TOWN OF BROOKLINE
MASSACHUSETTS

REPORTS OF SELECT BOARD AND ADVISORY COMMITTEE

on the

Articles in the Warrant

for the

ANNUAL TOWN MEETING

to be held virtually via Zoom

Register in advance for this meeting:

Tuesday, May 24, 2022

at

7:00 P.M.

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

Town of Brookline

SELECT BOARD

Heather A. Hamilton, Chair

Raul A. Fernandez, Vice Chair **Bernard Greene**

John VanScoyoc **Miriam Aschkenasy**

Melvin A. Kleckner, Town Administrator

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

MODERATOR

Kate Poverman

ADVISORY COMMITTEE

Dennis Doughty, 57 Perry Street, Chair 739-7266
Carla Benka, Vice-Chair, 26 Circuit Road 277-6102
Scott Ananian, 103 Griggs Road 233-1238
Benjamin Birnbaum, 15 Feneno Terrace, ... 276-5944
Harry Bohrs, 27 Toxeth Street 566-3556
Clifford M. Brown, 9 Hyslop Road 232-5626
John Doggett, 8 Penniman Place 566-5474
Katherine Florio, 30 Gardner Road #3i 751-8056
Harry Friedman, 27 Clafin Road BE2-0122
David-Marc Goldstein, 22 Osborne Road 232-1943
Neil Gordon, 87 Ivy Street ..... (508)265-1362
Susan Granoff, 52 Vernon Street #1 731-0822
Kelly Hardebeck, 18 Littell Road 901-7977
Anita Johnson, 41 Osborne Road 734-0711
Georgia Johnson, 54 Harvard Ave., #2 470-2984
Alisa G. Jonas, 333 Russett Road 469-3927
Janice Kahn, 63 Craftsland Road 739-0606
Carol Levin, 61 Blake Road 731-0166
Pamela Lodish, 195 Fisher Avenue 566-5533
Linda Olson Pehlke, 48 Browne Street 232-1965
Donelle S. O'Neal, 68 Village Way ..... (857)243-3602
David Pollak, 112 Lancaster Terrace 921-4418
Stephen Reeders. 85 Cottage Street 953-8315
Carlos Ridruejo, 16 Holland Road 901-5908
Lee L. Selwyn, 285 Reservoir Road 277-3388
Alok Somani, 126 Cottage Street ..... (614)822-8315
Christine M. Westphal, 31 Hurd Road 738-7981

Lisa Portscher, Executive Assistant, Town Hall 730-2115

TOWN OF BROOKLINE
MASSACHUSETTS

SELECT BOARD
Melvin A. Kleckner
Town Administrator

In Select Board
March 15, 2022

WARRANT FOR THE 2022 ANNUAL TOWN MEETING

Question of approving the Town Moderator's request for a remote Annual Town Meeting.

Question of approving and executing the Warrant for the May 24, 2022 Annual Town Meeting.

On motion it was,

1. Voted to approve the Town Moderator's request for a remote Annual Town Meeting.

Aye: Heather Hamilton, Bernard Greene, Raul Fernandez, John VanScoyoc, Miriam Aschkenasy

2. Voted to approve and execute the Warrant for the May 24, 2022 Annual Town Meeting.

Aye: Heather Hamilton, Bernard Greene, Raul Fernandez, John VanScoyoc, Miriam Aschkenasy

ATTEST

Melvin Kleckner
Town Administrator

Cc: Town Clerk

`BROOKLINE TOWN MODERATOR

REQUEST TO CALL SPECIAL TOWN MEETING

To the Brookline Select Board:

On February 14, 2022, Governor Baker signed legislation granting permission for Representative Town Meetings to be held remotely through July 15, 2022 (H 4345, secs. 8(a) and (b)). Legislation permitting remote Representative Town Meetings was originally enacted pursuant to and as described in section 8(a) of Chapter 92 of the Acts of 2020 of the Commonwealth of Massachusetts, as amended by section 9 of Chapter 20 of the Acts of 2021, I hereby request that the Select Board call for the Annual Town Meeting scheduled to be held on May 24, 2022, and any Special Town Meeting to be held concurrently, to be held through remote participation. In connection with such request, I submit the following information:

1. I have determined that it is necessary and in the best interests of the Town, in view of the COVID-19 pandemic, that these Town Meetings be held through remote participation of the Town Meeting Members, staff, and other participants rather than as in-person meetings.

2. I have determined that it is not possible to safely assemble the Town Meeting Members, staff and interested members of the public in a common location. I confirm that I have consulted with the Town's Director of Health and Human services, who concurs with this request, and have consulted with the Chair of the Brookline Commission on Disability concerning possible accommodations for persons with disabilities who wish to participate in these meetings.

3. I have determined that the optimum remote participation platform is a combination of the Zoom video system and telephone conference call. In addition, members of the public who wish to view the proceedings may do so via the video streaming service provided by Brookline Interactive Group in real time at brooklineinteractive.org/live or on RCN Channel 15 or Comcast Channel 23.

4. I hereby certify that we have successfully used these video and telephone conferencing platforms at all Town Meetings held in 2021: the Annual Town Meeting, the October 2021 Special Town Meeting and the November 2021 Special Town Meeting, and that their use will satisfactorily enable the May 24, 2022 Annual Town Meeting to be conducted in substantially the same manner as if the meeting occurred in person at the Brookline High School auditorium and in accordance with the operational and functional requirements of H. 4345 and Chapter 92, as amended.

5. Registered voters residing in the Town wishing to participate in these virtual meetings will be required to submit a request to participate to the Town Clerk not less than 48 hours in advance of the session in which they wish to participate, and the Town Clerk will verify the requester's voter registration status and provide the requester with instructions for participation. Persons other than resident registered voters will be permitted to participate so long as they comply with the aforesaid notice provision.

Respectfully submitted,

/s/ Kate Poverman

Town Moderator February 15, 2022

MAY 24, 2022
ANNUAL TOWN MEETING
INDEX

ARTICLE NO.	TITLE
1.	Appointment of Measurers of Wood and Bark. (Select Board)
2.	Approval of Collective Bargaining Agreements. (Human Resources)
3.	Annual authorization of Compensating Balance Agreements. (Treasurer/Collector)
4.	Report on the close-out of special appropriations / Bond Authorization Rescission. (Select Board)
5.	Approval of unpaid bills of a prior fiscal year. (Select Board)
6.	Acceptance of legislation to increase certain property tax exemptions. (Assessors)
7.	Authorize the acceptance and granting of easements in the areas of 19-21 Brington Road and 22 Tappan Street. (Department TBD)
8.	Annual (FY23) Budget Appropriations Article. (Advisory Committee)
9.	Amend Article 4.8 of the Town's General By-Laws to adjust calculation of Living Wage (Human Resources)
10.	Transfer of funds to support developing of Comprehensive Plan
11.	Approval of an increase in the Cost of Living Adjustment (COLA) base for retirees from $13,000 to $15,000 pursuant to Section 103(j) of Massachusetts General Laws, Chapter 32. (Retirement Board)
12.	Amend Article 3.14 of the Town's General By-Laws to revise the discrimination complaint process. (CDICR)
13.	Amend Article 5.5, 10.2 and 10.3 of the Town's General By-Laws to revise corresponding references found in article 3.14 related to the discrimination complaint process. (CDICR)
14.	Amend Article 9.05 of the Town's Zoning By-Laws pertaining to Conditions for Approval of Special Permits to expressly authorize the Zoning Board of Appeals to attach conditions related to construction impact mitigation. (Planning and Community Development Department)

15. Amend the Zoning Map and portions of Articles 2 – 5 of the Town's Zoning By-Laws pertaining to two proposed Overlay Districts in the Boylston Street Corridor – Brington Road to High Street/ Washington Street. (Planning and Community Development Department)

16. Amend Article 4.07 – Table of Use Regulations of the Town's Zoning By-Laws to provide a minimum depth to required ground floor non-residential space in multi-family buildings that are located in Local Business (L) and General Business (G) Zoning Districts. (Planning and Community Development Department)

17. Amend Article 6 of the Town's Zoning By-Laws to increase the requirements for electric vehicle-ready parking spaces. (Planning and Community Development Department)

18. Amend Articles 2 and 6 of the Town's Zoning By-Laws pertaining to Bicycle Parking and Design Regulations (Planning and Community Development Department)

19. Resolution regarding a Vision Zero Study Committee (Transportation Board)

20. Resolution regarding a Pedestrian-Friendly Lighting Policy (Trevvett)

21. Resolution regarding the Community Choice Aggregation Program (Lescohier et. al)

22. Amend the Town's General By-Laws to restrict the sale or distribution of products containing Fluorinated Hyrdocarbons or PFAS (Per- and Polyfluorinated Alkyl Substances). (Richmond et.al)

23. Resolution to create an Athletic Field Surface Task Force (Toffel)

24. Amend the Town's General By-Laws pertaining to Artificial Turf Surfaces. (Richmond et.al)

25. Amend the Town's General By-Laws to ban single use plastics. (Richmond et.al)

26. Amend Article 3.16 of the Town's General By-Laws pertaining to the Park and Recreation Commission (Brown et. al)

27. Amend Article 8.31 of the Town's General By-Laws pertaining to leaf blowers (Warner et. al)

28. Home Rule Petition to expand local voting rights to sixteen and seventeen year-olds (Sweitzer-Shalit et. al)

29. Home Rule Petition to expand local voting rights to permanent legal residents (Sweitzer-Shalit et. al)

30. Resolution regarding eliminating the parking requirement at the Kent/Station Street Senior Affordable Housing Development (Wachter et. al)

31. Resolution regarding opposition to the state ballot question on defining and regulating App-Based Drivers (Black)

32. Resolution regarding calling for an end to the US embargo of Cuba (Black)

33. Amend Article 2.1 of the Town's General By-Laws pertaining to Codifying the Town Meeting Handbook (Ananian et. al)

34. Resolution regarding transparency during Town Meeting deliberations (Silbaugh et. al)

35. Resolution regarding the TMM Email List (Vogt et. al)

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

2022 ANNUAL TOWN MEETING WARRANT REPORT

The Select Board and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2022 Annual Town Meeting to be held on Tuesday, May 24, 2022 at 7:00 p.m.

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

ARTICLE 1

FIRST ARTICLE
Submitted by: Select Board

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

PETITIONER'S ARTICLE DESCRIPTION

Article 20 of the November, 2000 Special Town Meeting requires that this be the first article at each Annual Town Meeting. It calls for the Select Board to appoint two Measurers of Wood and Bark.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 1.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 1 by a vote of 15-0-0.

Executive Summary	Each year, the Select Board is called up to appoint two Measurers of Wood and Bark, whose task it is to ensure that cords of firewood sold in Brookline measure eight feet long, four feet wide and for feet high.
Voting Yes will...	Call upon the Select Board two appoint two Measurers of Wood and Bark, whose task it is to ensure that cords of firewood sold in Brookline measure eight feet long, four feet wide and for feet high.
Voting No will...	Eliminate this position.
Financial impact	The positions do not draw a salary, stipend or other remunerative benefit, and the Town incurs no current financial cost or future pension or OPEB liability. The Town does print several sheets of paper every year to send this description out to Town Meeting Members but this cost is considered de minimus.

Introduction

The position of Measurer of Wood and Bark was an early effort at consumer protection, important when homes were heated by wood and town dwellers had to purchase their fuel from vendors who came in from rural areas with their loads of cut and split cordwood.

Even into the 20th Century, the consumer protection aspect of the office remained. A town report from 1902 researched by Ken Liss of the Brookline Historical Society states that the town did not have a measurer that year. A number of complaints were filed regarding substandard cords of wood, and shortages were found in each case.

Discussion

At the spring 2000 Town Meeting the article was dropped because the Measurers of Wood and Bark were considered to be unnecessary. But in the fall of that same year, Town Meeting required that this traditional article be reinstated. The Advisory Committee in its report at the time noted:

"Of course the Measurers of Wood and Bark are unnecessary! They've been unnecessary for as far back as anyone now living can remember! But it was a harmless tradition, which cost nothing (except for the paper and ink used to print the Article in the Combined Reports) and it was a link with our origins in a less mechanized society."

Recommendation

By a vote of 15-0 with no abstentions, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 1.

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

ARTICLE 1 ADVISORY COMMITTEE VOTES

Article Description	Measurers of Wood & Bark
AC recommendation (Favorable Action unless indicated)	**15-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	
Georgia Johnson	
Alisa Jonas	
Janice Kahn	
Carol Levin	
Pam Lodish	
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	
Alok Somani	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 2

SECOND ARTICLE
Submitted by: Human Resources

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

PETITIONER'S ARTICLE DESCRIPTION

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

SELECT BOARD'S RECOMMENDATION

As of the deadline for the combined reports, there is one Memorandum of Agreement that has been approved by the Board and ratified by the unions.

TOWN of BROOKLINE
Massachusetts

HUMAN RESOURCES OFFICE
333 Washington Street
(617) 730-2120
www.brooklinema.gov

Ann Hess Braga, Director

To: Heather Hamilton, Chair, Brookline Select Board
Melvin Kleckner, Town Administrator
From: Ann Hess Braga, Director, Human Resources
Date: April 5, 2022

Re: Approval for AFSCME MOA (FY22-FY24)

This is to notify you that we have entered into a Memorandum of Agreement (MOA) with the Brookline AFSCME Local 1358, contingent on the Select Board's approval and Town Meeting funding. This MOA is three-year agreement at a one percent increase for FY22, followed by a three percent increase for FY23 and FY24.

Background: Beginning in summer 2020, formal negotiations began between the Management Team (Michael Downey - Assistant Town Counsel, Ann Braga - Human Resources Director, Jennifer Stallion – Labor and Employment Specialist in Human Resources, Erin Gallantine – DPW Commissioner) and the Local 1358 AFSCME. The teams formally met seven times before coming to the attached agreement. The AFSCME has ratified the Memorandum of Agreement through a vote on March 16, 2022.

The provisions of the MOA are:

- **Wages: 1% effective July 1, 2021, 3% July 1, 2022; 3% July 2023**
- **Removal of several positions with supervising responsibilities and higher levels of required education from the bargaining unit (Assistant Aquatics Director, Senior Planner)**
- **Clean up of Civil Service language**
- **On June 30, 2024, implementation of an added $5.00 premium for Snow and Ice Operations**
- **Addition of the Juneteenth holiday**
- **Town reimbursement of license renewal costs for Commercial Driver's License holders**
- **Posting of vacancies**
- **Agreement to non-DOT Post Accident and Reasonable Suspicion Drug testing and a Wellness Day (physical/cancer screening) subject to other Town bargaining units agreeing**

ITEM	FY22	FY23	FY24	FY25	TOTAL
7/1/21 - 1%	120,454	120,454	120,454		**361,362**
7/1/22 - 3%		364,975	364,975		**729,951**
7/1/23 - 3%			375,925		**375,925**
Snow Proposal				40,000	**40,000**
					0
TOTAL ROLL-OUT COSTS	**120,454**	**485,429**	**861,354**	**40,000**	**1,507,237**
Each 1% =	120,454	121,658	125,308	129,067	
New Wages - $ =	120,454	364,975	375,925	40,000	
New Wages - % =	1.0%	3.0%	3.0%	0.3%	**7.3%**
Wages on Base - $ =	120,454	364,975	375,925	40,000	
Wages on Base - % =	1.0%	3.0%	3.0%	0.3%	**7.3%**

The management bargaining team recommends that the Select Board approve the attached agreement which provides the Town and AFSCME with a fair agreement and a continued strong labor-management relationship.

Article 2 asks Town Meeting to approve funding for the AFSCME, Main contract. The report from the Human Resources Director above describes the provisions agreed to in the agreement.

The MOA is attached to this warrant article report.

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

VOTED: To approve and fund by an appropriation, provided for in the FY2022, (Item 20) and FY2023 (item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2021- and expires on June 30, 2024:

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

all as set forth in the report of Ann Hess Braga, Director of Human Resources, dated April 5, 2022, which report is incorporated herein by reference.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Article 2 by a vote of 23-0 with 0 abstentions.

Executive Summary	Article 2 seeks to have Town Meeting approve the appropriation of the funds to pay for the adjustment of the collective bargaining agreement between the Town and Local 1358, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) contained in a Memorandum of Agreement dated March 2022. The agreement has been ratified by the AFSCME membership. Its primary purpose is to set the wage increases for FY 22, FY 23 and FY 24. Those increases (1% in FY 22; 3% in FY 23; and 3% in FY 24) fall within the Towns goals for salary increases.
Voting Yes will...	fund the salary increases included in the Memorandum of Agreement dated March 2022.

Voting No will...	send the Town of Brookline back to the negotiations with Local 1358, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)
Financial impact	The total cost of this 3-year contract adjustment and extension is $1,507,237.
Legal Implications	Other provisions of this contract include: • Removal of several positions with supervising responsibilities and higher levels of required education from the bargaining unit (Assistant Aquatics Director, Senior Planner) • Clean up of Civil Service language to reflect that new hires are not covered by Civil Service as per a previous vote of Town Meeting • On June 30, 2024, implementation of an added $5.00 premium for Snow and Ice Operations • Addition of the Juneteenth holiday • Town reimbursement of license renewal costs for Commercial Driver's License holders • Posting of vacancies • Agreement to non-DOT Post Accident and Reasonable Suspicion Drug testing and a Wellness Day (physical/cancer screening) subject to other Town bargaining units agreeing

Introduction
This Article seeks to have Town Meeting fund a three-year extension of the Collective Bargaining Agreement between the Town of Brookline and Local 1358, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) by a Memorandum of Agreement (MOA) dated March 2022. The Memorandum of Agreement was ratified by a vote of the AFSCME membership on March 16, 2022.

Cost Projections

ITEM	FY22	FY23	FY24	FY25	TOTAL
7/1/21 - 1%	120,454	120,454	120,454		**361,362**
7/1/22 - 3%		364,975	364,975		**729,951**
7/1/23 - 3%			375,925		**375,925**
Snow Proposal				40,000	**40,000**
					0
TOTAL ROLL-OUT COSTS	**120,454**	**485,429**	**861,354**	**40,000**	**1,507,237**
Each 1% =	120,454	121,658	125,308	129,067	
New Wages - $ =	120,454	364,975	375,925	40,000	
New Wages - % =	1.0%	3.0%	3.0%	0.3%	**7.3%**
Wages on Base - $ =	120,454	364,975	375,925	40,000	
Wages on Base - % =	1.0%	3.0%	3.0%	0.3%	**7.3%**

Discussion
Other sections of the MOA remove several members of the Bargaining unit who have either supervisory or more managerial roles, specifically the Assistant Aquatics Director and Senior Planner; clean up some language concerning civil service membership; change the name of the Columbus Day holiday to the Indigenous Peoples Day Holiday; add Juneteenth as a holiday; and provide for a future Snow & Ice Operations Premium of $5 an hour that will become effective on June 30, 2024.

The Snow & Ice Operations Premium is meant to further compensate public works employees who are working during a weather emergency. Several other local municipalities have begun offering these premiums. The reasoning behind this premium is that if a worker is called in during a weather emergency over the weekend they earn overtime pay on the weekend, but if the work continues during the week their payment reverts back to their regular hourly wage, and not the overtime wage. It therefore seems reasonable to AFSCME that they should receive premium compensation during the weather emergency.

Recommendation
The Advisory Committee recommends favorable action on the motion offered by the Select Board by a vote of 23-0 with 0 abstentions.

ARTICLE 2 ADVISORY COMMITTEE VOTES

Article Description	Collective Bargaining
AC recommendation (Favorable Action unless indicated)	**23-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE TOWN OF BROOKLINE

AND

LOCAL 1358, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

March 2022

1. **Wages**

   FY'22: 1%
   FY'23: 3%
   FY'24: 3%

2. **Article I, Recognition**

   - Remove "Recreation Leader – Assist. Dir. Aquatics" title from the bargaining unit
   - Remove "Sr. Planner" title from the bargaining unit
     - **NOTE**: Currently, two incumbents in the Senior Planner title will continue as members of Local 1358 until their departure from that position.

3. **Article VI, Civil Service**

   Except as otherwise provided by Section of General Laws, Chapter 150E, the Employer and Union shall recognize and adhere to all Civil Service Rules and Regulations relative to seniority, promotions, discharges, suspensions and transfers from one job classification to another or from one department to another for all employees hired on or before May 20, 2010. The parties understand and acknowledge that the Civil Service Rules and Regulations do not apply to any and all employees hired on or after May 21, 2010.
   ~~This article and all other Articles incorporating or referencing the Massachusetts Civil Service Law will be reopened for negotiations in the event that the Town Meeting rescinds the civil service law as it pertains to any group of unit employees.~~

4. **Article XVII, Hours of Work and Overtime**

   Add Section (d) – Snow & Ice Operations Premium

   Effective June 30, 2024, a premium of $5.00 per hour will be paid for all bargaining unit members involved in snow and/or ice operations during their regular straight time hours.

NOTE: See separate document outlining parameters of the Snow & Ice Operations Premium.

5. **Article XVIII, Holidays**

a) Legal Holidays. The following ~~twelve~~ thirteen legal holidays, and any other day declared a legal holiday by the state and federal government, shall be deemed paid holidays except when they fall on a Saturday: New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Patriot's Day, Memorial Day, Bunker Hill Day, Independence Day, Labor Day, Indigenous Peoples Day (Columbus Day), Veteran's Day, Thanksgiving Day, ~~and~~ Christmas Day and Juneteenth Independence Day. All legal holidays falling on a Sunday shall be celebrated on Monday. Unit B employees shall observe Bunker Hill Day as a "floating" holiday. Employees may elect to be off on any day in the calendar year that is mutually agreed to by the employee and his/her department head, except that an employee who elects to be off on the actual day of the holiday shall be given the day off.

An employee is credited with another day of vacation when a legal holiday falls during his vacation leave. If the regular day off of an employee is Saturday and a holiday is listed above falls on a Saturday, such person shall, where possible, with the approval of the ~~Board of Selectmen~~Select Board, be given the preceding Friday or the following Monday off without loss of pay, or if said day off cannot be given by reason of personnel shortage or other cause, he shall be given, in lieu thereof, an additional day's pay.

6. **Article XXVII, Tool Allowances and License Renewals**

B. License Renewals: This provision shall not apply to the cost of obtaining initial licenses. The Town will pay the cost to renew the following licenses: hoisting, pesticide, backflow technician, water supply operator, certified pool operator, Class CDL A and B, and arborist when such license is required for the employee's job, as determined by the Department Head, up to a maximum of $250 per employee per fiscal year.

7. **Article XXXII – Posting of Vacancies**

~~Except in the case of Foreman and General Foreman positions, n~~Notices of all job vacancies within the bargaining unit which are to be filled by the Town shall be posted within the department where the vacancy exists and on the Human Resources Office bulletin board. Copies will be sent to Local 1358.

Notices shall contain the job description, qualifications, location, and salary.

All employees wishing to be applicants for the position shall inform the department head where the vacancy exists in writing within one week of the date of posting.

In cases where applicant length of service, ability, qualifications, and quality of previous performance are relatively equal, preference will be given to the senior qualified bidder in the department where the vacancy exists.

8. **Drug & Alcohol Policy – Reasonable Suspicion and Post-Accident (See Attached)**

   The Union agrees to the terms and conditions of the Town's Drug & Alcohol Policy, though the Town agrees not to implement said Policy until it reaches agreement with all other unions on a Drug and Alcohol Policy.

9. **Article XVI, Other Leave – This will go into effect upon implementation of the Drug & Alcohol Policy**

   Add Section (j): Employees shall be permitted eight hours of paid leave per calendar year for the purpose of undergoing a cancer screening and/or annual physical. Paid leave taken under this section must be taken in a single 7.5/8-hour block and will not deduct from the employee's accrued leave.

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

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

For the Town of Brookline

Erin Gallentine, Commissioner
Department of Public Works

Ann Hess Braga, Director
Human Resources Office

3/16/22
Date

For Local 1358, AFSCME, AFL-CIO

Michael Fallon, President

Garrett Mahoney, Staff Representative
AFSCME, Council 93

3/17/22
Date

ARTICLE 3

THIRD ARTICLE
Submitted by: Treasurer/Collector

To see if the Town will authorize the Town Treasurer, with the approval of the Select Board, to enter into Compensating Balance Agreement(s) for FY2023 in accordance with General Laws Chapter 44, Section 53F, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article authorizes the Town Treasurer to enter into Compensating Balance Agreements, which are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in return for which the bank agrees to perform certain services for the depositor. In order to incorporate such compensating balance agreements into the local budget process, the Commonwealth passed a law in 1986 mandating that all such arrangements be authorized by Town Meeting on an annual basis.

SELECT BOARD'S RECOMMENDATION

A report and recommendation on this article will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 3 by a vote of 19-0-2.

Executive Summary:	This article is filed annually by the Town Treasurer/Collector. Compensating balances are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in exchange for certain bank services
Voting Yes will...	Authorize the Town Treasurer, with the approval of the Select Board, to enter into compensating balance agreements for FY2023 in accordance with Massachusetts General Laws Chapter 44, Section 53F. These agreements would allow the Town to maintain specified amounts of

	deposits, which may or may not be interest bearing, in exchange for the reduction or elimination of cash payments for bank services.
Voting No will...	Not authorize the Treasurer to negotiate a reduction or elimination of fees for services, in exchange for deposits of Town funds in non-interest-bearing accounts.
Financial impact	Compensating balance agreements add value when the savings in fees more than offsets the loss of interest income, or when services can be bargained for among competing banks.

Introduction
This article is filed annually by the Town Treasurer/Collector. Compensating balances are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in exchange for certain bank services.

Discussion
Article 3 asks Town Meeting to authorize the Town Treasurer, with the approval of the Select Board, to enter into compensating balance agreements for FY2023 in accordance with Massachusetts General Laws Chapter 44, Section 53F. These agreements would allow the Town to maintain specified amounts of deposits, which may or may not be interest bearing, in exchange for the reduction or elimination of cash payments for bank services.

The proposed Town budget generally assumes that the Town's available funds are invested in interest-bearing accounts, and that banking services are paid for in ordinary course. This authorization gives the Treasurer the authority to negotiate a reduction or elimination of fees for services, in exchange for deposits of Town funds in non-interest-bearing accounts.

Compensating balance agreements add value when the savings in fees more than offsets the loss of interest income, or when services can be bargained for among competing banks. Town Meeting has authorized these arrangements since the mid-1980s.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the following motion by a vote of 19-0-2.

VOTED: That the Town authorize the Town Treasurer, with the approval of the Select Board, to enter into Compensating Balance Agreement(s) for FY2023 in accordance with General Laws Chapter 44, Section 53F.

ARTICLE 3 ADVISORY COMMITTEE VOTES

Article Description	Compensating balance agreements
AC recommendation (Favorable Action unless indicated)	**19-0-2**
Scott Ananian	A
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	
Janice Kahn	
Carol Levin	
Pam Lodish	A
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 3

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Compensating balances are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in return for which the bank agrees to perform certain services for the depositor. In order to incorporate such compensating balance agreements into the local budget process, the Commonwealth passed a law in 1986 mandating that all such arrangements be authorized by Town Meeting on an annual basis.

A unanimous Select Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ARTICLE 4

FOURTH ARTICLE
Submitted by: Select Board

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

PETITIONER'S ARTICLE DESCRIPTION

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations.

SELECT BOARD'S RECOMMENDATION

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

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

The Select Board recommend NO ACTION, by a vote of 4-0 taken on April 19, 2022.

ROLL CALL VOTE:

Aye:	Absent
Greene	Hamilton
Fernandez	
Aschkenasy	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO ACTION on Article 4 by a vote of 17-0 with no abstentions.

Summary: An Article similar to Article 4 is submitted each year by the Select Board to close out any Special Appropriations and/or rescind any unneeded Bond Authorizations. Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a Warrant Article to: (1) show the status of all special appropriations to ensure that surplus funds, if any, are managed in a timely fashion; and (2) identify the unused portion of borrowing authorization that requires rescission.

The first part of Article 4 deals with Special Appropriations Closeouts. Under state statute, surplus funds for revenue-financed capital projects are transferred to Free Cash at the end of the respective fiscal year. The Town's Comptroller has the statutory authority to close out the unexpended balances in the accounts.

The second part of Article 4 raises the question of rescinding any – or any unused portion of – previously approved bond authorizations. There are currently no previously approved bond authorizations to rescind.

Accordingly, the Advisory Committee recommends NO ACTION on Article 4 by a vote of 17-0 with no abstentions.

ARTICLE 4 ADVISORY COMMITTEE VOTES

Article Description	**Close out special appropriations / bond authorization recission**
AC recommendation (Favorable Action unless indicated)	**NO ACTION 17-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	
Georgia Johnson	
Alisa Jonas	
Janice Kahn	
Carol Levin	Y
Pam Lodish	
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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Available Budget Report - Capital Funds (Bond funded) for Fiscal Year 2022 as of 4/11/22

		Revised Budget	YTD Expended	YTD Encumbered	Available	Status
C192	FIRE ENGINE TOWER #1 REPLACEME	1,599	0	0	1,599	Suspension upgrade underway
C193	FLEET MAINT FACILITY & TRAINING	753	0	0	753	Complete
	FIRE CAPITAL	2,352	0	0	2,352	
C199	ACQUISITION OF 111 CYPRESS ST	18,403	0	12,898	5,505	
C215	PURCHASE OF NEWBURY COLL-WEST	5,742	5,742	0	0	Complete
C221	GERALD ALSTON SETTLEMENT	11,000,000	11,000,000	0	0	Complete
	SELECT BOARD CAPITAL	11,024,145	11,005,742	12,898	5,505	
C185	RIDLEY SCHOOL RENOVATION	6,889,873	5,730	0	6,884,143	Complete (balance can shift to future project)
C195	ENVELOPE FENESTRATION	583,490	71,123	41,875	470,492	Ongoing
C204	BHS RENOVATION/EXPANSION	94,765,469	62,621,493	23,156,540	8,987,436	Ongoing
C208	TOWN/SCH BLDG ENV/FENESTRATION	1,460,981	9,555	48,449	1,402,977	Ongoing
C209	PIERCE SCHOOL FEASIBILITY	1,525,886	671,015	735,215	119,656	Ongoing
C210	DRISCOLL SCHOOL RECONSTRUCTION	113,304,582	14,667,518	89,310,008	9,327,056	Ongoing
C214	TOWN/SCH BLDG ROOF REPAIR	2,720,672	1,239,010	35,000	1,446,662	Ongoing
C220	ENVELOPE FENESTRATION	750,000	0	0	750,000	Ongoing
	BUILDING CAPITAL	244,049,243	101,296,928	113,352,883	29,399,432	
C150	MUDDY RIVER RESTORATION	52,217	6,656	0	45,561	In process
C157	NEWTON ST LANDFILL	2,274	0	879	1,395	Nearing Completion
C158	WASTEWATER SYSTEM IMP	38,472	38,472	0	0	
C166	CARLTON ST FOOTBRIDGE RESTORAT	801,889	166,544	249,792	385,553	In process
C169	STORM DRAIN IMPROVEMENTS	5,284	3,904	1,360	20	Near Closeout
C179	NEWTON ST LANDFILL CLOSE	62,731	11,744	0	50,987	In process
C180	VILLAGE SQUARE IMPROVEMENTS	1,200,000	0	0	1,200,000	
C181	SINGLETREE TANK IMPROVEMENTS	78,598	13,100	5,000	60,498	Completed
C182	SINGLETREE GATEHOUSE IMPROVEMENTS	13,011	0	10,583	2,428	Completed
C187	WASTEWATER SYSTEM IMP	110,845	101,058	0	9,787	Completed
C194	COREY HILL PLAYGROUND	5,424	2,200	3,224	0	Nearing Close-out.
C196	WATER SYSTEM IMPROVEMENTS	28,820	24,383	4,437	0	In process.
C198	BROOKLINE RESERVOIR PARK	340,658	35,624	74,753	230,281	In process.
C200	WASTEWATER SYSTEM IMPROVEMENTS	2,911,650	1,810,400	1,101,250	0	In process
C201	HARRY DOWNES FIELD/KRAFT FAM	30,551	16,005	2,568	11,978	Nearing project close-out.
C202	LARZ ANDERSON PARK	1,496,262	1,325,514	170,103	645	In process.
C206	WATER SYSTEM IMPROVEMENTS	1,733,054	1,075,725	656,289	1,040	In process
C207	WASTE WATER SYSTEM IMPROVEMENT	2,940,429	11,923	35,000	2,893,506	In process
C211	WATER SYSTEM IMPROVEMENTS	2,000,000	103,493	0	1,896,507	In process
C212	WASTE WATER SYSTEM IMPROVEMENT	3,000,000	0	0	3,000,000	Will follow current projects
C213	LARZ ANDERSON PARK	2,200,000	0	95,688	2,104,312	In process.
C216	WATER SYSTEM IMPROVEMENTS	2,000,000	0	0	2,000,000	In process
C217	WASTE WATER SYSTEM IMPROVEMENT	3,000,000	0	0	3,000,000	In process
C218	MURPHY PLAYGROUND	915,000	0	0	915,000	In process - Bid Spring 2022
C219	ROBINSON PLAYGROUND	1,150,000	0	58,485	1,091,515	In process - Bid Spring 2022
	DPW CAPITAL	26,117,169	4,746,745	2,469,411	18,901,013	
C188	GOLF COURSE IMPROVEMENTS	748,914	0	0	748,914	For on-going work including drainage, bunkers, and cart paths.
	RECREATION CAPITAL	748,914	0	0	748,914	

Available Budget Report - Special Warrant Articles (Revenue-Financed) for Fiscal Year 2022 as of 3/23/22

Account	Account Name	Revised Budget	YTD Expended	YTD Encumbered	Available Balance	Comment
K017	TOWN FURNITURE UPGRADES	25,938	0	25,938	0	Ongoing town furniture replacement program.
K018	SCHOOL FURNITURE UPGRADES	15,581	0	0	15,581	Ongoing school furniture replacement program.
Sub-Total Finance Dept		**41,519**	**0**	**25,938**	**15,581**	
K042	CLASSROOM CAPACITY	1,755,340	1,713,943	577	40,820	
K042	CLASSROOM CAPACITY (school org)	58,267	5,115	29,500	23,652	
Sub-Total School Dept		**1,813,607**	**1,719,058**	**30,077**	**64,472**	
K042	VOTING MACHINES	130,000	0	0	130,000	Internal transfer needed to address shortfall of $34,000 due to new precincts
Sub-Total Town Clerk		**130,000**	**0**	**0**	**130,000**	
K122	RIVERWAY BIKE/PED PATH	40,000	0	0	40,000	Being Coordinated with USACE for Phase II Improvements.
K158	ZONING BY-LAW RE-ORGANIZATION	194,644	0	0	194,644	Phase 1 complete by 6/22. Remaining phases originally contemplated such as "accounting for changed circumstances in land use patterns", will not be spent until additional staffing resources are identified to begin such an intensive public process. Re-appropriated under Art. 10
Sub-Total Dept of Planning & Community Development		**234,644**	**0**	**0**	**234,644**	
K016	IT HARDWARE-SOFTWARE	141	0	0	141	Completed.
Sub-Total Information Technology Dept		**141**	**0**	**0**	**141**	
K169	RADIO INFRASTRUCTURE	1,853,964	0	846,685	1,007,279	Ongoing project
Sub-Total Police Dept		**1,853,964**	**0**	**846,685**	**1,007,279**	
K173	STATION 6 DRAFTING PIT	50,000	0	0	50,000	Project is no longer feasible as further study shows the structure is untenable re-appropriated under Art. 8
K175	FIRE STATION ALERTING SYSTEM	450,000	169,065	260,155	20,780	Installation underway
Sub-Total Fire Dept		**500,000**	**169,065**	**260,155**	**70,780**	
K002	ENERGY CONSERVATION	165,000	161,672	0	3,328	Ongoing
K010	ENERGY MANAGEMENT SYSTEMS	3,400	3,400	0	0	Completed
K022	TOWN-SCHOOL SECURITY-LIFE SAFETY	207,106	92,061	7,675	107,370	Ongoing
K040	PUTTERHAM BATHROOM	8,096	0	0	8,096	Completed
K046	TOWN HALL/MAIN LIBRARY GARAGE IMPROVEMENTS	288,200	0	0	288,200	Complete
K050	ADA RENOVATIONS	92,361	29,866	3,910	58,585	Ongoing
K098	FIRE STATION RENOVATIONS	1,266,237	54,506	34,530	1,177,201	On hold until final plan/funding is approved
K109	TOWN/SCHOOL BUILDINGS ELEVATOR	180,000	180,000	0	0	Complete
K121	GARAGE FLOOR SEALANTS	150,000	0	0	150,000	Complete
K123	DEVOTION HOUSE / PUTTERHAM SCHOOL	62,000	0	0	62,000	Complete
K128	COOLIDGE CORNER LIBRARY	128	0	0	128	Complete
K131	DRISCOLL SCHOOL HVAC	119,392	0	0	119,392	Complete
K145	TOWN/SCHOOL TRASH COMPACTORS	3,378	2,950	0	428	Complete
K161	HVAC EQUIPMENT	1,701	1,701	0	0	Complete
K163	PUBLIC BUILDING FIRE ALARM UPGRADES	217,966	21,938	25,555	170,472	Ongoing
K168	DRISCOLL SCHOOL SCHEMATIC DESIGN	160,111	65,364	0	94,747	Ongoing
Sub-Total Building Dept		**2,925,076**	**613,459**	**71,671**	**2,239,947**	
K051	TREE MANAGEMENT	588,147	153,200	164,563	270,384	In Process
K052	BICYCLE ACCESS IMPROVEMENTS	25,661	88	0	25,573	In Process
K054	STREET LIGHTING REPLACEMENT	20,703	0	100	20,603	In Process
K055	CARLTON STREET FOOTBRIDGE	33,384	276	0	33,108	In Process
K056	SIDEWALK IMPROVEMENTS	421,071	17,768	118,943	284,360	In Process
K058	STREET REHABILITATION	4,996,378	2,098,087	375,854	2,522,438	In Process
K065	RIVERWAY PARK IMPROVEMENT	86,369	0	0	86,369	Coordination & Planning - Will Follow Phase II Muddy River
K066	PLAYGROUND,FENCE,FIELD, EQUIPMENT	528,954	169,708	302,293	56,953	In Process
K069	TENNIS/BASKETBALL COURT REHAB	393,385	0	0	393,385	In Process
K070	LARZ ANDERSON PARK	1,429,585	62,580	89,066	1,277,939	In Process
K073	TOWN-SCHOOL GROUNDS REHAB	332,074	143,373	37,939	150,762	In Process
K078	MUDDY RIVER REMEDIATION	1,317,057	34,238	0	1,282,819	In Process
K083	TRAFFIC CALMING	312,797	0	20,728	292,069	In Process
K088	MOUNTFORT ST TRAFFIC SIGNAL	76,438	0	0	76,438	Awaiting MassDOT St. Mary's Bridge Project Approval & Funding
K093	WATER METER REPLACEMENT	486,650	243,872	4,112	238,666	Ongoing
K096	PARKING METERS	153,526	0	136,556	16,970	In Process
K097	LANDFILL SETTLEMENTS	130,733	0	0	130,733	In Process
K101	MUNICIPAL SERVICE CENTER REPAIRS	1,081	0	0	1,081	Nearing Close Out
K115	OLD BURIAL GROUNDS	94,377	917	0	93,460	In Process
K120	PARK COMFORT STATIONS	379,523	6,098	22,825	350,600	In Process

Available Budget Report - Special Warrant Articles (Revenue-Financed) for Fiscal Year 2022 as of 3/23/22

Account	Account Name	Revised Budget	YTD Expended	YTD Encumbered	Available Balance	Comment
K124	WOODLAND RD / HAMMOND ST CROSSING STUDY	15,600	0	0	15,600	In Process. Awaiting funding for construction project for plans & specs
K125	BROOKLINE AVE PLAYGROUND	83,747	77,281	0	6,466	In Process.
K129	MBTA TRAFFIC SIGNALIZATION	16,240	0	40	16,200	In Process. Initial round implemented in 2020.
K141	DEAN RD/CHESTNUT HILL AVE TRAF SIGNAL	54,222	54,222	0	0	Completed
K142	WINTHROP PATH REHABILITATION	65,000	0	0	65,000	In Process
K143	BROOKLINE RESERVOIR PARK	1,504	0	1,504	0	Complete
K150	DAVIS PATH FOOTBRIDGE	576,386	9,145	13,155	554,086	Initial Planning and Cost Estimates moving to 25% Design
K151	MURPHY PLAYGROUND	64,771	155	38,500	26,116	In Process. Preparing to put project out to bid.
K152	STORMWATER IMPROVEMENTS	739,600	52,692	276,220	410,688	In Process
K160	CYPRESS PLAYGROUND DESIGN	200,245	12,237	950	187,058	In Process
K164	NETHERLANDS ROUD FACILITY IMPROVEMENTS	221,681	84,436	1,325	135,920	In Process
K166	BROOKLINE RESERVOIR	55,027	41,166	13,861	0	Complete - Project punch list
K167	RIDE SHARE FUNDS	431,532	144,304	106,209	181,019	In Process
K170	FIRE ALARM CALL BOX	306,787	1,426	12,685	292,676	In Process
K171	ROBINSON PLAYGROUND	65,368	14,853	50,515	0	In Process. Preparing to put project out to bid
K174	CARLTON ST/MONMOUTH ST TRAF SIGNAL	333,663	131,536	202,127	0	Substantially Complete
K177	WASH/HARV/KENT/DAVIS TRAF SIG	140,000	8,038	131,963	0	In process
K178	ACCESSIBLE PEDESTRIAL SIGNAL	50,000	0	1,755	48,245	In Process. Phase 1 being completed May & June 2022.
K179	WASHINGTON ST AND COMPLETE STS	600,000	0	598,500	1,500	In Process. Design Review Committee
K180	WILLOW POND ENV RESTORATION	280,000	24,425	73,275	182,300	In Process
Sub-Total DPW		**16,109,266**	**3,586,120**	**2,795,561**	**9,727,585**	
K106	EVELYN KIRRANE AQUATIC CTR	182,064	0	0	182,064	on-going
K172	ELIOT REC CTR RENOVAT	7,220	0	0	7,220	completed renovation
Sub-Total Recreation		**189,284**	**0**	**0**	**189,284**	
	TOTAL	**23,797,501**	**6,087,702**	**4,030,087**	**13,679,713**	

ARTICLE 5

FIFTH ARTICLE
Submitted by: Select Board

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

PETITIONER'S ARTICLE DESCRIPTION

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

SELECT BOARD'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. As of the writing of this Recommendation, there are no unpaid bills from a previous fiscal year. Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on March 22, 2022.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO ACTION on Warrant Article 5 by a vote of 21-0-2.

