consultant (the consultant) for building projects, the Commission shall by regulation, adopt procedures, by regulation which conform to the requirements of the laws of Massachusetts.

ARTICLE 3.9 BROOKLINE COMMISSION FOR WOMEN - SECTION 3.9.4 MEMBERSHIP, APPOINTMENT, TERM, item (a):

(a) The Commission shall consist of eleven residents, all of whom shall be appointed by the Select Board to serve for a term of three years.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 3.10 COUNCIL ON AGING SECTION 3.10.1 ESTABLISHMENT - SECTION 3.10.2 MEMBERSHIP

The Council on Aging shall consist of the Chair of the Select Board, Chair of the Park and Recreation Commission, Chair of the Housing Authority, Director of Public Health, Superintendent of Schools, Head Librarian, or their respective representatives, and, in addition, fifteen ~~citizens~~**residents** reflecting the general composition of the ~~citizenry of Brookline~~ **town**. The ~~Citizen~~**resident** members shall be appointed by the Select Board after receiving recommendations from public and private agencies concerned with the welfare of older persons. Fifty-one percent of the members of the Council on Aging shall be composed of persons 60 years of age or over. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

SECTION 3.10.3 TERMS AND CHAIR

Length of term of ~~Citizen~~**resident** Members shall be determined in the following manner: Initial ~~Citizen~~**resident** Membership shall be split as evenly as possible into thirds. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a one year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a two-year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a three-year term. All subsequent ~~Citizen~~**resident** Members shall be appointed for a three-year term.

ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE

The Select Board shall appoint five residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered **terms and so long as they remain residents**. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.6 PLANNING BOARD:

The Select Board shall appoint seven residents to serve on the Planning Board for five year staggered terms **and so long as they remain residents**. At least one of the appointees must be qualified for such appointment by virtue or relevant and significant experience or training in the field of environmental or urban planning. The Planning Board is established under G.L.c. 41, §81A, and shall perform and discharge all of the statutory powers and duties required by law, including those set forth in The Zoning Act, G.L.c. 40A, in the

Subdivision Control Act and other relevant sections in G.L.c. 41, Sections 81A to 81GG, inclusive, in Chapter 270 of the Acts of 1985 and in G.L.c. 41.

ARTICLE 3.13 HOUSING ADVISORY BOARD - SECTION 3.13.2 MEMBERSHIP:

The Housing Advisory Board shall consist of seven residents ~~of the town~~, five appointed by the Select Board for three year staggered terms, and a member each of the Planning Board and Brookline Housing Authority. Vacancies shall be filled for unexpired terms. Of the Select Board's appointees, one should be a low or moderate income tenant who demonstrates a knowledge of tenant issues. The other Select Board's appointees should have knowledge or experience in one or more of the following areas: government housing programs, housing or real estate finances, affordable housing development, design or urban planning, real estate law. The Select Board should ensure that all of these areas of expertise are represented on the Housing Advisory Board.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.1 ESTABLISHMENT AND PURPOSE:

The Commission shall consist of fifteen (15) residents ~~of the Town~~, who shall be called Commissioners.

ARTICLE 3.16 PARK AND RECREATION COMMISSION

There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms.

ARTICLE 3.23 BROOKLINE COMMISSION ON DISABILITY - SECTION 3.23.4 MEMBERSHIP

The Commission shall consist of seven (7) or nine (9) residents appointed by the Select Board. The majority of members shall consist of people with disabilities. One member shall be a member of the immediate family of a person with a disability. One member shall be a member of the Select Board or a Department Head. All members shall serve three-year terms. Terms shall be staggered to preserve continuity. Resignations shall be made by notifying the Select Board and Town Clerk in writing. If any member is absent from three or more regularly scheduled meetings in any one calendar year, a recommendation shall be made by the chairperson to the Select Board that such member be removed from the Commission, unless any or all absences are excused for good cause by the chairperson. Good cause shall include, but not be limited to: illness, a death in the family, severe weather, and professional responsibilities. The Select Board shall fill any vacancy for the remainder of the unexpired term in the same manner as an original appointment. Any members of said Commission may, after a public hearing if so requested, be removed for cause by the Select Board. No member shall undertake to speak or act on behalf of the Commission without the approval of the Commission. All members, with the exception of the Town's ADA Coordinator, shall have full voting rights.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 4.9 ELECTION CAMPAIGNS – item (G):