Executive Summary:	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.

Voting Yes will...	
Voting No will...	
Financial impact	There are no unpaid bills from a prior fiscal year and, therefore, no financial impact

Introduction

This article is filed annually by the Select Board in case there are unpaid bills from a prior fiscal year. Massachusetts General Laws, Chapter 44, Section 64, requires the specific appropriation of funds for the payment of bills from a prior fiscal year.

Discussion

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

Recommendation

The Advisory Committee recommends NO ACTION by a vote of 21-0-2.

ARTICLE 5 ADVISORY COMMITTEE VOTES

Article Description	Unpaid bills
AC recommendation (Favorable Action unless indicated)	**NO ACTION, 21-0-2**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	
Janice Kahn	A
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	A
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 6

SIXTH ARTICLE
Submitted by: Board of Assessors

To see if the Town will elect to establish an additional property tax exemption for fiscal year 2023 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, low-income elderly, the blind and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved by Town Meeting continually since FY1989.

SELECT BOARD'S RECOMMENDATION

This article provides for an increase in the property tax exemption amounts for certain classes of individuals, including surviving spouses, the elderly, the blind and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved annually since FY1989. The estimated cost for FY2023 is approximately $42,850 and is funded from the tax abatement overlay reserve account. The law allows the Town to increase the exemptions by up to 100% as indicated on the following schedule, which are recommended by the Board of Assessors:

Description	Ch.59, Sec.5 Clause	FY2022 #Granted	Basic Amount Exempted	Proposed Amount Exempted
Surviving Spouse	17D	2	$175	$350
Veteran (10% Disability)	22	40	$400	$800
Veteran (loss of one hand, foot or eye)	22A	0	$750	$1,500
Veteran (loss of two hands, feet or eyes)	22B	0	$1,250	$2,500
Veteran (special housing)	22C	0	$1,500	$3,000
Veteran (certain widows of soldiers)	22D	0	$250	$500
Veteran (100% disability, cannot work)	22E	8	$1,000	$2,000
Blind	37A	28	$500	$1,000
Elderly	41C	9	$500	$1,000

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

VOTED: That the Town elect to establish an additional property tax exemption for fiscal year 2023 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 6 by a vote of 23-0-0.

Executive Summary	Article 6 is an annual Warrant Article to increase state-mandated local property tax exemptions for certain classes of qualifying individuals.
Voting Yes will...	Allow the Town to grant some additional relief to a few classes of qualifying individuals.
Voting No will...	For the first time since 1989, increase the tax burden on those individuals.
Financial impact	The estimated cost for FY2022 is approximately $44,250 and is funded from the tax abatement overlay reserve account.

Background

This Article would allow the Town in FY22 to continue its current practice of doubling the base amount of certain state-mandated property tax exemptions for several classes of qualifying taxpayers, including disabled veterans, blind persons, low-income and low-asset elderly, and low-asset surviving spouses. The Town is required by state law to give these taxpayers, if eligible, a basic property tax exemption in the amount specified in Chapter 59, Section 5, of the Massachusetts General Laws and for which the Town is reimbursed by the state (fully for the elderly exemption and partially for the others). State law provides for a local, optional, annual increase in the mandated exemptions of up to 100%. The percentage increase must be uniform across all the exemption classes and is paid out of the Town's tax abatement overlay reserve account. The proposed increases, which require annual re-authorizations, are recommended by the Board of Assessors and have been approved each year by Town Meeting since FY1989.

Discussion

The table below shows, for each category: the number of Brookline taxpayers who received an exemption in FY22; the basic dollar amount exempted under state law; and the additional exemption amount proposed in this Warrant Article (which, in all categories, doubles the original basic amount).

During the past seven years, veterans have constituted an average of 54% of the recipients of these exemptions, the blind 32%, the elderly 10%, and surviving spouses 3%. These percentages do not reflect the proportional distribution of these demographic groups among Brookline's population (e.g., seniors make up over 20% of Brookline's population, veterans and blind persons considerably less). Note that the exemptions for veterans and blind taxpayers do not have any income or asset cap requirements, unlike those for the elderly and surviving spouses, which may explain these disparities.

The actual annual costs of these increased exemptions have been steadily decreasing in recent years, dropping from $62,000 in FY15, when there were 126 Brookline exemption recipients, to about $55,000 in FY19, when the number of recipients was 110. In FY21, the estimated costs of the additional exemptions was $49,950 and the number of recipients was 99. For FY22 the estimated cost is $43,350, with 88 participants. Exemption recipients are down 11% compared to FY21 and the total cost to the Town is down 13%.

There has been some difficulty in doing outreach programs during the COVID-19 pandemic. For example, the twice-a-year outreach meetings with seniors usually conducted by the Chief Assessor at the Senior Center had to be done virtually. Currently, the burden is on the taxpayer to find out about available tax assistance programs and to apply for them each year before the April 1 deadline.

Description	Base Amount	FY2021 # Granted	FY2022 # Granted	Total $	Proposed $ amount additional
Surviving Spouse	175	2	2	350	350
Veterans	400	44	40	16,000	16,000
Veterans with 100% disability	1,000	11	8	8,000	8,000
Blind Persons	500	31	28	14,000	14,000
Elderly	500	11	10	5,000	5,000
Total:		99	88	43,500	43,500

Recommendation

The Advisory Committee unanimously recommends **FAVORABLE ACTION** on the following motion offered by the Select Board under Warrant Article 6 by a vote of 23-0-0:

ARTICLE 6 ADVISORY COMMITTEE VOTES

Article Description	Property Tax Exemptions
AC recommendation (Favorable Action unless indicated)	**23-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 7

SEVENTH ARTICLE
Submitted by: Building and School Departments

To see if the Town will vote to authorize the Select Board, on such terms and conditions that are in the best interest of the Town, to accept:

(1) a grant of an easement from Brookline Hills Condominium (19-21 Brington Road) or owners therein to occupy land on the Northeast corner of the parcel with the street address 19-21 Brington Road (Assessors' Parcel ID 191-01-02), as well as the ground underneath, with certain infrastructure including, but not limited to, three parking spaces, granite curbing, steel & wood fencing, concrete fence foundations, 1 light pole, and accompanying below grade conduits providing power to the light pole, and to enter into such land as necessary to maintain said infrastructure;

And also vote to authorize the Select Board, on such terms and conditions that are in the best interest of the Town, to grant:

(1) an easement to Brookline Hills Condominium allowing ingress and egress over a portion of the service drive extending from Brington Road onto the parcel with the street address 22 Tappan Street (Assessors Parcel ID 191-01-01) in order to access three parking spaces located on property with the street address 19-21 Brington Road.

and

(2) an easement to the owner of 25 Brington Road allowing ingress and egress over a portion of the service drive extending from Brington Road onto the parcel with the street address 22 Tappan Street (Assessors Parcel ID 191-01-01) in order to access the rear yard of 25 Brington Road.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The High School Expansion project includes a large new building at 22 Tappan Street. In the property's former configuration, the owners of 19-21 Brington Road and 25 Brington Road had easements allowing them to traverse its parking lot to access the rear of their properties. The Town intends to preserve the rights underlying those easements, but must relocate them to account for the larger size of the new building. In addition, a small amount of infrastructure attendant to the new building - including a light pole, fencing and curbing – as well as 3 parking spaces constructed by the Town for use by the owners of 19-21 Brington Road extends onto the 19-21 Brington Road lot. The owners of that property intend to grant the Town an easement formally allowing the infrastructure on their

property. Because these are interests in real estate, a Town Meeting vote is necessary to authorize the Town's acceptance and grant of these easements.

The Town has retained a surveyor to prepare draft plan definitively showing the boundaries of the easements, along with a legal description. It is the Department's intention to circulate that plan, along with draft versions of the Easement Agreements, as soon as they are available.

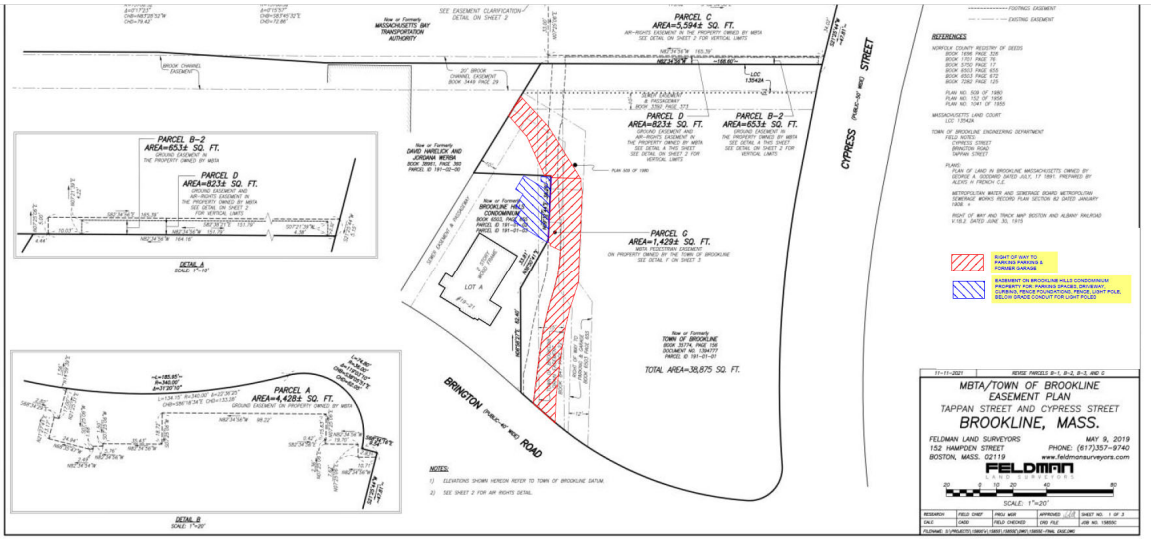


Figure 1- Preliminary Easement Plan
PDF version posted with Town Meeting files

SELECT BOARD'S RECOMMENDATION

Article 7 is a request from the Building and School department for Town Meeting to authorize the Select Board the authority to grant and accept certain easements in association with the High School Expansion project. The relocation of the current easements is due to the addition of the new building at 22 Tappan Street.

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

VOTED: That the Town authorize the Select Board, on such terms and conditions that are in the best interest of the Town, to accept:

(1) a grant of an easement from Brookline Hills Condominium (19-21 Brington Road) or owners therein to occupy land on the Northeast corner of the parcel with the street address 19-21 Brington Road (Assessors' Parcel ID 191-01-02), as well as the ground underneath, with certain infrastructure including, but not limited to, three parking spaces, granite curbing, steel & wood fencing, concrete fence foundations, 1 light pole, and accompanying

below grade conduits providing power to the light pole, and to enter into such land as necessary to maintain said infrastructure;

And also vote to authorize the Select Board, on such terms and conditions that are in the best interest of the Town, to grant:

(1) an easement to Brookline Hills Condominium allowing ingress and egress over a portion of the service drive extending from Brington Road onto the parcel with the street address 22 Tappan Street (Assessors Parcel ID 191-01-01) in order to access three parking spaces located on property with the street address 19-21 Brington Road.

and

(2) an easement to the owner of 25 Brington Road allowing ingress and egress over a portion of the service drive extending from Brington Road onto the parcel with the street address 22 Tappan Street (Assessors Parcel ID 191-01-01) in order to access the rear yard of 25 Brington Road.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 7 by a vote of 24-0-0.

Executive Summary:	19-21 and 25 Brington Road are residential buildings that stand immediately to the west of 22 Tappan Street (formerly 111 Cypress Street), a property that Town Meeting, in November 2017, voted to take by eminent domain, subject to existing easements, for the construction of a high school building. The school building opened in January 2022. WA 7 would preserve these established rights enjoyed by the owners of those residential buildings and by the Town, permitting owners of 19-21 and 25 access to their properties along a new Town service road on the 22 Tappan property, and allowing Brookline access along that service road to Town infrastructure on the private properties. The easement the Town receives relates to a small portion of land belonging to 19-21 Brington that has on it some fencing, a light pole, a conduit that runs underneath it and three parking spaces put in by the Town that will be used by the owners of 19-21 Brington. This easement will allow the Town to have access to and maintain the property. The Article authorizes the Select Board to give and receive such easements.
Voting Yes will...	Reaffirm rights and conveniences currently enjoyed and/or proposed by the Town and abutters and agreed to by those parties.

Voting No will...	Compel the Town to redraft the proposed easements to meet the concerns of Town Meeting while current easements remain in effect.
Financial impact	None

Introduction: See Executive Summary above and map PDF below.

Discussion: Both the abutters and the Town find the easements agreeable.

Recommendation: The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Select Board under Warrant Article 7 by a vote of 24-0-0.

ARTICLE 7 ADVISORY COMMITTEE VOTES

Article Description	Brington Road easements
AC recommendation (Favorable Action unless indicated)	**24-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 8

EIGHTH ARTICLE
Submitted by: Advisory Committee

To see if the Town will:

A.) Fiscal Year 2023 Budget

Appropriate the sums requested or proposed by the Select Board or by any other officer, board or committee, or any other sum or sums, for the fiscal year 2023 budget; without limiting the foregoing, appropriate the sums necessary for all town expenses, including the snow and ice budget, debt and interest, and operating expenses; fix the salaries of all elected officers as provided for in General Laws, Chapter 41, Section 108; authorize the leasing, leasing with an option to purchase or installment purchase of equipment; appropriate to or from a stabilization fund as provided for in General Laws Chapter 40, Section 5B; appropriate CPA funds as provided in General Laws, Chapter 44, Section 44B; authorize the continuation of all revolving funds in accordance with General Laws, Chapter 44, Section 53E½ and all Enterprise Funds in accordance with General Laws, Chapter 44, Section 53F½; allocate available free cash; provide for a reserve fund; and establish the requirements for transfers among appropriations, interfund transfers, transfers for the purposes of salary adjustments, filling vacant positions and budgetary reporting.

B.) Fiscal Year 2023 Special Appropriations

Appropriate sums of money for the following special purposes:

1. Appropriate $700,000, or any other sum, to be expended under the direction of the Fire Chief, with any necessary contracts over $100,000 to be approved by the Select Board, for the replacement of Fire Engine #1.

2. Appropriate $900,000, or any other sum, to be expended under the direction of the Police Chief, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades/replacement of the Police and Fire Department's radio infrastructure.

3. Appropriate $450,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board for Public Safety Building locker room improvements.

4. Appropriate $560,000, or any other sum, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, traffic calming.

5. Appropriate $472,000, or any other sum, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, bike access improvements.

6. Appropriate $188,000, or any other sum, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, for parking meter technology upgrades.

7. Appropriate $1,350,000, or any other sum, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, for the upgrade of the Washington/Harvard/Kent/Davis traffic signal.

8. Appropriate $50,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, for Accessible Pedestrian Signals.

9. Appropriate $1,880.000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of streets.

10. Appropriate $353,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of sidewalks.

11. Appropriate $700,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for design work related to the Washington Street Rehabilitation and Complete Streets Program.

12. Appropriate $600,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for storm water improvements.

13. Appropriate $2,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for water system improvements.

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

15. Appropriate $140,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades to the fuel system at the Netherlands Road facility.

16. Appropriate $3,210,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the design and renovation of Skyline Park.

17. Appropriate $2,800,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the environmental restoration of Willow Pond.

18. Appropriate $200,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the renovation of playground equipment, fields, and fencing.

19. Appropriate $90,000, or any other sum, to be expended under the direction of the Commissioner of Public Works for the rehabilitation of Town and School grounds.

20. Appropriate $300,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board and the Tree Planting Committee, for the removal and replacement of trees.

21. Appropriate $25,000, or any other sum, to be expended under the direction of the Chief Procurement Officer for school furniture upgrades.

22. Appropriate $340,000, or any other sum, to be expended under the direction of the School Committee, with any necessary contracts over $100,000 to be approved by the School Committee, for replacement of the High School's public address system.

23. Appropriate $50,000, or any other sum, to be expended under the direction of the Building Commissioner for underground tank removal.

24. Appropriate $85,000, or any other sum, to be expended under the direction of the Building Commissioner for ADA renovations to Town and School facilities.

25. Appropriate $100,000, or any other sum, to be expended under the direction of the Building Commissioner for energy conservation projects in Town and School facilities.

26. Appropriate $100,000, or any other sum, to be expended under the direction of the Building Commissioner for upgrades to energy management systems in Town and School facilities.

27. Appropriate $650,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and, with respect to School Buildings, by the School Committee, for building roof repairs to Town and School facilities.

28. Appropriate $250,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Board of Select Board and, with respect to School Buildings, by the School Committee, for improvements to life safety systems and building security in Town and School facilities.

29. Appropriate $1,827,048, or any other sum, to be expended under the direction of the School Superintendent, with any necessary contracts to be approved by the School Committee, for the expansion of classroom capacity in various schools.

C.) Funding

And determine whether such appropriations shall be raised by taxation, transferred from available funds, borrowed or provided by any combination of the foregoing, and authorize the leasing, leasing with an option to purchase, or the installment purchase of any equipment or any capital items; and authorize the Select Board, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants, gifts, reimbursements, and aid from both federal, state, and other sources and agencies for any of the purposes noted in this Article, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This is the annual appropriations article for FY2023. Included in this omnibus budget article are operating budgets, special appropriations, enterprise funds, revolving funds, and conditions of appropriation. This is the culmination of work that officially began with the publication of the Town Administrator's Financial Plan on February 15th. The proposed budget has since been reviewed by numerous sub-committees of the Advisory Committee, the full Advisory Committee, and the Select Board. The vote ultimately recommended to Town Meeting is offered by the Advisory Committee.

SELECT BOARD'S RECOMMENDATION

The Select Board would like to thank the Town Administrator and his staff, the Advisory Committee, the School Superintendent and his staff, and the School Committee for all of their efforts and collaboration toward dealing with this FY2022 budget.

ACTIONS SINCE THE RELEASE OF THE FINANCIAL PLAN

Since the Financial Plan was released on February 15th, there have been a number of changes made, and there remains a small difference between the Select Board and the Advisory Committee vote which the Board will address at their May 10th meeting.

The changes, were as follows:

With the completion of the bond sale, some adjustments are needed for the debt and interest portion of the budget. The favorable rate achieved on the debt exclusion project (Driscoll) also lowered the budget requirements by $23,307, which also provides a corresponding adjustment to the revenue estimate for property taxes. There is no impact on the operating budget from these changes.

In addition to the debt service adjustments, additional revenue was identified to support FY23 needs. The Town is using the House Ways and Means budget adjustments to revise our state aid estimate for FY23. This will provide an additional $214,607. We have also determined that Local Receipts could be increased $287,880 primarily due to an improved outlook in the Medicaid reimbursement estimate.

As we have known for some time, decisions on APRA are linked to decisions on the Town's FY 2023 budget. ARPA acknowledges the general revenue losses that municipalities experienced during COVID, and created a formula to allow cities and towns to use grant funding to offset local government expenses. In Brookline, the focus on use of this "Revenue Replacement" funding has been on the School Department's FY 2023 budget. A total of **$3,000,000** of ARPA funding be allocated to meet the FY 2023 School Department's budget needs and ***$500,000*** is allocated to the School Department with the express condition that it be used to meet school building maintenance expenditures as recommended by the Town's Buildings Division. The Board shares the Advisory Committee's concern about the use of one-time funds to support recurring costs, and looks forward to engaging with the Town/School Partnership on long-term solutions to the Town's structural gap.

In total $502,487 of additional General Fund revenue was identified to support both the Town and Schools. Per the Town/School split $300,921 was recommended for the School appropriation and $201,566 is available for the Town. Based on outstanding collective bargaining negotiations, the Town Administrator initially recommended that the entire town share be allocated to the collective bargaining reserve. Based on the School Committee and Advisory Committee votes on the School allocation ($19K less) and Town Allocation (funding for an additional Planning Department position) the table below describes what the Board will look to reconcile on May 10th.

	SB vote*	AC motion
School Department	300,920	281,521
Collective Bargaining Reserve	201,566	135,047
Planning Department		70,608
Group Health		15,310
	502,486	**502,486**
* The Board will look to reconcile with the AC on 5/10		

BUDGET SUMMARY

The General Fund budget proposed by the Select Board totals $348 million, of which $399 million is appropriated, reflecting an increase of $15.3 million (4.7%). The remaining $9.4 million is the so-called "Non-Appropriated" portion of the budget. In total, the $348 million reflects a 4.2% increase. This budget recommendation includes a General Fund Operating Budget of $329 million, which represents an increase of $13.3 million (4.2%); revenue-financed capital of $9.6 million; enterprise / revolving funds of $38 million (gross); and non-appropriated expenses of $9.4 million.

Property taxes are a stable source of municipal revenue in an otherwise unstable time. Proposition 2½ dictates the annual 2.5% in the property tax levy each year. The law allows additional taxes to be raised on new construction value (New Growth) and any tax overrides or exclusions authorized by Brookline's voters. Overall, property tax revenue is projected to increase by 3.4% in FY 2023.

Despite the uncertainty of the economy, many local revenues have rebounded well from the early months of 2020. In particular, the municipal share of state excise taxes for meals and hotel rooms has increased by 13% over FY 2022. Licenses and permits related to business activity have grown, as have revenues from parking meters and parking fines. I am proud of the Town's proactive and creative measures to keep our restaurant and food service industry open during the worst days of the pandemic. 2022 represents the year that state excise taxes from the sale of adult-use cannabis has exceeded taxes from alcohol sales. With Brookline becoming one of the first communities in eastern Massachusetts to license adult-use sales, marijuana excise tax revenue rose swiftly, with $900,000 projected in annual revenue in FY 2023. That level has plateaued somewhat, based on impacts from COVID and with growing competition in the regional marketplace. The Town also receives a 3% host community fee that dedicates $1 million for expenses related to the impacts from cannabis sales. In addition to allocating these funds for direct oversight, mitigation and enforcement activities within various operating budgets, the Town has aggressively used host community money to fund public health, racial equity and other initiatives. Realistically, the Town should plan for State law and regulations to limit the value of the HCA as this industry matures. If this happens, I am hopeful that the State will consider an increase to the 3% excise tax available to cities and towns from the overall state tax of 10.75%. Excise taxes are far greater in other states legalizing adult sales, including California (15%), Arizona (16%), and Oregon (17%). Newer taxation models from recent state legalization efforts have used alternative approaches that could prove useful to Massachusetts.

We are disappointed that the Governor's proposed state budget for FY 2023 limits local aid to

municipalities during a time of favorable revenue growth. Despite state revenue growing annually by 24% as of January 2022 (and 7% over the FY 2022 state budget benchmark), the Governor is projecting state revenue growth in FY 2023 at 2.7%. This is the rate at which the Governor's budget proposes to increase general unrestricted aid to Brookline. Chapter 70 Education Aid is also projected to be limited to Brookline. The Governor's budget allocates the minimum $30 per-pupil aid to Brookline in FY 2023. We were also surprised and disappointed to see the Town's assessment for MBTA operations increase by 9% over the prior year, wiping out the modest gains in state aid. At the time this document is being finalized, we are still unaware of the reason for this increase, although we suspect it may relate to Brookline's population growth in the 2020 Census. Many communities, along with the Massachusetts Municipal Association, are encouraging the Legislature to use more realistic revenue growth projections to support cities and towns.

The Town's fund balance from FY 2021 was healthy, part of a strategic plan to bolster reserves necessary to retain the Town's Aaa bond rating. The unreserved fund balance certified by the state is referred to as Free Cash, and this amount is used by the Town solely for reserves and capital expenditures. In FY 2023, a total of $14.2 million in Free Cash has been certified. About $6.1 million of this amount will be allocated to preserve fund balance while another $6.8 million will fund the town's Capital Improvement Plan. The balance is then allocated to various operating and special reserve funds of the Town in accordance with formal fiscal policies. I am pleased to report that the Town is on track to increase its ratio of reserves to 10% of revenue, which is the accepted minimum rate for Aaa-rated communities.

The Town of Brookline is the recipient of an award of federal funding from the American Recovery Plan Act (ARPA) passed by Congress in March of 2021. The total award is $43.9 million, $32.4 of which is received directly from the federal government and $11.5 which is passed through Norfolk County. The funding is paid over two years and must be expended no later than December 31, 2024. There are four categories of use for the funds; COVID-19 Expenditures, Revenue Replacement, Premium Pay for Essential Workers and Investments in Water/Sewer and Broadband. Funding from the ARP is separate from the normal budget and accounting systems of the Town. The grant is administered by the United States Treasury department with voluminous requirements for use and reporting of expenditures. Despite its independence from the normal budgeting system, use of these federal funds is inexorably linked to the Town's FY 2023 budget and future financial planning. Eligible expenses of the federal grant often overlap with expenses included in the Town's budget, creating funding flexibility. In addition, ARPA regulations allow a municipality to spend at least $10 million of its grant for any purpose under the Revenue Replacement category use. To date, the Select Board has authorized the expenditure of $1.8 million from the ARPA to fund direct COVID-related expenses. The purposes and timing of allocating the remaining funds will be integrated into the FY 2023 budget planning process. The Select Board has initiated a robust community engagement process led by the Brookline Community Foundation that will serve as the basis for this discussion. The temporary nature of this federal grant will force difficult decisions around the sustainability of programs and services it will fund. All expenditures must be evaluated for their ongoing impact upon the Town's budget, including options to transition funding when the federal dollars expire. We must also consider the availability of other federal programs when allocating both ARPA and municipal funds so that we can maximize the Town's financial benefit. For example, the new infrastructure bill passed by Congress could fund many capital projects of the Town currently included in the Town's Capital Improvement

Plan or proposed to be funded by ARPA. Many other federal programs are funded through ARPA, including substantial funding to the Commonwealth of Massachusetts for specific program objectives. We must be vigilant about these other funding opportunities, which can have the effect of expanding the overall federal funding available to the Town.

The FY 2023 "New Normal" budget restores some, but not all, prior reductions in municipal departments needed to balance the last two budgets. In addition, a concerted effort is being made to enhance the funding available to reach collective bargaining agreements with Town unions and to establish competitive wages for management and non-union employees. In the initial FY 2022 Budget, no funding was made available for this purpose, given the constraints imposed by the COVID pandemic. As actual revenues played out, we allocated all of the supplemental revenue appropriated to municipal departments at the Special Town Meeting in November to the Collective Bargaining Reserve. We have allocated additional funding in FY 2023, and are hopeful that this will enable long-term agreements with our unions. Despite the limitations on the Town's funding created by our structural gap, we were able to accomplish some modest investments in areas that are the focus of policy initiatives passed by Town Meeting. While much more attention will be focused in these areas during the ARPA process, we were able to make some movement in the FY 2023 Budget for the advancement of key policy priorities, including Sustainability, DEI, Historic Preservation, Traffic and Pedestrian Safety, Fire Prevention and Responsiveness.

Funding the Town's liabilities for employee pensions and related health benefits (OPEB) continue to have an enormous impact on the discretion available within the operating budget. State and municipal employees in Massachusetts do not participate in Social Security (new members are eligible for Medicare), making the defined benefit state retirement plan the sole vehicle for retiree compensation. The funding of this pension system is a local obligation which was historically funded on a "pay as you go" basis. The Town is now following an actuarially approved plan to meet the unfunded liability of this obligation. This plan requires increased appropriations of nearly 7.85% annually until the plan reaches its fully-funded basis in 2030. At that time, the Town will shift this investment into the unfunded liability of its OPEB obligation, involving health insurance benefits for Town and School retirees and their survivors. The Town has been allocating the sum of $250,000 annually to this obligation until such time as the funded plan will commence in 2031. This annual allocation was level-funded during the FY 2021 and 2022 budgets but the annual growth of $250,000 has been restored for FY 2023.

The Town has funded capital expenditures for FY 2023 as part of a longer-term Capital Improvement Plan (CIP). Town financial policies require at least 7.5% of the prior year net revenue be allocated to the annual capital budget. This covers both the cost of pay as you go cash projects and the annual debt service on projects that were financed with municipal bonds. Over the last few years, our fund balance has allowed additional investment to meet a backlog of capital projects, especially related to school classroom expansion. In FY 2023, our overall investment in the capital budget represents 8.3% of prior year net revenue. The Town's long-term capital improvement plan is addressed in more detail in Section VII of this Budget Message and discussed further in the Policy Issues section of this Introduction. The issue of the Town's debt burden has been a subject of policy discussions, including concerns expressed by the Brookline Fiscal Advisory Committee (BFAC). While our financial policies dictate that the Town's debt burden should never exceed 6% per capita, it was never anticipated that so

many large-scale capital projects such as school building replacement would be funded outside the Proposition 2½ property tax levy limit. As of FY 2023, debt financed within the tax levy is relatively low at 3%, but when added to $350 million of "excluded" debt, this pushes the overall per capita costs to 11%. The current CIP, which assumes more large-scale projects being added to the mix, is unsustainable.

The FY 2023 Budget represents a transition to a New Normal. The New Normal comes with expectations that government will address societal issues exacerbated by the COVID pandemic and increase investments to advance important public policy priorities of the Brookline community. The New Normal does not care that local governments have not traditionally been responsible for emergency housing, food security, mental health and maintenance of public housing. The lack of funding and/or failure of programs by the federal and state government, have left local government as the last resort for residents of our community. The federal ARPA grant provides a unique and unprecedented opportunity to address many of these fundamental issues. However, with a structural gap in the Town's budget that leaves a large shortfall for public education and other important public services or projects, the Town must develop a more strategic, long-term approach at meeting these needs once the federal dollars disappear. Use of periodic tax overrides and debt exclusions are essential tools for a residential community like Brookline in the Proposition 2½ era, but these must be carefully planned and communicated. The Town must always consider options to limit property tax increases, including use of locally generated revenue, expanding the commercial tax base, minimizing growth in ongoing expenditures and making more informed choices reflecting the community's priorities.

CONCLUSION AND RECOMMENDATION

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

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

The Board recommends FAVORABLE ACTION by a vote of 4-0 taken on April 26, 2022 on the motion offered by the Advisory Committee with the following amendments to table 1:

TABLE 1 ADJUSTMENTS			
	AC MOTION	SELECT BOARD MOTION	VARIANCE
Item 9 - Planning & Community Development	1,382,091	1,311,483	-70,608
Item 21 - School Department	125,098,883	125,118,282	19,399
Item 23 b. - Group Health	34,799,370	34,784,060	-15,310
Item 20 – Collective Bargaining	3,151,633	3,218,152	66,519

ROLL CALL VOTE:

Aye:	Absent:
Fernandez	Hamilton
Greene	
Aschkenasy	
VanScoyoc	

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

FREE CASH POLICIES

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

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

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

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

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

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

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

RESERVE POLICIES

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

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

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

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

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

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

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

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

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

CAPITAL IMPROVEMENT PROGRAM (CIP) POLICIES

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

Definition of a CIP Project

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

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

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

Evaluation of CIP Projects

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

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

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

The evaluation criteria shall include the following:

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

CIP Financing Policies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNFUNDED LIABILITIES POLICY

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

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

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

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

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

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

SCHOOL COMMITTEE STATEMENT

On April 27, 2022, the School Committee voted 8-0-1 to recommend passage of WA8. Voting in favor were Ms. Federspiel, Mr. Pearlman, Ms. Charlupski, Dr. Ehrenberg, Ms. Frias, Dr. Liu, Ms. Monopoli, and Ms. Nobrega. Ms. Ditkoff abstained.

The School Committee is supportive of the budget allocation as recommended by Town Staff which fully funds the PSB budget request, and which was voted favorably by the Select Board on April 26, 2022, and is grateful to the Town for its support of public education.
The School Committee is grateful to the PSB staff who have prepared and presented the FY23 PSB budget. FY23 budget documents and associated presentations are available at www.brookline.k12.ma.us/budget.

Because the budget materials can be complex, and in keeping with previous practice, PSB will provide an executive summary to Town Meeting Members in advance of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 8 as amended by a vote of 23-0-0. (The budget increased from the original proposal in the warrant due to additional revenue.)

The Advisory Committee has reviewed the proposed appropriations for FY2023 and is pleased to present this report to Town Meeting. Since February of 2022, the Committee and its subcommittees have conducted well-attended public hearings with the Town's department heads and the leadership of the Public Schools of Brookline. By a vote of 23-0-0 the Advisory Committee recommends FAVORABLE ACTION on the FY2023 budget. The full motion follows this report.

We thank all of the people who assisted in this year's process, including (but not limited to) the Select Board, Town Administrator, Deputy Town Administrator, Assistant Town Administrator, the Administrative Services Director, School Committee, and Town department heads. Particular thanks are extended to Deputy Town Administrator Melissa Goff and Assistant Town Administrator Justin Casanova-Davis for their time and patience in explaining the intricacies of municipal finance and their willingness to answer the Committee's many questions. Special thanks should be given to all of the citizens of Brookline who volunteer their time and effort to serve on committees or attend the countless hearings and meetings which are necessary for this planning.

DISCUSSION

The FY2023 main budget motion is $348,450,307. Written as a single figure, this is an almost incomprehensible number; this report attempts to deconstruct it into bite-sized chunks. Before diving in, let's consider the overall picture. As the Town Administrator indicated in his annual budget message, the COVID pandemic continues to inject some uncertainty into the Town's finances, affecting both projected revenue and expenses. This has been particularly visible in the planning for the School budget because the range of projected enrollment outcomes has been quite large. At the start of the pandemic there was a

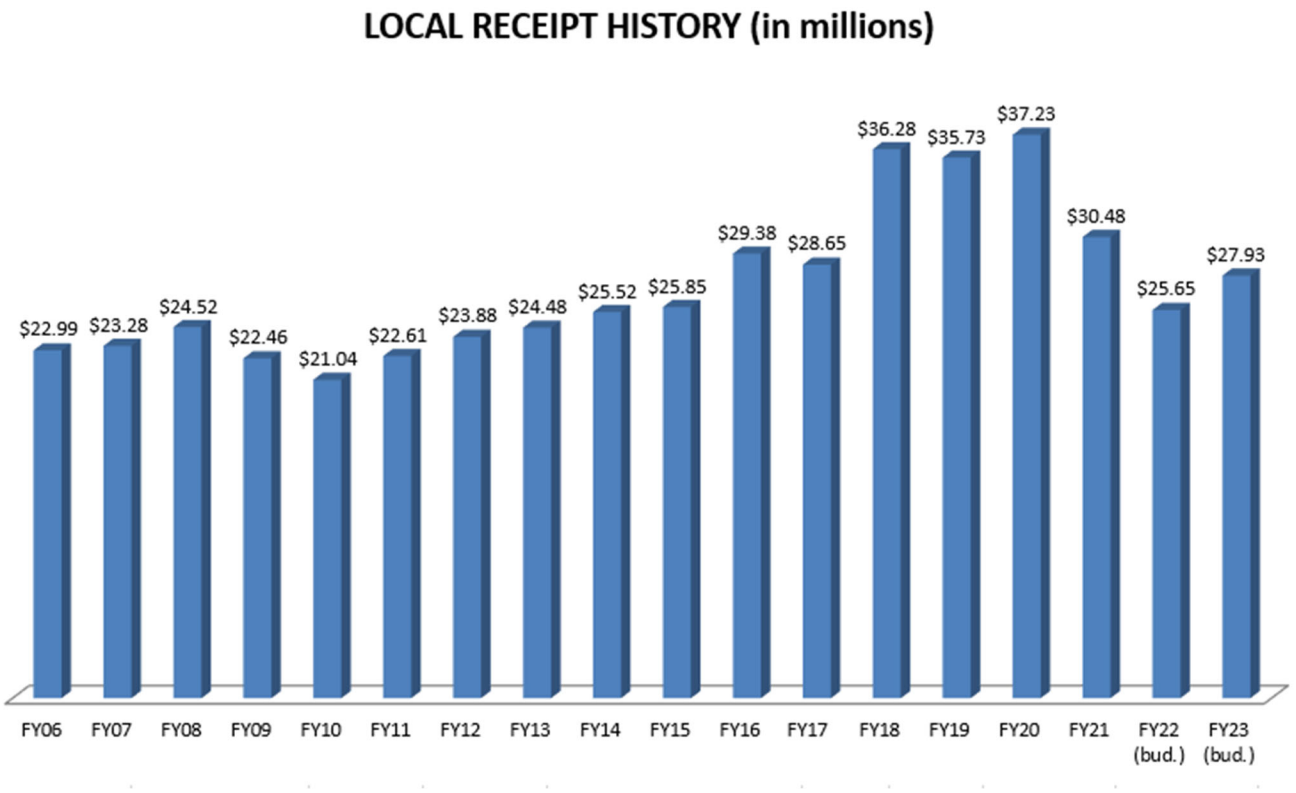
significant drop in enrollment due to the pandemic. The long term impact on enrollment is uncertain and the School department must plan for a range of outcomes.

The FY2023 budget restores many departmental budgets to pre-pandemic levels. However, as has been true in recent years, the overall growth in revenues continues to lag the growth in the Town's fixed costs, which constrains department budgets to remain effectively flat; there are limited new investments or services to be found in this overall budget. You often hear this referred to as a "structural deficit" and there will be more to say on this topic below. An infusion of relief funds from the American Rescue Plan Act (ARPA) has helped bridge this deficit for FY2023; as we shall see the outlook for future years is less sanguine.

Town staff should be commended for making all of this budget data available in interactive form online, and we recommend that all of you take the opportunity to explore it in detail. (Start on the Town's home page at https://brooklinema.gov/ and follow the navigation links to "Budget Central.")

Revenues

We project an approximately 10% increase in local receipts from FY2022, which is healthy, but leaves the Town $1M short of what was collected in local receipts as far back as FY2016 (and which represents a $10M shortfall from the peak in FY2020). Receipts appear to be rebounding and we can hope that as the pandemic wanes our local receipts will follow the pre-pandemic trend.



Property tax revenue is projected to grow by 3.3% to $281,218,963, reflecting the Proposition 2-1/2 growth cap of 2.5% along with a modest increase from new development. Overall property tax revenue in FY2023 also includes $20.5M of tax revenue tied to debt exclusions for school building projects including Florida Ruffin Ridley, Brookline High, and Driscoll.

Over time, the mix of revenue has shifted. In FY1997, property taxes represented 64.1% of revenue; in the current budget they represent 80%. New sources of revenue have materialized. Excise taxes on the sale of marijuana are expected to be $975K in FY2023. Although Host Community Agreement funds are budgeted at $1M in FY2023 but are expected to drop precipitously over the next few years. Without changes (at the State level) to excise taxes, funding for certain public health and equity programs is at risk.

Pre-pandemic the Town had planned an increase to parking meter rates that had been anticipated to raise over $750,000. This increase was deferred due to the pandemic and should be revisited once we settle on a "new normal" for parking, especially since some parking spaces have been eliminated due to the outdoor dining program and enforcement activity has declined.

A total of $14.2M in Free Cash has been certified. Free Cash is generated when the actual operating results compare favorably with the budget, such as when actual revenues exceed the original estimates and/or when actual expenditures are less than appropriated. It is also affected by increases or decreases in uncollected property taxes, non-General Fund deficit balances, and any other legally incurred operating deficits. In FY2023 the Town is appropriating $11,606,813 of Free Cash. This level of Free Cash has allowed the Town to address a decline in fund balance; meet policy requirements for the operating reserve, liability fund, and Capital Improvement Program; as well as provide funding for the Affordable Housing Trust Fund and additional Capital Improvement Program support.

Expenses

The full set of departmental allocations is broken out in the budget resolution; this report focuses on selected areas of interest. Of particular note are Public Safety, Building, Public Works, and the Schools. The tables below show the expenses for these departments over the last 6 budget cycles. As noted earlier, many departments have seen pandemic-related cuts reversed in the FY2023 budget. Some notable exceptions include training resources for the Human Resources Department, the intern program for Information Technology, outside counsel funds, and vehicle replacements for the Police Department.

	FY18 ACTUAL	FY19 ACTUAL	FY20 ACTUAL	FY21 BUDGET	FY22 BUDGET	FY23 BUDGET
Police	$16,151,311	$18,578,613	$17,742,983	$17,386,626	$17,493,030	$17,703,841
Fire	$15,070,184	$15,586,571	$16,105,142	$15,951,670	$16,481,472	$16,934,284
Building	$7,653,367	$5,511,493	$8,158,293	$8,831,246	$9,587,404	$10,237,173
Public Works	$16,336,101	$16,069,996	$16,360,644	$16,008,198	$16,668,234	$16,747,737
Schools	$105,196,458	$110,918,206	$116,978,533	$120,748,990	$119,870,476	$125,098,883

Selected Department Expenses Over Time

	FY18 ACTUAL	FY19 ACTUAL	FY20 ACTUAL	FY21 BUDGET	FY22 BUDGET	FY23 BUDGET
Police	9.1%	10.1%	9.2%	8.8%	8.8%	8.6%
Fire	8.5%	8.4%	8.3%	8.1%	8.3%	8.2%
Building	4.3%	3.0%	4.2%	4.5%	4.8%	5.0%
Public Works	2.3%	2.3%	2.2%	2.0%	2.1%	2.1%
Schools	59.2%	60.1%	60.5%	61.3%	60.3%	60.8%

Selected Department Expenses as a % of Departmental Expenditures Over Time

Schools. The largest single allocation in the budget is for the Public Schools of Brookline. The School Department's Budget is recommended to be funded at $125,098,883 in FY2023, representing an approximately 3.3% increase from the final FY2022 budget. This budget reflects the current allotment recommended by the Town-School Partnership process. The School Department will supplement this allocation via the use of remaining funds available to it from the Elementary and Secondary School Emergency Relief program, revenue from the Materials Fee program and revenue from the State's special education "circuit breaker" program. In addition, the School Department requested and was granted $3,000,000 in ARPA funds under the revenue replacement category and $500,000 (also under revenue replacement) to supplement funds allocated to the Building Department for repairs and maintenance of school facilities.

In FY2022, it was unclear whether the dramatic reduction in enrollment experienced in FY2021 as a result of the pandemic would continue or "bounce back" as the School Department moved away from the hybrid teaching approach adopted in FY2021. While there has been some increase in enrollment, the projections being relied on by the Department in FY2023 do not indicate a major increase in enrollment. Accordingly, the School Department has budgeted a reduction in K-8 sections. It is expected that the accompanying personnel reductions will be realized through natural attrition and resignations as opposed to layoffs. The table below shows that for the 2022-2023 school year, using 237 K-8 sections (down from the initial recommendation of 246), the number of children per classroom using the lower or midpoint enrollment estimate will range between 19.6 to 20.2,

which is equivalent to the pre-pandemic average of 20.2 and noticeably higher than the past

	ACTUAL				PROJECTED					
	19-20 (Oct)	**20-21 (Oct)**	**21-22 (Oct)**	**21-22 (Mar)**	**22-23 (Low)**	**22-23 (Mid)**	**22-23 (High)**	**22-23 (Low)**	**22-23 (Mid)**	**22-23 (High)**
PK	252	153	255	255	300	300	252	300	300	252
K-8	5442	4703	4587	4686	4641	4776	5484	4641	4776 (87.7% PP)	5484
9-12 & SP	2083	2035	2087	2072	2075	2171	2225	2075	2171	2225
Total	**7777**	**6891**	**6929**	**7013**	**7016**	**7247**	**7961**	**7016**	**7247**	**7961**
K-8 sections	270	270	258	258	246			237 (87.7% of PP)		
K-8 avg/sec (range)	**20.2** (14-26)	**17.4**	**17.8**	**18.2**	**18.9**	**19.4** (16-23)	**22.3**	**19.6**	**20.2** (18-25)	**23.1**

two years.
Finally, it should be noted that between the Elementary and Secondary School Emergency Relief program and ARPA, the School Department will be using $4M of one-time funds for permanent operating purposes. The Department similarly used $5M of one-time funds for operating purposes in FY2022. This approach cannot be sustained and if organic growth in revenue is insufficient, this approach will need to be addressed in FY2024 or FY2025 at the latest — either by reductions in expenses or an increase in taxes or some combination of both.

Police. The Police Department budget for FY2023 is $17,703,841, an increase of $210,811 from FY2022. Approximately half of the increase is for salaries; most of the rest is new vehicles and increased gasoline prices.

There are a number of budgetary issues that are not addressed by the published Financial Plan, most notably problems with staff recruiting, retention, inability of both the Brookline Police Union and Town to sign a new collective bargaining agreement, as well as low morale within the Department. There are a number of reasons for morale issues; most notably the increased use of forced overtime to fully staff shifts, the burden of which has fallen on the newest hires. It has not been uncommon for officers to work 16 hour shifts on a regular basis as often as 3 or 4 times per week. This has been addressed in the short term by reassigning specialty officers (e.g., detectives) to patrol duties, a solution which is more of a band-aid than a long-term strategy. Turnover has been high, exacerbating this problem. Since 2011, 26 officers have left the Department for other employment (the Department is budgeted for 135), with a majority leaving within the last 18 months. There are currently 19 Patrol Officer vacancies. (The Department currently has approval to hire 9; there are 4 in the Academy.)

The most recent collective bargaining agreement ended on June 30, 2020, and was itself a retroactive contract when approved by Town Meeting. Some of the costs of the next agreement will be needed for implementing more competitive salaries, as well as for body cameras, which is in collective bargaining negotiations. In addition, the implementation of body cameras has hardware and software costs, along with staff training and support costs. The Department has received quotes ranging from $550,000 to over $1M for the hardware and software costs alone.

Fire. The Fire Department budget for FY2023 is $16,934,284, an increase of $452,812 (2.7%) over FY2022. As with the Police Department, approximately half of the increase is salaries and the bulk of the remainder is budgeted capital (vehicles and equipment).

Necessary renovations to fire stations is in our future. The latest estimates for rebuild/renovations range from $50M (if the buildings are not renovated to have net-zero emissions) to $60M (if they are to be Net-Zero or Net Zero Ready). This is a 5-7 year rolling initiative that will require a debt exclusion for funding.

The Fire Department has not had trouble hiring qualified candidates; however because the Town does its own training of recruits, it must wait until there are a sufficient number of vacancies to fill to justify the expense of a training program. Chief Sullivan believes we could reduce costs by having recruits trained at the State academy, for which participation is free. By having recruits enter the State academy, the Department could fill vacancies as they arise, thereby reducing the need for overtime staffing for longtime vacancies. There are, however, waiting lists for the State training academy and there are some differences in the training. This topic merits further examination.

Building. The Building Department budget for FY2023 is $10,237,173. In the Advisory Committee's opinion, the original budget as presented did not include enough funds for building maintenance. Brookline has added a number of new buildings (most visibly the Ridley School and the new High School building on Cypress/Tappan) over the past few years. These buildings are notable for being "high-tech" buildings. This is great for our "Carbon Footprint" and the plans for these buildings were overwhelmingly approved by Town Meeting. However, sufficient funds for the additional maintenance required were not to be found in the budget. This has been addressed for FY2023 through the use of ARPA funds as well as adjustments within the School budget, but the availability of one-time funds cannot be relied on for future maintenance.

Public Works. The Department of Public Works (DPW) operating budget for FY2023 (excluding the Enterprise fund) is essentially level funded at $16,747,736 and represents a $79,501 increase (0.48%) over FY2022. Through the use of Host Community Agreement dollars and an outside grant, two new positions — a Waste Zero Program manager and an additional Transportation Engineer — have been added to DPW's headcount. Adjusting for Host Community Agreement expenses the actual year-over-year increase in the Department's budget is $289,022 (1.7%).

During the pandemic, the DPW workload increased significantly because of the increased use of public parks and other public spaces; increased litter and trash in parks and playgrounds; installation of outdoor dining spaces in the public way that required inspections for safety, compliance, and accessibility; increased cafeteria food and litter on school grounds as school lunch periods moved outdoors; and the DPW becoming, along with the Police Department, the de facto mask enforcement call center. The DPW staff, although understaffed and working with significant constraints, put in extra effort to maintain effective operations. This has led to understandable morale concerns and the diversion of effort to these high-priority needs delayed the delivery of capital projects in some cases.

Capital Improvement Plan

The 2022 Annual Town Meeting will be asked to vote on a Capital Improvement Program (CIP) for FY2023 that totals $24,090,653. Of that amount, $8,710,000 is financed by general bonds; $5,740,000 by utility bonds, $1,060,605 by state and federal grants, and $8,580,048 by revenue. Among the pressures on the CIP are the lease for 2 Clark Road (See #55, "Classroom Capacity") and the debt service on the $11 million settlement of the Gerald Alston case, which was financed with a 10-year bond incurring $1,395,234 in debt service in FY2023.

Details and explanations for the CIP requests the Advisory Committee recommends funding can be found later in this report.

Concerns

The FY2023 budget is a comprehensive plan to address the needs of the Town, but it is not without serious concerns that future budgets must take into account.

Staffing

Throughout the budget review process Advisory Committee members heard two common (and somewhat related) themes across the departments:

1. Hiring has become increasingly difficult. Certain positions requiring specialized skills (for example, maintenance of the newer HVAC systems) have been unable to be filled except through expensive contracting. This experience is not uncommon to those who work in certain segments of the private sector; salaries have increased dramatically in recent years and job switching is on the rise.
2. Total compensation (salary, benefits, vacation, etc.) is often not perceived as competitive. This is not true as a general rule for all departments (School salaries and benefits compare favorably with other communities), but the Advisory Committee has heard repeated concerns about the ability to hire and retain staff, exacerbated by the oft-heard complaint that it is increasingly difficult for Town employees to afford to live in Brookline. The Town has responded with (as mentioned earlier) a significant allocation to the Collective Bargaining Reserve and has contracted with the Collins Center for Public Management to initiate a salary study with a preliminary report expected in the next few months. The results from the study will inform future planning for pay and benefits. This is an issue which will merit review in future budgets.
   [1]

Maintenance

As noted above, the original budget did not include enough funds for building maintenance and we cannot rely on one-time funds for future maintenance needs. The Advisory Committee recommends that a new approach to building maintenance funding be considered, possibly involving the use of a stabilization fund dedicated to building maintenance with funds being directed to this stabilization fund via the debt exclusion for new construction. (In other words, a portion of the maintenance budget should be included and earmarked in the planning/costing for a new building.)

Similarly, the Department of Public Works' vehicle inventory is getting long in the tooth. Vehicles that have outlived their planned lifespan are still on the road because insufficient funds have been allocated for their replacement. Estimates show that over $10M in replacement costs for DPW vehicles will be necessary over the next 5 years.

Continuing this theme, the Transportation Mobility Plan commissioned by the Department of Public Works estimates the backlog of street repairs and maintenance to be $51.6M, $5.8M of which corresponds to 3.3 miles of roadways in need of major repairs. More importantly, this same analysis estimates that $5M per year is needed to maintain the roadway network at its current conditions (by way of comparison, the FY2023 budget allocates $2M for this purpose).

Pensions/Other Post-Employment Benefits (OPEBs)
The Town continues to follow its plan to shore up the Pension Fund and OPEB funding deficits. Based on current estimates, the Town remains on track to fully fund the Pension Fund by 2030, freeing up funds to direct to covering the OPEB liability. Despite these welcome steps, it is important to recognize that a significant liability (approximately $225M each) currently exists in each area. As a percentage of revenue, Brookline's unfunded pension liability is third highest among AAA-rated communities[1], while our unfunded OPEB liability is in the middle of the pack.

Debt
The Town has maintained its AAA bond rating, indicating that the rating agencies continue to trust our managing of our finances. Still, as of July 2021, the Town has amassed $472M in bonded debt, with necessary construction projects looming on the horizon. This debt corresponds to $7,473 per capita and represents 136% of annual revenue. Among the 13 AAA-rated communities, this is higher than all but Belmont and Nantucket. (By way of comparison, Newton's debt represents 65% of its annual revenue.)

Increased demand for services
At every Town Meeting there are Warrant Articles submitted which intend to alter behavior. There is often considerable support for these Articles, as they regularly reflect the desires and values of the community. To cite some examples, over the past several cycles we have debated proposals that:

- asked for increased enforcement for snow removal
- asked for increased enforcement for leaf blower complaints
- asked for additional permitting and enforcement for short-term rentals
- asked for increased enforcement for shrubbery clearing (sidewalk safety)
- called for increases to sustainability planning
- called for comprehensive long-term planning
- asked for more databases to be maintained by the Town Clerk and IT Departments
- asked for more frequent updating of the web site to improve Open Meeting Law compliance

It is uncommon for these well-intentioned and important articles to identify funding sources. Typically, we ask departments to "make do" by shuffling around resources and responding to the highest priority needs. Of course we want the departments to be responsible and responsive, and they are excellent at adjusting their priorities on the fly. But we can not

[1] excluding Boston and Cambridge

continue to add new responsibilities year over year without adding staff or other resources. (See below under "structural liabilities" for more on this topic.) For this budget cycle, the Advisory Committee's budget includes an additional FTE for the Planning Department to respond to calls from Town Meeting for extra attention to be paid to long-term planning. Additionally, the budget review process identified allocated but as-yet-expended funds that could be shifted for this purpose which became the germ for Warrant Article 10 in this Warrant ("funding for the comprehensive planning efforts recommended by Town Meeting in November 2021").

The Advisory Committee endeavors to make reasonable estimates as to the financial implications of Warrant Articles and include those estimates in its reports.

Climate Change

Many of you would surely argue that addressing the ongoing effects of climate change along with effecting changes to minimize future harms are the defining crisis of our age. This is borne out in our Warrants over recent years. Brookline has, admirably, been a leader in this area and we can expect more such initiatives. These initiatives have a cost. As we saw with the renovations to fire stations, the short-term costs could be affected by as much as $10M if we choose the "greener" options. Similarly, our new school buildings are more environmentally friendly but have higher maintenance costs. If the Town is to continue to be a leader in addressing the climate crisis, funds must be found for this purpose.

Structural liabilities

Even without all of the above concerns, the Town faces additional headwinds.

To quote from last year's Advisory Committee budget report:

> *"Even in these times of low inflation, our overall costs rise by 5 to 6%, driven largely by salary increases related to steps in grade and seniority. And our revenue before overrides increases by 3 to 4%, held in check by Proposition 2-1/2. This creates a recurring structural budget deficit."*

To quote from the Town Administrator's FY2023 budget forum:

> *"Everyone has a stake in every penny so when you try to reallocate funding from a budget … of course you're going to get a lot of resistance. Zero-based budgeting in a zero sum game is not a practical approach."* [2]

Or to quote from almost anyone reading this report in calendar year 2022:

> *"Holy cow! Can you believe the price of gas?"*

We do not know the results of collective bargaining, but we can reasonably anticipate that the documented spike in inflation in 2021-2022 will place additional pressures on the budget. The Advisory Committee budget allocates $3,151,633 to the Collective Bargaining Reserve, more than twice what was allocated in FY2022 and 5.7% higher than what was proposed at the start of the budgeting process.

It is important to keep in mind that, absent the fortuitous and unlikely appearance of one-time funds, there are only three primary levers available to address the ongoing structural problems:

- Increase the commercial tax base through new construction and new businesses
- Increase residential real estate taxes via overrides, continuing a trend we have employed for more than 20 years
- Cut or reallocate funding

Taking each of these in turn:

Increase the commercial tax base. Like everything else, commercial revenues took a hit due to the pandemic. The Town responded admirably to the requests from the business community, delaying the rate hike for the parking meters, facilitating outdoor dining opportunities during the pandemic and subsequently laying the groundwork to expand them into an ongoing, regular, licensed program, awarding Small Business Relief Grants, and publishing a Diversity and Inclusion Business Directory.
Before the pandemic began, in December, 2019, the Town made it easier for new businesses to open by eliminating the variety of parking requirements for most businesses near transit stations. A nail salon, for example, that wanted to open where there used to be a carpentry repair shop would no longer need to go through a 3-6 month special permitting process to ask for permission to not build a parking lot on their property (a relief when in most cases they had no such room to begin with). Are we continuing to do enough to attract and keep businesses, both from the perspective of encouraging development through zoning or other changes (to increase commercial tax revenue) and from the perspective of listening to the needs of the businesses that are here (to preserve or increase revenues collected from those businesses, as well as to keep our commercial areas vibrant and appealing)? It is worth noting that even under the most optimistic scenarios, commercial development can not be the sole solution to the Town's structural deficit.

Increase residential real estate taxes via overrides. This is our traditional approach and it is likely we will see a push for this in the coming months. The taxpayers may be convinced to increase the levy but it becomes increasingly likely that there will come a day when an override or debt exclusion will fail, and we must keep in mind there remain additional major projects (Pierce School renovation and fire station rehabilitations) to come.

Cut or reallocate funding. We all know this is hard. The argument is repeatedly made that some citizen in the town receives a benefit from every dollar we spend and can be expected to notice if that dollar is no longer available. This is no excuse for avoiding the hard work of defining priorities. Society changes and the relative priorities of departmental needs must vary over time. We should expect to see this reflected in our budgets.

RECOMMENDATIONS FOR CAPITAL IMPROVEMENT PROGRAM

The Town's Capital Improvement Program (CIP) policies define a CIP Project as follows:

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

- Construction of new buildings
- Major renovation of or additions to existing buildings
- Land acquisition or major land improvements
- Street reconstruction and resurfacing
- Sanitary sewer and storm drain construction and rehabilitation
- Water system construction and rehabilitation
- Major equipment acquisition and refurbishment
- Planning, feasibility studies, and design for potential capital projects

Criteria to evaluate CIP proposals include the following:

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

The Advisory Committee recommends funding the following FY 2023 CIP requests.

37. POLICE/FIRE RADIO INFRASTRUCTURE
Recommendation: $900,000 (Revenue Financed)

The Police Department's FY 23 CIP request for $900,000 represents the fourth annual payment of a five-year lease/purchase agreement with Motorola for upgrading police and fire radio channel infrastructure. The upgrade program began three years ago when the system's copper circuit connections could no longer be supported by Verizon and replacement parts were no longer available for the 25-year-old equipment. The new system and equipment has a life expectancy of 12-15 years.

The upgrading process, although slowed down by the pandemic with scheduling delays and delays in the arrival of equipment, is in the "home stretch." The department has been waiting for the arrival of three more components but expects the three channels – two for Police and one for Fire - to go live in the near future.

38. PUBLIC SAFETY BUILDING LOCKER ROOM IMPROVEMENTS
Recommendation: $450,000 (Revenue Financed)

The Police Department is located within the Public Safety Headquarters at 350 Washington Street in Brookline. Renovated over twenty years ago, portions of the facility need updating. This CIP request calls for the expansion and enhancement of locker room facilities via the reconfiguration of existing spaces to respond to the increased number of female patrol officers and female supervisors. Currently 13% (14 individuals) of the 135 officers are female; the number of supervisory positions has increased during the past 20+ years from one to three.

At present the locker room area, consisting of toilets, showers, changing space, and 20 lockers, is shared by officers, supervisors, and 12 female public safety dispatchers and is already inadequate. Further, if the Department is to consider diversifying its force in accordance with the guidelines of the National Association of Women Law Enforcement Executives, then there is even more need for additional lockers, toilets and showers as well as commensurate changing areas for patrol officers and for supervisors. A separate space to accommodate nursing mothers is also being requested since there is currently no separate nursing area in the Public Safety building, which is a violation of a law passed in 2018. In addition to the legal requirement of providing a nursing area, the lack of such a facility could be a barrier to women coming back to work after maternity leave.

Current plans call for additional square footage to be gained by using the current training room since new technology enables mobile training to take place in the Community Room on the first floor of the building. At present the Community Room is used by the public during the early weekday hours and on weekends. Sometimes training takes place in the evening but it is expected that such sessions would be scheduled around the times that members of the public are using the room.

The $450,000 request is based on draft plans; most of the work will consist of plumbing, along with opening a number of walls, adding more lockers, toilets, sinks, and showers, and installing

doors. Funds will also be used to upgrade fixtures in the locker room for male supervisors.

39. TRAFFIC CALMING / SAFETY IMPROVEMENTS
Recommendation: $560,000 (Revenue Financed)

As of September 14, 2021, the Town had a list of 20 Traffic Calming projects that had been submitted to the Engineering and Transportation Division for review and prioritization. An updated list may be found here: https://www.brooklinema.gov/DocumentCenter/View/489/Current-Traffic-Calming-Project-Status-Report-PDF.

Assuming Town Meeting's approval, adding another engineer to the staff of the Transportation Division as of July 1, 2022, will accelerate the schedule of implementing Traffic Calming and other safety improvements. Larger amounts of funding for these purposes are projected for future years, with the average funding request, currently $50,000, growing to one of $150,000.

FY 23 CIP funding for the following two projects has been requested and is recommended by the Advisory Committee.

Beverly Road Safety Improvement Plan
This project is the result of a Traffic Calming application submitted by Beverly Road residents with the support of the principal of the Baker School, the Baker Safe Routes to School Parent leaders, and other members of the community. The plan focuses primarily on improving pedestrian, cyclist, micro-mobility, and motorist safety at three intersections and within the Baker School Zone along Beverly Road.

Carlton Street at Colchester Street Safety Improvement Plan
The Carlton/Colchester Streets Safety Improvement Plan, based on input from Walk Boston, the Brookline Bicycle & Pedestrian Advisory Committees, and neighborhood residents, is a requirement of the Massachusetts Department of Transportation. It will improve access for pedestrians and bicyclists to the Carlton Street footbridge via installation of a raised intersection with crosswalk, raised crosswalk signs and pavement markings, bicycle ramp, and rapid flash beacons. The Carlton Street footbridge connects the Cottage Farm and Longwood neighborhoods to the paths and parks of the Emerald Necklace and the restoration of this historic connection was a condition of the federally funded Muddy River Restoration project.

40. BICYCLE ACCESS IMPROVEMENTS
Recommendation: $472,000 (Revenue Financed)

Projects funded through this appropriation originate from plans for a larger Green Routes Bicycle Network. The Network seeks to avoid circuitous routes that discourage cycling. As much as possible, its routes minimize traffic stress, avoid hills, are esthetically pleasant, and minimize stops. It incorporates routes that cyclists prefer since there is no benefit to designating routes that bicyclists won't follow. Funding supports the painting of existing and new bike lanes and sharrows, replacement and installation of protective bollards and designated signage, and the installation of curb extensions and protected bike lanes.

FY 23 funds will be used to support Brookline Avenue Multi-Modal Improvements, which are based on the Transportation Board's approved Green Routes Master Network Bike Plan, the Select Board's Emerald Necklace Crossings Committee Final Report, and the Town's Complete Streets Policy.

Brookline Avenue is an important multi-modal corridor for the Town and the Greater Boston region acting as the main access route to the Longwood Medical Area (LMA) from portions of Brookline as well as from the suburban communities to the west of Boston. Important users include MBTA Route 60 and 65 bus riders. In addition Brookline Avenue provides important connections for the Emerald Necklace multi-modal path system used by pedestrians and by cyclists for both commuting and recreational purposes.

The proposed project, will improve pedestrian, bicycle, micro-mobility, public transit, and emergency vehicle access to and through the Brookline Avenue corridor between Washington Street and the Brookline/Boston boundary. Specific components include:

1. A northbound shared Bus/Bike/Emergency Vehicle travel lane
2. Two northbound general purpose travel lanes
3. A southbound general purpose travel lane
4. A southbound shared Bus/Bike/Emergency Vehicle travel lane
5. Upgrading of the Brookline and Aspinwall Avenue intersection to current ADA standards, with improved bicycle accommodations including bike walks and left turn queue boxes
6. Relocation of the southbound Route 60 and 65 bus stop at Aspinwall Avenue to the far side of the intersection in accordance with MBTA preferred bus stop guidelines
7. A new protected two-way, street level cycle track providing the missing connections in the Emerald Necklace bicycle and micro-mobility paths along the Muddy River.

41. PARKING METER TECHNOLOGY UPGRADE
Recommendation: $188,000 (Revenue Financed)

The FY 23 request for Parking Meter Upgrades represents the final installment of funds to replace coin-only single head parking meter mechanisms with "Smart Meters" that accept credit cards and can be both monitored remotely to determine if the meter is operating and changed remotely for hours of operation and meter rates.

The increase in the cost of the meters grew significantly (70%) from last year's projections because of the inclusion of 5G technology and the overall cost of materials and production.

42. ACCESSIBLE PEDESTRIAN SIGNAL CONVERSION
Recommendation: $50,000 (Revenue Financed)

Accessible Pedestrian Signals (APS), include pedestrian pushbuttons and countdown timers. They communicate information in non-visual formats to all pedestrians, including those who are vision-impaired, and play an important role in the safe navigation of signalized

intersections by locating the crossing location, activating the pedestrian push buttons, and informing pedestrians when crossing the street is safe.

With the approval of FY 23 CIP funds, the APS installation project will be completed in three, as opposed to the previously projected five, years, thanks to both the allocation of CDBG funds and competitive pricing for the needed equipment.

43. STREET REHABILITATION – TOWN
Recommendation - $1,888,000 (Revenue Financed)

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

With the approval of the 2008 Operating Override, an additional $750,000 was added to the CIP for streets and sidewalks ($700,000 for streets and $50,000 for sidewalks), along with an annual 2.5% increase in the CIP appropriation associated with this work.

In 2018 Stantec updated the Town's Pavement Management Program, noting that the $18.5 million backlog of Street Maintenance work in 2014 had increased to a $23.5 million backlog, that the PCI rating (Pavement Condition Index) was 73 and that the annual appropriation needed to keep the Town's public ways in good condition was $3 million.

In July 2021 Beta Engineering published a report on the Town's public ways based on survey work undertaken in Spring 2020. The report noted that the average PCI rating had dropped to 70.80, that the current backlog had increased to $53.9 million and that the annual appropriation needed to maintain streets and roads in good condition had increased to $5 million.

To put those recommended funding amounts in context, the appropriations for Street Rehabilitation in FY 20-FY22 were $1,750,000, $2,549,916 and $2,072,224 respectively.

Going forward, Street Rehabilitation projects will be looked at through the lens of Complete Streets and will include traffic volume data, traffic counts, vehicular speed, crash summaries, pedestrian reports, sidewalk conditions, the Green Routes Master Plan for bicycle access, Safe Routes to School, traffic signals, accessibility ramps, and traffic calming. This is a far more comprehensive approach than has been used in the past and will involve more process and greater community input. It is also an approach that will cost more in time and in dollars and presents even greater justification for significantly increasing the annual appropriations for the Street Rehabilitation Program.

Streets prioritized for rehab work in FY 23 include all or portions of Washington Street, Summit Avenue, Jordan Road, Allandale Street, Greenough Road, Tappan Street, Davis Avenue, and Woodland Road. Streets under review include all or portions of Warren Street,

Walnut Street, Heath Street, Chestnut Street, Short Street, Kenwood Street, Russell Street, Arlington Road, and Kensington Circle.

44. SIDEWALK REPAIR
Recommendation: $353,000 (Revenue Financed)

Sidewalk Repair funds are directed to sidewalks that are not reconstructed as part of a larger street rehabilitation or major repair project. As noted above, the 2008 Override included $50,000 for sidewalk repair, to be increased annually by 2.5%. Small sections of sidewalks are repaired by the crews of the Highway Division of the DPW, and some of the CIP appropriation is used to purchase materials for this purpose. Most of the CIP funds, however, are used to pay outside contractors to repair long stretches of sidewalks in the Town.

(For those who may be interested, the portion of the sidewalk near Town Hall that was repaired with low carbon concrete last fall is holding up well.)

45. WASHINGTON ST. REHAB – COMPLETE STREETS PROJECT
Recommendation - $700,000 (Revenue Financed)

Funding for this project supports survey, design, engineering, analysis, and project management services necessary to support the Town in obtaining Federal and/or State funding for the rehabilitation of 1.3 miles of Washington Street and associated intersections from Station Street (Brookline Village) northerly up to and including its intersection with Beacon Street (Washington Square). The estimated construction cost for the project is $28.2 million. The Town's share is currently estimated at approximately $6 million spread over several years and supports preliminary design, public participation, right of way approvals, engineering bid documents, construction oversight, project management, funding assistance, implementation, and Town preferred betterments.

Washington Street is currently constrained with a relatively narrow right-of-way with two lanes of traffic, on-street parking in both directions, bicycling, public transit via the Route 65 Bus, and significant volumes of pedestrians. It serves as an important connection between Route 9/Boylston Street and Beacon Street, is utilized by high volumes of drivers, pedestrians, and bicyclists, and provides access to three commercial districts, Public Safety facilities, the County Court House, and other Town government services including the Public Library and Town Hall. The roadway and the sidewalks are in poor condition and in need of replacement.

The project includes improving safety and operations along the corridor for drivers, bicyclists, pedestrians, and transit users. Successful completion of the project will improve safety, provide efficient traffic operations and enhancements, expand sidewalk/streetscape, and utilize healthy transportation concepts.

While plans for a Complete Streets approach for Washington Street have proceeded, the street's condition in various locations has continued to deteriorate so measures such as crack sealing to address water infiltration have taken place and bonded wearing course treatment

along with restriping will be undertaken to increase the visibility of bike lanes and safe crossings

46. PARKS AND PLAYGROUNDS REHABILITATION & UPGRADE
Recommendation: $200,000 (Revenue Financed)

This annual, town-wide program directs CIP funds to the repair and replacement of unsafe and deteriorating features in park, playground and athletic field facilities. Items funded with these dollars include fences, gates, backstops, retaining walls, picnic furniture, turf restoration, infield refurbishment, bench replacements, play structures, safety surfacing, and drainage improvements. The expenditure of these funds is intended to avoid more expensive rehabilitation that would be necessary if these items were left to deteriorate.

Due to pressures on the FY 23 CIP, funds for this "bucket" have decreased (by 23%), which increases the possibility that instances of disrepair in the Town's parks, playgrounds, and athletic fields will go unaddressed.

47. TOWN/SCHOOL GROUNDS REHAB
Recommendation: $90,000 (Revenue Financed)

Town and School grounds require on-going structural improvements and repair. These funds are intended to support attractive and functional landscapes and hardscape improvements including plant installation, regrading, reseeding, tree work, repair to concrete or asphalt walkways through the site, trash receptacles, bike racks, drainage improvements, retaining walls, and repairs to stairs, treads, railings, benches, or other exterior structures. This funding does not include capital replacement of areas over building structures or directly connected to the buildings, such as entrance stairways and ramps into the building, which are under the Building Department's jurisdiction.

Like the Parks and Playgrounds Rehabilitation "bucket," this program's objective is to avoid the more expensive rehabilitation that would be necessary if these items were left to deteriorate.

Due to pressures on the FY 23 CIP, funds for this program have decreased (by 45%), thus increasing the possibility of unmet needs for replacements and repairs.

48. TREE REMOVAL AND REPLACEMENT / URBAN FORESTRY MANAGEMENT
Recommendation: $350,000 ($50,000 in reappropriated funds added to the originally $300,000 appropriation) (Revenue Financed)

The tree removal and replacement program represents the Town's effort to balance street tree removals with plantings. Storm damage, disease, and old age continue to reduce tree canopies. Funds in this program will be utilized to remove hazard trees and provide structural, health, and safety pruning to prolong the life and viability of our significant trees. New trees will be planted in anticipation of the ultimate loss of existing mature trees. Such new plantings are critical, as they directly impact the tree-lined character of the community, improve stormwater

quality, provide oxygen, reduce heat impact in the summer, and improve the overall quality of life in Brookline.

Also included in the requested annual appropriation is funding for Urban Forest Management to address a range of significant improvements needed, such as tree removals, crown thinning, soil amendments, woodland canopy gap management, invasives removal, pest management, health and structural pruning, and planting throughout the Town's parks and open spaces.

It should be noted that the Division of Parks and Open Space has released is Urban Forest Climate Resiliency Master Plan Report (https://www.brooklinema.gov/DocumentCenter/View/25153/Brookline-Urban-Forest-Climate-Resiliency-Master-Plan-Report-June-2021), which includes an assessment of the health and condition of the Town's street trees, an analysis of the entire urban forest, and a 10-year action plan outlining goals and recommendations to enhance the resiliency of Brookline's urban tree canopy. Given the age and the condition of that tree canopy, as well as increasing costs, it will be critical to increase funding for this program in future years. The Advisory Committee increased the original $300,000 in FY 23 funds by $50,000 in response to this critical need.

49. SCHOOL FURNITURE
Recommendation: $25,000 (Revenue Financed)

Funds in this program are used to replace school furniture, which absorbs significant wear and tear through daily use. Funds may also be used to respond to the occasional special request from a PSB teacher.

50. UNDERGROUND FUEL TANK REMOVAL
Recommendation: $50,000 (Revenue Financed)

These funds are used to remove double-wall carbon steel fiberglass underground fuel tanks. Although they come with a 30-year warranty and are tested annually, the tanks are approaching the 20-25 year-old mark. Among the older tanks in this category is one for the Lawrence School. The one for the library is another candidate.

The tanks are filled with approximately 1000 gallons of fuel oil, which keeps them from floating. In past years, $50,000 would have been sufficient to remove two tanks, but given the current budget environment, this amount may be sufficient for only one tank removal. Once the underground tanks have been removed, they are replaced with smaller ones (275 gallons) located inside the building.

There are 26 tanks at various school and town sites. Existing boilers are set up for dual fuel and until such time as buildings are fossil fuel free, oil is considered to be a backup for natural gas for heat.

51. TOWN/SCHOOL BUILDING - ADA RENOVATIONS
Recommendation: $85,000 (Revenue Financed)

Funds in this account are used to bring Town and School buildings into compliance with the Americans with Disabilities Act (ADA). Some of the dollars are used to install features such as handrails, ramps, and specific devices including automatic door openers, ADA compliant sink faucets, and electronic toilet flushometers. Other funds are reserved to respond to specific requests for accommodation that are made to the Building Department throughout the year.

52. TOWN/SCHOOL BUILDING - ENERGY CONSERVATION
Recommendation: $100,000 (Revenue Financed)

This appropriation is used to decrease energy consumption in Town and School buildings. Programs include, but are not limited to, lighting retrofit and controls, energy efficient motors, insulation, and heating and cooling equipment. Another investment has been with variable frequency drives (VFDs). VFDs control the speed of motors for pumps and fans. They reduce the speed of the motor in response to inputs from the energy management system based on the needs of the space.

The program supplements existing gas and electric utility conservation programs. On average the Town receives between $50,000 and $100,00 in rebates annually from utility companies. A recent program (February 2022) offers a $3000 rebate for the replacement or installation of heat pumps.

53. TOWN/SCHOOL BUILDING - ENERGY MANAGEMENT SYSTEM
Recommendation: $100,000 (Revenue Financed)

This appropriation is used to upgrade the Johnson Controls equipment that runs the energy management systems in Town and School buildings. Funds will be spent on updating software, hardware, and wiring. The Building Department will continue to work with the Information Technology Department on these projects.

54. TOWN/SCHOOL BUILDING - SECURITY/LIFE SAFETY SYSTEMS
Recommendation: $250,000 (Revenue Financed)

Funds in this program are used for security improvements in Town and School buildings and for upgrading fire alarm systems, sprinkler systems, emergency lighting, and egress signs. Funds in FY 23 will be used for the inspection and repair of plaster ceilings, additional keycard readers, upgrades for keycard software, town building camera upgrades, interior cameras for school buildings, and the installation or replacement of such security measures as locks, doors, and frames.

55. CLASSROOM CAPACITY
Recommendation $1,827,048 (Revenue Financed)

In response to the need for additional space to accommodate growing school enrollment and before the expansion/rebuild of several K-8 school buildings, a "Classroom Capacity" account was created and supported with CIP dollars. Initially used to repurpose existing space and to add modular units via lease-purchase arrangements, more recently Classroom Capacity funds have been used to lease not only classroom space for the Brookline Early Education Program (BEEP) but also office space for School administrators and support staff.