(G) Committee on Campaigns (1) There shall be a Committee on Campaigns consisting of not less than five nor more than seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and not less than

three nor more than five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman, School Committee, Library Trustee, Housing Authority, Moderator, Town Clerk or Constable shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

SECTION 5.6.4 MEMBERSHIP OF THE PRESERVATION COMMISSION
The Brookline Preservation Commission, hereinafter referred to as the Preservation Commission, shall consist of seven (7) ~~members~~ **residents** appointed by the Select Board. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE
(A) Appointment - The Select Board shall appoint a Committee of not less than five nor more than seven ~~members~~ **residents** for staggered three year terms **and as long as they remain residents** to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission, the Commission for Diversity, Inclusion and Community Relations and the School Committee. In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.

ARTICLE 34

The following changes have been made from the proposed motion previously distributed with the supplemental mailing:

1 – In each of (i) ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE, (ii) ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.6 PLANNING BOARD, and (iii) ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE, removed the word "and" before "so long as they remain residents, a change suggested by the Advisory Committee, for clarity.
2 - Removed language that refers to Article 4.9 ELECTION CAMPAIGNS – Item (G), which was deleted from the bylaws by a vote of Favorable Action on Warrant Article 10,

Petitioner's amended motion follows:
VOTED: That the Town amend its General By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

ARTICLE 2.2 ADVISORY COMMITTEE - SECTION 2.2.1 APPOINTMENT OF MEMBERS
The Moderator shall, in June of each year, appoint ~~citizens~~ **members** ~~to serve on~~ **of** the Advisory Committee (herein the Committee) established under G.L.c. 39, Section 16, and this Bylaw. Members of the Committee shall serve without compensation. The Committee shall consist of not fewer than twenty nor more than thirty ~~registered voters~~ **residents** of the Town. At least sixteen Committee members shall be elected Town Meeting Members at the time of their appointment. At least one elected Town Meeting Member shall be appointed from each precinct**, to the extent practicable**. No more than eight members shall be appointed who are not elected Town Meeting Members at the time of their appointment. No more than four members of the Committee shall reside in the same precinct. No member of the Committee shall be an employee of the Town or a member of any standing Board or Committee having charge of the expenditure of money; but, this restriction shall not disqualify from appointment to the Committee, members of special committees, which may be created from time to time by Town Meeting, the Moderator or the Select Board to report on specific matters.

ARTICLE 2.3 COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE - SECTION 2.3.1 APPOINTMENT OF MEMBERS
There shall be a Committee on Town Organization and Structure (CTO&S) to consist of seven ~~members~~ **residents,** appointed by the moderator for three year staggered terms.
ARTICLE 3.2 SCHOOL COMMITTEE
There shall be a School Committee, comprised of nine ~~residents~~ **members** elected for three year staggered terms.

ARTICLE 3.5 AUDIT COMMITTEE SECTION - 3.5.1 APPOINTMENT
There shall be an Audit Committee consisting of six **resident voting** members**,** with appointment not restricted to the ranks of the appointing bodies. The Select Board shall appoint one member, the Advisory Committee shall appoint one member, the School Committee shall appoint one member and the Town Moderator shall appoint three members. The membership shall elect a chairperson annually from among their number. Appointments shall be for a term of three years. All terms shall expire on August 31. Any vacancy occurring in the Committee shall be filled by the appropriate appointing body for the balance of the unexpired term.

ARTICLE 3.6 BOARD OF APPEALS
There shall be a Board of Appeals, as provided in General Laws Chapter 40A, Section 12, to consist of three ~~members~~ **residents** who shall be appointed by the Select Board, for terms of such length and so arranged that the term of one member shall expire each year. One member shall be an attorney and at least one of the remaining members shall be a registered architect, professional civil engineer or master builder. The Zoning By-laws may provide for the appointment of associate members.