Currently, Classroom Capacity funds are used to lease space at Temple Ohabei Shalom, Temple Emeth, and 2 Clark Road, a property owned by the Maimonides School. All three locations house BEEP classes, but in the case of 2 Clark Road, while seven classrooms are used by BEEP, the remaining classrooms have been converted into administrative offices for curriculum directors and for SPED, Steps to Success, and School Operations support staff, all of whom total approximately 40 people.

-- Temple Emeth: In FY 23, leasing six classrooms at Temple Emeth in South Brookline will cost $299,276, with an additional $51,970 for operating costs including custodial services and utilities. The lease for this space runs through FY 25, but can be extended to FY 29.

-- Temple Ohabei Shalom: In FY 23, leasing five classrooms at Temple Ohabei Shalom on Beacon Street, east of Coolidge Corner, will cost $220,802. Access to these classrooms is limited to specific times. The lease expires July 31, 2023, but can be extended to July 31, 2030.

-- 2 Clark Road: In FY 23 leasing the entire building at 2 Clark Road will cost $1,190,000, plus $134,000, the cost of utilities carried in the Building Department's budget, and $41,000, the cost of landscape maintenance and snow plowing, carried in the DPW budget. The lease for this property runs until July 31, 2024, with an option to extend for one year. A back-of-the-envelope estimate attributes approximately $680,000 of the total for administrative space and approximately $510,000 for BEEP.

The total cost of the leases for all 3 spaces from FY 22- FY 27 is $9,671,584.

There was an extensive discussion at the Advisory Committee Capital Subcommittee hearing regarding 1) the continued use of CIP funds for rent; 2) the School Department's timeline for moving all educational programs and administrative staff back onto school campuses or into other Town-owned properties; and 3) options to pursue in the interim.

There is currently considerable pressure on the CIP, to the point that there are insufficient dollars to maintain and therefore prolong the lifespan of the significant investments that have been made in Town and School buildings and in public parks and playgrounds. There are also insufficient funds to address Climate Change and support Climate Change mitigation to the degree warranted.

For these reasons and understanding the need to have sufficient time to execute an alternative plan, the Advisory Committee, through its Capital Subcommittee, has requested that by February 2023, with the release of the FY 24 CIP, the School Department will have prepared a plan that identifies steps to reduce reliance on CIP funds for leased spaces, including the

specific goal of reducing the use of leased buildings for administrative space. Such measures could include 1) reducing the number of offices needed by creating shared office space, particularly for School staff members who spend much of their working day outside of their offices; 2) developing hybrid work models that include working from home as well as working from an office; 3) using current excess space on K-8 campuses resulting from current lower student enrollment; and 4) exploring the Baldwin School and the Town-owned property on the former Newbury College campus for office space, with the understanding that particularly in the case of the Newbury property, such office use might very well be temporary.

Regarding classroom space, the opening of the new Driscoll School, a rebuilt or reconfigured Pierce School (assuming a successful debt exclusion ballot question), and an ADA-compliant and upgraded Baldwin School should be able to accommodate the BEEP classes that are now in leased spaces, although it is not entirely clear that Baldwin would be the best location for South Brookline BEEP families.

Because of the other unmet demands on the CIP and because of the Town's published CIP policy, the School Department has been asked to develop a plan to eliminate reliance on the CIP for leased space, particularly administrative space, by the beginning of FY 24, with any further leasing of such space after FY23 to be funded from the Department's operating budget.

56. ENGINE #1 REPLACEMENT
Recommendation: $725,000 (General Fund Bond)

Town Policy calls for the replacement of front-line fire engines every 17 years and their rehabilitation every 10 years. It also calls for the replacement of front-line ladder trucks every 20 years and their rehabilitation every 12 years. This schedule is aligned with guidelines from the National Fire Protection Association.

Engine 1 was purchased in 2006; it is due to be replaced in FY 23 at an estimated cost of $725,000. Delivery of the new engine will be about one year after the order is placed.

The current Engine 1 will become a reserve engine, meaning that it will be used when front line equipment is taken out of service for unanticipated repairs, scheduled maintenance, or warranty work. One reserve engine is used for training at Station 6. The department keeps an average of three engines in reserve, housing them at Stations 4, 5, and 6. Currently there are four. Once a reserve engine reaches the end of its useful life, it is auctioned off for scrap or purchased by a private collector. All proceeds are deposited in the General Fund.

The replacement for Engine 1 will have a streamlined design that will make negotiating Brookline streets and Brookline traffic easier and more efficient. No problems are anticipated in being able to accommodate it in terms of its dimensions or weight in any of the stations.

Electric fire engines are currently undergoing beta testing in the Midwest and the Fire Department will track their performance. In the near future the Department is likely to purchase hybrid before transitioning to electric vehicles for staff and Fire Prevention. The current lack of infrastructure needed to support electric vehicles presents one barrier to their purchase now.

58. STORMWATER IMPROVEMENTS & PERMIT COMPLIANCE
Recommendation: $600,000 (Utility Bond)

The EPA's Stormwater Phase II Rule establishes an MS4 stormwater management program that is intended to improve the Town's waterways by improving the quality of the water that is discharged through Brookline drains. This is undertaken by reducing the quantity of pollutants that stormwater picks up on the roads and carries into storm sewer systems during storm events.

59. WATER SYSTEM IMPROVEMENTS
Recommendation: $2,000,000 (Utility Bond)

The Water Distribution System Capital Improvement Program completed in 2019 focused on redundancy, fire flow enhancement, reliability and break history. Water System Improvements funding will be directed to design and to construction projects that meet the objectives of the 2019 report. Some of these funds will also be used on pipeline projects and upgrading meters, a number of which are reaching the end of their useful life.

60. WASTEWATER SYSTEM IMPROVEMENTS
Recommendation: $3,000,000 (Utility Bond)

This on-going project provides funding for the rehabilitation of the wastewater collection system (sanitary sewer). Rehabilitation was based on the recommendations of the Wastewater Master Plan completed in 1999. Previous construction projects to correct sewer system deficiencies targeted: 1) structural improvements, 2) sewer and storm drain separation and 3) hydraulic capacity restoration. Moving forward, the primary focus will be on the reduction of inflow and infiltration, essentially keeping clear water out of the sewer system, thus eliminating its unnecessary and costly treatment. Funding for this project should ultimately enhance the efficiency of the wastewater collection system and help to lower MWRA wholesale costs. This project is supported by an MWRA grant and interest-free loan program.

61. FUEL SYSTEM EQUIPMENT UPGRADE
Recommendation: $140,000 (Utility Bond)

CIP funds will be used to remove and replace an underground fuel tank at the Water & Sewer Garage, 44 Netherlands Road.

62. SKYLINE PARK SYNTHETIC TURF REPLACEMENT AND PARK IMPROVEMENTS
Recommendation: $3,210,000 (Bond)

The synthetic turf carpet at Skyline Field was installed in 2008 and based on age, use, and a recent surface hardness impact test for safety, should be replaced. (Synthetic turf fields generally have a life cycle of approximately 10-12 years.) Current plans call for the existing carpet and synthetic rubber infill to be removed and recycled, the drainage layer/sub-base laser graded, and new carpet and natural material infill installed. This project also calls for the planting of 25 trees and pruning of existing trees, pathway surfacing, new drainage structure and curbing, chain link fencing around bicycle storage, and a new comfort station with storage room. If funds are approved, the design review process will start in FY 23, with construction following in FY 24.

63. WILLOW POND ENVIRONMENTAL RESTORATION
Recommendation: $2,800,000 (Bond)

Willow Pond is a 0.6-acre pond located on the Brookline/Jamaica Plain border. It is part of the Olmsted Park portion of the Emerald Necklace. Water inputs into Willow Pond include one tributary originating from Ward's Pond (from the south), one tributary from Spring Pond (from the east) and stormwater from the Chestnut Street drain which outfalls near the Ward Pond inlet.

The pond was dredged in 1963 to remove excess sediment build-up. Since 1963, sediment from the three above-mentioned sources has gradually accumulated to a point where the pond's historic capacity has been reduced. In addition, Willow Pond is part of a larger Mass Department of Environmental Protection Disposal Site as regulated under the Massachusetts Contingency Plan (MCP), due to historic releases of petroleum from drainage discharges to the Pond impacting pond sediments. A portion of the overall site has achieved regulatory closure under the MCP; the remediation of the pond itself remains the last step required to complete regulatory closure

The Town of Brookline retained Weston & Sampson Engineers, Inc. to develop a Dredging Feasibility Study for Willow Pond. The FY 23 request for $2,800,000 for dredging and other environmental restoration work is based on the feasibility study. These funds will also be used for the shoreline stabilization and restoration around Willow Pond as well as Leverett Pond, work that was not included in the federally funded Muddy River Restoration Project.

64. TOWN/SCHOOL BUILDING - ROOF REPAIR/REPLACEMENT PROGRAM
Recommendation: $650,000 (Bond)

A master plan prepared by a consultant for the repair and replacement of roofs on all Town and School buildings includes an evaluation of roof conditions, estimates for repair and replacement, a repair/replacement priority list, and a schedule. The plan is updated on a regular basis. The slate roof at the Lawrence School is on the schedule for FY 23.

ADVISORY COMMITTEE'S FISCAL YEAR 2023 BUDGET RECOMMENDATION

By a vote of 23-0-0, the Advisory Committee submits the FY2023 Town Budget with a recommendation of FAVORABLE ACTION on the following motion:

VOTED: To approve the budget for fiscal year 2023 set forth in the attached Tables I and II; to appropriate the amounts set forth for such fiscal year in the departments and expenditure object classifications within departments, as set forth in Tables I and II, subject to the following conditions; to raise all sums so appropriated, unless other funding is provided herein; and to establish the following authorizations:

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

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

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

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

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

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

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

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

C) Transfers within the Library Department appropriation shall be permitted with the approval of the Board of Library Trustees, and written notice of such approval shall

be submitted promptly to the Advisory Committee, Town Administrator and Town Comptroller.

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

2.) PROCUREMENT CONTRACTS AND LEASES: The Chief Procurement Officer is authorized to lease, or lease with an option to purchase, any equipment or capital item funded within the FY2023 budget, and to solicit and award contracts for terms of not more than four years, provided that in each instance the longer term is determined to be in the best interest of the Town by a vote of the Select Board.

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

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

4.) STIPENDS / SALARIES OF ELECTED OFFICIALS: The stipends of members of the Select Board shall be at the rate of $4,500 per year for the Chair and at the rate of $3,500 per year for each of the other four members. The annual salary of the Town Clerk shall be at the rate of $101,203 effective July 1, 2022, plus any adjustment approved by vote of the Select Board. The Town Clerk shall pay all fees received by the Town Clerk by virtue of their office into the Town treasury for Town use.

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

6.) GOLF ENTERPRISE FUND: The following sums, totaling $2,580,460 shall be appropriated into the Golf Enterprise Fund, and may be expended under the direction of the Park and Recreation Commission, for the operation of the Golf Course:

Salaries	$736,066
Purchase of Services	$373,760
Supplies	$382,500
Other	$9,600
Utilities	$135,880
Capital	$526,000
Debt Service	$156,135
Reserve	$25,000
Total Appropriations	$2,344,941
Indirect Costs	$235,519
Total Costs	$2,580,460

Total costs of $2,580,460 to be funded from golf receipts with $235,519 to be reimbursed to the General Fund for indirect costs.

7.) WATER AND SEWER ENTERPRISE FUND: The following sums, totaling $31,358,359, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	Water	Sewer	Total
Salaries	2,476,507	545,912	3,022,419
Purchase of Services	172,398	149,000	321,398
Supplies	143,220	26,000	169,220
Other	13,900	3,180	17,080
Utilities	141,100	0	141,100
Capital	417,300	109,800	527,100
Intergovernmental	8,023,100	14,587,590	22,610,690
Debt Service	542,500	1,191,815	1,734,315
Reserve	135,000	175,000	310,000
Total Appropriations	12,065,025	16,788,297	28,853,322
Indirect Costs	2,004,619	500,417	2,505,036
Total Costs	14,069,645	17,288,714	31,358,359

Total costs of $30,691,325 to be funded from water and sewer receipts with $2,472,183 to be reimbursed to the General Fund for indirect costs.

8.) <u>REVOLVING FUNDS:</u>

a.) The Park and Recreation Commission is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for special recreation programs and events. All receipts from said programs and events shall be credited to the fund. Annual expenditures from the fund shall not exceed $4,300,000.

b.) The Building Commissioner is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for the repair and maintenance of the Town's rental properties, including all those listed in the vote under Article 13 of the Warrant for the 1999 Annual Town Meeting. All receipts from said rental properties shall be credited to the fund. Annual expenditures from the fund shall not exceed $225,000.

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

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

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

f.) The School Department is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for the School bus Program. Annual expenditures from the fund shall not exceed $75,000.

9.) <u>SCHOOLHOUSE MAINTENANCE AND REPAIR</u>: The sum of $6,876,596, included within the Building Department appropriation for school building maintenance, shall be expended for School Plant repair and maintenance and not for any other purpose. The listing of work to be accomplished shall be established by the School Department. The feasibility and prioritization of the work to be accomplished under the school plant repair and maintenance budget shall be determined by the Superintendent of Schools and the Building Commissioner, or their designees.

10.) SNOW AND ICE BUDGET: The sum of $402,814, included within the Department of Public Works appropriation for snow and ice operations, shall be expended for snow and ice operations and not for any other purpose, unless transferred per the provisions of Section 1.B.vi of this Article 9.

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

Cemetery Sales Special Revenue Fund [to the General Fund for the Department of Public Works]	$ 100,000
Recreation Revolving Fund [to the General Fund for benefits reimbursement]	$460,000

12.) COMMUNITY PRESERVATION FUNDS

a) To appropriate $138,129 from FY2023 Community Preservation Fund revenues for committee administrative expenses:

Salaries	38,129
Contingency	100,000

13.) HOST COMMUNITY FUNDS

Appropriate $1,007,293 to be expended under the direction of the Town Administrator for marijuana mitigation activities, and to meet the appropriation transfer $1,007,293 from the HCA stabilization fund.

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

15.) SPECIAL APPROPRIATIONS: The appropriations set forth as items 35 through 69, inclusive, in Table 1 shall be specially appropriated for the following purposes. In addition, with

the exception of Items #64 - 69, they shall be transferred from the General Fund to the Revenue-Financed Capital Fund.

Appropriate sums of money for the following special purposes:

37.) Raise and appropriate $900,000, to be expended under the direction of the Police Chief, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades/replacement of the Police and Fire Department's radio infrastructure.

38.) Raise and appropriate $450,000, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board for Public Safety Building locker room improvements.

39.) Raise and appropriate $560,000, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, for traffic calming.

40.) Raise and appropriate $472,000, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, for bike access improvements.

41.) Raise and appropriate $188,000, with any necessary contracts over $100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, for parking meter technology upgrades.

42.) Raise and appropriate $50,000, to be expended under the direction of the Commissioner of Public Works, for Accessible Pedestrian Signal Conversions.

43.) Raise and appropriate $1,880,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of streets.

44.) Raise and appropriate $353,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of sidewalks.

45.) Raise and appropriate $700,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the Washington Street Rehabilitation and Complete Streets Project.

46.) Raise and appropriate $200,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be

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

47.) Raise and appropriate $90,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of Town and School grounds.

48.) Raise and appropriate $350,000, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board and the Tree Planting Committee, for the removal and replacement of trees and to meet the appropriation transfer $50,000 from the balance remaining in the appropriation voted under Section 13, Special Appropriation No. 38 of Article 9 of the 2019 Annual Town Meeting.

49.) Raise and appropriate $25,000, or any other sum, to be expended under the direction of the Chief Procurement Officer for school furniture upgrades.

50.) Raise and appropriate $50,000, or any other sum, to be expended under the direction of the Building Commissioner for underground tank removal.

51.) Raise and appropriate $85,000, to be expended under the direction of the Building Commissioner for ADA renovations to Town and School facilities.

52.) Raise and appropriate $100,000, to be expended under the direction of the Building Commissioner for energy conservation projects in Town and School facilities.

53.) Raise and appropriate $100,000, or any other sum, to be expended under the direction of the Building Commissioner for upgrades to energy management systems in Town and School facilities.

54.) Raise and appropriate $250,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Board of Select Board and, with respect to School Buildings, by the School Committee, for improvements to life safety systems and building security in Town and School facilities.

55.) Raise and appropriate $1,827,048, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee, for the expansion of classroom capacity in various schools.

56.) Raise and appropriate $700,000, or any other sum, to be expended under the direction of the Fire Chief, with any necessary contracts over $100,000 to be approved by the Select Board, for the replacement of Fire Engine #1 and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $700,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and

authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

57.) Raise and appropriate $1,350,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the upgrade of the Washington/Harvard/Kent/Davis traffic signal, and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $1,350,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

58.) Raise and appropriate $600,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for storm water improvements and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $600,000 under General Laws, Chapter 44, Section 8(5), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

59.) Raise and appropriate $2,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for water system improvements and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $2,000,000 under General Laws, Chapter 44, Section 8(5), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

60.) Raise and appropriate $3,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for wastewater system improvements and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $3,000,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

61.) Raise and appropriate $140,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades to the fuel system at the Netherlands Road facility, and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $600,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other

forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

62.) Raise and appropriate $3,210,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the design and renovation of Skyline Park and to meet the appropriation authorize the Treasurer, with the approval of the Select Board, to borrow $3,210,000, under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose. Raise and appropriate $2,800,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the environmental restoration of Willow Pond, and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $600,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

63.) Raise and appropriate $2,800,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the environmental restoration of Willow Pond, and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $600,000 under General Laws, Chapter 44, Section 7(1)., as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

64.) Raise and appropriate $650,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and, with respect to School Buildings, by the School Committee, for building roof repairs to Town and School facilities and to meet the appropriation, authorize the Treasurer with the approval of the Selectmen, to borrow $750,000 under General Law, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

16.) **FREE CASH**: Appropriate and transfer $11,606,813 from free cash for the following purposes:

a.) Operating Budget Reserve Fund (MGL Chapter 40, Section 6) – $732,511;
b.) Liability/Catastrophe Fund (Chapter 66 of the Acts of 1998, as amended) – $132,489;

c.) Stabilization Fund (MGL Chapter 40, Section 5B) - $3,500,000
d.) Reduce the tax rate (Special Appropriations) – $6,814,801;
e.) Housing Trust Fund – $427,012;

XXX

FY2023 BUDGET - TABLE 1 MAY, 2022

		FY20 ACTUAL	FY21 ACTUAL	FY22 BUDGET	FY23 BUDGET	$$ CHANGE FROM FY22	% CHANGE FROM FY22
	REVENUES						
	Property Taxes	234,846,238	254,898,615	272,124,853	281,218,963	**9,094,110**	**3.3%**
	Local Receipts	36,878,485	30,479,935	25,651,386	28,244,982	**2,593,597**	**10.1%**
	State Aid	22,259,149	22,397,775	22,825,559	23,029,933	**204,374**	**0.9%**
	Free Cash	9,081,257	11,065,720	10,401,890	11,598,580	**1,196,690**	**11.5%**
	Other Available Funds	3,188,731	4,390,037	3,329,073	4,357,848	**1,028,775**	**30.9%**
	TOTAL REVENUE	**306,253,860**	**323,232,082**	**334,332,760**	**348,450,307**	**14,117,546**	**4.2%**
	EXPENDITURES						
	DEPARTMENTAL EXPENDITURES						
	1 . Select Board	752,179	826,296	968,105	833,631	**(134,474)**	**-13.9%**
	2 . Human Resources	459,435	572,887	604,195	607,890	**3,695**	**0.6%**
	3 . Information Technology	1,993,949	1,948,968	2,212,246	2,206,095	**(6,151)**	**-0.3%**
	4 . Diversity, Inclusion, and Community Relations	257,180	300,971	331,266	358,667	**27,401**	**8.3%**
	5 . Finance Department	3,276,686	3,042,846	3,368,197	3,447,121	78,924	**2.3%**
	a. Comptroller	*704,846*	*687,568*	*715,461*	*726,008*	***10,547***	***1.5%***
	b. Purchasing	*715,553*	*719,383*	*709,756*	*761,441*	***51,685***	***7.3%***
	c. Assessing	*660,690*	*566,093*	*752,421*	*737,463*	***(14,958)***	***-2.0%***
	d. Treasurer	*1,195,597*	*1,069,802*	*1,190,559*	*1,222,209*	***31,650***	***2.7%***
	6 . Legal Services	*1,149,170*	*1,179,915*	*1,279,383*	*1,105,224*	***(174,159)***	***-13.6%***
	7 . Advisory Committee	19,693	18,152	29,007	29,129	**122**	**0.4%**
	8 . Town Clerk	798,563	1,117,013	617,240	830,521	**213,281**	**34.6%**
	9 . Planning and Community Development	1,230,257	1,039,154	1,272,086	1,382,091	**110,005**	**8.6%**
	10 . Police	17,742,983	17,314,441	*17,493,030*	*17,703,841*	***210,811***	***1.2%***
	11 . Fire	16,105,142	16,546,639	16,481,472	16,934,284	**452,812**	**2.7%**
	12 . Building	8,158,293	8,465,596	9,587,404	10,237,173	**649,769**	**6.8%**
(1)	13 . Public Works	16,360,644	16,170,468	16,668,234	16,747,737	79,503	**0.5%**
	a. Administration	*966,214*	*779,873*	*959,616*	*951,914*	***(7,702)***	***-0.8%***
	b. Engineering/Transportation	*1,316,971*	*1,304,413*	*1,392,568*	*1,459,743*	***67,175***	***4.8%***
	c. Highway	*6,062,296*	*4,995,342*	*5,233,854*	*5,380,746*	***146,892***	***2.8%***
	d. Sanitation	*3,413,212*	*3,632,171*	*4,310,136*	*4,293,420*	***(16,716)***	***-0.4%***
	e. Parks and Open Space	*3,650,776*	*3,857,133*	*4,188,729*	*4,259,100*	***70,371***	***1.7%***
	f. Snow and Ice	*951,175*	*1,601,536*	*583,331*	*402,814*	***(180,517)***	***-30.9%***
	14 . Library	4,241,330	4,104,319	4,262,381	4,387,687	**125,306**	**2.9%**
	15 . Health and Human Services	1,324,313	1,474,730	1,595,761	1,340,667	**(255,094)**	**-16.0%**
	16 . Veterans' Services	270,108	263,282	316,384	316,534	**150**	**0.0%**
	17 . Council on Aging	966,717	858,548	1,027,656	1,010,140	**(17,516)**	**-1.7%**
	18 . Recreation	1,117,436	1,079,663	1,058,391	1,162,787	**104,396**	**9.9%**
(2)	19 . Personnel Services Reserve	715,000	715,000	715,000	715,000	**0**	**0.0%**
(2)	20 . Collective Bargaining - Town	1,505,081	450,000	1,206,587	3,151,633	**1,945,046**	**161.2%**
	Subtotal Town	*76,224,078*	*76,773,888*	*81,094,025*	*84,507,852*	***3,413,827***	***4.2%***
	21 . Schools	116,978,533	120,928,616	121,066,547	125,098,883	**4,032,336**	**3.3%**
	22 . *Vocational Education Assessments*	*26,113*	*28,179*	*92,895*	*92,895*	***0***	***0.0%***
	Subtotal Education	*117,004,646*	*120,956,795*	*121,159,442*	*125,191,778*	***4,032,336***	***3.3%***
	TOTAL DEPARTMENTAL EXPENDITURES	**193,228,724**	**197,730,683**	**202,253,467**	**209,699,630**	**7,446,163**	**3.7%**
	NON-DEPARTMENTAL EXPENDITURES						
(1)	23 . Employee Benefits	65,149,336	67,201,499	71,554,793	75,366,050	**3,811,257**	**5.3%**

		FY20 ACTUAL	FY21 ACTUAL	FY22 BUDGET	FY23 BUDGET	$$ CHANGE FROM FY22	% CHANGE FROM FY22
(3)	*a. Pensions*	*24,917,372*	*26,569,845*	*28,490,221*	*30,557,924*	***2,067,703***	***7.3%***
	b. Group Health	*30,539,855*	*31,707,590*	*33,305,817*	*34,799,370*	***1,493,553***	***4.5%***
(3)	*c. Retiree Group Health Trust Fund (OPEB's)*	*4,781,980*	*4,181,979*	*4,181,979*	*4,431,980*	***250,001***	***6.0%***
	d. Group Life	*127,452*	*128,740*	*145,000*	*145,000*	***0***	***0.0%***
	e. Disability Insurance	*48,480*	*50,521*	*46,000*	*46,000*	***0***	***0.0%***
(3)	*f. Worker's Compensation*	*2,050,000*	*1,850,000*	*1,850,000*	*1,850,000*	***0***	***0.0%***
(3)	*g. Public Safety IOD Medical Expenses*	*0*	*0*	*0*	*275,000*	***275,000***	**#DIV/0!**
(3)	*h. Unemployment Compensation*	*200,000*	*200,000*	*525,000*	*250,000*	***(275,000)***	***-52.4%***
	i. Medical Disabilities	*13,694*	*11,751*	*40,000*	*40,000*	***0***	***0.0%***
	j. Medicare Coverage	*2,470,503*	*2,501,073*	*2,970,776*	*2,970,776*	***0***	***0.0%***
(2)	24 . Reserve Fund	2,521,043	2,776,291	3,630,963	2,930,043	**(700,920)**	**-19.3%**
	25 . HCA Reserve Fund	0	300,000	0	0	**0**	**-**
	26 . Stabilization Fund	0	1,000,000	2,829,788	3,500,000	**670,212**	**23.7%**
	27 . Affordable Housing	200,000	726,549	80,737	427,012	**346,275**	**428.9%**
	28 . Liability/Catastrophe Fund	389,700	49,729	81,223	132,489	**51,266**	**63.1%**
	29 . General Insurance	506,914	520,955	883,358	1,056,923	**173,565**	**19.6%**
	30 . Audit/Professional Services	122,128	99,284	147,000	149,000	**2,000**	**1.4%**
(5)	31 . Contingency Fund	61,069	5,717	10,000	10,000	**0**	**0.0%**
	32 . Out-of-State Travel	1,276	0	0	0	**0**	**-**
	33 . Printing of Warrants & Reports	49,666	52,405	45,000	50,000	**5,000**	**11.1%**
	34 . MMA Dues	13,226	13,226	14,239	14,595	**356**	**2.5%**
	Subtotal General	*3,865,022*	*5,544,156*	*7,722,308*	*8,270,062*	***547,755***	***7.1%***
(1)	35 . Borrowing	17,976,346	25,022,165	34,516,793	36,032,468	**1,515,675**	**4.4%**
	a. Funded Debt - Principal	*11,333,360*	*13,640,000*	*19,377,067*	*20,280,487*	***903,420***	***4.7%***
	b. Funded Debt - Interest	*6,468,027*	*11,237,370*	*14,879,226*	*15,591,981*	***712,755***	***4.8%***
	c. Bond Anticipation Notes	*140,217*	*133,256*	*200,500*	*100,000*	***(100,500)***	***-50.1%***
	d. Abatement Interest and Refunds	*34,742*	*11,539*	*60,000*	*60,000*	***0***	***0.0%***
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**86,990,704**	**97,767,820**	**113,793,894**	**119,668,580**	**5,874,686**	**5.2%**
	TOTAL GENERAL APPROPRIATIONS	**280,219,428**	**295,498,503**	**316,047,361**	**329,368,210**	**13,320,849**	**4.2%**
	SPECIAL APPROPRIATIONS						
	36 Host Community Agreement Special Appropropriation (transfer)				1,007,239		
	37 . Police/Fire Radio Infrastructure (revenue financed)				900,000		
	38 . Public Safety Building Locker Room Improvements (revenue financed)				450,000		
	39 . Traffic Calming / Safety Improvements (revenue financed)				560,000		
	40 . Bicycle Access Improvements (revenue financed)				472,000		
	41 . Parking Meters (revenue financed)				188,000		
	42 . Accessible Pedestrian Signal Conversion (revenue financed)				50,000		
	43 . Street Rehab. (revenue financed)				1,880,000		
	44 . Sidewalk Repair/Reconstruction (revenue financed)				353,000		
	45 . Washington St. Rehab and Complete Streets (revenue financed)				700,000		
	46 . Playground Equipment, Fields, Fencing (revenue financed)				200,000		
	47 . Town/School Grounds Rehab (revenue financed)				90,000		
	48 . Tree Removal and Replacement (revenue financed) + $50K re-appropriation				350,000		
	49 . School Furniture Upgrades (revenue financed)				25,000		

		FY20 ACTUAL	FY21 ACTUAL	FY22 BUDGET	FY23 BUDGET	$$ CHANGE FROM FY22	% CHANGE FROM FY22
	50 . Town/School Underground Tank Removal (revenue financed)				50,000		
	51 . Town/School ADA Renovations (revenue financed)				85,000		
	52 . Town/School Energy Conservation Projects (revenue financed)				100,000		
	53 . Town/School Energy Management Systems (revenue financed)				100,000		
	54 . Town/School Bldg Security / Life Safety Systems (revenue financed)				250,000		
	55 . Classroom Capacity (revenue financed)				1,827,048		
	56 . Engine #1 Replacement (bond)				700,000		
	57 . Wash/Harv/Kent/Davis Traffic Signal Upgrade (bond)				1,350,000		
	58 . Stormwater Improvements (utility bond)				600,000		
	59 . Water System Improvements (utility bond)				2,000,000		
	60 . Wastewater System Improvements (utility bond)				3,000,000		
	61 . Netherlands Road Fuel Upgrade (utility bond)				140,000		
	62 . Skyline Park (bond)				3,210,000		
	63 . Willow Pond Remediation (bond)				2,800,000		
	64 . Town/School Bldg Roof Repairs (bond)				650,000		
(4)	**TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS**	**9,949,094**	**8,828,250**	**7,617,048**	**9,637,287**	**2,020,239**	**26.5%**
	TOTAL APPROPRIATED EXPENDITURES	**290,168,522**	**304,326,753**	**323,664,409**	**339,005,497**	**15,341,088**	**4.7%**
	NON-APPROPRIATED EXPENDITURES						
	Cherry Sheet Offsets	89,070	103,231	101,559	118,419		
	State & County Charges	6,826,231	6,810,339	6,938,649	7,371,328		
	Overlay	1,785,140	1,829,768	3,603,145	1,930,062		
	Deficits-Judgments-Tax Titles	25,000	25,000	25,000	25,000		
	TOTAL NON-APPROPRIATED EXPEND.	**8,725,441**	**8,768,339**	**10,668,353**	**9,444,809**	**(1,223,544)**	**-11.5%**
	TOTAL EXPENDITURES	**298,893,963**	**313,095,091**	**334,332,761**	**348,450,306**	**14,117,545**	**4.2%**
	SURPLUS/(DEFICIT)	**7,359,897**	**10,136,991**	**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 #35).

FY23 BUDGET - TABLE 2 MAY 2022

Department/Board/Commission	Personnel Services/ Benefits	Purchase of Services	Supplies	Other Charges/ Expenses	Utilities	Capital Outlay	Inter-Govt'al	Debt Service	Agency Total
Select Board (Town Administrator)	756,298	50,880	2,048	21,900		2,505			833,631
Human Resources Department (Human Resources Director)	325,491	239,359	14,900	26,500		1,640			607,890
Information Technology Department (Chief Information Officer)	1,216,333	682,773	10,350	15,050		281,589			2,206,095
Diversity, Inclusion, and Community Relations (Director)	311,792	30,000	13,000	3,000		875			358,667
Finance Department (Director of Finance)	2,440,928	919,867	46,960	29,207	2,304	7,855			3,447,121
Legal Services (Town Counsel)	813,075	206,269	2,500	81,500		1,880			1,105,224
Advisory Committee (Chair, Advisory Committee)	24,989		3,275	570		295			29,129
Town Clerk (Town Clerk)	683,569	118,172	27,250	500		1,030			830,521
Planning and Community Department (Plan. & Com. Dev. Dir.)	1,277,013	87,248	9,712	4,550		3,568			1,382,091
Police Department (Police Chief)	16,251,582	536,731	137,857	31,300	319,790	426,581			17,703,841
Fire Department (Fire Chief)	16,104,040	168,426	126,952	27,100	251,970	255,796			16,934,284
Public Buildings Department (Building Commissioner)	2,963,098	4,251,623	25,075	5,248	2,863,659	128,470			10,237,173
Public Works Department (Commissioner of Public Works)	8,596,489	5,218,510	995,885	45,500	1,202,125	689,230			16,747,737
Public Library Department (Library Board of Trustees)	3,255,810	242,886	605,352	4,700	235,815	43,124			4,387,687
Health & Human Services Department (Health & Human Svcs Dir)	1,028,863	229,653	24,000	4,470	47,865	5,816			1,340,667
Veterans' Services (Veterans' Services Director)	155,147	2,388	1,150	157,339		510			316,534
Council on Aging (Council on Aging Director)	873,281	48,418	18,846	4,250	59,645	5,700			1,010,140
Recreation Department (Recreation Director)	845,183	23,037	86,480	12,400	192,687	3,000			1,162,787
School Department (School Committee)									125,098,883
Total Departmental Budgets	**57,922,981**	**13,056,240**	**2,151,592**	**475,084**	**5,175,860**	**1,859,464**			**205,740,102**
DEBT SERVICE									
Debt Service (Director of Finance)								36,032,468	36,032,468
Total Debt Service								**36,032,468**	**36,032,468**
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	30,557,924								30,557,924
Group Health Insurance (Human Resources Director)	34,799,370								34,799,370
Retiree Group Health Insurance - OPEB's (Director of Finance)	4,431,980								4,431,980
Group Life Insurance (Human Resources Director)	145,000								145,000
Disability Insurance	46,000								46,000
Workers' Compensation (Human Resources Director)	1,850,000								1,850,000
Unemployment Insurance (Human Resources Director)	525,000								525,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	2,970,776								2,970,776
Total Employee Benefits	**75,366,050**								**75,366,050**
GENERAL / UNCLASSIFIED									
Vocational Euducation Assessments									92,895
Reserve Fund (*) (Chair, Advisory Committee)				2,930,043					2,930,043
Stabilization Fund (Director of Finance)				3,500,000					3,500,000
Liability/Catastrophe Fund (Director of Finance)				132,489					132,489
Housing Trust Fund (Planning & Community Develpoment Dir.)				427,012					427,012
General Insurance (Town Administrator)		1,056,923							1,056,923
Audit/Professional Services (Director of Finance)		149,000							149,000
Contingency (Town Administrator)				10,000					10,000
Out of State Travel (Town Administrator)									
Printing of Warrants (Town Administrator)	20,000	20,000	10,000						50,000
MMA Dues (Town Administrator)				14,595					14,595
Town Salary Reserve (*) (Director of Finance)	3,151,633								3,151,633
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	**3,886,633**	**1,225,923**	**10,000**	**7,014,139**					**12,229,590**
TOTAL GENERAL APPROPRIATIONS	**137,175,664**	**14,282,163**	**2,161,592**	**7,489,223**	**5,175,860**	**1,859,464**		**36,032,468**	**329,368,210**

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

ARTICLE 8

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On May 10th the Select Board reconsidered their motion under Article 8 in order to consider the Advisory Committee motion which included a new position in the Planning and Community Development Department, reducing the allocation in the Collective Bargaining Reserve in order to provide this funding. The Select Board was glad to see that the allocation requested by the School Committee has been funded, and stressed the importance of using the Town School Partnership to address any structural changes to the underlying revenue allocation formula.

A unanimous Select Board voted FAVORABLE ACTION on the Advisory Committee motion

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

57. WASHINGTON/HARVARD/KENT/DAVIS TRAFFIC SIGNAL UPGRADE
Recommendation: $1,350,000 (Bond)

Last year, Town Meeting approved $140,000 for the preliminary design, final design and preparation of bid documents for upgrading traffic signal equipment and infrastructure at the intersections of Washington and Station Streets and Washington Street- Harvard Street-Kent Street -Davis Avenue-Andem Place. The existing equipment does not meet the design and operational standards of the American with Disabilities Act and cannot be retrofitted to meet such standards due to technical difficulties, including the limited capacity of the outdated traffic signal controller.

The consultant hired with the FY 22 funds undertook traffic evaluations and an existing conditions survey and is now in the process of developing a plan that will include new traffic signal equipment and new traffic signal timing based on pedestrian, cyclist, and motor vehicle volumes. The plan will be presented to the Transportation Board in the fall for final approval.

FY 23 CIP funds are requested for constructing the new intersection signal system, subject to the Board's approval. These funds will be used to purchase and install new traffic signal equipment, pedestrian signals, pedestrian countdown timers, and Accessible Pedestrian Signal buttons. They will also be used for concrete sidewalks, granite curbing, ADA-compliant curb ramps, pavement markings, and other elements necessary to meet state and federal standards.

Currently scheduled for FY 2027, the Washington Street Complete Streets Project (Special Appropriation #45) will consider a longer term redesign of the intersection as it relates to the entire Washington Street corridor. Should the Complete Streets Project necessitate changes to the design of the signalization for the Brookline Village intersections, the equipment purchased and installed for the current project will be maintained and used to repair or replace traffic equipment in other parts of the town.

The upgrading of transportation infrastructure, including traffic signals, is necessary to meet the Select Board's commitment to Brookline becoming carbon neutral by 2050 and Town Meeting's commitment to Healthy and Sustainable Transportation. This commitment includes 1) attaining a 75%/25% split between alternative modes of transportation (walking, biking, electric micro-mobility, and public transportation) and single occupancy vehicle trips; 2) increasing safety for those alternative modes of transportation users; and 3) complying with federal and state standards regarding accessibility.

ARTICLE 8

AMENDMENT OFFERED BY C. SCOTT ANANIAN, TMM10 AND KIMBERLY RICHARDSON TMM2

MOVED: To Amend the Advisory Committee motion as follows:

MOVED: That the FY2023 following changes by made to FY2023 appropriations:

- The appropriation for the Parks and Recreation Department in the Services category be increased by $1,100,000 for scholarships to participate in parks and recreation programming;
- The appropriation for the Parks and Recreation Department in the Supplies category be increased by $50,000 for administrative expenses and equipment as a result of an increase in activities;
- The appropriation for the Parks and Recreation Department in the Personnel category be increased by $200,000 for full-time and part-time staff; and
- The appropriation for Group Health be increased by $15,310 for staff benefits.