ARTICLE 3.7 BUILDING COMMISSION; PROCEDURE FOR THE CONSTRUCTION AND ALTERATION OF TOWN BUILDINGS AND STRUCTURES SECTION - 3.7.1 APPOINTMENT OF MEMBERS
The Select Board shall appoint five ~~citizens~~ **residents** to serve as members of the Building Commission (the Commission), which shall have charge and direction of the construction, repair and alteration of all town buildings and all buildings and structures placed on town land. **So long as they remain residents, the**~~The~~ members of said Commission shall hold office from the 1st of September following his or her appointment for three year staggered terms, and until a successor is appointed. Commission appointments shall be made to preserve three year staggered terms, with two members appointed one year, two members appointed the following year and one member appointed the third year. They shall serve without compensation. The Commission shall comprise a registered architect, a registered engineer, a licensed builder, and two other ~~citizens~~ **residents**. The Building Commissioners shall act as Secretary of the Commission. The Select Board shall have the power to fill any vacancy in the Commission. With respect to the selection of an architect, engineer, or other consultant (the consultant) for building projects, the Commission shall by regulation, adopt procedures, by regulation which conform to the requirements of the laws of Massachusetts.

ARTICLE 3.9 BROOKLINE COMMISSION FOR WOMEN - SECTION 3.9.4 MEMBERSHIP, APPOINTMENT, TERM, item (a):

(a) The Commission shall consist of eleven residents, all of whom shall be appointed by the Select Board to serve for a term of three years.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 3.10 COUNCIL ON AGING SECTION 3.10.1 ESTABLISHMENT - SECTION 3.10.2 MEMBERSHIP
The Council on Aging shall consist of the Chair of the Select Board, Chair of the Park and Recreation Commission, Chair of the Housing Authority, Director of Public Health, Superintendent of Schools, Head Librarian, or their respective representatives, and, in addition, fifteen ~~citizens~~**residents** reflecting the general composition of the ~~citizenry of Brookline~~ **town**. The ~~Citizen~~**resident** members shall be appointed by the Select Board after receiving recommendations from public and private agencies concerned with the welfare of older persons. Fifty-one percent of the members of the Council on Aging shall be composed of persons 60 years of age or over. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

SECTION 3.10.3 TERMS AND CHAIR
Length of term of ~~Citizen~~**resident** Members shall be determined in the following manner: Initial ~~Citizen~~**resident** Membership shall be split as evenly as possible into thirds. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a one year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a two-year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a three-year term. All subsequent ~~Citizen~~**resident** Members shall be appointed for a three-year term.

ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE
The Select Board shall appoint five residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered **terms so long as they remain residents**. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.6 PLANNING BOARD:
The Select Board shall appoint seven residents to serve on the Planning Board for five year staggered terms **so long as they remain residents**. At least one of the appointees must be qualified for such appointment by virtue or relevant and significant experience or training in the field of environmental or urban planning. The Planning Board is established under G.L.c. 41, §81A, and shall perform and discharge all of the statutory powers and duties required by law, including those set forth in The Zoning Act, G.L.c. 40A, in the Subdivision Control Act and other relevant sections in G.L.c. 41, Sections 81A to 81GG, inclusive, in Chapter 270 of the Acts of 1985 and in G.L.c. 41.

ARTICLE 3.13 HOUSING ADVISORY BOARD - SECTION 3.13.2 MEMBERSHIP:
The Housing Advisory Board shall consist of seven residents ~~of the town~~, five appointed by the Select Board for three year staggered terms, and a member each of the Planning

Board and Brookline Housing Authority. Vacancies shall be filled for unexpired terms. Of the Select Board's appointees, one should be a low or moderate income tenant who demonstrates a knowledge of tenant issues. The other Select Board's appointees should have knowledge or experience in one or more of the following areas: government housing programs, housing or real estate finances, affordable housing development, design or urban planning, real estate law. The Select Board should ensure that all of these areas of expertise are represented on the Housing Advisory Board.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.1 ESTABLISHMENT AND PURPOSE:
The Commission shall consist of fifteen (15) residents ~~of the Town~~, who shall be called Commissioners.

ARTICLE 3.16 PARK AND RECREATION COMMISSION
There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms.

ARTICLE 3.23 BROOKLINE COMMISSION ON DISABILITY - SECTION 3.23.4 MEMBERSHIP
The Commission shall consist of seven (7) or nine (9) residents appointed by the Select Board. The majority of members shall consist of people with disabilities. One member shall be a member of the immediate family of a person with a disability. One member shall be a member of the Select Board or a Department Head. All members shall serve three-year terms. Terms shall be staggered to preserve continuity. Resignations shall be made by notifying the Select Board and Town Clerk in writing. If any member is absent from three or more regularly scheduled meetings in any one calendar year, a recommendation shall be made by the chairperson to the Select Board that such member be removed from the Commission, unless any or all absences are excused for good cause by the chairperson. Good cause shall include, but not be limited to: illness, a death in the family, severe weather, and professional responsibilities. The Select Board shall fill any vacancy for the remainder of the unexpired term in the same manner as an original appointment. Any members of said Commission may, after a public hearing if so requested, be removed for cause by the Select Board. No member shall undertake to speak or act on behalf of the Commission without the approval of the Commission. All members, with the exception of the Town's ADA Coordinator, shall have full voting rights.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

SECTION 5.6.4 MEMBERSHIP OF THE PRESERVATION COMMISSION
The Brookline Preservation Commission, hereinafter referred to as the Preservation Commission, shall consist of seven (7) ~~members~~ **residents** appointed by the Select Board. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE

(A) Appointment - The Select Board shall appoint a Committee of not less than five nor more than seven ~~members~~ **residents** for staggered three year terms **as long as they remain residents** to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission, the Commission for Diversity, Inclusion and Community Relations and the School Committee. In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.

ARTICLE 34

PETITIONER'S AMENDED MOTION

REDLINED VERSION

The following changes have been made from the proposed motion previously distributed with the supplemental mailing:

1 – In each of (i) ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE, (ii) ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.6 PLANNING BOARD, and (iii) ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE, removed the word "and" before "so long as they remain residents, a change suggested by the Advisory Committee, for clarity.

2 - Removed language that refers to Article 4.9 ELECTION CAMPAIGNS – Item (G), which was deleted from the bylaws by a vote of Favorable Action on Warrant Article 10,

Petitioner's amended motion follows:

VOTED: That the Town amend its General By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

ARTICLE 2.2 ADVISORY COMMITTEE - SECTION 2.2.1 APPOINTMENT OF MEMBERS

The Moderator shall, in June of each year, appoint ~~citizens~~ **members** ~~to serve on~~ **of** the Advisory Committee (herein the Committee) established under G.L.c. 39, Section 16, and this Bylaw. Members of the Committee shall serve without compensation. The Committee shall consist of not fewer than twenty nor more than thirty ~~registered voters~~ **residents** of the Town. At least sixteen Committee members shall be elected Town Meeting Members at the time of their appointment. At least one elected Town Meeting Member shall be appointed from each precinct**, to the extent practicable**. No more than eight members shall be appointed who are not elected Town Meeting Members at the time of their appointment. No more than four members of the Committee shall reside in the same precinct. No member of the Committee shall be an employee of the Town or a member of any standing Board or Committee having charge of the expenditure of money; but, this restriction shall not disqualify from appointment

to the Committee, members of special committees, which may be created from time to time by Town Meeting, the Moderator or the Select Board to report on specific matters.

ARTICLE 2.3 COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE - SECTION 2.3.1 APPOINTMENT OF MEMBERS

There shall be a Committee on Town Organization and Structure (CTO&S) to consist of seven ~~members~~ **residents,** appointed by the moderator for three year staggered terms.

ARTICLE 3.2 SCHOOL COMMITTEE

There shall be a School Committee, comprised of nine ~~residents~~ **members** elected for three year staggered terms.

ARTICLE 3.5 AUDIT COMMITTEE SECTION - 3.5.1 APPOINTMENT

There shall be an Audit Committee consisting of six **resident voting** members**,** with appointment not restricted to the ranks of the appointing bodies. The Select Board shall appoint one member, the Advisory Committee shall appoint one member, the School Committee shall appoint one member and the Town Moderator shall appoint three members. The membership shall elect a chairperson annually from among their number. Appointments shall be for a term of three years. All terms shall expire on August 31. Any vacancy occurring in the Committee shall be filled by the appropriate appointing body for the balance of the unexpired term.

ARTICLE 3.6 BOARD OF APPEALS

There shall be a Board of Appeals, as provided in General Laws Chapter 40A, Section 12, to consist of three ~~members~~ **residents** who shall be appointed by the Select Board, for terms of such length and so arranged that the term of one member shall expire each year. One member shall be an attorney and at least one of the remaining members shall be a registered architect, professional civil engineer or master builder. The Zoning By-laws may provide for the appointment of associate members.