This results in the following amendments to table 1 and table 2:

TABLE 1 ADJUSTMENTS			
Item	**AC MOTION**	**THIS AMENDMENT**	**VARIANCE**
Item 18 - Recreation	$1,162,787	$2,512,787	$1,350,000
Item 23 b. - Group Health	$34,799,370	$34,814,680	$15,310

TABLE 2 ADJUSTMENTS (deletions in ~~strikethrough~~, addition in **bold**)							
Department	Personnel Services / Benefits	Purchase of Services	Supplies	Other Charges / Expenses	Utilities	Capital Outlay	Total
Recreation	~~$845,183~~ **$1,045,183**	~~$23,037~~ **$1,123,037**	~~$86,480~~ **$136,480**	$12,400	$192,687	$3,000	~~$1,162,787~~ **$2,512,787**
Group Health Insurance	~~$34,799,370~~ **$34,814,680**						

Explanation
Part A. Submitting a Budget Amendment –

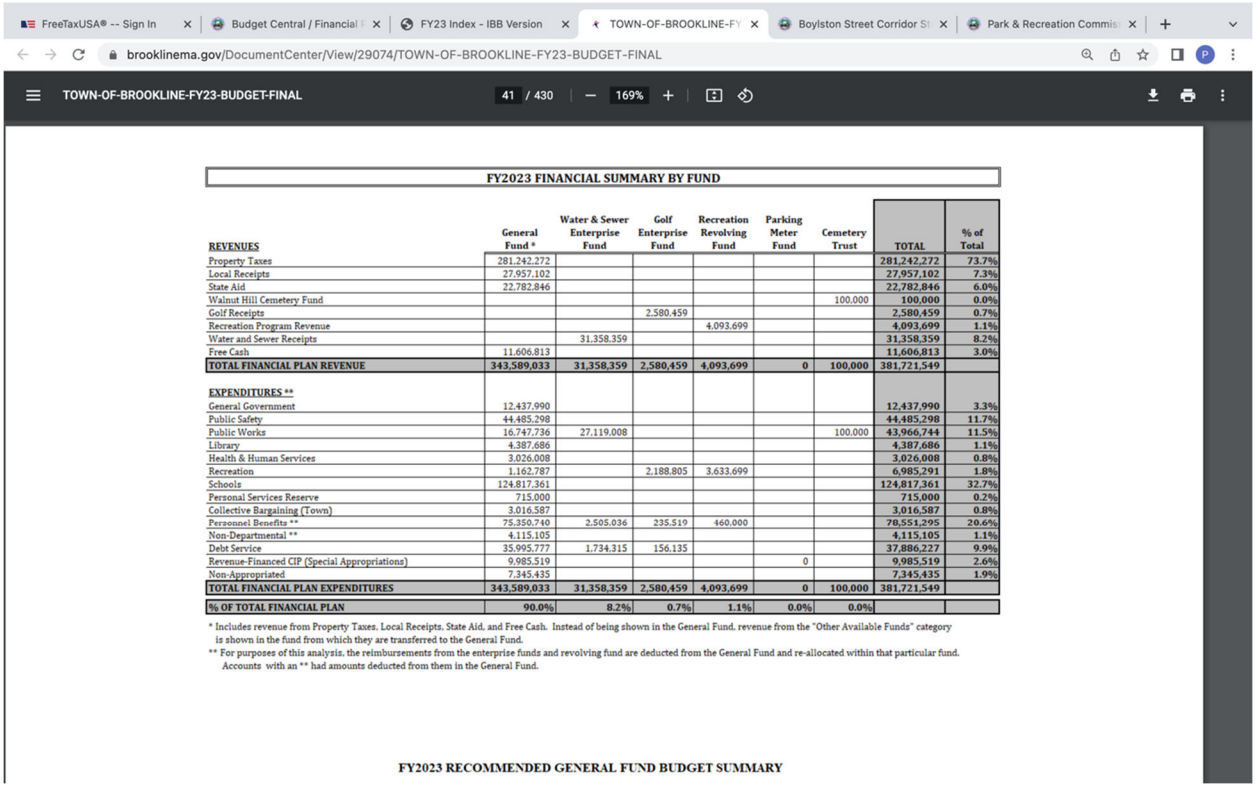
Movers, in collaboration with the petitioners for warrant article 26, respectfully seek a budget amendment to adequately fund recreation programming for disadvantaged Brookline families. This amendment serves a substantial good for the community and improves the present budget warrant article. This budget amendment when linked to WA 26 addresses a significant public health issue carried mostly by Brookline's most disadvantaged families.

Discussions with town officials about funding the Recreation Department began in December 2021. The petitioners for WA 26 were hopeful that adequate funding would be found to increase services to disadvantaged families. Even the Select Board and the Town Administrator have been involved in identifying funding, though unsuccessful at this point. Furthermore, the Recreation Commission to date has not been able to address these most basic needs by raising fees or seeking funding from other sources despite having the authority to do so. The relevant sections state:

> **Chapter 198. AN ACT AUTHORIZING THE PARK AND RECREATION COMMISSION OF THE TOWN OF BROOKLINE TO SET CERTAIN FEES, SUBJECT TO THE APPROVAL OF THE BOARD OF SELECTMEN.**
> *Be it enacted, etc., as follows:*
> **SECTION 1.** Notwithstanding the provisions of any general or special law to the contrary, unless otherwise provided by by-law, the park and recreation commission of the town of Brookline shall have, the authority to set the fees and charges for all park and recreation programs, activities, facilities and services, subject to the approval of the board of selectmen.
> **SECTION 2.** This act shall take effect upon its passage.

(WA 26 would further clarify the Commissioner's authority as it relates to providing services.) The petitioners for WA 26 made clear the need for a budget amendment, but genuinely hoped that the funding could be found. We now see no other way to provide services than this budget amendment. Movers respectfully ask that the moderator allow them an opportunity to amend the budget. Movers seek to add a line-item and add an additional $1,350,000 as provided by the Parks and Recreation management. The source of the funding does not have to be determined until Fall Town Meeting, which will provide time for a proper budget process.

Background 2023 Budget Materials:



FY2023 FINANCIAL SUMMARY BY FUND

REVENUES	General Fund *	Water & Sewer Enterprise Fund	Golf Enterprise Fund	Recreation Revolving Fund	Parking Meter Fund	Cemetery Trust	TOTAL	% of Total
Property Taxes	281,242,272						281,242,272	73.7%
Local Receipts	27,957,102						27,957,102	7.3%
State Aid	22,782,846						22,782,846	6.0%
Walnut Hill Cemetery Fund						100,000	100,000	0.0%
Golf Receipts			2,580,459				2,580,459	0.7%
Recreation Program Revenue				4,093,699			4,093,699	1.1%
Water and Sewer Receipts		31,358,359					31,358,359	8.2%
Free Cash	11,606,813						11,606,813	3.0%
TOTAL FINANCIAL PLAN REVENUE	343,589,033	31,358,359	2,580,459	4,093,699	0	100,000	381,721,549	
EXPENDITURES **								
General Government	12,437,990						12,437,990	3.3%
Public Safety	44,485,298						44,485,298	11.7%
Public Works	16,747,736	27,119,008				100,000	43,966,744	11.5%
Library	4,387,686						4,387,686	1.1%
Health & Human Services	3,026,008						3,026,008	0.8%
Recreation	1,162,787		2,188,805	3,633,699			6,985,291	1.8%
Schools	124,817,361						124,817,361	32.7%
Personal Services Reserve	715,000						715,000	0.2%
Collective Bargaining (Town)	3,016,587						3,016,587	0.8%
Personnel Benefits **	75,350,740	2,505,036	235,519	460,000			78,551,295	20.6%
Non-Departmental **	4,115,105						4,115,105	1.1%
Debt Service	35,995,777	1,734,315	156,135				37,886,227	9.9%
Revenue-Financed CIP (Special Appropriations)	9,985,519				0		9,985,519	2.6%
Non-Appropriated	7,345,435						7,345,435	1.9%
TOTAL FINANCIAL PLAN EXPENDITURES	343,589,033	31,358,359	2,580,459	4,093,699	0	100,000	381,721,549	
% OF TOTAL FINANCIAL PLAN	90.0%	8.2%	0.7%	1.1%	0.0%	0.0%		

* Includes revenue from Property Taxes, Local Receipts, State Aid, and Free Cash. Instead of being shown in the General Fund, revenue from the "Other Available Funds" category is shown in the fund from which they are transferred to the General Fund.
** For purposes of this analysis, the reimbursements from the enterprise funds and revolving fund are deducted from the General Fund and re-allocated within that particular fund. Accounts with an ** had amounts deducted from them in the General Fund.

FY2023 RECOMMENDED GENERAL FUND BUDGET SUMMARY

Part B. The following discussion provides an explanation of the needs, the cost and outcome measures, provided by Deborah Brown, lead petitioner for Warrant Article 26.

"Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man." President Lyndon B. Johnson Commencement Address at Howard University June 4, 1965

"Play is important for the emotional, social, cognitive, and physical development of children. In addition to being critical for general health and a preventative against overweight, play develops life skills for children and communication skills among peers

and family members.[1]" "According to the report, play's benefits extend to psychological well-being. Play provides an opportunity for a student to shine in areas that are not strictly academic and thus contributes to the child's personal sense of pride and belonging in her school environment. This has the potential to discourage truancy and encourage children to remain in school to complete their education.[2]" "Having access to quality play spaces and playgrounds gives children the health benefits of being physically active, a way to develop motor skills, a place to improve mental health, and they contribute to the overall health outcomes of a community." It is not just access to build playgrounds and natural environment play spaces, she says, but also the connection to social resources and social capital of the community. "Playgrounds build social cohesion.[3]"

Further, "for kids, playgrounds are equivalent to the "public square" for adults — that is, places where all may freely express themselves. Many play experts and park and recreation professionals attest to the inclusive nature of play and the need for playgrounds to be inclusive.[4]"

Segregation and Access to Nature

Segregated town programming may also be a more pervasive and ugly issue than the Town is aware of. While we do not have a breakdown of parks and recreation participants, general observations do indicate that low income and children of color participation could be greater than it is presently. "For purposes of the present statement, segregation refers to that restriction of opportunities for different types of associations between the members of one racial, religious, national or geographic origin, or linguistic group and those of other groups, which results from or is supported by the action of any official body or agency representing some branch of government. We are not here concerned with such segregation as arises from the free movements of individuals which are neither enforced nor supported by official bodies, nor with the segregation of criminals or of individuals with communicable diseases which aims at protecting society from those who might harm it.[5]" In this instance, we are speaking about segregating children. While on its face, unintentional, we now know the substantial issues in the distribution of services to low income youth. There is considerable data describing the health and social impacts of segregation.

"Not only is residential segregation more extreme for children than for adults, but the close links between residential and school segregation mean that children are often isolated from opportunity across multiple environments during the developmental period when neighborhood and school resources critically impact their wellbeing, opportunities, and life chances. Beyond this reality of segmented opportunities lies a greater question—whether

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[1] **Recreational Play Can Be Far More Important Than Academics, The Atlantic, *By Esther Entin* JANUARY 16, 2012.**

[2] Id.

[3] **Parks and Recreation Magazine, The Value of Play, Playgrounds and Parks During the Pandemic, November 18, 2021, Feature, by Richard J. Dolesh**

[4] Id.

[5] **THE EFFECTS OF SEGREGATION AND THE CONSEQUENCES OF DESEGREGATION: A SOCIAL SCIENCE STATEMENT**, MINNESOTA LAW REVIEW, Vol. 37:428.

such separation and difference in the quality of children's environments by race/income is morally or socially right. Segregation spatially isolates groups and limits social interaction, and, for children, this isolation occurs during the crucial period when racial attitudes are being formed. The degree of this separation challenges the values of unity and equal opportunity that we as a nation espouse, especially to the extent that purposefully exclusionary policies contribute to high levels of residential segregation. Further, segregation reifies notions of difference and supremacy by making separation into a physical reality. As illustrated by the account of a young, black student in a wealthy Boston suburb who was bused into the inner-city after school because of the mistaken assumption that he must be a desegregation program participant rather than a resident of that suburb, segregation fosters powerful perceptions of who belongs where, who deserves "access."2[6] Brookline needs to make sure that it is not the community discussed in this long ago article. The issues of segregation last for years and impede the growth and development of children.

I cannot explain how important being exposed to beauty is for the life of any person. Parks and Recreation is a gateway to beauty. We have allowed our Black, Latinx and Asian as well as low income families to be cut off from nature. I have seen POC fearful of being in Medford's woods. They said that they preferred an urban landscapes to wild or natural environments. But, are these responses and preferences as widespread as reported? Some also argue that women are not particularly comfortable in nature. There is a growing body of research that challenges these assumptions. Researchers say that comfort in nature is more predicated on opportunity. They also say that comfort in nature begins at an early age. Currently children of color are largely being denied this access to beauty through the Town's programming.
Finally, recreation in nature allows one's vitamin D levels rise, get more exercise, be happier and improve one's concentration.

Income and Poverty Statistics
Covid has only exacerbated the need for consistent recreational opportunities.
Income does have a direct relationship between a family's ability to engage in recreation. Median household income in Brookline, MA is $117,326. In 2019, the place with the highest median household income in Brookline, MA was Census Tract 4011 with a value of $189,643, followed by Census Tract 4012 and Census Tract 4006, with respective values of $174,667 and $156,797. Males in Massachusetts have an average income that is 1.33 times higher than the average income of females, which is $67,290. The income inequality in Massachusetts (measured using the Gini index) is 0.483, which is higher than the national average. The economy of Brookline, MA employs 32.7k people. The median property value is $933,200 and the home ownership rate is 48.9%.

[6] **Consequences of Segregation for Children's Opportunity and Wellbeing**, Nancy McArdle Senior Research Consultant, diversitydatakids.org Dolores Acevedo-Garcia Professor, The Heller School for Social Policy and Management, Brandeis University, pg. 2, 2017 President and Fellows of Harvard College.

Brookline does have some alarming poverty statistics. Twelve percent (12%) of Brookline's residents live below the poverty level. Nine percent of female residents live in poverty. The race most likely to be in poverty in Brookline is Black, with 32.11% below the poverty level. The race least likely to be in poverty in Brookline is White, with 8.76% below the poverty level. Asians have a 19.05% poverty rate while Latinx have a 18.75% poverty rate, groups identifying as multiple races have a 18.75% rate, Others have a 29.28% rate and Native Americans have a 11.5% poverty rate. The poverty rate among those that worked full-time for the past 12 months was 1.31%. Among those working part-time, it was 19.75%, and for those that did not work, the poverty rate was 27.51%.

BHA has a total of 1,501 residents and 354 are of children 18 years and younger. WE also know that:

families with 1 child 18 years old and younger = 110
families with 2 children 18 years old and younger = 57
families with 3 children 18 years old and younger = 21
families with 4 children 18 years old and younger = 11
families with 5 children 18 years old and younger = 4

The average BHA income ranges by property between $14,906 - $23,059. Overall the average income is $18,601

Basic School Statistics: 14% or 1089 of 7777 Brookline students receive free lunch or reduced lunch

If Every Student Participated In One Class per Quarter:

1089 students x 5 classes @ 1485 per student

$1485 x 1089 = $1,617,165 per year for all students on free and reduced lunch

Assume 75% of 1089 students attend camp

75% of 1089 = 816 Students on free or reduced lunch

816 students x $1485 = $1,211,760 per year for all students on free and reduced lunch

50% (544 Students) x $1485 = $823,690 per year for all students on free and reduced lunch

The Petitioners anticipate that no more than 50% of students would participate. We also know that camp programs cost approximately $285 per week. Parks will generally only pay 30% of the cost of a class or $85 leaving parents to pay $200 per week per class or $1,000 for one month.

Brookline Parks and Recreation Pricing and Scholarships

According to Brookline Parks and Recreation, they have over one thousand programs, all ranging at different costs. The Cost to serve an additional 500 kids in its 7-week version Summer Camp Program is approximately $1 million dollars ($285/wk * 7 weeks) * 500 kids. BHA has 354 who would benefit from the programming and the schools have 1089, yet there are not the funds. The statistics are based on the school percentage or 1089.

- A total of **34 children or 3.12% attended camp for free**
- Approximately **93 or 8.54% received partial scholarships**

Between FY21 – 22, the Rec Dept. applies for f**unding through_ the Brookline Community Foundation and with this grant they are able to**:

- send **20 children or 1.83% to camp for free.**
- **8 of those children or .734% came through Brookline Community Mental Health (BCMH)** and
- the other **12 children or 1.1 came through Steps to Success (STS).**
- In addition to this, **BREC offered free camp to an additional 12 BCMH children or 1.1% who weren't covered by the grant.**
- **3 or .275% children received free camp through the voucher program.**
- **11 or 1.01% additional STS students were able to get free camp at the Park School Summer Program** through a partnership between Park School and the Town of Brookline.
- **BREC also gave an additional 12 or 1.1%** children a partial scholarship to Rec Summer Camp

Also, during FY21-22, the "General Programs Funded through Rec Financial Aid" include:

- **80 students or 7.34% partial scholarships to programming** *other than camp* so far for FY22.
- **8 families or .73% at the low income level**,
- **5 families or .459% at the very low income level and the rest of the families fall under the extremely low income level.**

BOSTON'S SUMMER CAMPS ARE FREE.

Actual funding does not bridge the gap between youth in need and the total number of children able to participate in the programming.

Ultimately, participation comes down to funding. Rec reserved funds total approximately $686,807 in retained earnings at the end of the last fiscal year. It utilizes the reserve for Rec Capital projects and they currently have $1.2 million in Capital Projects in future years.

Examples of Inclusion Programming in Brookline

The Parks and Rec Department commissioners do not have to reinvent the proverbial wheel to be more inclusive. Parks and Rec has a very strong disability inclusion program.

"Mission - The mission of the Recreation Therapy Division of the Brookline Recreation Department is to provide effective, Therapeutic-based programs for youth through adult populations who have disabling conditions and/or illnesses in an effort to promote positive growth, development, and independence. This is accomplished through the provision of recreation services in a safe, structured, and prosperous environment via the Brookline Recreation Department."

"Recreation Therapy in Brookline - The Brookline Recreation Therapy Division provides evidence based recreation opportunities for individuals with disabilities, injuries, or illnesses, aged youth to adult. Serving the Greater Boston area, some programs provide specialized instruction, while others are inclusive for people of all abilities. The Brookline Recreation Therapy Division is also home to Brookline Special Olympics, one of the largest Special Olympics Chapters in Massachusetts. The Recreation Therapy Division is managed by our Certified Therapeutic Recreation Specialist, Micah Barshay, and is supported by dedicated part time staff and volunteers."

In addition to analyzing how Parks and Rec. achieves inclusion for the disabled, it could work with the Schools Superintendent to learn approaches that his office has developed to increase diversity among students. BEEP has actually in recent years changed its admissions policies to include more economic diversity. On the private side, the Daily After School Enrichment Program is tuition and donation funded.

BEEP Program Overview
In 2016, the School Committee authorized a centralized application process to provide families with financial assistance for certain school related fees. The program provides a prorated subsidy for households earning less than 350% of the US Department of Health and Human Services Poverty Guidelines. The United States Department of Agriculture uses these guidelines to determine the Free and Reduced Lunch eligible income levels. The tables of income levels provided in this document are based on the United States Health and Human Services Poverty Guidelines posted on their website, which can be accessed here: http://aspe.hhs.gov/poverty/index.shtml.

Financial Assistance will be offered to meet any PSB student fees or charges, including those for Athletics, Instrumental Music, and other program and field trip fees. Other fees include but are not limited to curriculum-based field trip expenses, Brookline Early Education Program (BEEP), School Department Summer Programs, and other fees the school department may charge as a result of curriculum requirements. In essence, the families that cannot afford the programming subsidize the families in need.

BEEP Income Eligibility and Application Fee

Determination Status	Income Level over Poverty Guideline for Household Income	Households will pay
Approved for Free	<200%	$0 program fee
McKinney-Vento Homeless Determination		$0 program fee
Foster Care (individual only)		$0 program fee
75% Reduction of Fee	201% - 300%	25% of the program fee
50% Reduction of Fee	301% - 350%	50% of the program fee

* % above HHS Poverty Guidelines

Brookline Public Schools have figured out a way to link access to their programs with one stop financial aid applications. BEEP is also working to ensure that families from economically diverse backgrounds participate in its programming. Private institutions have been slow to provide financial assistance to children in need. This is also true for families with vouchers.

Daily After School Enrichment Program

Daily After School Enrichment Program (DASEP) is an independent non-profit program that provides learning-based afternoon activities to the Florida Ruffin Ridley Elementary School students in grades K-8. The program is arranged into four 8-week sessions--Fall, Winter, Early Spring, and Late Spring--so that session breaks align with school breaks. Over the 30+ years since the program's inception, DASEP has become the district's largest after school program, serving over 300 students with 30-40 class and activity choices per session. Families may choose from a wide range of classes offered five days a week during the two hours following the regular school day and in the following broad categories: athletics, creative movement, and fitness; visual and performing arts; artisan, culinary and creative crafts; and science and technology.

The program receives no funding aid form the Schools or the Town. On the face of its website it describes how a family can apply for financial aid. Families attending the Florida Ruffin Ridley School have been made aware of the financial aid programming. Prior to COVID it did offer generous financial assistance to all qualifying families. That said, they are still trying to assist families in need.

As with BEEP, they figured out a price structure and told all of the families. Almost all of the families agreed with the programming and payment schedule. They also seek donations, families have agreed to pay more and families have been transparent about their means. Again, Parks and Rec. should research this model.

Girls on the Run

Girls On The Run and *Heart and Sole* (grades 3-5) and *Heart and Sole* (grades 6-8) aim to inspire girls to be joyful, healthy and confident using a fun, experience-based curriculum

which creatively integrates running. Over the course of the program, girls will: develop and improve competence, feel confidence in who they are, develop strength of character, respond to others and oneself with care and compassion, create positive connections with peers and adults and make a meaningful contribution to community and society. Such life skills will prevent unhealthy and risky behaviors, such as physical inactivity and negative body image, and promote positive health outcomes (e.g., physical, mental, social and spiritual health).

The season will run from Monday, September 23 through December, with a program- and state-wide 5K on Sunday, December 8! The program will meet twice a week for 10 weeks, right after school at Pierce for 90 minutes, led by teacher and parent coaches. More information will be sent out in the coming weeks, including practice schedule, more information about the program, and registration information.

Other Ideas

- Switch financially able families to "nonresident status," and explain that the change is needed to cover the cost of low income families.
- Charge a registration fee for upfront money.

Potential Outcome Measures

Outcome statements The primary outcomes the project team identified from the objectives in the enabling legislation of the program:

• All socio-demographic groups have equal access to diverse and uncongested recreation opportunities
• Maintain high quality recreation experiences
• Rates of outdoor recreation participation are high and increasing among disadvantaged families
• Outdoor recreation contributes to health, wellness and environmental learning
• Habitat for native plants and animals is groomed and improved over the long term

Measures	Outcomes	Comments
Recreation Health and Quality of Life Benefits	Requires survey to represent indicators for monitoring human wellbeing associated with environmental restoration **Measuring human wellbeing: A protocol for selecting local indicators** 2018 Happiness Comes Naturally: Engagement with Nature as a Route to Positive Subjective Well-Being Ethan A. McMahan Western Oregon University	
Recreation Supply, Inventory and Access	• # of recreation sites, by type (e.g., picnic areas, attraction sites) • # of miles (e.g., park space; playground areas)	

	• Amount (e.g., acres) of recreation experience opportunities in each Recreation Opportunity Spectrum (ROS) class, e.g., semi-primitive, non-motorized (by ecosystem type, region or planning area) • Amount and kind of experience opportunities added by a particular land acquisition • % total green space and increases (in predefined region) held in public ownership and managed for public access • Number of people served per park acre	
Recreation Participation and Demand	• % of population participating in nature-based recreation. Common outcome measure, assessed via survey, usually broken out by subcategory • % of participation by population subgroups based on race, ethnicity, gender, socioeconomic status. (A measure for equity of recreation participation.) • % of recreation sites at or above capacity more than X% of the time on high season days - total and by recreation activity type • Park need: Areas farther than 10-minute walk from a park. Prioritize among those areas based on: 1) population density - weighted at 50%; 2) density of children age 19 and younger - weighted at 25%; 3) density of individuals in households with income less than 75% of city median income - weighted at 25%. • # of access passes sold per year, per type ● 50% of all children learn to swim by the 5th grade ● Increases in participation among protected categories	
Economic Outcomes of Recreation	Assess the Parks and Rec's potential economic contribution to Brookline • How much are participants spending on programming • Total sales benefitted, including Tee shirts and contracts • # of jobs supported – full time, part-time, all year, seasonal Recreation economic value (benefits received by an individual or group directly engaged in an outdoor recreation activity) • Consumer surplus value per day, by recreation activity	
Recreation Health and Quality of Life Benefits	• Survey indicators for monitoring human wellbeing associated with being in the natural environment.	

Sustainable Development and Smart Growth	• Increase in recreational opportunities and open space areas that push residential and commercial development away from greenspace • % of lands permanently safe from development	

Response to Parks and Rec Commissioner's Concerns

Generally, the role of the Commissioners should include performing statutory functions assigned to Parks and Recreation Commissions. They should promote the use of and advocate for parks and recreational services. Commissioners should suggest recreational programs to be implemented by the Park and Recreation Department. I would argue that they would advise the Select Board in the areas of public policy and long-range recreation planning of recreation and public enjoyment. This includes facilities.

Most importantly, Commissioners are to represent the community and typically most of them should have some expertise in the areas of parks (landscaping or athletic fields, recreation (activities, leagues, or cultural events), youth sports (organized and pick-up), natural resources, public health, and construction. They should have a sound understanding of how the department collaborates with the community to accomplish certain goals. There is and has always been the need for relationships between neighbors, residents, organizations, and other departments. Finally, each Commissioner has a duty to leverage their skills to support or fund various projects that would otherwise not be completed.

1. **Commissioners believe that WA 26 should be a policy instead of a by-law for a variety of reasons.**

A law is framed for bringing justice to the society, a policy is framed for achieving certain goals. Excluding families from Parks and Recreation services is nothing short of an injustice. Laws are for the people, and policies are made in the name of the people. Policies can be called a set of rules that guide any government or any organization. Laws are administered through the courts. Laws and policies are an essential part of how laws and for that matter how Brookline operates. Laws and policies help to maintain law and order in any civilization, as well as help shape political and social aspects of the society. The people must obey and follow laws, whereas, a policy is declared with the intention of betterment of society and its citizens. Laws are formal and focus on helping improve the welfare and society.

A policy, on the other hand, is informal. It is just a statement or a document of what is intended to be done in the future. At best, policies can help to identify new laws that are needed by government to achieve its goals. Laws set out standards, procedures and principles that must be followed. It is enforceable by law. Finally, laws are compulsory and there are provisions in these laws for compliance for those who break these laws.
Petitioners believe that a bylaw is necessary, because Brookline would benefit greatly from shaping its political and social considerations. There are currently not set standards, procedures and principles in place. Also, the community would benefit greatly from compulsory requirements. Finally, a policy or guidance would not have the weight of law and as such could not be compelled to provide the services for families.

2. **Whether the Parks and Recreation By-law Creates an Additional Burden on the Commission.**

Generally, the Commissioners are Brookline's key parks and recreation policymakers, overseeing the operation and administration of the parks. Generally, most commissioners

are responsible for overseeing the management and administration, representing parks and rec interests at the Select Board, Town Meeting, town administrator, at the state and federal level, and participating in long-range planning, and managing the Parks and Rec's budget and finances. The Commissioners have identified several concerns about the scope of new responsibilities. I would argue that it does not matter that the Commissioners are volunteers. This by-law simply clarifies the scope of the Commissioner's responsibility to extend to considerations for families and their recreational needs and opportunities. Right now, many parks and recreation issues are not really part of the Commissioner's statutory duties. This appears to be a significant program shortcoming and significant issue for the Town's low income residents.

Presently required to… SECTION 3.16.1 PARK AND RECREATION AREA PROGRAMS

The Park and Recreation Commission shall, "at least annually, (a) promulgate a proposed Program for such substantial construction, alteration or repair of the parks and recreation areas in the Town over the following six years as it may consider appropriate, including estimates of expected costs; (b) advertise such proposed program at least twice in a newspaper of general circulation in the Town; (c) conduct a public hearing concerning such proposed program at a time and place specified in such advertisement; and (d) after such public hearing and such further revision as it may consider necessary, submit such proposed program for approval to the Select Board."

In fact the present bylaw is silent about parks and recreation services and especially serving specific groups. Annual data gathering is more operational instead of strategic. It says little about obtaining meaningful data or for that matter taking a strategic view of its services. The proposed bylaw would lead to their seeking such information to guide their programming.

Fundraising – This section should not be viewed as an unusual request.

"Commissioners will fundraise for the parks and recreation system, including researching and offering recommendations for grant applications. The Commission may not receive grant funds without consent of the Select Board." I am at a loss as to why this is beyond the scope of the Commissioners. From time to time, officers and commissioners should and do fundraise. They could propose increasing fees. For example, commissioners working with the town administrator might well solicit more funds for the department from the state and federal government, seek funding from the Brookline Community Foundation or other sources. The expectation is not for the Commissioners to actually draft funding requests. Commissioners are responsible for its Fund. It could raise recreation fees. Also, Commissioners should be expected to attend fundraising events on behalf of the town.

Creating policies, consistent with the bylaw, should be well within the Commissioner's authority. As described above, the policies should then really enhance programming. A review of the Parks and Recreation mission language states that "The Park and Recreation Commission is a policy-making board responsible to the town for providing year-round, high quality, indoor and outdoor recreation activities for children and adults. The goals of the commission are to deliver programs that are cultural, social, mental, and physically based which are presented at well-maintained parks and facilities." It is the "providing year-round, high quality, indoor and outdoor recreation activities for children and adults" where the bylaw better describes some of their responsibilities. We are concerned with

meeting appropriate community based needs that are cost efficient, within the reach of the overall community resource base, while providing the highest level of participant satisfaction. Safety and quality are paramount. All individuals with special conditions are entitled to full participation in any Brookline Recreation and Park program.
Clearly, the Town's own mission for Parks and Recreation speaks to developing policies. The fact that the Commission has not created a program to fund disadvantaged youth speaks to why the town should have a by-law that requires Commissioners to create such additional programming.
Petitioners do not believe that the Commissioners annually preparing, considering, and approving a parks and recreation master plan is outside the scope of your responsibilities. Much like the Commissioners have an "Open Space Design Review Panel," it should have a panel that examines the full scope of parks and recreation programming. Further, when the by-law states that "The Commissioners will design and produce a youth engagement assessment tool and recommendations in order to increase low income families and families suffering extenuating circumstances participation in recreation programming" is a reasonable expectation in keeping with the scope of your duties.

If the Commissioners are to look at construction issues, then I would hope that they would consider the people side of parks. In order to ensure that all plans for the substantial construction, alteration or repair of a park or recreation area under the jurisdiction of the Commission respect the historical, cultural, aesthetic, and open space values of the Town and serve the expressed needs of the primary community to be served by the improvement, the Commission shall appoint a Park and Open Space Design Review Panel, hereinafter called the review panel, for each such plan.

3. **Are the Commissioners Expected to Perform Community Engagement?**

Commissioners and Parks and Recreation Staff do not presently have the necessary resources to make disadvantaged residents aware of the programming. As I have stated, once the by-law is passed, various organizations would help perform outreach. At a minimum, Brookline Housing Authority (BHA), Brookline for Racial Justice and Equity (BRJE), Brookline Asian American Families Network (BAAFN) and Black and Brown groups of Brookline would help. The Town also has a full-time community engagement staffer who could also help disseminate information. Finally, the Brookline Schools could also send notifications to families receiving free lunches. Of course, families with extenuating circumstances would also be protected by the by-law.

4. **What Are Some Potential Funding Sources** –

Petitioners have submitted a budget amendment to fund the objectives outlined in the by-law proposed in WA 26. A by-law, unlike a policy, creates a responsibility on the part of the town to fund the programming, which a policy would not. Consider raising fees. Add the increased Parks and Recreation needs to the General Fund. Funding could also come from ARPA, Select Board's fund (Boston Athletic Association, Professional Golf Association, or Cannabis) and other funding sources.

5. **Will the Commissioners Be Overworked** –

This is purely a volunteer appointment, so anyone may volunteer or decline it. Commissioners may need a different skills set and that may actually mean that the Select Board solicits people with a different skills set. Granted the work is hard, but that should not be a reason to limit WAs scope and authority.

ARTICLE 8

AMENDMENT OFFERED BY MARISSA VOGT, TMM6, AMANDA ZIMMERMAN, TMM7, SUSAN GRANOFF, TMM7, ANITA JOHNSON, TMM8, AND LEN WHOLEY, TMM11

MOVED that special appropriation 44 for the rehabilitation of sidewalks be increased by $147,000 to a new total of $500,000 with the additional funds dedicated to improving sidewalk PROWAG compliance.

Explanation:

The Town of Brookline has committed to build a transportation network on the public way that accommodates people of all ages and abilities, regardless of their mode of transport, through its 2016 adoption of the Complete Streets policy. Accessibility of sidewalks and curb ramps is critical for pedestrian safety. Sidewalks and curb ramps that are too narrow, cracked, or bumpy may force pedestrians to walk in the streets, placing them at increased risk. Car crashes with pedestrians are a frequent cause of physical harm in Brookline, with roughly ~50 pedestrian crashes, of which ~20 lead to injury, per year prior to the pandemic.

The Town of Brookline has adopted PROWAG ("Public Right Of Way Accessibility Guidelines") guidelines as its standards for pedestrian access. These guidelines have been developed by the U.S. Access Board, which is "a federal agency that promotes equality for people with disabilities through leadership in inclusive design and the development of accessibility guidelines and standards," according to its website. PROWAG guidelines address a variety of sidewalk and curb ramp design properties like the minimum clear width, maximum allowable cross slope, maximum allowable height before changes in level should be beveled, and the size and placement of "detectable warning surfaces," textured surfaces of contrasting colors that warn the visually impaired that they are entering a potentially hazardous area.

PROWAG guidelines are recommended by MassDOT and other agencies as best practices for sidewalks and curb ramps that are similar to, but often have greater baseline standards than, ADA standards. For example, the PROWAG guidelines specify that sidewalks should be designed with a minimum of 4 feet of clear width that is continued around any obstructions (like a street tree), while the ADA standards require only 3 feet of clear sidewalk width.

Unfortunately, many of Brookline's sidewalks and curb ramps fail to meet PROWAG guidelines – or ADA standards. The Town recently conducted thorough inventory and condition assessment of the Town's transportation infrastructure, including sidewalks and

curb ramps. The results are summarized in the Transportation and Mobility Plan[1], which was released in early 2022. Among its findings: **10 percent of Brookline's sidewalks were rated as "unsafe in certain areas" or "potentially hazardous for public use" and 13 percent of *existing*[2] curb ramps were determined to display "significant signs of failure that could present safety issues".**

The Transportation Department estimates that bringing Brookline's sidewalks and curb ramps up to compliance with PROWAG guidelines would cost ~$4.2 million – nearly 12 times the $353,000 originally designated for sidewalk rehabilitation in the Advisory Committee's budget motion. Assuming a similar budget in future years, and taking into account that sidewalks and curb ramps would also require regular repair and maintenance (fixing cracks, etc.), it is reasonable to conclude that completely bringing Brookline's sidewalks and curb ramps up to compliance with PROWAG guidelines would take at least 15-20 years. That is an unacceptably long time for the public way to remain inaccessible to people in wheelchairs, young children in strollers, or people with other mobility issues.

While the Town has been making slow but steady improvements to its pedestrian and bicycle infrastructure thanks in part to the adoption of the Complete Streets policy in 2016, those areas have been chronically underfunded, particularly compared to motorist infrastructure. For example, the Town's 2008 annual budget included $1,000,000 for the rehabilitation of streets and $200,000 for the rehabilitation of sidewalks. The 2008 operating override added an additional $700,000 for streets – an increase of 70% – but just $50,000, or a 25% increase, for sidewalks. This motion adjusts the Town's budget to reflect our support of sustainable, healthy transportation options.

Our motion increases the special appropriation for the rehabilitation of sidewalks by $147,000 from $353,000, for a total of $500,000, roughly matching the annual funding level recommended to the Transportation Department by Town consultants and that the department initially requested from the Town Administrator.

This motion is brought by members of the Pedestrian Advisory Committee, Bicycle Advisory Committee, and Transportation Board in our individual capacities, with thanks to Officer Nicholas Goon of the Brookline Police Department for providing traffic crash data and to several other TMMs and community members who are working to make Brookline's transportation infrastructure safer and more equitable.

[1] https://www.brooklinema.gov/DocumentCenter/View/29829/Brookline-Transportation--Mobility-Plan-FINAL-02252022

[2] Some intersections do not have curb ramps at all.

ARTICLE 8

AMENDMENT OFFERED BY PAUL HSIEH, TMM4

MOVED: To amend the Advisory Committee motion starting on page 8-49, modify the referenced special appropriations as follows (changes are in **bold underlined and strikethrough**):

Item 62: Skyline Park

Raise and appropriate $3,210,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the design and renovation of Skyline Park, **with the condition that no money in any way related to design, procurement, or construction for Skyline Park can be encumbered or expended in furtherance of refurbishing the existing plastic turf field or installing new plastic turf at Skyline Park;** and **to** meet the appropriation authorize the Treasurer, with the approval of the Select Board, to borrow $3,210,000, under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose.

ARTICLE 9

NINETH ARTICLE
Submitted by: Director of Human Resources

To see if the Town will amend the General By-Laws, Part IV, Financial and Reports, Article 8.4, Living Wage By-Law, Section 8.4.2, Living Wage, as follows (additions are underlined and deletions appear in stricken text):

SECTION 4.8.2 LIVING WAGE
(a) The town of Brookline ("town") shall pay each of its employees no less than $10.30 an hour except as provided in Section 4.8.5 and in collective bargaining agreements with the town under G.L. c. 150E, section 7.

(b) The wage prescribed in paragraph (a) of this Section 4.8.2 shall be known as the "living wage" and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments given to full-time, nonunion town employees on the town's general pay schedule, beginning in the year 2003.

(c) The living wage shall also be adjusted annually at the time of and after the adjustment set forth in paragraph (b) of this Section 4.8.2 if necessary to insure that as so adjusted, it is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

(d)Should the adjusted "living wage" fall below the "minimum wage" as defined in Section 4.8.3, the Town shall adjust the living wage to be one dollar ($1.00) more than the minimum wage.

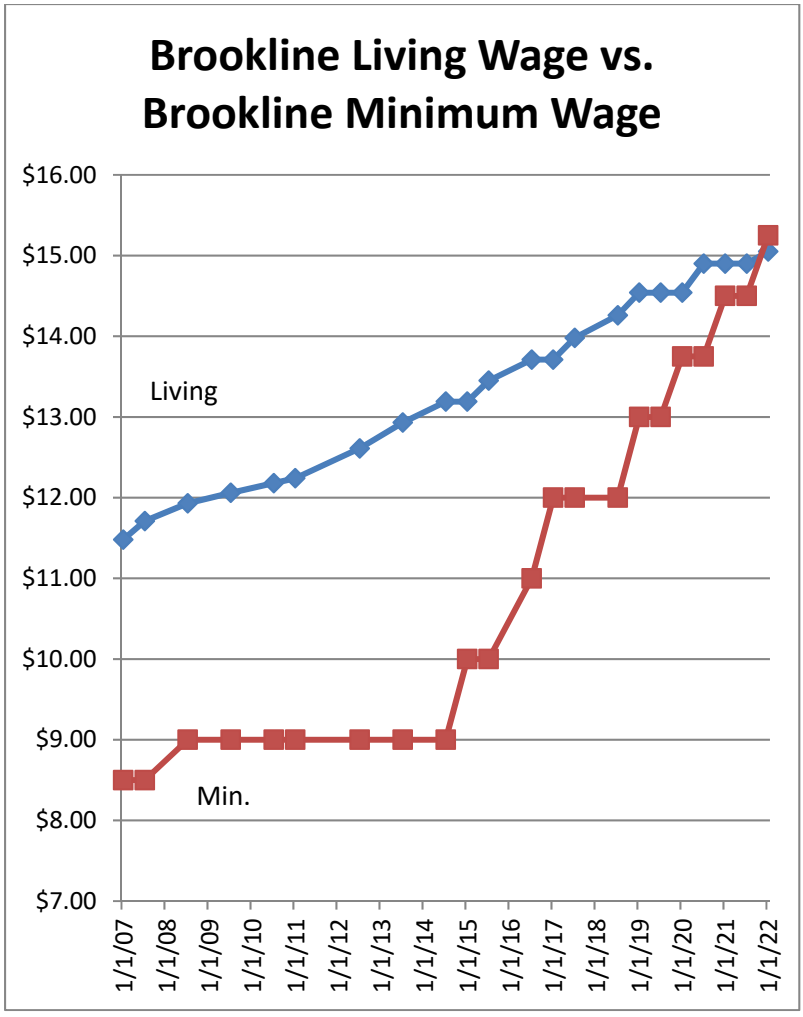
Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Background and Purpose: The Living Wage Bylaw, currently at $14.90 per hour, was adopted in 2001 for the purpose of increasing wages for certain lower paid positions and ensuring wage protection into the future. During the twenty years since its implementation, the Living Wage Bylaw has served the important purpose of providing wage protection to part-time and temporary employees who are not covered by a collective bargaining agreement, including those who may depend on their wages as their primary source of income. This article proposes to address an issue that has developed as a result of the progressive increase in the State Minimum Wage over the last several years to bring it to $15.00 per hour ("The Great Bargain"). The article provides for a review of wages where the Brookline Living Wage ends up being lower than the Brookline Minimum Wage. In only those specific cases, it provides for an adjustment to be made in the Brookline Living Wage to be $1.00 more than the Brookline Minimum Wage.