ARTICLE 3.7 BUILDING COMMISSION; PROCEDURE FOR THE CONSTRUCTION AND ALTERATION OF TOWN BUILDINGS AND STRUCTURES SECTION - 3.7.1 APPOINTMENT OF MEMBERS

The Select Board shall appoint five ~~citizens~~ **residents** to serve as members of the Building Commission (the Commission), which shall have charge and direction of the construction, repair and alteration of all town buildings and all buildings and structures placed on town land. **So long as they remain residents, the**~~The~~ members of said Commission shall hold office from the 1st of September following his or her appointment for three year staggered terms, and until a successor is appointed. Commission appointments shall be made to preserve three year staggered terms, with two members appointed one year, two members appointed the following year and one member appointed the third year. They shall serve without compensation. The Commission shall comprise a registered architect, a registered engineer, a licensed builder, and two other ~~citizens~~ **residents**. The Building Commissioners shall act as Secretary of the Commission. The Select Board shall have the power to fill any vacancy in the Commission. With respect to the selection of an architect, engineer, or other consultant (the consultant) for building projects, the Commission shall by regulation, adopt procedures, by regulation which conform to the requirements of the laws of Massachusetts.

ARTICLE 3.9 BROOKLINE COMMISSION FOR WOMEN - SECTION 3.9.4 MEMBERSHIP, APPOINTMENT, TERM, item (a):

(a) The Commission shall consist of eleven residents, all of whom shall be appointed by the Select Board to serve for a term of three years.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

ARTICLE 3.10 COUNCIL ON AGING SECTION 3.10.1 ESTABLISHMENT - SECTION 3.10.2 MEMBERSHIP

The Council on Aging shall consist of the Chair of the Select Board, Chair of the Park and Recreation Commission, Chair of the Housing Authority, Director of Public Health, Superintendent of Schools, Head Librarian, or their respective representatives, and, in addition, fifteen ~~citizens~~**residents** reflecting the general composition of the ~~citizenry of Brookline~~ **town**. The ~~Citizen~~**resident** members shall be appointed by the Select Board after receiving recommendations from public and private agencies concerned with the welfare of older persons. Fifty-one percent of the members of the Council on Aging shall be composed of persons 60 years of age or over. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

SECTION 3.10.3 TERMS AND CHAIR

Length of term of ~~Citizen~~**resident** Members shall be determined in the following manner: Initial ~~Citizen~~**resident** Membership shall be split as evenly as possible into thirds. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a one year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a two-year term. One-third of the ~~Citizen~~**resident** Members shall be initially appointed for a three-year term. All subsequent ~~Citizen~~**resident** Members shall be appointed for a three-year term.

ARTICLE 3.11B INFORMATION TECHNOLOGY DEPARTMENT - SECTION 3.11B.4 INFORMATION TECHNOLOGY ADVISORY COMMITTEE

The Select Board shall appoint five residents to serve on the Information Technology Advisory Committee, hereafter referred to as the "ITAC", for three-year staggered **terms** ~~and~~ **so long as they remain residents**. The ITAC shall be responsible for providing community input to IT decision making, periodically reviewing the IT Strategic Plan including annual updates, and evaluating lessons learned from major IT initiatives. The ITAC shall meet quarterly, and at other times deemed necessary by the CIO and / or the Chairman of the ITAC.

ARTICLE 3.12 DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT - SECTION 3.12.6 PLANNING BOARD:

The Select Board shall appoint seven residents to serve on the Planning Board for five year staggered terms ~~and~~ **so long as they remain residents**. At least one of the appointees must be qualified for such appointment by virtue or relevant and significant experience or training in the field of environmental or urban planning. The Planning Board is established under G.L.c. 41, §81A, and shall perform and discharge all of the statutory powers and duties required by law, including those set forth in The Zoning Act, G.L.c. 40A, in the Subdivision Control Act and other relevant sections in G.L.c. 41, Sections 81A to 81GG, inclusive, in Chapter 270 of the Acts of 1985 and in G.L.c. 41.