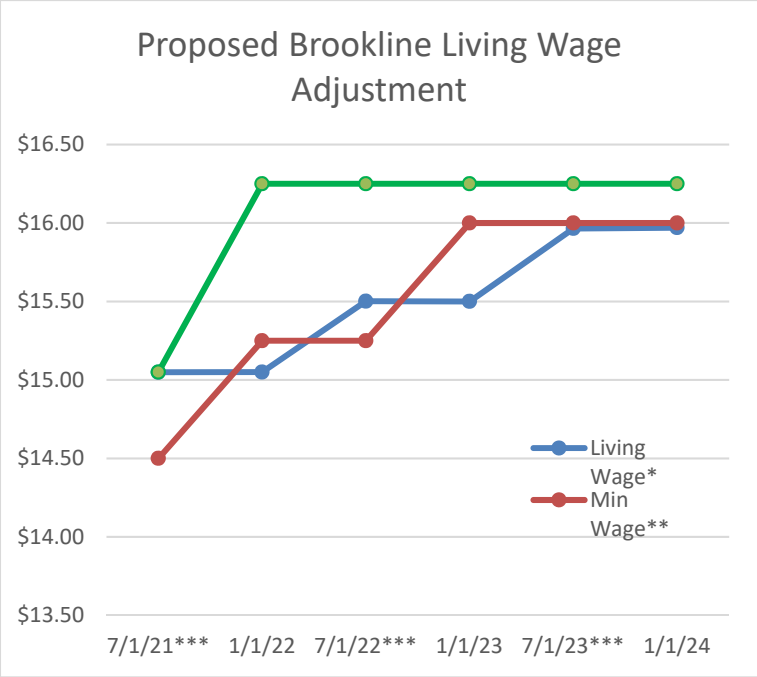
As of January 1, 2022, the State Minimum Wage is $14.25 with a resulting wage for Non Living Wage employees of $15.25. However, the Brookline Living Wage is only $14.90, as a wage increase for non-union employees has not been approved for FY22. Even with the proposed wage increase of one percent falling in line with the FY22 Adjusted Budget collective bargaining reserve, the Brookline Living Wage will only rise to $15.05 per hour.

Town of Brookline Living Wage History		
Date	**Living Wage***	**Min Wage****
1/1/07	$11.48	$8.50
7/1/07	$11.71	$8.50
7/1/08	$11.93	$9.00
7/1/09	$12.06	$9.00
7/1/10	$12.18	$9.00
1/1/11	$12.24	$9.00
7/1/12	$12.61	$9.00
7/1/13	$12.93	$9.00
7/1/14	$13.19	$9.00
1/1/15	$13.19	$10.00
7/1/15	$13.45	$10.00
7/1/16	$13.71	$11.00
1/1/17	$13.71	$12.00
7/1/17	$13.98	$12.00
7/1/18	$14.26	$12.00
1/1/19	$14.54	$13.00
7/1/19	$14.54	$13.00
1/1/20	$14.54	$13.75
7/1/20	$14.90	$13.75
1/1/21	$14.90	$14.50
7/1/21(1)	$15.05	$14.50
1/1/22	*$15.05*	*$15.25*
	* Follows non-union COLAs	
	** +$1 MA Min Wage	
	(1)Assumes 7/1/21 retro 1% non-union COLA	



This article would result in a continuation of the intent of the By-Law to provide wage protection to wage protection to part-time and temporary employees who are not covered by a collective bargaining agreement, including those who may depend on their wages as their primary source of income. In all, approximately four percent (4%) of employees are covered under the Brookline Living and Minimum Wage positions.

The article provides a technical mechanism for review when the situation warrants. It also has an impact on the budgets of affected departments, but more importantly has an impact on the services provided. Given the economy and impacts from the COVID-19 pandemic, it has become increasingly difficult to recruit for all positions, but these roles are particularly difficult to recruit and retain employees. The covered positions provide a critical role in the programs and offerings that the Town provides and improve the quality of life of our residents.



Brookline Living Wage Proposal			
Date	Living Wage*	Min Wage**	Adjusted Living Wage
7/1/21***	$15.05	$14.50	$15.05
1/1/22	$15.05	$15.25	$16.25
7/1/22***	$15.50	$15.25	$16.25
1/1/23	$15.50	$16.00	$16.25
7/1/23***	$15.97	$16.00	$16.25
1/1/24	$15.97	$16.00	$16.25
	* Follows non-union COLAs		
	** +$1 MA Min Wage		
	*** Assumed wage increase 1%, 3%, 3%		

Living Wage Positions:
LIBRARY PAGE 1-3 NON UNION
COA ASSISTANTS-TEMP
REC ASST REC LEADER EKAC/JR
REC BEEC ASST REC LEADER/JR
REC EKAC INSTRUCTOR
REC EKAC LIFEGUARD
REC GOLF ASST REC LEADER/JR
REC GOLF GREENSKEEPER
REC GYM REFEREE JR

REC JKSR CONCESSIONS
REC JKSR SKATE GUARD JR
REC OATH REFEREE
REC OFAC ASST REC LEADER/JR
REC OFAC CAMP INSTRUCTOR
REC OFAC LIFEGUARD
REC OFFST ASST REC LEADER/JR
REC TPPN ASST REC LEADER/JR
REC TPPN PT MANAGER
REC TPPN REFEREE JR
REC TPPN SCOREKEEPER
VETERANS JOB PROGRAM-TEMP

Minimum Wage Positions:
LIBRARY PAGE 1-3 NON UNION
REC EKAC LIFEGUARD
REC OFAC LIFEGUARD
COA ASSISTANTS-TEMP
INTERNS-TEMP (Health Grad Students)
MISC TEMP LIVING WAGE
REC ASST REC LEADER EKAC/JR
REC BEEC ASST REC LEADER/JR
REC EKAC INSTRUCTOR
REC EKAC INSTRUCTOR JR
REC EKAC LIFEGUARD JR
REC EKAC PT MGR
REC GOLF ASST REC LEADER/JR
REC GYM ASST REC LEADER/JR
REC GYM REFEREE
REC JKSR ASST REC LEADER/JR
REC JKSR CONCESSIONS
REC JKSR RENTAL SHOP
REC JKSR SKATE GUARD JR
REC OATH REFEREE
REC OATH REFEREE JR
REC OFAC ASST REC LEADER/JR
REC OFAC CAMP COUNSELOR
REC OFAC CAMP COUNSELOR JR
REC OFAC CAMP INSTRUCTOR
REC OFFST ASST REC LEADER/JR
REC RT SPECIALIST/INTERN
REC SOULE LIFEGUARD
REC TPPN ASST REC LEADER/JR
REC TPPN REFEREE JR

SCHOOL COMMITTEE STATEMENT

On April 7, 2022, the School Committee voted 8-0-1 to recommend passage of WA9. Voting in favor were Ms. Federspiel, Mr. Pearlman, Ms. Charlupski, Ms. Ditkoff, Dr.

Ehrenberg, Ms. Frias, Dr. Liu, and Ms. Monopoli. Ms. Nobrega abstained because one of her children worked as a summer high school employee.

In the interest of supporting lower wage employees, some of whom are employed by the Public Schools of Brookline, the School Committee supports the review and adjustment of the living wage calculation to ensure that the Brookline Living Wage exceeds the Brookline Minimum Wage.

SELECT BOARD'S RECOMMENDATION

Article 9 is a proposed change to the Town's Living wage by-law to ensure that the Brookline Living Wage does not fall below the Brookline Minimum Wage. The Select Board agree that the changes proposed by the HR Director meet the intent of what the original by-law language was trying to achieve. The Board thanks Ms. Braga for proactively solving this potential problem.

The Select Board unanimously voted 5-0 on the following motion:

VOTED: That the Town will amend the General By-Laws, Part IV, Financial and Reports, Article 8.4, Living Wage By-Law, Section 8.4.2, Living Wage, as follows (additions are underlined and deletions appear in stricken text):

SECTION 4.8.2 LIVING WAGE
(a) The town of Brookline ("town") shall pay each of its employees no less than $10.30 an hour except as provided in Section 4.8.5 and in collective bargaining agreements with the town under G.L. c. 150E, section 7.

(b) The wage prescribed in paragraph (a) of this Section 4.8.2 shall be known as the "living wage" and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments given to full-time, nonunion town employees on the town's general pay schedule, beginning in the year 2003.

(c) The living wage shall also be adjusted annually at the time of and after the adjustment set forth in paragraph (b) of this Section 4.8.2 if necessary to insure that as so adjusted, it is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

(d)Should the adjusted "living wage" fall below the "minimum wage" as defined in Section 4.8.3, the Town shall adjust the living wage to be one dollar ($1.00) more than the minimum wage.

**After the Board vote, the Advisory Committee added a minor amendment to this motion. The Board will look to reconcile that change on May 10th.*

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION as amended by a vote of 20-2 with 2 abstentions

Executive Summary:	This article seeks to adjust the calculation of the Brookline Living wage to better reflect the original intent of Article 4.8. Article 4.8 established both a Brookline Living Wage and a Brookline Minimum Wage. The Brookline minimum wage is calculated by adding $1 dollar to the Massachusetts minimum wage. At the time of passage it was anticipated the calculated Brookline Living Wage would be higher than the Brookline Minimum wage. That may be about to change because Brookline pegs its minimum wage against that of the State.
Voting Yes will...	Change the calculation of the Brookline Living Wage by adding the following language to Article 4.8.2: (d) Should the adjusted "living wage" fall below the Brookline "minimum wage" as defined in Section 4.8.3, the Town shall adjust the living wage to be one dollar ($1.00) more than the Brookline minimum wage. Voting yes will ensure that Brookline's Living Wage is always at least $1.00 more than the Brookline Minimum Wage.
Voting No will...	Will leave Article 4.8 unchanged and may result in a situation where increases in the Massachusetts Minimum Wage will cause the Brookline Living Wage to fall below the Brookline Minimum Wage.
Financial impact	Since the vast majority of Brookline's hourly employees already make more than both the Brookline Minimum Wage and the Brookline Living Wage it is felt that this article will have a minor financial impact on the Town.
Legal implications	Article 4.8 requires the Town to post information about both the Brookline Minimum Wage and the Brookline Living Wage and requires both the Town and *certain contractors who do business with the Town* to abide by these minimum pay scales. If a covered employer violates this By-law the Town may terminate their contract and/or levy an appropriate fine.

Introduction
This Amendment to By-Law 4.8 seeks to clarify and modify the calculation of the Brookline Living Wage and to align the By-Law with the original intent Article 4.8,

which was to have the Brookline Living Wage be higher than the Brookline Minimum Wage. This change is necessary because it has not been possible for the Living Wage, as currently calculated, to keep up with the increases in the Brookline Minimum wage, which are being driven by the increase in the Massachusetts Minimum Wage.

Evaluation Methodology/Research
Before proposing this amendment, the Human Recourses Department of the Town of Brookline reviewed our current pay policies to determine if any Town Department would be significantly adversely impacted by the amendment. It determined that this adjustment was unlikely to have an adverse impact on the budgets of any Town Department.

Discussion
Brookline's Minimum and Living Wages create an intentional stratification. The Minimum Wage may apply to certain seasonal or entry-level positions, as opposed to the somewhat higher Living Wage that can apply to employees with more experience or with more oversight responsibility (e.g. Jr. Lifeguard vs Sr. Lifeguard).

This Article is proposed in order to align the outcome of the calculation for the Brookline Living Wage with the original intent of the Town when it passes Article 4.8. Article 4.8 requires the Town to notice all employees and, importantly, all businesses with service contracts with the Town for more than $5,000, with notice of the Brookline Minimum Wage and the Brookline Living Wage. The notices reflect the values imbedded in Article 4.8 of the Town By-law. While there was some discussion at the Advisory Committee about whether or not By-law 4.8 was still needed given the recently approved increases in the Massachusetts minimum wage that have been approved by the legislature, this article does not address that. This article only seeks to clarify and modify the calculation for the Brookline Living Wage so that, at the very least, our Living Wage always remains $1.00 more than our Minimum Wage

The Advisory Committee recommended one clarifying change: to add the word "Brookline" to clarify that the "Brookline minimum wage" is distinct from the State or Federal minimum wages.

Recommendation
The Advisory Committee Recommends Favorable Action on the following amended motion under Warrant Article 9 by a vote of 20-2 with 2 abstentions.

VOTED: That the Town amend the General By-Laws, Part IV, Financial and Reports, Article 8.4, Living Wage By-Law, Section 4.8.2, Living Wage, and the title of Section 4.8.3 as follows (additions are **underlined**):

SECTION 4.8.2 LIVING WAGE
(a) The town of Brookline ("town") shall pay each of its employees no less than $10.30 an hour except as provided in Section 4.8.5 and in collective bargaining agreements with the town under G.L. c. 150E, section 7.

(b) The wage prescribed in paragraph (a) of this Section 4.8.2 shall be known as the "living wage" and shall be adjusted annually by the same percentage and on the same schedule relative to wage adjustments given to full-time, nonunion town employees on the town's general pay schedule, beginning in the year 2003.

(c) The living wage shall also be adjusted annually at the time of and after the adjustment set forth in paragraph (b) of this Section 4.8.2 if necessary to insure that as so adjusted, it is at least one dollar more than the state minimum wage in effect under G.L. c.151 at the time of such adjustment.

(d) Should the adjusted "living wage" fall below the "Brookline minimum wage" as defined in Section 4.8.3, the Town shall adjust the living wage to be one dollar ($1.00) more than the minimum wage.

SECTION 4.8.3 **BROOKLINE** MINIMUM WAGE

ARTICLE 9 ADVISORY COMMITTEE VOTES

Article Description	Living wage, as amended
AC recommendation (Favorable Action unless indicated)	**20-2-2**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
John Doggett	A
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	A
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	
Alok Somani	N
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 9

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

After the Select Board took their vote on Article 9 the Advisory Committee amended the motion to add the word "Brookline" to clarify that the "Brookline minimum wage" is distinct from the State or Federal minimum wages.

A unanimous Select Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ARTICLE 9

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 04/20/2020. By a vote of 7-0-0, the CDICR recommends **FAVORABLE ACTION** on Warrant Article 9.

DISCUSSION

Warrant Article 9

Warrant Article 9 seeks to amend the General By-Laws, Part IV, Financial and Reports, Article 8.4, Living Wage By-Law, Section 8.4.2, Living Wage. The purpose of the amendment would be to ensure that wages paid to certain lower paid Town employees not covered by a collective bargaining agreement and, who may in fact, depend on this income as their primary source of support would always be assured that their hourly pay (known as the Brookline Living Wage) would keep pace and exceed the Brookline Minimum Wage by $1.00 per hour. Currently, the Brookline *Living* Wage is $15.05 per hour while the Brookline *Minimum* Wage is $15.25 per hour which is currently $1.00 per hour greater than the *Massachusetts Minimum* Wage of $14.25 per hour. Because of the recent increases in the Massachusetts Minimum Wage (as well as the Brookline Minimum Wage), the Brookline Living Wage no longer exceeds the Brookline Minimum Wage which was not the intent of the original Living Wage By-Law. This disconnect is untenable and must be fixed so that as the Massachusetts Minimum Wage increases, the Brookline Living Wage will increase as well. With basic living costs rising at a rate that we have not seen since the early 1980s, Town Meeting must act and act now.

It is with this in mind that the Commission voted **FAVORABLE ACTION** on Warrant Article 9 by a vote of 7-0-0.

ARTICLE 10

TENTH ARTICLE
Submitted by: Neil Wishinsky, Steven Kanes, and David Lee

To see if the Town will transfer the sum of $194,644, or any other sum, from the special appropriation under item 38 of Article 7 at the 2018 Annual Town Meeting to be expended under the direction of the Director of Planning and Community Development, with any necessary contracts over $100,000 to be approved by the Select Board, to support the comprehensive planning efforts described by Article 26 of the November 2021 Special Town Meeting including data services and analysis to better understand the existing conditions of the built environment in Brookline.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Warrant Article 26 was adopted almost unanimously at the November 2021 Special Town Meeting, which simply put, asks the Planning and Community Development Department to begin Brookline's long overdue comprehensive planning process. In so doing, Town Meeting overwhelming concluded by a vote of 219 in favor, 2 no votes, and 4 abstentions, that "it would be in the Town's best interest to engage in a Town-wide, progressive planning and zoning reform project responding to the need for greater resiliency in the face of the climate emergency and pandemic disruptions, plus the critical need for equity, housing affordability, and business vitality."

Warrant Article 26 specifically requests that the Select Board, in consultation with the Director of Planning and Community Development, appoint a Planning Process Study Committee, for an inclusive, community-driven planning and zoning reform process, and that the Select Board endeavor to seek and provide adequate funding to retain all necessary consultants and additional planning staff to successfully complete the work of the Planning Process Study Committee and the implementation of its recommendations.

Funds to support the Planning Process Study Committee's work were not included in the Town Administrator's proposed budget for FY 2023. This warrant article seeks to correct that omission by reprogramming funds from an abandoned zoning reorganization project to provide the Department of Planning and Community Development with the resources to begin the planning effort that was overwhelmingly supported by Town Meeting by its near unanimous approval of Article 26.

The source of funds for this effort would be a reallocation of the Item 38 Special Appropriation passed at the May 2018 Annual Town Meeting for a study to reorganize the zoning bylaw. That project was abandoned after $5,356 being spent. In any event, planning needs to occur before any major reorganization of the zoning bylaw is undertaken. This

reallocation is in support of a more comprehensive effort to solve the issue identified for solution in the original 2018 Annual Town Meeting appropriation.

_____

SELECT BOARD'S RECOMMENDATION

Article 10 is an appropriation article, which seeks to redirect funds from a prior year CIP account into a new special appropriation. These funds would support the activities expressed in the 2021 Special Town Meeting Article 26 resolution, which asked the Select Board to appoint a Planning Process Study Committee to work with the Planning Department and other Town staff to develop a work program, budget, and scope for an inclusive, community-driven planning and zoning reform process.

The Board appreciates that the petitioners worked with the director of Planning and Community Development to find a compromise that would work within existing staffing and funding constraints.

A unanimous Select Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ROLL CALL VOTE:

Aye:	Absent:
Hamilton	Aschkenasy
Fernandez	
Greene	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation:FAVORABLE ACTION by a vote of 20-0-0.

Executive Summary	WA 10 would make funding available to support the comprehensive planning efforts described in WA 26 from the November 2021 Special Town Meeting, including data services and analysis to better understand the existing conditions of the built environment in Brookline. The database work is a precursor to the planning effort that had been overwhelmingly adopted by Town Meeting in November 2021. However, no action has thus far been taken by the Select Board on implementing WA 26.

Voting Yes will...	Make available approximately $188,644 in previously-approved CIP funds that Town Meeting had appropriated to the Department of Planning and Community Development in 2018 to support a total reorganization of the Brookline Zoning By-Law but which have never been expended, to support the planning effort that was overwhelmingly adopted by Town Meeting in November 2021.
Voting No will...	Prevent the November 2021 WA26 mandate from being carried out.
Financial impact	The funds that are to be redirected for this purpose were allocated to the Planning Department in the 2018 CIP. Redirecting these funds for this purpose will have no effect upon the FY23 budget.

Introduction

The May 2018 Annual Town Meeting adopted, in WA 7, an appropriation of $200,000 in CIP funding to support an undertaking being requested by the then-Director of the Department of Planning and Community Development for a study to reorganize the Brookline Zoning By-law. That project was abandoned after $5,356 had been spent, leaving a balance of $194,644. The Petitioners seek to redirect these unspent funds to support a related undertaking – one that had been overwhelmingly supported (by a vote of 219 in favor, 2 opposed) at the November 2021 Town Meeting. The Petitioners explain that "Warrant Article 26 specifically requests that the Select Board, in consultation with the Director of Planning and Community Development, appoint a Planning Process Study Committee, for an inclusive, community-driven planning and zoning reform process, and that the Select Board endeavor to seek and provide adequate funding to retain all necessary consultants and additional planning staff to successfully complete the work of the Planning Process Study Committee and the implementation of its recommendations." However, no action has been taken by the Select Board with respect to WA26 since its adoption nearly five months ago. WA10 would make these previously-approved but as-yet-unused CIP funds available to support the objectives of WA26.

Discussion

The Advisory Committee received more than fifty (50) e-mails from members of the public in support of WA 10. WA10 received unanimous support from members of the Advisory Committee. It was noted that the monies that had been previously allocated (in 2018) were intended to improve our zoning, and that's what this WA will accomplish, but in a more thoughtful rather than in the simply mechanical way that had been originally contemplated in the 2018 allocation. The Planning Director advised the Committee that a small portion of the unused 2018 funds allocation, which she had estimated at about $6,000, is currently being expended on work being undertaken by General Code, the contractor to the Planning Department, to update the online version of the zoning by-law. She advised that approximately $6,000 less than the amount stated in Warrant

Article 10 would thus be available. On the basis of this estimate, the Advisory Committee amended the dollar amount stated in WA 10 to $188,644, representing the funds that would be available to support the comprehensive planning effort contemplated in the November 2021 STM WA26.

Recommendation

By a vote of 20-0-0, the Advisory Committee recommends FAVORABLE ACTION on WA 10 as amended.

VOTED: That the Town transfer the sum of $188,644 from the special appropriation under item 38 of Article 7 at the 2018 Annual Town Meeting to be expended under the direction of the Director of Planning and Community Development, with any necessary contracts over $100,000 to be approved by the Select Board, to support the comprehensive planning efforts described by Article 26 of the November 2021 Special Town Meeting including data services and analysis to better understand the existing conditions of the built environment in Brookline.

ARTICLE 10 ADVISORY COMMITTEE VOTES

Article Description	**Redirect funds for comprehensive planning**
AC recommendation (Favorable Action unless indicated)	**20-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 11

ELEVENTH ARTICLE
Submitted by: Brookline Retirement Board

To see if the Town will accept the provisions of Section 103(j) of Massachusetts General Laws Chapter 32, as amended by Section 19 of Chapter 133 of the Acts of 2010 to permit an increase to the base upon which the cost of living increases may be granted to Town retirees from the first $13,000 to the first $15,000 of the retirement allowance.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the warrant at the request of the Brookline Retirement Board, which voted unanimously on March 7, 2022 to adopt this section.

Section 19 of Chapter 133 of the Acts of 2010 authorizes municipal retirement boards to increase the COLA base in increments of $1,000 for members and surviving spouses of members of the retirement system receiving retirement allowances on June 30th of the prior fiscal year.

By taking favorable action on this Article, the Town will accept a local option which increases the base upon which the cost of living increase may be granted to Town retirees, from a maximum of 3% of the first $13,000 of a retirement allowance, to the first $15,000 of a retirement allowance. Sixty four of one hundred and four Massachusetts Retirement Systems now have a COLA base greater than $13,000. The present cap of $13,000 was set by the Town nine years ago, and under the present cap a 3% annual cost of living increase for Brookline Retirees can be no higher than $390.00 per year. Increasing the base to $15,000 will result in a $60.00 annual increase, bringing the COLA increase to $450.00.

The Social Security COLA effective January 1, 2022, which is based on the Consumer Price Index, was 5.9% on the full Social Security benefit. For example the 5.9% increase for a Social Security retiree based on a $20,000 benefit, would have resulted in a $1,180.00 annual increase. The vast majority of Brookline retirees do not receive Social Security benefits.

Currently, the retirement COLA which has been factored into the system's funding schedule is 3% of the first $13,000. The Retirement's Board's actuary estimates that the amortization of this new COLA base would add approximately $100,000 per year to that schedule. The funding schedule will be revised to anticipate the possibility of a 3% COLA each year on the first $15,000. The system has benefitted from double-digit investment gains over the past three years. In addition, legislative reforms revising the retirement benefit formula, membership criteria, and a reduction in administrative expenses are

expected to substantially offset any increases to the funding schedule resulting from the increase in the COLA base.

SELECT BOARD'S RECOMMENDATION

A report and recommendation under Article 11 will be in the supplemental meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: Favorable Action on Warrant Article 11 by a vote of 21-0 with 1 abstention.

Executive Summary:	This Article was filed by the Retirement Board and seeks to increase the base amount used to calculate the Cost of Living (COLA) increase given to retirees each year from $13,000 to $15,000 which will add an additional $60 dollars, to the annual COLA. This would make the COLA for this year $450 dollars per retiree.
Voting Yes will...	Increase the amount used to calculate the COLA for retirees an additional $2,000 from $13,000 to $15,000
Voting No will...	Will leave the base amount used to calculate the COLA at $13,000 or $390 per year for each retiree.
Financial impact	The Retirement Board believes that the yearly increase in the cost of retirement benefits paid by the Town would total approximate $49,000 dollars, since there are approximately 850 retired Town employees collecting pensions.
Legal implications	None. After a review by the actuaries, the Retirement Board has determined that this increase would not impact the time line to reach full funding of the Town's retirement obligations.

Introduction

Article 11 was submitted by the Brookline Retirement Board and seeks to increase the amount of the base used to calculate cost living increases for Brookline retirees from $13,000 to $15,000. State law regulates both the cost of living increase percentage (currently3%) and the yearly amount of retirement payout to which that percentage is applied. Currently the cost of living increase is calculated using a payout base of $13,000 which would result in an increase of the annual payout to retirees of $390, assuming the retiree had a pension of at least $13,000. State law allows that base to be increased with a

vote of Town Meeting. If Town Meeting approves the increase of the base amount to $15,000, the yearly payout to retirees with pensions of at least that amount would increase by an additional $60 dollars, making the cost of living adjustment added to a retirees yearly payout by $450 dollars.

Evaluation Methodology/Research
The Retirement Board asked its actuaries to determine if this increase would impact the Town's timeline for reaching full funding of the Town's retirement obligations and the actuaries determined that given the Town's historic rate of return this increase would not impact the time line for the Town to reach full funding of its retirement obligations.

Discussion
The Retirement Board thought that a small increase in the based used to calculate the COLA for the Town's retirees was appropriate given the recent uptick in inflation. While this increase will not have a significant impact on recent retirees, the Town has a number of retirees who are older and collecting much smaller pensions; for those retirees even a small increase is welcome. Since the increase will not impact the time line for the Town to reach full funding of its pension obligations the Advisory Committee supported the increase in the base used to calculate the COLA.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the following motion under Warrant Article 11 by a vote of 21-0 with 1 abstention:

VOTED: That the Town accept the provisions of Section 103(j) of Massachusetts General Laws Chapter 32, as amended by Section 19 of Chapter 133 of the Acts of 2010 to permit an increase to the base upon which the cost of living increases may be granted to Town retirees from the first $13,000 to the first $15,000 of the retirement allowance.

ARTICLE 11 ADVISORY COMMITTEE VOTES

Article Description	COLA adjustment
AC recommendation (Favorable Action unless indicated)	**21-0-1**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	A
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 11

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 11 is a request of the Retirement Board for the Town to increase the base used to calculate cost of living increases for retirees from $13,000 to 15,000. The current Cost of Living Adjustment (COLA) base is 3% on the first $13,000.00, which is $390.00 per year since 2012. This amount is in the current 2030 full funding schedule. The warrant article, if approved, would increase the base to 3% on the first $15,000.00, which is $450.00 (a difference of $60.00 per retiree per year). The cost to set up the annual increase in the funding schedule is $4.9 million. Of the $4.9 million, $3.3 million is for current retirees and $1.6 million is for future retirees.

The Retirement Board believes that the time is right to make this adjustment because the strong performance in the most recent actuarial valuation will allow for this change without altering the funding schedule. Some members of the Select Board expressed skepticism about the performance of the fund in the future, concerns about the annual increases in the pension costs and the pressure the 7.5% annual escalation places on the Town's overall finances. A majority of the Board believes that given the current inflationary environment that an adjustment to the COLA is reasonable.

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

ROLL CALL VOTE:

Aye:	No:
Hamilton	VanScoyoc
Greene	Sandman
Aschkenasy	

ARTICLE 12

TWELFTH ARTICLE
Submitted by: Sandy Batchelder on behalf of the CDICR, with Mariah Nobrega and Deborah Brown

To see if the Town will amend the Town's General By-laws, 3.14 as follows (language to be stricken appearing in strikeout, language to be added appearing in underline):

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, and equity 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 and equity. 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, 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 (5) 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 (in accordance with 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 civil rights ~~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 By-law 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 works 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 manage the complaint process as described in Section 3.14.3 (B). ~~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 policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

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 recommendations ~~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 of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);

(vi) ~~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, 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 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 Civilian Complaint Procedure or the Human Resources Office's procedures;~~

(vii) ~~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, 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 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.~~

(viii) ~~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.~~

(ix) ~~The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) 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.~~

(x) ~~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);~~

(xi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under By-law 5.5;

(xii) ~~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;~~

(xiii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xiv) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, ~~and~~ inclusion, and equity, and encourage public and private agencies to respond to those youth needs.

(B) To carry out its responsibilities, the Commission shall establish a Complaint Committee (CC) charged with investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). Complaints involving allegations of discrimination may be made by persons or organizations against the Town, its employees, agencies, or officials or against another person or organization concerning incidents of discrimination occurring in Brookline. A third party may also file a complaint on a person or organization's behalf, or on behalf of a class of people. These complaints may involve, but are not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students, faculty and staff of the School Department to the extent permitted by federal law (including, but not limited to, Title IX).

(i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency or other communication or access issues.

(ii) The CC shall consist of not more than 5 persons chosen by the Commission for one year renewable terms. The CC shall include attorneys or other individuals with applicable legal and/or civil rights experience as well as members of historically marginalized communities. Members of the CC must be residents of Brookline and at least one shall be a member of the Commission. The CC shall choose its Chair for one year renewable terms. The CDO and its staff shall be the staff for the CC.

(iii) The CC shall create a complaint form but may receive complaints in any written form or orally. The CC shall take steps to publicize its procedures and encourage the public

to file complaints if they believe they have been the subject of discrimination. Complaints may be received by any member of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review pursuant to Section 3.14.3(B)(iv). If an oral complaint is received, the complainant may edit the form and additional materials prepared by the person(s) receiving the complaint. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant, in writing, of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based or the date on which the complainant discovers that the act was discriminatory, including pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and the CC may also extend the deadline for other good cause shown.

(iv) The CDO shall, using written and published criteria developed with the CC, review each complaint to determine whether the facts as alleged by the complainant would constitute discrimination; if so, the complaint will be referred to the CC. The review shall be completed in thirty (30) days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its case determination or if an extension is necessary.

(v) If the CDO determines that the complainant has not established a case of discrimination, the complainant has forty five (45) days to appeal the determination to the CC from the time of its receipt. This appeal will be heard by one member of the CC, and shall be completed within thirty (30) days of receipt of the appeal.

(vi) At any point during the proceedings, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator appointed by the American Arbitration Association subject to their rules and procedures. The results of the alternative dispute resolution may be considered a binding

agreement that could be enforced in a court proceeding, as may be permitted by law.

(vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC shall investigate the complaint. The CC shall adopt and publish rules of procedure for its investigations. The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties, including notice of their right to appeal, and to the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(viii) The complainant or respondent may appeal the results of the investigation within forty five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of three (3) members of the CC chosen by its Chair and the hearing shall be held within thirty (30) days of the appealing filing date. Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(x). The CC shall adopt and publish rules of procedure for its appeal hearings.

(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

(x) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the

CC shall seek relief within thirty (30) days of the panel's report, through one or more of the following actions:

(a) If the respondent is an employee, agent or official of the Town or the Town itself, the CC shall provide written findings of fact and recommendations to the Select Board.

(a) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.

(xi) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission.

(xii) The CDICR and CC shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and the civil or human rights of persons or organizations who come into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.

(xiii) The CDO shall develop a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be consistent with the Massachusetts public records law.

(C) To carry out the foregoing responsibilities, the Commission is also 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;

(i) Conduct or receive research in the field of employment discrimination, human rights, and 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;

(i) 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;

(ii) 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, the Commission shall 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 applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), 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~~ respond to questions and provide information and feedback. 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 written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information. ~~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 (5) years thereafter, the Commission shall review this By-law 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.

~~**SECTION 3.14.8 EFFECTIVE DATE OF DECEMBER 12, 2019 AMENDMENTS**~~

~~The amendments, as indicated in strikethrough, bold and underlined, adopted on December 12, 2019, become effective July 1, 2021.~~

SECTION 3.14.8 SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.9 RESOLUTION OF CONFLICTING PROVISIONS

In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.10 APPLICATION OF THIS BY-LAW

Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

PETITIONER'S ARTICLE DESCRIPTION

This warrant article seeks to revise Article 3.14 of the Town's bylaws which covers the Office of Diversity, Inclusion and Community Relations (ODICR) as well as the Commission for Diversity, Inclusion and Community Relations (CDICR). Please see related warrant article for the minor associated changes to Articles 5.5, 10.2 and 10.3 that are required due to the changes in Article 3.14.

Background

May 24, 2022 Annual Town Meeting
12-14

In the Fall of 2019 Arthur Conquest submitted a warrant article to revise the provisions of Article 3.14 to improve the procedure for discrimination complaints. Under the previous language of Article 3.14, investigations are limited to the Chief Diversity Officer, who can solely provide a report with recommendations.

The Conquest warrant article was approved at the Town Meeting to be implemented by July 1, 2021. The Commission formed a Complaint Process Committee that met 30+ times over 18 months. Two public hearings were held. The discrimination complaint processes in Cambridge, Newton, Arlington, Somerville, Melrose, Northampton and Medford were reviewed along with best practices of national organizations and models of mediation and restorative justice.

The work of the committee was delayed by the pandemic and another warrant article was filed by the CDICR and approved by the Town Meeting extending the effective date of the new bylaw to July 1, 2022.

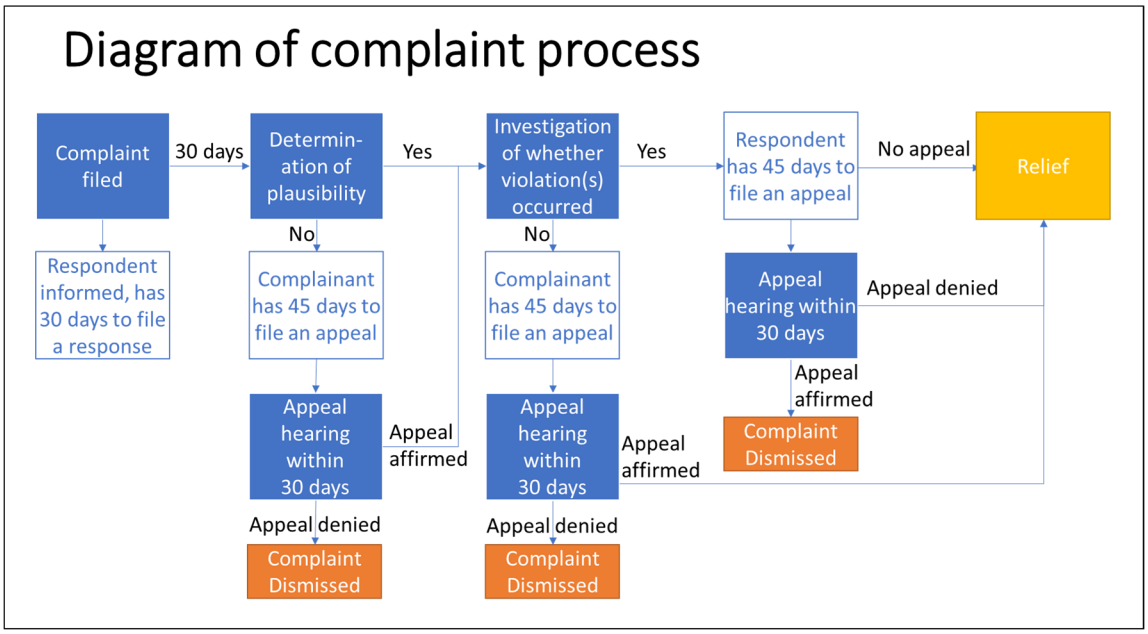
Proposed Changes to the Bylaw

Jurisdiction. The new complaint procedure would be available to the broadest class of persons and organizations who suffer discrimination in Brookline. There is a non-exclusive list of the types of discrimination covered. Discrimination claims may be brought against individuals or entities located in town but not associated with Town government (**an area that was unclear in the previous language**), as well as employees, agents and officials of the Town. Persons covered by Town/School collective bargaining agreement retain their rights under the agreement and may be entitled to the procedures specified in other Town/School discrimination policies. Similarly, students are entitled to procedures in Federal law.

Alternative Dispute Resolution. At any point during the proceedings and with the encouragement of the bylaw, the parties may agree to submit their dispute to arbitration, mediation or restorative justice – **the intent is to change behavior and seek redress, not to levy fines**. These procedures may be conducted informally by the CDO or formally by the AAA and may be considered a binding agreement enforceable in court.

Complaint Committee (CC) Membership. Under the new bylaw, the CDICR will appoint a **new Complaint Committee** of not more than 5 persons who are residents of Brookline and have relevant legal or civil rights experience or are members of historically marginalized communities. At least one would be a member of the Commission. CC members would serve one year renewable terms. The CC would be supported by ODICR staff.

CC Process. A complaint form would be adopted but complaints may be filed in any written form or orally. **To ensure accessibility, the bylaw will now make explicit that translators and other accommodations would be provided if necessary**. The CC would publicize the new bylaw and encourage the filing of discrimination complaints. **A new joint formal CC/CDO investigation process is outlined in the new language, with right to appeals and adoption of formal rules of procedure and subpoena power.** A process flow diagram of the process is below.



Remedies. Should there be a finding of discrimination, and should the respondent be an employee, agent or official of the Town or the Town itself, the CC shall provide findings of fact and recommendations to the Select Board (similar to the previous process.) However, if the respondent is not an employee, agent or official of the Town or the Town itself, **the CC may levy a fine of $300 per day and per act of discrimination on the respondent under a state statute. State law prohibits the CC from seeking any other remedy**. Although $300 may not be enough to change behavior it can mount up and may be sufficient to obtain the cooperation of respondents.

Retaliation. **Retaliation is now prohibited, as is intimidation of a witness or a party to such a proceeding.** Associates of persons protected by the bylaw are also protected from discrimination.

Other. Other changes are made in Article 3.14 to conform it to the new discrimination provisions or remove outdated material.

Committee Membership (* - current members)

Members include 6 current/former practicing attorneys and were advised by the heads of ODICR and HR who served ex officio, as well as Town Counsel Michael Downey.

Joan Lancourt (former CDICR chair)
Deborah Brown (TMM)*
Sandy Batchelder (CDICR member)*
Koinonia Givens (former TMM, Library Trustee)
Robert Volk (TMM)*
Mariah Nobrega (TMM, former CDICR member)*
Eloise Lawrence (former CDICR member)
Mike Offner (former TMM)
Arthur Conquest (TMM)*

ShanShan Guo (CDICR member)*
Ann Braga (ex officio non-voting)*
Lloyd Gellineau (ex officio, non-voting)*

INTERIM REPORT OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE (CTO&S) ON WARRANT ARTICLES 12 AND 13

Introduction

Warrant Articles 12 would create procedures under which the Commission for Diversity, Inclusion and Community Relations ("CDICR" or "the Commission") would resolve discrimination complaints under Town By-Law Article 3.14 (the article establishing and governing CDICR). Basically, the approach under By-Law Article 3.14 has changed from providing information, mediation and dispute resolution opportunities (the original 2014 version), to a more active investigative role with time limits (the 2019 Conquest Amendments), to a proposal for a more prosecutorial and punitive role granting a new Complaint Committee ("CC") subpoena power and the authority to levy $300 per day fines (2022 Articles 12 and 13).

CTO&S is filing this interim report after the exchange of drafts and discussions with Petitioners. CTO&S perceives a number of problems with the enforcement approach taken by Article 12 (and incorporated by Article 13 into the Town's Fair Housing By-Law Article 5.5). Some, but not all, of those issues are discussed below. The issues are complicated, and Petitioners and CTO&S believe that narrowing the issues in dispute would benefit Town Meeting. CTO&S intends to file a final report and recommendations after discussions with Petitioners. That final report with the CTO&S recommendations would be included in the Supplemental Mailing.

Town Meeting will ultimately determine whether the approach laid out in Article 12 should be adopted, or whether the Town should retain the 2019 version of the By-Law. Town Meeting can also decide through the amendment process whether certain elements of Article 12 (such as the subpoena power) should remain or should be stricken. CTO&S sees determinations such as these to be "political" decisions to be made by Town Meeting rather than decisions to be made by CTO&S.

Thus, the goal of CTO&S is limited: recommending language designed to ensure, to the extent possible, that if there is favorable action on Articles 12 and 13, the Articles comply with federal and State law and the State constitution, avoid penalties that could well be viewed as inequitable, ensure strong protection for privacy rights, enhance due process protections, and reduce the likelihood of unnecessary and expensive litigation.

Some Issues under the State and Federal Law

Article 12 does not define "discrimination." It also states that complaints "<u>are not limited to</u>" discrimination regarding employment, housing, and other areas covered by federal and State law. Town Counsel has pointed out that under Section 7(5) of art. 89 of the Amendments to the Massachusetts Constitution, the "Home Rule Amendment,"

municipalities have no power "to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power." Town Counsel has pointed to Bloom v. Worcester, 363 Mass. 136 (1973), which allowed that city to investigate and identify discrimination with only mediation and recommendations to the City Manager as remedies, with the Supreme Judicial Court stating that the ordinance "at the most … can encourage a person by moral suasion to do what the law already requires him to do." The Court emphasized that the ordinance was "concerned at most with adherence by persons in the city to those laws relating to unlawful discrimination which are already in effect and which do govern their civil relationships."

CTO&S seeks to bring Article 12 within constitutional limitations. It has also focused on open-ended language that could, for example, trigger "neighbor vs. neighbor" complaints. It has therefore inserted explicit language limiting complaints to incidents "that are illegal under federal or State law." Although Petitioners have argued that a definition of discrimination is not needed since "there are multiple federal and state laws that do this," the CTO&S language explicitly referencing federal and State law has not yet been accepted.

The Petitioners' proposal would also allow third parties to file complaints on a person or organization's behalf regardless of whether that person or organization had authorized the complaint or even wanted to be brought in as the focus of a complaint proceeding. Town Counsel has noted that the breadth of potential complainants under Article 12 violates constitutional principles for "standing" (the right to bring complaints) under Massachusetts law. CTO&S has thus proposed language that adopts the "standing" provisions of the Massachusetts Commission Against Discrimination ("MCAD") and that satisfies constitutional standards. Petitioners have removed the ability of third parties to file class action complaints, but differences remain between CTO&S and Petitioners.

Under the original Article 12 a complaint could be filed orally or in writing without any verification that the allegations were true. CTO&S has recommended that any complaint be reduced to a formal complaint signed under the pains and penalties of perjury verifying the truth of the allegations while Petitioners have inserted language that complaints have to be "sworn." There will be further discussion about verification language.

CTO&S expressed concerns, under federal and State law, about the application of the new enforcement mechanism to Public Schools of Brookline employees, officials and students under the original Article 12. Both parties have proposed language to deal with School employees and officials.
While complaints against Town and School employees and officials would be limited to a referral and recommendation to the Select Board, Superintendent and/or School Committee, Article 12 as amended by Petitioners still retains a provision for a $300 per day fine "to the extent the law allows" against everyone else for each violation of the By-Law.

The potential use of the $300 per day fine is sharply constrained by the Home Rule Amendment to the Massachusetts Constitution. As noted above, Bloom v. Worcester approved an anti-discrimination ordinance that provided for "moral suasion" (mediation and recommendations to the City Manager) rather than fines. As Town Counsel has

advised CTO&S and Petitioners, the "to the extent the law allows" provision could allow fines to be applied to businesses licensed by the Town if found to be "incident to an exercise of an independent municipal power." Thus, Town Counsel has pointed out (and CTO&S agrees) that fines could not be applied to housing including landlord-tenant relations, health care, private employment, and private education. In corresponding fashion, it would appear that the Home Rule Amendment would also bar fines in the areas of credit, any public accommodations not licensed by the Town, and the sale of property.

This could lead to a situation where the $300 per day fine could be levied against a local business such as a nail salon licensed by the Town, but not against, for example:

- the Bank of America if it discriminated against hundreds of individuals in refusing credit or mortgages;
- a major landlord that had repeatedly discriminated on the basis of race, the use of Section 8 certificates, or the presence of children; or
- a major private employer engaged in salary discrimination against its entire workforce on the basis of sex.

CTO&S believes that retaining the $300 per day fine would not only force costly and burdensome litigation about its application but would also because of the limitations of Home Rule Amendment at most be used to target local individuals and local businesses. It could also potentially target students older than 17, since they are not School employees or officials. CTO&S would eliminate the $300 fine, but this issue has not been resolved with Petitioners.

Some Other Issues

In addition to limitations imposed by the Home Rule Amendment and State and federal law, CTO&S has sought to address other issues such as privacy rights and due process. Consistent with the advice of Town Counsel, CTO&S recommended language designed to protect the privacy rights of individuals. CTO&S also believes that efforts to de-escalate and resolve issues before the initiation of the formal complaint process, if the parties agree in a given situation, are healthy and should expressly be encouraged. Petitioners agree with both concepts, though differences in language remain.

Article 12 creates a Complaint Committee ("CC"). Despite the fact that the CC is a quasi-judicial body that should impartially decide the merits of complaints brought before it, Article 12 originally had the CC appointed by CDICR, itself an appointed body. CTO&S would have CC appointments rest with the Select Board, a body accountable to the public. It may be possible to agree on an appointment process.

CTO&S has also modified the language of Article 12 to make clear that the attorneys who volunteer to be appointed to the CC have civil rights experience; that such attorneys should be involved in the appellate steps of the complaint process; and that to enhance due process protections, the same members of the CC should not be deciding appeals from decisions in which they have previously participated. To protect individual privacy and reputational rights, CTO&S has included language to ensure that early stages in the complaint process will be non-public and confidential. Petitioners have also sought to address these concerns and it may be possible to resolve some or all language differences.

The provision in Article 12 giving the CC the authority and discretion to issue subpoenas, to serve interrogatories, to compel the attendance of witnesses, and so on, has been controversial. As noted, CTO&S believes that giving these powers to a Town body such as the CC is a "political" decision to be decided at Town Meeting. CTO&S has included language designed, at a minimum, to enhance the due process rights of both the complainant and respondent by requiring the CC to invoke such processes if reasonably requested by either the complainant or the respondent. The CTO&S language would provide the opportunity for both parties to undertake a form of discovery (the mutual ability to learn facts) in the proceedings.

Also, in the interests of due process and to clearly preserve existing legal rights, CTO&S would explicitly state that legal proceedings by either party seeking relief through an administrative or judicial body would not violate the prohibition against retaliation and intimidation.

CTO&S has also deleted language under which the CC would take "appropriate corrective action" outside the complaint process and would "encourage the public to file complaints." This language, unfortunately, suggested a mindset where the CC is not viewed as a quasi-judicial body fairly deciding cases on the merits. It would be similarly repugnant to the concepts of fairness and due process for a federal court judge to urge the U.S. Attorney to bring more drug-related prosecutions before the judge for verdicts and sentencing.

CTO&S has also included clarifying language in various locations, such as inserting standard language as used by the MCAD defining continuing violations for statute of limitations purposes, and an addition making clear that communications and access issues for which accommodations are required include not only limited English proficiency but also disability.

Finally, and significantly, Article 12 itself refers to the need for regulations and rules of procedure to be formulated and adopted. Town Counsel has strongly emphasized the need for training of the CC in a multitude of areas, including civil rights law, confidentiality and privacy, and due process. CTO&S proposes language ensuring that the complaint process can become effective only when such steps have been accomplished.

SELECT BOARD'S RECOMMENDATION

A report and recommendation will be included in the supplemental reports.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation will be included in the supplemental reports.

XXX

ARTICLE 12

MOTION OFFERED BY THE PETITIONERS

VOTED to amend the Town's General By-Laws, Article 3.14 as follows (language to be stricken appearing in strikeout, language to be added appearing in underline):

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, and equity 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 and equity. 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 at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible.

The Commission shall consist of fifteen (15) residents, 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 (5) 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 (in accordance with Section 3.1.5) as it determines to be necessary, which may include youth, i.e., persons under the age of 18, 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 civil rights ~~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 By-law 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 works 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~~ manage the complaint process as described in Section 3.14.3 (B). ~~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 policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

~~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.~~

The CDO shall serve as an ombudsperson to provide information and guidance to all persons, including 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 persons to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, the Police Department's Civilian Complaint Procedure, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect to the fullest extent possible the privacy rights of all individuals but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that 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 recommendations ~~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 of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);

~~(vi) 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, 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 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 Civilian Complaint Procedure or the Human Resources Office's procedures;~~

~~(vii) 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, 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 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.~~

~~(viii) 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.~~

~~(ix) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) 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.~~

~~(x) 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);~~

(xi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under By-law 5.5;

~~(xii) 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;~~

(xiii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xiv) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, ~~and~~ inclusion, and equity, and encourage public and private agencies to respond to those youth needs.

(B) To carry out the responsibilities under Section 3.14.3(A)(v), a Complaint Committee (CC) will be established and charged with investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). Complaints involving allegations of discrimination may be made by a person claiming to be aggrieved, by a duly authorized representative of such person, or by an organization whose members include those persons claiming to be aggrieved, against the Town, its employees, agencies, or officials or against another adult person or organization concerning incidents of discrimination occurring in Brookline. These complaints may involve incidents, if illegal under federal or State law, regarding, but not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students as complainants, and to faculty and staff of the School Department to the extent permitted by State and federal law (including, but not limited to, Title IX).

(i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency, disability or other communication or access issues.

(ii) The CC shall consist of not more than ~~5~~7 persons appointed at a public meeting by the Select Board in consultation with the Commission and Town Counsel. The CC members shall be appointed for three-year renewable terms following the same process as Commissioners, described in Section 3.14.1. The CC shall include attorneys with applicable civil rights experience or other individuals with applicable professional civil rights experience (together, "civil rights professionals") as well as members of historically marginalized communities, i.e., individuals in groups historically excluded due to their membership in a protected class. Members of the CC must be residents of Brookline with the ability necessary to perform the duties assigned to the CC under this By-law, including fair and equitable performance of the CC's quasi-judicial responsibilities, including adherence to laws and procedures. At least one shall be a member of the Commission. The CC shall choose its Chair for one-year renewable terms. The CDO and its staff shall be the staff for the CC.

The CC shall in consultation with Town Counsel adopt and publish regulations and procedural rules for receiving and processing complaints under Section 3.14.3(B), including all stages from complaint receipt through final disposition. Members of the CC shall receive training approved by the Office of Town Counsel. The CC shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the privacy rights of all to the fullest extent possible but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that doing so does not violate any person's rights to privacy.

(iii) The CC shall create a complaint form which must be signed and contain a sworn statement certifying the truth of the allegations contained therein, but the CC may receive initial complaints in any written form or orally. The CC shall take steps to publicize its

procedures. Complaints may be received by any member of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review pursuant to Section 3.14.3(B)(iv). If an initial oral or other complaint is received in a form other than the CC complaint form, the complainant may edit the CC form and additional materials prepared by the person(s) receiving the complaint, but shall be required to sign and swear to the written CC complaint form as provided above. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant, in writing, of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days from the date of receipt by respondent to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based, provided that (a) where the unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside the statutory filing period so long as the latest unlawful act occurred within the filing period; (b) the time for filing begins on the date on which the complainant knew or should have known about the allegedly unlawful conduct; (c) the time for filing may be extended by the pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and (d) the CC may also extend the deadline for other good cause shown if requested before the deadline has passed; otherwise if the complainant can demonstrate excusable neglect.

(iv) The CDO shall, using written and published criteria developed with the CC, privately review each complaint to determine whether the facts as alleged by the complainant would plausibly suggest that the acts complained about would constitute discrimination under this Bylaw; if so, the complaint will be referred to the CC. This plausibility review shall be completed in thirty (30) days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its case determination or if an extension is necessary.

(v) If the CDO determines that the complainant has not plausibly established a case of discrimination under this Bylaw, the complainant has forty-five (45) days to appeal the determination to the CC from the time of its receipt. This appeal will be heard in a private proceeding by one member of the CC who is a civil rights professional who is an attorney, and shall be completed within thirty (30) days of receipt of the appeal.

(vi) At any point, including prior to or after the filing of a complaint, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator agreed to by the parties or appointed by the American Arbitration Association subject to their rules and procedures, and in the absence of agreement by the parties the CDO or its designee will designate which particular rule set shall apply. The results of the

alternative dispute resolution shall be considered a binding agreement enforceable in a court proceeding, as may be permitted by law.

(vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case plausibly falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC who was not previously involved in the proceedings shall conduct a private investigation of the complaint. The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties, including notice of their right to appeal, and to the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(viii) The complainant or respondent may appeal the results of the investigation within forty-five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of three (3) members of the CC chosen by its Chair, including at least two civil rights professionals, at least one of whom is an attorney, other than the CC member or members involved in prior stages of the procedure, and the hearing shall be held within thirty (30) days of the appeal filing date, or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix). Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, provided that such process shall be utilized at the reasonable request of either complainant or respondent. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

(x) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the CC shall seek relief within thirty (30) days of the panel's report, through one or more of the following actions:

(a) If the respondent is an employee, agent or official of the Town or the Town itself, the CC shall provide written findings of fact and recommendations to the Select Board. If the respondent is an employee, agent or official of the School Department, the CC shall provide written findings of fact and recommendations to the Superintendent of Schools and, in the case of the Superintendent, to the School Committee.

(b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) issue a notice of violation to the respondent and provide written findings of fact and recommendations to the Select Board or the Superintendent of Schools as appropriate. To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.

(xi) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission. Administrative or judicial claims for sanctions, compensation or equitable or other relief shall not constitute a violation of this Section 3.14.3(B)(xi).

(xii) The CDICR shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and the civil or human rights of persons or organizations who come into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.

(xiii) The CDO shall develop a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be required by the Massachusetts public records law. Such log and report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy.

(C) To carry out the foregoing responsibilities, the Commission is also 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 employment discrimination, human rights, and 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.

(D) At least every two years, the Commission shall 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 applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), 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 such notifications shall respect and protect to the fullest extent possible the right to privacy and confidentiality of all, discussing the complaints and problems presented only in general terms, or in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. All departments and agencies ~~in~~ of 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~~ respond to questions and provide information and feedback. 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 written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information. ~~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. Such report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does

not violate any person's rights to privacy. 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 (5) years thereafter, the Commission shall review this By-law 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.

~~**SECTION 3.14.8 EFFECTIVE DATE OF DECEMBER 12, 2019 AMENDMENTS**~~

~~The amendments, as indicated in strikethrough, bold and underlined, adopted on December 12, 2019, become effective July 1, 2021.~~

SECTION 3.14.8 EFFECTIVE DATE OF SPRING 2022 ANNUAL TOWN MEETING AMENDMENTS

The amendments, as indicated in strikethrough, bold and underlined, adopted at the Spring 2022 Annual Town Meeting, become effective upon the later of (a) six months after compliance with G.L. c.40, §32; or (b) the completion of the required initial training and adoption of regulations and rules of procedure as provided herein.

SECTION 3.14.~~8~~9 SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.~~9~~10 RESOLUTION OF CONFLICTING PROVISIONS

In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.~~10~~11 APPLICATION OF THIS BY-LAW

Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

AMENDMENT EXPLANATION

WA 12 seeks to provide a fundamental right not to be subjected to discrimination, and a formal complaint process is essential to protecting this right. What the Complaint Committee has developed, in consultation with a range of town organizations, is a great step forward to protect this right.

This complaint process will help close equity gaps so that membership in a protected class does not predict one's success, while also improving outcomes for all. It protects a person's right to file a complaint employee filing or who are threatened for filing a complaint, instituting or causing to be instituted any proceeding relating to their rights. It creates a set of standards for which both Brookline, respondents and complainants are protected from unreasonableness. A complaint process legitimizes the town's commitment to diversity and inclusion. It is consistent with its stated Government Alliance for Racial Equity (GARE), for which the Town has been a member for approximately five years.

The Committee was comprised of subject matter experts, law professors, practitioners, town officials, a psychiatrist and other interested parties. They equipped themselves to invest almost two years in developing this By-law. The Directors of both HR and DICR were ex officio members of the committee.

The Committee took great pains to analyze regional discrimination complaint processes. It reviewed national standards outlined by the U.S. Department of Justice civil rights complaint information for accuracy and national consistency. It has worked closely with Town Counsel. Put simply, proposed complaint process is far from anything approximating an outlier.

During hearings, the Committee gathered information about the impact of discrimination on complainants. Some are haunted to this day by their experiences. Others described not having calls returned based on the present structure and how ineffective MCAD is.

Following submission of the warrant article, the petitioners spent a significant amount of time in the article review process with CTO&S and AC. In particular, members of CTO&S were very collaborative in thinking through how the language could be further tightened, and the amended language that is submitted reflects the CTO&S recommendations that were adopted by the petitioners. Petitioners also worked closely with the new Town Counsel, who had additional suggestions beyond the ones previously provided during the bylaw revision process by other members of the Office of Town Counsel.

Some notable changes to the amended version:

1. Clarifies the Ombuds role of the Chief Diversity Officer (CDO)
2. Removes third party complaint filing
3. Enhances privacy and confidentiality mandates
4. Excludes minors and students as respondents
5. Modifies appointment procedures so that Select Board appoints Complaint Committee (CC) members instead of CDICR
6. Clarifies qualifications for CC membership
7. Explicitly includes training (and provides a timeline extension to do so)
8. Adds procedural components to ensure CC members who are civil rights professionals participate in each phase of investigation

9. Provides for a notice of violation that is not a fine in the case of violation by a person or organization who is not the Town, or an employee, agent or official of the Town.
10. Clarifies the role of the Superintendent and School Committee in the case of involvement with the School Department.

There are three key areas in the revised Bylaw language that are a source of ongoing discussion that we believe are important to retain:

1. **Complaints against another adult person or organization, i.e. not limited to the Town, its employees, agencies, or officials.** The current bylaw language already allows this due to vague wording and in the 2019 reports to Town Meeting, this was considered to be a feature. The proposed bylaw simply clarifies what the current bylaw does not.
2. **Subpoena Power.** Town Counsel has opined that the power to issue subpoenas by the CDICR is upheld in Bloom v. Worcester, in which a similar committee issued a subpoena. Town Counsel has also made clear that should the subpoena be ignored, Town Counsel would only go to court to enforce the subpoena at the direction of the Select Board.
3. **Ability to Issue Fines.** The petitioners believe that the ability to issue fines is important as a deterrent. The issuing of fines is highly complex due to previous case law and can only be considered in close consultation with Town Counsel. As mentioned (#9) above, the amended language now would have the committee primarily issue a notice of violation.

A few other areas of discussion have also arisen, which the petitioners believe have been obviated by the amended language:

1. Concern about this process being weaponized against people, or that this process would be unprofessional or bring personal biases to the process. This is addressed by the clarification of membership qualifications, the training provided by Town Counsel, and the procedural updates which include civil rights professionals and/or attorneys at every phase of investigation.
2. The question about whether the CDICR is up to the task, given the body has not had a chair for the past year. Although the Complaint Committee is defined within Warrant Article 3.14, it is almost entirely separate from the CDICR, with the exception of having one member in common. The Complaint Committee is:
    a. Appointed by the Select Board
    b. Trained by Town Counsel
    c. Performs investigations with the Chief Diversity Officer

    The petitioners also note that the concern about the CDICR's involvement was also of concern to the CDICR itself, which did not feel it was the appropriate forum for these investigations.

Some people have suggested the November 2019 language voted is preferable to what the CDICR subcommittee spent two years to produce. It is important to point out that the November 2019 language, among other issues:

1. Provides no protections for due process

2. Provides no protections for privacy
3. Provides no protections for minors or students
4. Provides no separate committee – the CDICR is the investigatory body (a fact which greatly concerned CDICR in 2019 – many members felt they would resign)
5. Provides no training to the investigators

The CDICR subcommittee that was established consistent with the 2019 vote of the Select Board, and that reviewed and corrected the issues identified in the 2019 SB, AC and CTO&S reports, spent 30+ meetings over nearly 2 years to do so.
Understanding the complexity of this warrant article, as part of this explanation we have provided several appendices:

1. A copy of the WA showing (in green) where it has been amended since original submission.
2. A "clean" copy of the WA showing how it would read as approved.
3. The November 2019 approved language that will take effect if this WA is not passed – as well as the reports from the AC, SB, CTOS, CDICR and SC statement.

WARRANT ARTICLE 12 (Green – edits agreed upon by petitioners and CTOS members)

VOTED to amend the Town's General By-Laws, Article 3.14 as follows (language to be stricken appearing in strikeout, language to be added appearing in underline):

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, and equity 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 and equity. 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 at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible.

The Commission shall consist of fifteen (15) residents, 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 (5) 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 (in accordance with Section 3.1.5) as it determines to be necessary, which may include youth, i.e., persons under the age of 18, 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 civil rights ~~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 By-law 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 works 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~~ manage the complaint process as described in Section 3.14.3 (B). ~~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 policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

~~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.~~

The CDO shall serve as an ombudsperson to provide information and guidance to all persons, including 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 persons to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, the Police Department's Civilian Complaint Procedure, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect to the fullest extent possible the privacy rights of all individuals but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that 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 recommendations ~~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 of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);

~~(vi) 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, 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 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 Civilian Complaint Procedure or the Human Resources Office's procedures;~~

~~(vii) 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, 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 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.~~

~~(viii) 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.~~

~~(ix) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) 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.~~

~~(x) 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);~~

(xi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under By-law 5.5;

~~(xii) 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;~~

(xiii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xiv) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, ~~and~~ inclusion, and equity, and encourage public and private agencies to respond to those youth needs.

(B) To carry out ~~the its~~ responsibilities under Section 3.14.3(A)(v), ~~the Commission shall establish~~ a Complaint Committee (CC) will be established and charged with

investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). Complaints involving allegations of discrimination may be made by ~~persons or organizations against the Town~~ a person claiming to be aggrieved, by a duly authorized representative of such person, or by an organization whose members include those persons claiming to be aggrieved, against the Town, its employees, agencies, or officials or against another adult person or organization concerning incidents of discrimination occurring in Brookline. ~~A third party may also file a complaint on a person or organization's behalf, or on behalf of a class of people.~~ These complaints may involve incidents, if illegal under federal or State law, regarding, but ~~are~~ not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students as complainants, and to faculty and staff of the School Department to the extent permitted by State and federal law (including, but not limited to, Title IX).

(i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency, disability or other communication or access issues.

(ii) The CC shall consist of not more than ~~5~~7 persons ~~chosen by~~ appointed at a public meeting by the Select Board in consultation with the Commission and Town Counsel. The CC members shall be appointed for ~~one~~ three-year renewable terms following the same process as Commissioners, described in Section 3.14.1. The CC shall include attorneys with applicable civil rights experience or other individuals with applicable ~~legal and/or~~ professional civil rights experience (together, "civil rights professionals") as well as members of historically marginalized communities, i.e., individuals in groups historically excluded due to their membership in a protected class. Members of the CC must be residents of Brookline with the ability necessary to perform the duties assigned to the CC under this By-law, including fair and equitable performance of the CC's quasi-judicial responsibilities, including adherence to laws and procedures. ~~and at~~ At least one shall be a member of the Commission. The CC shall choose its Chair for one-year renewable terms. The CDO and its staff shall be the staff for the CC.

The CC shall in consultation with Town Counsel adopt and publish regulations and procedural rules for receiving and processing complaints under Section 3.14.3(B), including all stages from complaint receipt through final disposition. Members of the CC shall receive training approved by the Office of Town Counsel. The CC shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the privacy rights of all to the fullest extent possible but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that doing so does not violate any person's rights to privacy.

(iii) The CC shall create a complaint form which must be signed and contain a sworn statement certifying the truth of the allegations contained therein, but the CC may receive initial complaints in any written form or orally. The CC shall take steps to publicize its

procedures ~~and encourage the public to file complaints if they believe they have been the subject of discrimination~~. Complaints may be received by any member of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review pursuant to Section 3.14.3(B)(iv). If an initial oral or other complaint is received in a form other than the CC complaint form, the complainant may edit the CC form and additional materials prepared by the person(s) receiving the complaint, but shall be required to sign and swear to the written CC complaint form as provided above. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant, in writing, of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days from the date of receipt by respondent to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based ~~or the date on which the complainant discovers that the act was discriminatory, including,~~ provided that (a) where the unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside the statutory filing period so long as the latest unlawful act occurred within the filing period; (b) the time for filing begins on the date on which the complainant knew or should have known about the allegedly unlawful conduct; (c) the time for filing may be extended by the pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and (d) the CC may also extend the deadline for other good cause shown if requested before the deadline has passed; otherwise if the complainant can demonstrate excusable neglect.

(iv) The CDO shall, using written and published criteria developed with the CC, privately review each complaint to determine whether the facts as alleged by the complainant would plausibly suggest that the acts complained about would constitute discrimination under this Bylaw; if so, the complaint will be referred to the CC. ~~The~~ This plausibility review shall be completed in thirty (30) days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its case determination or if an extension is necessary.

(v) If the CDO determines that the complainant has not plausibly established a case of discrimination under this Bylaw, the complainant has forty-five (45) days to appeal the determination to the CC from the time of its receipt. This appeal will be heard in a private proceeding by one member of the CC who is a civil rights professional who is an attorney, and shall be completed within thirty (30) days of receipt of the appeal.

(vi) At any point ~~during the proceedings~~, including prior to or after the filing of a complaint, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator agreed to by the parties or appointed by the

American Arbitration Association subject to their rules and procedures, and in the absence of agreement by the parties the CDO or its designee will designate which particular rule set shall apply. The results of the alternative dispute resolution ~~may~~ shall be considered a binding agreement enforceable in a court proceeding, as may be permitted by law.

(vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case plausibly falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC ~~shall investigate~~ who was not previously involved in the proceedings shall conduct a private investigation of the complaint. ~~The CC shall adopt and publish rules of procedure for its investigations.~~ The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties, including notice of their right to appeal, and to the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(viii) The complainant or respondent may appeal the results of the investigation within forty-five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of three (3) members of the CC chosen by its Chair, including at least two civil rights professionals, at least one of whom is an attorney, other than the CC member or members involved in prior stages of the procedure, and the hearing shall be held within thirty (30) days of the appeal filing date, or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix). Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(x). ~~The CC shall adopt and publish rules of procedure for its appeal hearings.~~

(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, provided that such process shall be utilized at the reasonable request of either complainant or respondent. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

(x) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the CC shall seek relief within thirty (30) days of the panel's report, through one or more of the following actions:

(a) If the respondent is an employee, agent or official of the Town or the Town itself, the CC shall provide written findings of fact and recommendations to the Select Board. If the respondent is an employee, agent or official of the School Department, the CC shall provide written findings of fact and recommendations to the Superintendent of Schools and, in the case of the Superintendent, to the School Committee.

(b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) issue a notice of violation to the respondent and provide written findings of fact and recommendations to the Select Board or the Superintendent of Schools as appropriate. To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.

(xi) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission. Administrative or judicial claims for sanctions, compensation or equitable or other relief shall not constitute a violation of this Section 3.14.3(B)(xi).

(xii) The CDICR ~~and CC~~ shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and the civil or human rights of persons or organizations who come into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.

(xiii) The CDO shall develop a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be ~~consistent with~~ required by the Massachusetts public records law. Such log and report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy.

(C) To carry out the foregoing responsibilities, the Commission is also 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 employment discrimination, human rights, and 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.

(D) At least every two years, the Commission shall 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 applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), 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 such notifications shall respect and protect to the fullest extent possible the right to privacy and confidentiality of all, discussing the complaints and problems presented only in general terms, or in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. All departments and agencies ~~in~~ of 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~~ respond to questions and provide information and feedback. 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 written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information. ~~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. Such report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent

possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. 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 (5) years thereafter, the Commission shall review this By-law 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.

~~**SECTION 3.14.8 EFFECTIVE DATE OF DECEMBER 12, 2019 AMENDMENTS**~~

~~The amendments, as indicated in strikethrough, bold and underlined, adopted on December 12, 2019, become effective July 1, 2021.~~

SECTION 3.14.8 EFFECTIVE DATE OF SPRING 2022 ANNUAL TOWN MEETING AMENDMENTS

The amendments, as indicated in strikethrough, bold and underlined, adopted at the Spring 2022 Annual Town Meeting, become effective upon the later of (a) six months after compliance with G.L. c.40, §32; or (b) the completion of the required initial training and adoption of regulations and rules of procedure as provided herein.

SECTION 3.14.~~8~~9 SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.~~9~~10 RESOLUTION OF CONFLICTING PROVISIONS

In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.~~10~~11 APPLICATION OF THIS BY-LAW

Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

WARRANT ARTICLE 12 ("Clean" copy based on amended language)

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, inclusion, and equity 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 and equity. 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 at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible.

The Commission shall consist of fifteen (15) residents, 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 (5) 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 (in accordance with Section 3.1.5) as it determines to be necessary, which may include youth, i.e., persons under the age of 18, 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

civil rights 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 By-law giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out the Director's duties.

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 works with the Human Resources Office to promote diversity and inclusion.

The CDO shall manage the complaint process as described in Section 3.14.3 (B).

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 policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

The CDO shall serve as an ombudsperson to provide information and guidance to all persons, including 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 persons to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, the Police Department's Civilian Complaint Procedure, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect to the fullest extent possible the privacy rights of all individuals but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that 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 recommendations 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 of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);

(vi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under By-law 5.5;

(vii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(viii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, inclusion, and equity, and encourage public and private agencies to respond to those youth needs.

(B) To carry out the responsibilities under Section 3.14.3(A)(v), a Complaint Committee (CC) will be established and charged with investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). Complaints involving allegations of discrimination may be made by a person claiming to be aggrieved, by a duly

authorized representative of such person, or by an organization whose members include those persons claiming to be aggrieved, against the Town, its employees, agencies, or officials or against another adult person or organization concerning incidents of discrimination occurring in Brookline. These complaints may involve incidents, if illegal under federal or State law, regarding, but not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students as complainants, and to faculty and staff of the School Department to the extent permitted by State and federal law (including, but not limited to, Title IX).

(i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency, disability or other communication or access issues.

(ii) The CC shall consist of not more than 7 persons appointed at a public meeting by the Select Board in consultation with the Commission and Town Counsel. The CC members shall be appointed for-three-year renewable terms following the same process as Commissioners, described in Section 3.14.1. The CC shall include attorneys with applicable civil rights experience or other individuals with applicable professional civil rights experience (together, "civil rights professionals") as well as members of historically marginalized communities, i.e., individuals in groups historically excluded due to their membership in a protected class. Members of the CC must be residents of Brookline with the ability necessary to perform the duties assigned to the CC under this By-law, including fair and equitable performance of the CC's quasi-judicial responsibilities, including adherence to laws and procedures. At least one shall be a member of the Commission. The CC shall choose its Chair for one-year renewable terms. The CDO and its staff shall be the staff for the CC.

The CC shall in consultation with Town Counsel adopt and publish regulations and procedural rules for receiving and processing complaints under Section 3.14.3(B), including all stages from complaint receipt through final disposition. Members of the CC shall receive training approved by the Office of Town Counsel. The CC shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the privacy rights of all to the fullest extent possible but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that doing so does not violate any person's rights to privacy.

(iii) The CC shall create a complaint form which must be signed and contain a sworn statement certifying the truth of the allegations contained therein, but the CC may receive initial complaints in any written form or orally. The CC shall take steps to publicize its procedures. Complaints may be received by any member of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review pursuant to Section 3.14.3(B)(iv). If an initial oral or other complaint is received in a form other than the CC complaint form, the complainant may

edit the CC form and additional materials prepared by the person(s) receiving the complaint, but shall be required to sign and swear to the written CC complaint form as provided above. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant, in writing, of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days from the date of receipt by respondent to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based, provided that (a) where the unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside the statutory filing period so long as the latest unlawful act occurred within the filing period; (b) the time for filing begins on the date on which the complainant knew or should have known about the allegedly unlawful conduct; (c) the time for filing may be extended by the pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and (d) the CC may also extend the deadline for other good cause shown if requested before the deadline has passed; otherwise if the complainant can demonstrate excusable neglect.

(iv) The CDO shall, using written and published criteria developed with the CC, privately review each complaint to determine whether the facts as alleged by the complainant would plausibly suggest that the acts complained about would constitute discrimination under this Bylaw; if so, the complaint will be referred to the CC. This plausibility review shall be completed in thirty (30) days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its case determination or if an extension is necessary.

(v) If the CDO determines that the complainant has not plausibly established a case of discrimination under this Bylaw, the complainant has forty-five (45) days to appeal the determination to the CC from the time of its receipt. This appeal will be heard in a private proceeding by one member of the CC who is a civil rights professional who is an attorney, and shall be completed within thirty (30) days of receipt of the appeal.

(vi) At any point, including prior to or after the filing of a complaint, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator agreed to by the parties or appointed by the American Arbitration Association subject to their rules and procedures, and in the absence of agreement by the parties the CDO or its designee will designate which particular rule set shall apply. The results of the alternative dispute resolution shall be considered a binding agreement enforceable in a court proceeding, as may be permitted by law.

(vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case plausibly falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC who was not previously involved in the proceedings shall conduct a private investigation of the complaint. The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties, including notice of their right to appeal, and to the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(viii) The complainant or respondent may appeal the results of the investigation within forty-five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of three (3) members of the CC chosen by its Chair, including at least two civil rights professionals, at least one of whom is an attorney, other than the CC member or members involved in prior stages of the procedure, and the hearing shall be held within thirty (30) days of the appeal filing date, or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix). Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, provided that such process shall be utilized at the reasonable request of either complainant or respondent. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

(x) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the CC shall seek relief within thirty (30) days of the panel's report, through one or more of the following actions:

(a) If the respondent is an employee, agent or official of the Town or the Town itself, the CC shall provide written findings of fact and recommendations to the Select Board. If the respondent is an employee, agent or official of the School Department, the CC shall provide written findings of fact and recommendations to the

Superintendent of Schools and, in the case of the Superintendent, to the School Committee.

(b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) issue a notice of violation to the respondent and provide written findings of fact and recommendations to the Select Board or the Superintendent of Schools as appropriate. To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.

(xi) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission. Administrative or judicial claims for sanctions, compensation or equitable or other relief shall not constitute a violation of this Section 3.14.3(B)(xi).

(xii) The CDICR shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and the civil or human rights of persons or organizations who come into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.

(xiii) The CDO shall develop a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be required by the Massachusetts public records law. Such log and report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy.

(C) To carry out the foregoing responsibilities, the Commission is also 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 employment discrimination, human rights, and human relations and issue reports and publications on its findings or, where

appropriate, submit local or state-wide proposed legislation, after 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.

(D) At least every two years, the Commission shall prepare written organizational goals ("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 applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), 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 such notifications shall respect and protect to the fullest extent possible the right to privacy and confidentiality of all, discussing the complaints and problems presented only in general terms, or in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. All departments and agencies of the Town shall cooperate fully with the Commission's reasonable requests for information and when appropriate respond to questions and provide information and feedback. 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 written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information.

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. Such report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. 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 (5) years thereafter, the Commission shall review this By-law 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.

SECTION 3.14.8 EFFECTIVE DATE OF SPRING 2022 ANNUAL TOWN MEETING AMENDMENTS

The amendments, as indicated in strikethrough, bold and underlined, adopted at the Spring 2022 Annual Town Meeting, become effective upon the later of (a) six months after compliance with G.L. c.40, §32; or (b) the completion of the required initial training and adoption of regulations and rules of procedure as provided herein.

SECTION 3.14.9 SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.10 RESOLUTION OF CONFLICTING PROVISIONS

In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.11 APPLICATION OF THIS BY-LAW

Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

ARTICLE 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;

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(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 IIuman 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.

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(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>

November 19, 2019 Special Town Meeting
24-8

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.

November 19, 2019 Special Town Meeting
24-9

"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.

VDH Valerio Dominello & Hillman, LLC

One University Avenue
Suite 300B
Westwood, MA 02090

T 617.862.2005
F 617.862.2025
W VDHBoston.com

John Foskett, Esq.
John.Foskett@VDHBoston.com

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.**

(viii~~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~~i~~**x**) 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. **The Commission shall prepare a written report summarizing its review and proposing any changes no later than February 1, 2020.**

ARTICLE 12&13

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation:

- The Advisory Committee by a vote of 19-1-1 recommends amending the petitioners' Motion by substituting the (attached) version drafted by CTO&S members that removes from Section 3.14.3(B)(x)(b) the following text: "To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40§21D."
- The Advisory Committee by a vote of 13-2-6 recommends No Action on Article 12 as amended.
- Should Town Meeting vote in favor of Warrant Article 12, the Advisory Committee by a vote of 11-1-8 recommends Favorable Action on the version of Warrant Article 13 that conforms with the enacted version of Warrant Article 12.

Executive Summary:	Warrant Article 12 amends the Town's By-Law 3.14 relating to Diversity, Inclusion and Community Relations to create a new quasi-judicial Complaint Committee (CC) and process for the Town of Brookline to investigate discrimination complaints, make determinations of whether discriminatory acts were committed as alleged, and mete out penalties of up to $300 per day in fines (in the petitioners' version). Warrant Article 13 would apply these procedures to complaints of discrimination in violation of the Town's Fair Housing By-Law (Article 5.5). Warrant Article 13 will not be moved at Town Meeting if Warrant Article 12 fails to pass.
Voting Yes will...	Create a new Complaint Committee to address complaints of discrimination in Brookline.
Voting No will...	Allow the bylaw changes passed by 2019 Special Town Meeting to be enacted as of July 1. This will create similar responsibilities but assign the work to the Commission for Diversity, Inclusion and Community Relations, rather than a separate committee, and would lack the detailed development that is articulated in Warrant Articles 12 and 13.
Financial impact	**The Department Director has estimated the annual additional cost to administer this at $200,000. Town Counsel has indicated that there would be additional costs to develop policies and procedures, and to develop a training program and train the members of the new committee.** If there are lawsuits against the Town questioning the legality of Warrant Article 12 or any decisions made under its authority, the Town would also incur an unknown amount of additional legal defense expenses as well as the cost of judgments against the Town should the Town lose any of these lawsuits.