ARTICLE 3.13 HOUSING ADVISORY BOARD - SECTION 3.13.2 MEMBERSHIP:

The Housing Advisory Board shall consist of seven residents ~~of the town~~, five appointed by the Select Board for three year staggered terms, and a member each of the Planning Board and Brookline Housing Authority. Vacancies shall be filled for unexpired terms. Of the Select Board's appointees, one should be a low or moderate income tenant who demonstrates a knowledge of

tenant issues. The other Select Board's appointees should have knowledge or experience in one or more of the following areas: government housing programs, housing or real estate finances, affordable housing development, design or urban planning, real estate law. The Select Board should ensure that all of these areas of expertise are represented on the Housing Advisory Board.

ARTICLE 3.14 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS – SECTION 3.14.1 ESTABLISHMENT AND PURPOSE:

The Commission shall consist of fifteen (15) residents ~~of the Town~~, who shall be called Commissioners.

ARTICLE 3.16 PARK AND RECREATION COMMISSION

There shall be a Park and Recreation Commission to consist of seven residents, appointed by the Select Board for three year staggered terms.

ARTICLE 3.23 BROOKLINE COMMISSION ON DISABILITY - SECTION 3.23.4 MEMBERSHIP

The Commission shall consist of seven (7) or nine (9) residents appointed by the Select Board. The majority of members shall consist of people with disabilities. One member shall be a member of the immediate family of a person with a disability. One member shall be a member of the Select Board or a Department Head. All members shall serve three-year terms. Terms shall be staggered to preserve continuity. Resignations shall be made by notifying the Select Board and Town Clerk in writing. If any member is absent from three or more regularly scheduled meetings in any one calendar year, a recommendation shall be made by the chairperson to the Select Board that such member be removed from the Commission, unless any or all absences are excused for good cause by the chairperson. Good cause shall include, but not be limited to: illness, a death in the family, severe weather, and professional responsibilities. The Select Board shall fill any vacancy for the remainder of the unexpired term in the same manner as an original appointment. Any members of said Commission may, after a public hearing if so requested, be removed for cause by the Select Board. No member shall undertake to speak or act on behalf of the Commission without the approval of the

Commission. All members, with the exception of the Town's ADA Coordinator, shall have full voting rights.

[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]

~~ARTICLE 4.9 ELECTION CAMPAIGNS – item (G):~~

~~(G) Committee on Campaigns (1) There shall be a Committee on Campaigns consisting of not less than five nor more than seven members: the Town Clerk or his designee; an appointee of the Board of Selectmen who may be a member of the Board; and not less than three nor more than five Brookline residents appointed by the Moderator for three-year staggered terms. No holder of or candidate for the office of Selectman, School Committee, Library Trustee, Housing Authority, Moderator, Town Clerk or Constable shall be eligible for appointment by the Moderator to the committee. Should any individual vacate his office as committee member, the applicable appointing authority shall appoint another individual to fill his or her unexpired term.~~

~~[NO CHANGES ARE BEING MADE TO THIS SECTION OF THE BYLAW]~~

SECTION 5.6.4 MEMBERSHIP OF THE PRESERVATION COMMISSION

The Brookline Preservation Commission, hereinafter referred to as the Preservation Commission, shall consist of seven (7) ~~members~~ **residents** appointed by the Select Board. The terms of office expire on August 31, unless otherwise specified by the Select Board or unless such appointment is for an indefinite term.

ARTICLE 6.8 NAMING PUBLIC FACILITIES - SECTION 6.8.2 REVIEW COMMITTEE

(A) Appointment - The Select Board shall appoint a Committee of not less than five nor more than seven ~~members~~ **residents** for staggered three year terms ~~and~~ **as long as they remain residents** to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission, the Commission for Diversity, Inclusion and Community Relations and the School Committee. In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from

time to time to take the place of any member who is absent or unable or unwilling to act for any reason.

ARTICLE 35

THIRTY-FIFTH ARTICLE

Reports of Town Officers and Committees

Moderator's Committee on Elderly Tax Relief
Interim Report
October 31, 2019

The committee consists of five committee members: Susan Granoff (Chair), Tom Elwertowski, Ben Franco, Jeff Kushner, and Bob Lepson. To date, the committee has held five meetings in 2018 and eight meetings in 2019, including a public hearing on October 30, 2019.

The committee has not completed its deliberations but plans to issue a full report before the 2020 Annual Town Meeting.

SELECT BOARD

Bernard W. Greene, Chair
Benjamin J. Franco
Nancy S. Heller
Heather Hamilton
Raul A. Fernandez

ADVISORY COMMITTEE

Michael Sandman, Chair