Legal implications	**Town Counsel has articulated significant concerns about legal risks. Many of these have been addressed in the redrafting of the Warrant Article. However, Town Counsel has stated that it is his expectation that it is likely that the legality of the bylaw will be challenged once adverse findings are made, and particularly if fines are levied.**

Background

In 2013 Town Meeting enacted Section 3.14 of the General Bylaw, establishing the Commission for Diversity, Inclusion and Community Relations (CDICR), and the Office of Diversity, Inclusion and Community Relations (ODICR). This Department is led by the Chief Diversity Officer (CDO). The By-law charges DICR with receiving and addressing complaints of discrimination, but "***without investigating or making determinations of fact, or drawing any legal conclusions***…"[1]

At the 2019 Special Town Meeting, Town Meeting passed Warrant Article 24, which amended Article 3.14 to strike the above language and to mandate that upon receiving an allegation of discrimination, "***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.***" This article did not define the specifics of how such an investigation would take place, what an appeal process might look like, or what penalties if any could be levied. Because of acknowledged concerns about the specific language of the Bylaw change, Warrant Article 24 included an 18-month delay in implementation, and charged CDICR with working out the details in the interim.

CDICR formed a Complaint Process Committee that met 30+ times over 18 months. However, that work was not able to be completed on schedule, and at the 2021 Annual Town Meeting, Town Meeting passed Warrant Article 13, which delayed the implementation of the above mandate for an additional year until July 1, 2022.

As of today DICR's complaint process remains as written in the original bylaw, but that will change on July 1. Thus, it should be noted that the choice provided by this Article is not between the "status quo" and the provisions described herein; rather it is the choice between the unspecified investigative procedure passed in 2019 and delayed until this July, and the provisions described herein.

Overview

The CDICR subcommittee conducted a review of the discrimination complaint processes in seven Massachusetts peer communities, and studied other models from across the

[1] This text, which is currently in force (until 7.1.22) but was stricken in the yet-to-be-implemented bylaw change passed in 2019, is not shown in the current version of the By-law. The By-law change as voted can be found in the 2019 STM records here: https://www.brooklinema.gov/DocumentCenter/View/20800/November-2019-Special-Town-Meetings-Supplements-Night-4

country. The most comprehensive peer community process is employed by the City of Cambridge, which has an investigative commission staffed by trained lawyers and which has a large budget at its disposal.

The Advisory Committee Subcommittee (which met five times over six weeks) appreciated the immense effort represented by Warrant Article 12, but expressed a long list of serious concerns with the By-law changes as proposed in the version published in the Warrant. In parallel, the Committee on Town Organization and Structure (CTO&S) also had many meetings and a long list of concerns. Town Counsel raised their own list of concerns that informed both AC and CTO&S' discussions. These concerns can be grouped into several categories, as follows:

Legal Exposure

- How the Complaint Committee would be staffed ("historically marginalized" is not well defined).
- How the Complaint Committee would be trained ("members would need to be well versed in appropriate legal practices but do not appear to be required to have any relevant training").
- What the legal exposure for the Town could be in the event that the investigative committee failed to follow due process.

Town Counsel repeatedly expressed the following opinions:

- The Town will likely be sued once investigations start and rulings are issued; the Town will almost certainly be sued if fines are issued.
- There are two cases which inform this debate: *Bloom vs. Worcester* and *Marshal House.* Town Counsel believes that the constraints implied by these cases mean that the Town might be able to issue a fine to a nail salon (for example) but would be unlikely to issue fines to a bank for lending practices or to many employers over hiring practices.
- The risks associated with setting up procedures which violate the law are high enough that — no matter what is written in the bylaw — Town Counsel will hire outside counsel, trained in this area of the law, to write the rules which the Complaint Committee must follow.
- Similarly, Town Counsel will take responsibility for providing training to all parties.
- The phrase "to the extent permissible by law" probably gets the bylaw through the required review by the Attorney General's Office (AGO), but it is likely that it will be caveated with the suggestion "check with Town Counsel" for interpretations, which begs the question of whether such a phrase adds any value in the statute.
- There are enough statutes which govern behavior within the schools that it is the preference of Town Counsel that this bylaw not be applied to schools at all.

- Town Counsel also suggested that all definitions related to discrimination, protected classes, etc. should come from State Law and that the town should not attempt to go farther than the State.

Advocacy vs. Enforcement
The petitioner spoke of "providing a favorable forum for complainants," raising concern that CDICR was trying to simultaneously be an advocate for citizens who believe they have experienced discrimination as well as the body which adjudicates whether those same citizens have experienced discrimination. Similarly, there was concern that the word "fair" appeared to be used exclusively to describe fairness from the perspective of the complainant and did not take into account the needs or rights of the respondent.

Standing and Subpoena power
Perhaps the deepest concerns were raised about the provisions of this Article which allowed discrimination complaints to be brought by otherwise uninvolved third parties and on behalf of a class of individuals, whether or not any allegedly affected individual approves of the complaint. Similarly, subpoena power in response to a complaint that was not filed under oath was felt by many to be unfair.

Committee Structure and Staffing
The Subcommittee expressed concerns that it would be difficult, if not impossible, to find volunteers to serve on the Complaint Committee, given the legal hurdles described above. In addition, concerns were raised that there were not enough members on the Complaint Committee to properly implement the proposed processes, especially in the event of an appeal, in which committee members who had participated in the original ruling would be expected to recuse themselves.

Cost
The Chief Diversity Officer has estimated that the cost to implement this Article would include: 2 additional FTE to support the program at a cost of $200,000/year in support infrastructure. Town Counsel notes that significant training would be required for the Complaint Committee members but to date has not offered an estimate of the training costs.

Unclear language
Questions were raised about many specifics, including the definition of "protected classes", of "discrimination," the rules of procedure and of evidence, and how the number of days that a $300/day fine would be determined.

<u>Revisions to Warrant Article 12</u>
In response to the many concerns and conversations, a working group made up of the petitioners and members of CTO&S, in consultation with Town Counsel, began meeting separately. That collaborative work has been impressive, and resulted in many revisions and a shared version that is identical in all respects except one only – the Complaint

Committee's ability to levy fines. The petitioners have retained this ability, and the CTO&S members' version takes this out.

These revisions have favorably resolved many (though not all) of the concerns that were raised.

- Appointing Authority. The revised draft has a clean separation between the complaint committee and the diversity commission. This addresses the concern that because of the role of the diversity commission in performing advocacy and outreach, it is inappropriate for the diversity commission to also be responsible for selecting the individuals who investigate and adjudicate complaints. The revised motion has the Select Board as the appointing authority.
- Authority over CC rules of procedure. The revised draft has the CC and Town Counsel responsible.
- Legal standard for statements. The revised motion includes language that requires complaints to be made under oath.
- Standing. The revised motion disallows third-party and class action complaints.
- Privacy rights. The revised motion preserves the rights of all parties.
- Subpoena power. The revised motion adds language making clear that such process shall be utilized at the reasonable request of either complainant or respondent. The limits of this power are better understood – that enforcement is only available through action of the courts in response to a request made by Town Counsel with authorization of the Select Board.
- Applicability to the schools. Several clarifications have been made, including limiting student involvement to only the possibility of being a complainant and not a respondent.
- Size of the Complaint Committee. The revised draft increases the maximum number of members from five to seven in order to address concerns about recusals, and other issues that might make it difficult to seat three members on an appeals board while not including the member who had been part of the investigation.

At this time, the issue of fines remains the one difference between the two versions of Warrant Article 12.

- The petitioners' view is that the fining ability is important, giving the Complaint Committee "teeth" in their words.
- Town Counsel believes that at best there is a quite narrow category of businesses for which it might be permissible to issue fines under this bylaw. It appears that these may be more likely to be small/local businesses – the "little guy." Fines that were levied against other parties would be more likely to be found by a court to be not allowed, with the potential for adverse findings against the town. For these reasons, the Advisory Committee recommends removing the ability to levy fines from the Warrant Article.

Advisory Committee Discussion and Recommendation

The Advisory Committee conducted several hours of discussion of Warrant Article 12. While the revisions that have been made over the past weeks were appreciated, a majority of AC members none-the-less expressed strong objections to the creation of a quasi-judicial Complaint Committee of volunteers to carry out such a complex and demanding quasi-judicial function. The primary concerns expressed were:

- Whether it is reasonable to rely on volunteers of indeterminate training to administer a system with such potentially negative consequences on the parties involved.
- Whether privacy could realistically be preserved throughout the process.
- Whether this new process provides meaningful value for the participants (especially given that there are no real remedies for the complainant, unlike the MCAD processes).

Warrant Article 13

Warrant Article 13 amends various other parts of the General Bylaw so that they remain consistent with the proposed changes to Article 12. If more than one version of Article 12 are moved at Town Meeting, each will be accompanied by a conforming version of Article 13.

Recommendation:

- The Advisory Committee by a vote of 19-1-1 recommends amending the petitioners' Motion by substituting the version drafted by CTO&S members that removes from Section 3.14.3(B)(x)(b) the following text: "To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40§21D."
- The Advisory Committee by a vote of 13-2-6 recommends NO ACTION on Article 12 as amended.
- Should Town Meeting vote in favor of Warrant Article 12, the Advisory Committee by a vote of 11-1-8 recommends Favorable Action on the version of Warrant Article 13 that conforms with the enacted version of Warrant Article 12.

ARTICLE 12 ADVISORY COMMITTEE VOTES

Article Description	**Revise the discrimination complaint process**
AC recommendation (Favorable Action unless indicated)	NO ACTION as amended 13-2-6
Scott Ananian	A
Carla Benka	N
Ben Birnbaum	N
Harry Bohrs	A
Cliff Brown	A
John Doggett	N
Katherine Florio	A
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	N
Kelly Hardebeck	N
Anita Johnson	N
Georgia Johnson	
Alisa Jonas	A
Janice Kahn	A
Carol Levin	
Pam Lodish	
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	N
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	N
Lee Selwyn	
Alok Somani	N
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 13 ADVISORY COMMITTEE VOTES

Article Description	**Updates to General Bylaws to conform with Article 12**
AC recommendation (Favorable Action unless indicated)	**Endorses appropriate version of WA13 in the event WA12 passes; 11-1-8**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	A
Harry Bohrs	A
Cliff Brown	A
John Doggett	A
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	
Pam Lodish	
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	A
David Pollak	Y
Stephen Reeders	A
Carlos Ridruejo	
Lee Selwyn	
Alok Somani	A
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

[Petitioners' draft5/14] WARRANT ARTICLE 12

VOTED to amend the Town's General By-Laws, Article 3.14 as follows (language to be stricken appearing in strikeout, language to be added appearing in underline):

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, and equity 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 and equity. 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 at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible.

The Commission shall consist of fifteen (15) residents, 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 (5) 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 (in accordance with Section 3.1.5) as it determines to be necessary, which may include youth, i.e., persons under the age of 18, 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 civil rights ~~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 By-law 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 works 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~~ manage the complaint process as described in Section 3.14.3 (B). ~~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 policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

~~The CDO shall respect the rights to privacy and confidentiality of all individuals and hold all matters in confidence 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.~~

The CDO shall serve as an ombudsperson to provide information and guidance to all persons, including 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 persons to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, the Police Department's Civilian Complaint Procedure, their union

representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect to the fullest extent possible the privacy rights of all individuals but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that 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 recommendations ~~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 of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);

~~(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, 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 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 Civilian 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, 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 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 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.~~

~~(vii) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) 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) 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~~vi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under Bylaw 5.5;

~~(x) 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~~vii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(~~xiii~~viii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, ~~and~~ inclusion, and equity, and encourage public and private agencies to respond to those youth needs.

(B) To carry out the responsibilities under Section 3.14.3(A)(v), a Complaint Committee (CC) will be established and charged with investigating and receiving complaints, directly or through the

Chief Diversity Officer (CDO). Complaints involving allegations of discrimination may be made by a person claiming to be aggrieved, by a duly authorized representative of such person, or by an organization whose members include those persons claiming to be aggrieved, against the Town, its employees, agencies, or officials or against another adult person or organization concerning incidents of discrimination occurring in Brookline. These complaints may involve incidents, if illegal under federal or State law, regarding, but not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students as complainants and to faculty and staff of the School Department to the extent permitted by State and federal law (including, but not limited to, Title IX).

(i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency, disability or other communication or access issues.

(ii) The CC shall consist of not more than 7 persons appointed at a public meeting by the Select Board in consultation with the Commission and Town Counsel. The CC members shall be appointed for three-year renewable terms following the same process as Commissioners, described in Section 3.14.1, The CC shall include attorneys with applicable civil rights experience or other individuals with applicable professional civil rights experience (together, "civil rights professionals") as well as members of historically marginalized communities, i.e., individuals in groups historically excluded due to their membership in a protected class. Members of the CC must be residents of Brookline with the ability necessary to perform the duties assigned to the CC under this By-law, including fair and equitable performance of the CC's quasi-judicial responsibilities, including adherence to laws and procedures. At least one shall be a member of the Commission. The CC shall choose its Chair for one-year renewable terms. The CDO and its staff shall be the staff for the CC.

The CC shall in consultation with Town Counsel adopt and publish regulations and procedural rules for receiving and processing complaints under Section 3.14.3(B), including all stages from complaint receipt through final disposition. Members of the CC shall receive training approved by the Office of Town Counsel. The CC shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the privacy rights of all to the fullest extent possible but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that doing so does not violate any person's rights to privacy.

(iii) The CC shall create a complaint form which must be signed and contain a sworn statement certifying the truth of the allegations contained therein, but the CC may receive initial complaints in any written form or orally. The CC shall take steps to publicize its procedures. Complaints may be received by any member of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review pursuant to Section 3.14.3(B)(iv). If an initial oral or other complaint is received in a form other than the CC complaint form, the complainant may edit the CC form and additional materials prepared by the person(s) receiving the complaint, but shall be required to sign and swear to the written CC complaint form as provided above. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant, in writing, of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other

appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days from the date of receipt by respondent to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based, provided that (a) where the unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside the statutory filing period so long as the latest unlawful act occurred within the filing period; (b) the time for filing begins on the date on which the complainant knew or should have known about the allegedly unlawful conduct; (c) the time for filing may be extended by the pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and (d) the CC may also extend the deadline for other good cause shown if requested before the deadline has passed; otherwise if the complainant can demonstrate excusable neglect.

(iv) The CDO shall, using written and published criteria developed with the CC, privately review each complaint to determine whether the facts as alleged by the complainant would plausibly suggest that the acts complained about would constitute discrimination under this Bylaw; if so, the complaint will be referred to the CC. This plausibility review shall be completed in thirty (30) days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its case determination or if an extension is necessary.

(v) If the CDO determines that the complainant has not plausibly established a case of discrimination under this Bylaw, the complainant has forty-five (45) days to appeal the determination to the CC from the time of its receipt. This appeal will be heard in a private proceeding by one member of the CC who is a civil rights professional who is an attorney, and shall be completed within thirty (30) days of receipt of the appeal.

(vi) At any point, including prior to or after the filing of a complaint, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator agreed to by the parties or appointed by the American Arbitration Association subject to their rules and procedures, and in the absence of agreement by the parties the CDO or its designee will designate which particular rule set shall apply. The results of the alternative dispute resolution shall be considered a binding agreement enforceable in a court proceeding, as may be permitted by law.

(vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case plausibly falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC who was not previously involved in the proceedings shall conduct a private investigation of the complaint. The CC shall adopt and publish rules of procedure for its private investigations. The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties, including notice of their right to appeal, and to the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(viii) The complainant or respondent may appeal the results of the investigation within forty-five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of three (3) members of the CC chosen by its Chair, including at least two civil rights professionals, at least one of whom is an attorney, other than the CC member or members involved in prior stages of the procedure, and the hearing shall be held within thirty (30) days of the appeal filing date, or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix). Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, provided that such process shall be utilized at the reasonable request of either complainant or respondent. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

(x) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the CC shall seek relief within thirty (30) days of the panel's report, through one or more of the following actions:

(a) If the respondent is an employee, agent or official of the Town or the Town itself, the CC shall provide written findings of fact and recommendations to the Select Board. If the respondent is an employee, agent or official of the School Department, the CC shall provide written findings of fact and recommendations to the Superintendent of Schools and, in the case of the Superintendent, to the School Committee.

(b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) issue a notice of violation to the respondent and provide written findings of fact and recommendations to the Select Board or to the Superintendent of Schools as appropriate. ~~To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.~~

(xi) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission. Administrative or judicial claims for sanctions, compensation or equitable or other relief shall not constitute a violation of this Section 3.14.3(B)(xi).

(xii) The CDICR shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and the civil or human rights of persons or organizations who come into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.

(xiii) The CDO shall develop a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be required by the Massachusetts public records law. Such log and report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy.

(~~B~~C) To carry out the foregoing responsibilities, the Commission is also 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;

(i) Conduct or receive research in the field of employment discrimination, human rights, and 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;

(i) 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;

(ii) 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 Bylaws.

(~~C~~D) At least every two years, the Commission shall 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 applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), 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 such notifications shall respect and protect to the fullest extent possible the right to privacy and confidentiality of all, discussing the complaints and problems presented only in general terms, or in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. All departments and agencies ~~in~~ of 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~~ respond to questions and provide information and feedback. 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 written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information. ~~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. Such report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. 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 (5) years thereafter, the Commission shall review this By-law 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.

~~**SECTION 3.14.8 EFFECTIVE DATE OF DECEMBER 12, 2019 AMENDMENTS**~~

~~The amendments, as indicated in strikethrough, bold and underlined, adopted on December 12, 2019, become effective July 1, 2021.~~

SECTION 3.14.8 EFFECTIVE DATE OF SPRING 2022 ANNUAL TOWN MEETING AMENDMENTS

The amendments, as indicated in strikethrough, bold and underlined, adopted at the Spring 2022 Annual Town Meeting, become effective upon the later of (a) six months after compliance with G.L. c.40, §32; or (b) the completion of the required initial training and adoption of regulations and rules of procedure as provided herein.

SECTION 3.14.~~8~~9 SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.~~9~~10 RESOLUTION OF CONFLICTING PROVISIONS

In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.~~10~~11 APPLICATION OF THIS BY-LAW

Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

ARTICLE 12 & 13

REPORT AND RECOMMENDATION OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE (CTO&S) ON WARRANT ARTICLES 12 AND 13

Recommendation

CTO&S by a 6-0 vote at its May 18, 2022 meeting voted to recommend the following referral motion:

> VOTED:
> To refer the subject matter of Articles 12 and 13 back to the Commission on Diversity, Inclusion and Community Relations (CDICR) for further study, potential revision and, if warranted, resubmission to the Spring 2023 Annual Town Meeting.

Background

Warrant Article 12 would create procedures for the resolution of discrimination complaints under Town By-Law Article 3.14 (the article establishing and governing CDICR). Basically, the approach under By-Law Article 3.14 has changed from providing information, mediation and dispute resolution opportunities (the original 2014 version), to a more active investigative role with time limits (the 2019 Amendments proposed by TMM Arthur W. Conquest III), to a proposal for a more prosecutorial and punitive role granting a new Complaint Committee ("CC") within CDICR subpoena power and the authority to levy $300 per day fines (Articles 12 and 13 now before Town Meeting).

Warrant Article 13 would do two things. It would apply the new Article 12 enforcement procedures to By-Law Article 5.5 (Fair Housing). It also includes "housekeeping" amendments to By-Law Articles 10.2 and 10.3 that would provide for enforcement authority for the $300 per day fines if those should be enacted under Article 12.

The Warrant Articles are designed to replace the 2019 Amendments, which are scheduled to go into effect on July 1, 2022.

Members of CTO&S (not constituting a quorum) have engaged in discussions with Petitioners in an effort to improve the language of Article 12, seeking to address issues of federal and State law and State constitutional requirements, due process, the potential for inequitable application, privacy, and the likelihood of unnecessary and burdensome litigation. This Report, at the end, contains some "base" language that resulted from those discussions. That language was <u>not</u> voted by CTO&S, which voted instead to recommend referral as noted above. The language is included only as a reference point for Town Meeting.

While many issues were resolved in the discussions, a number lingered. Should there be potential $300 per day fines? Petitioners would include such wording; the "base" Article 12 language at the end of this Report does not include such wording and further includes a potential motion to remove such language from Petitioners' version of Article 12.

Should there be the power to subpoena witnesses, to compel their attendance, to compel their testimony, and so on? Petitioners would include such power; the "base" language at

the end of this Report contains such language, but this Report also includes an amendment that, if moved, would delete that authority from Article 12.

With all the work done to massage the language of Article 12, why is CTO&S recommending referral?

Why Does CTO&S Recommend Referral?

Despite the work done by CDICR members over the last two years, and the efforts of CDICR and CTO&S members since the Warrant Articles were filed, it is clear from hearings before CTO&S and other Town bodies that, despite improvements in language, significant issues remain. As some examples:

The issue of fines is discussed at length below. CTO&S recognizes that Petitioners believe that fines are necessary to change behavior. At the same time, CTO&S recognizes that because of State constitutional limitations fines are likely to be applied, if they can be applied at all, in an inequitable manner affecting local businesses but not major corporations that could discriminate against large numbers of victims.

The subpoena issue is also discussed at length. Again, CTO&S recognizes that Petitioners in good faith seek subpoena authority to adequately investigate matters, but again there is the potential for inequitable application against individuals and small businesses, while large corporations would be able to "lawyer up" and compel the Town to attempt to enforce subpoenas through litigation.

Concern was raised over the fact that Petitioners intend Article 12 to apply not just to complaints against the Town, the Schools and their employees and officials, but also to "neighbor vs. neighbor" disputes. Petitioners have responded that there would be written criteria for "plausibility" to weed out specious complaints, and Town Counsel wants that "plausibility" determination to be determined by established case law. There was, nonetheless, concern that Article 12 could be "weaponized" to intimidate, and a question of why Petitioners did not also propose fines against someone who filed a meritless complaint.

Related to that was the concern of possible damage to reputations because, while Article 12 provides that early stages of the complaint process are to be done privately, nothing in the By-Law would prevent the complainant from publicizing a complaint.

Concerns have been expressed that Article 12 would create a process that might duplicate or compete with other existing channels for complaints, possibly leading to disparate outcomes. Petitioners noted that there are already multiple potential venues that a complainant can choose, such as the Massachusetts Commission Against Discrimination (MCAD) and the Town's Human Resources Office. Petitioners also argued that Article 12 is necessary because the MCAD takes too long to resolve complaints, and that it is important for individuals to have a venue where they can be heard and seek redress. On the other hand, there was concern about creating a duplicative Town process where volunteers as opposed to experienced professionals (as at the MCAD) were expected to make quasi-judicial decisions. Also noted was the benefit of having an outside agency such as the MCAD resolve disputes, as opposed to volunteers in Town who might be close to issues and have formed opinions they could not realistically put aside.

There was particular concern about the ability to adequately train even well-meaning volunteers, with some noting that entire law school courses are devoted to issues of civil rights, privacy and due process.

In this regard, Town Counsel is contemplating 16 to 24 hours of training and stated that his greatest concern with regard to potential Town liability revolved around training, with the Town potentially violating the civil rights of respondents (i.e., the persons against whom complaints are filed).

While it has been argued that the 2019 Amendments that would go into effect on July 1, 2022 are inferior to Article 12, Town Counsel has less concern about the potential for litigation under the 2019 language, which has already been approved by the Attorney General, than under Article 12, where challenges to its application would be expected. When the 2019 Amendments were passed, CDICR members expressed the view that they did not have the necessary background to carry out CDICR's responsibilities under those amendments, a view contributing to the decision to delay implementation of the 2019 changes. Town Counsel believes that there can be "workarounds" under the 2019 language; for example, the Commission could delegate authority to Town Counsel to perform duties under the 2019 By-Law to ensure that it functions.

Finally, even passage of Articles 12 and 13 would not prevent the 2019 Amendments from becoming effective on July 1, 2022, at which point any "workarounds" could be implemented and evaluated. If Articles 12 and 13 were passed, they would not be effective until (1) approval by the Attorney General (which has recently taken 6 to 8 months, and is not guaranteed), (2) the appointment of the Complaint Committee contemplated by Article 12, (3) the training of that Committee, and (4) the drafting and adoption of rules and regulations.

Given the remaining concerns expressed about Articles 12 and 13, CTO&S believes it better to refer than to vote "favorable action" on the Articles. Given the fact that Petitioners are seeking to address issues of concern, CTO&S likewise believes that it is better to refer than to vote "no action" on the Articles.

Possible Proceedings at Town Meeting

Town Meeting will likely first decide whether Articles 12 and 13 should be referred.

If the Articles are not referred, Town Meeting will then debate the Articles. We assume that the main motion will be language offered by Petitioners. Fines could be eliminated by passing the attached draft amendment. The subpoena/compulsory testimony language could be eliminated by passing another draft amendment also attached to this Report. Both would have to be moved to be considered. Other amendments could, of course, be offered by Town Meeting Members.

After amendments are decided, Town Meeting will ultimately determine whether the overall approach laid out in Articles 12 and 13 should be adopted. Town Meeting will decide whether Articles 12 and 13 should receive "favorable action" or whether the Town should retain the existing By-Laws including the 2019 Amendments, which would be the effect of a "no action" vote.

Legal Background – The Home Rule Amendment to the Massachusetts Constitution

Town Counsel Joe Callanan has provided CTO&S with a remarkable education about municipal authority under Massachusetts law. Under Section 7(5) of art. 89 of the Amendments to the Massachusetts Constitution, the so-called "Home Rule Amendment," municipalities have no power "to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power."

Town Counsel has pointed to Bloom v. Worcester, 363 Mass. 136 (1973), which permitted that city to investigate (including subpoenas) and identify discrimination -- with only mediation and recommendations to the City Manager as remedies. The Supreme Judicial Court concluded that the ordinance was permissible because it was "concerned at most with adherence by persons in the city to those laws relating to unlawful discrimination which are already in effect and which [already] do govern their civil relationships" and further reasoned that the ordinance "at the most … can encourage a person by moral suasion to do what the law already requires him to do." Id. at 146-47.

On the other hand, in Marshal House, Inc. v. Rent Review & Grievance Bd. of Brookline, 357 Mass. 709 (1970), the Court struck down Brookline's rent control by-law, by which Brookline, prior to the existence of State authorizing legislation, sought to limit rents and impose fines. The Court found that Brookline was precluded from regulating the landlord-tenant relationship. In the course of its opinion, the Court rejected the argument that the "police" power to, for example, protect against injury from fire or badly lighted passageways justified rent control: "a municipal law regulating a civil relationship is permissible (without prior legislative authorization) only as an incident to the exercise of some independent, individual component of the municipal police power." Id. at 717-18. The "independent" and "individual" ability to regulate public safety did not extend to the ability to impose rent control.

Fines

That background brings us to some of the specifics of Article 12. The potential use of the $300 per day fine is sharply constrained by the Home Rule Amendment – if, indeed, fines are to be permitted at all. As noted above, Bloom v. Worcester approved an anti-discrimination ordinance that provided only for "moral suasion" (mediation and recommendations to the City Manager) rather than fines. That sort of "moral suasion" is the approach taken by the 2019 Conquest Amendments. Those 2019 Amendments, leading to recommendations (e.g., to the Select Board, Superintendent or School Committee) can be identified as "~~strike throughs~~" in Warrant Article 12. They correspond to the "moral suasion" recommendations to the Worcester City Manager approved in Bloom v. Worcester and would remain in place if Articles 12 and 13, with their provisions for fines, are not passed.

Town Counsel has noted that we might be able to argue that the "exercise of an independent municipal power" language in the Home Rule Amendment would allow the Town to fine, for example, a local bar, restaurant or tattoo parlor, because they receive licenses from the Town. But Marshal House casts doubt on even that argument, because the Court looked at municipal powers independently and individually. Thus, while the Town might be able to fine a local bar, restaurant or tattoo parlor for unsanitary conditions or equipment, there would be the question of whether the "independent" and "individual" municipal power to protect public health extended to regulations regarding various forms of discrimination, just as the power to regulate public safety (fire, lighting) in rental buildings did not permit the imposition of rent control in Marshal House.

Town Counsel has pointed out (and CTO&S agrees) that because there is no municipal licensing involved, fines could not be applied to housing such as landlord-tenant relations, health care, private employment, and private education. In corresponding fashion, it would appear that the Home Rule Amendment would also bar fines in the areas of credit, any

public accommodations not licensed by the Town, and the sale of property, even if there were some narrow area of licensed local business activities where fines could be levied. This could lead to a situation where the $300 per day fine might arguably (but not certainly) be levied against a local business such as a pizza parlor, but not against, for example:

- the Bank of America or other banks, over which the Town has no municipal power, if they discriminated against hundreds of individuals in refusing credit or mortgages;
- a major landlord that repeatedly discriminated on the basis of race, the use of Section 8 certificates, or the presence of children; or
- a major private employer engaged in salary discrimination against its entire workforce on the basis of sex.

Petitioners have argued that fines are needed to get respondents to "cooperate" and to "change behavior." Petitioners attempt to thread the needle by imposing fines only "to the extent the law allows." While this qualifying phrase might permit the By-Law to pass muster during the Attorney General's review, it provides a recipe for inequitable application and expensive and burdensome litigation down the road.

As discussed above, the largest and worst potential offenders would not be subject to fines at all, and would have both the resources and incentive to successfully challenge any fines the Town tried to impose. A local business could, on the other hand, be faced with $300 per day fines. Even if those fines were unlawful because the Town was exceeding its "independent" and "individual" municipal power, the local business would be confronted with costly and burdensome litigation. Given the dictates of the Home Rule Amendment, retaining the $300 per day fine would be inherently inequitable in practice.

Fines are not included in the "base" language at the end of this report. If the Articles are not referred and Petitioners' language is used as the starting point for debate, CTO&S has provided an amendment that, if moved, would delete fines from Petitioners' proposal. That would be a decision for Town Meeting.

The Subpoena Power

The provision in Article 12 giving the Complaint Committee the authority and discretion to issue subpoenas, to serve interrogatories, to compel the attendance of witnesses, and so on, was a source of substantial controversy during hearings.

It is argued, on the one hand, that such language will allow the CC to get to the bottom of cases and that the complaint process would have no "teeth" without the ability to seek subpoenas and compel testimony. It is further argued that a party could refuse to comply with a subpoena from the CC, and the subpoena could not be enforced without a Select Board decision authorizing Town Counsel to file a court action under G.L. c.233, §10. A Justice of the Supreme Judicial Court or a Superior Court would then have discretion to decide whether to enforce the subpoena. In the view of Petitioners, these required steps provide adequate protection against abuse of the subpoena power.

On the other hand, it is argued that the power to initiate subpoenas should not rest in a local body. It is argued that the subpoena/compulsory testimony provisions (and Article 12 generally) create an unnecessary municipal process that is inherently inequitable. Other agencies such as the MCAD can already enforce anti-discrimination laws. Moreover, they can provide actual relief to injured parties while Articles 12 and 13 can only provide for

recommendations and, arguably in some cases, for fines that would be paid to the Town but not to the injured party. Moreover, large deep-pocketed entities would know that they could refuse to comply with subpoenas and thus compel enforcement litigation, and they could then readily afford the cost of such litigation. Individuals and small local businesses, on the other hand, even if not ignorant of their right to challenge subpoenas, would be forced either to comply or to face burdensome litigation costs.

The "base" language attached to this Report includes subpoenas, but CTO&S has provided an amendment that if moved by a Town Meeting Member would remove subpoena authority from that language or from Petitioners' version of Article 12. If Articles 12 and 13 are not referred, this would be another issue for Town Meeting to decide.

Students and the Schools

One issue during discussion of Article 12 was the fact that the Article, as originally proposed in the Warrant, would have expressly made the new enforcement structure "applicable to students, faculty and staff of the School Department to the extent permitted by federal law (including, but not limited to, Title IX)."

It should be noted that the "base" language in the Report and Petitioners' revised language now take a different approach. PSB students can proceed as complainants if they are the victims of discriminatory acts (with minors presumably acting through their parents), but they are not able to be charged as respondents under Article 12. Discipline of students as respondents is left to the Schools.

Students have been excluded as respondents under Article 12 in light of an October 23, 2019 opinion letter from outside counsel John Foskett, Esq. of Valerio, Dominello & Hillman LLC to Julie Schreiner-Oldham, then Chair of the Brookline School Committee. The opinion letter, provided at the time the 2019 Conquest Amendments were being considered, argued that under federal and State law personally identifiable student information cannot be disclosed without the consent of parents or eligible students to third parties who are not "authorized school personnel." The opinion letter further stated that student discipline is the province of School officials under the U.S. Department of Education Office of Civil Rights guidelines for Titles VI and IX and also under Massachusetts G.L. c.71, §§ 37H, 37H ½, 37H ¾, and 37O, and 603 CMR 53.00. (The letter can be found under Article 24 of the Combined Reports for the November 2019 Special Town Meeting on page 275 of 447:
https://www.brooklinema.gov/DocumentCenter/View/20751/Combined-Reports-November-2019-Brookline-Special-Town-Meeting-with-Supplements).

If actions against students were impermissible under the 2019 Amendments, the conclusion would apply with even more force to Article 12, which potentially includes subpoenas, compulsory testimony and substantial fines.

Petitioners' language and the "base" language in this Report thus remove language from Section 3.14.3(B) that would have the Article 12 enforcement procedure apply against students, referring to the potential role of students only as complainants. A reference to students is also not included in the remedy language of Section 3.14.3(B)(x)(b).

Discriminatory conduct unrelated to the Schools by an adult (18+) individual who also happens to still be a student would not be insulated. That conduct could be investigated as the conduct of an adult person. It is the explicit statement that Article 12 is applicable to "students" that is not legally authorized and thus has been removed.

Conclusion

Each Town Meeting Member will have the opportunity to decide whether Articles 12 and 13 should be referred for further consideration. If they are not, each Town Meeting Member will have the opportunity to decide on the appropriate scope of procedures that would be implemented under Article 12 (e.g., fines and subpoena authority). Town Meeting Members would then decide whether the procedures outlined in Articles 12, as amended, are necessary and appropriate for Brookline and should be adopted or whether the Articles should be rejected. CTO&S recommends referral back to CDICR, but has nonetheless laid out various potential votes below.

* * *

WARRANT ARTICLE 12 LANGUAGE (FOR REFERENCE ONLY – NOT VOTED BY CTO&S)

"Base" Language Before Potential Amendments (Includes Subpoenas; Does Not Include Fines)

VOTED to amend the Town's General By-Laws, Article 3.14 as follows (language to be stricken appearing in strikeout, language to be added appearing in underline):

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, and equity 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 and equity. 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 at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible.

The Commission shall consist of fifteen (15) residents, 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 (5) 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 (in accordance with Section 3.1.5) as it determines to be necessary, which may include youth, i.e., persons under the age of 18, 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 civil rights ~~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 By-law 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 works 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~~ manage the complaint process as described in Section 3.14.3 (B). ~~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 policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

~~The CDO shall respect the rights to privacy and confidentiality of all individuals and hold all matters in confidence 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.~~

The CDO shall serve as an ombudsperson to provide information and guidance to all persons, including 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 persons to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, the Police Department's Civilian Complaint Procedure, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect to the fullest extent possible the privacy rights of all individuals but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that 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 recommendations ~~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 of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);
~~(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, 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 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 Civilian 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, 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 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 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.~~
~~(vii) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) 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) 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~~vi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under Bylaw 5.5;
~~(x) 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~~vii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;
(~~xiii~~viii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, ~~and~~ inclusion, and equity, and encourage public and private agencies to respond to those youth needs.
(B) To carry out the responsibilities under Section 3.14.3(A)(v), a Complaint Committee (CC) will be established and charged with investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). Complaints involving allegations of discrimination may be made by a person claiming to be aggrieved, by a duly authorized representative of such person, or by an organization whose members include those persons claiming to be aggrieved, against the Town, its employees, agencies, or officials or against another adult person or organization concerning incidents of discrimination occurring in Brookline. These complaints may involve incidents, if illegal under federal or State law, regarding, but not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students as complainants and to faculty and staff of the School Department to the extent permitted by State and federal law (including, but not limited to, Title IX).
(i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency, disability or other communication or access issues.
(ii) The CC shall consist of not more than 7 persons appointed at a public meeting by the Select Board in consultation with the Commission and Town Counsel. The CC members shall be appointed for three-year renewable terms following the same process as Commissioners, described in Section 3.14.1, The CC shall include attorneys with applicable civil rights experience or other individuals with applicable professional civil rights experience (together, "civil rights professionals") as well as members of historically marginalized communities, i.e., individuals in groups historically excluded due to their membership in a protected class. Members of the CC must be residents of Brookline with the ability necessary to perform the duties assigned to the CC under this By-law, including fair and equitable performance of the CC's quasi-judicial responsibilities, including adherence to laws and procedures. At least one shall be a member of the Commission. The

CC shall choose its Chair for one-year renewable terms. The CDO and its staff shall be the staff for the CC.

The CC shall in consultation with Town Counsel adopt and publish regulations and procedural rules for receiving and processing complaints under Section 3.14.3(B), including all stages from complaint receipt through final disposition. Members of the CC shall receive training approved by the Office of Town Counsel. The CC shall at all times hold all matters in confidence to the fullest extent allowed by law and shall respect and protect the privacy rights of all to the fullest extent possible but may discuss with the Commission, only in general terms, and in specific terms only with the consent of all parties, the problems or issues that individual cases present, provided, however, that doing so does not violate any person's rights to privacy.

(iii) The CC shall create a complaint form which must be signed and contain a sworn statement certifying the truth of the allegations contained therein, but the CC may receive initial complaints in any written form or orally. The CC shall take steps to publicize its procedures. Complaints may be received by any member of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review pursuant to Section 3.14.3(B)(iv). If an initial oral or other complaint is received in a form other than the CC complaint form, the complainant may edit the CC form and additional materials prepared by the person(s) receiving the complaint, but shall be required to sign and swear to the written CC complaint form as provided above. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant, in writing, of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days from the date of receipt by respondent to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based, provided that (a) where the unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside the statutory filing period so long as the latest unlawful act occurred within the filing period; (b) the time for filing begins on the date on which the complainant knew or should have known about the allegedly unlawful conduct; (c) the time for filing may be extended by the pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and (d) the CC may also extend the deadline for other good cause shown if requested before the deadline has passed; otherwise if the complainant can demonstrate excusable neglect.

(iv) The CDO shall, using written and published criteria developed with the CC, privately review each complaint to determine whether the facts as alleged by the complainant would plausibly suggest that the acts complained about would constitute discrimination under this Bylaw; if so, the complaint will be referred to the CC. This plausibility review shall be completed in thirty (30) days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its case determination or if an extension is necessary.

(v) If the CDO determines that the complainant has not plausibly established a case of discrimination under this Bylaw, the complainant has forty-five (45) days to appeal the

determination to the CC from the time of its receipt. This appeal will be heard in a private proceeding by one member of the CC who is a civil rights professional who is an attorney, and shall be completed within thirty (30) days of receipt of the appeal.

(vi) At any point, including prior to or after the filing of a complaint, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator agreed to by the parties or appointed by the American Arbitration Association subject to their rules and procedures, and in the absence of agreement by the parties the CDO or its designee will designate which particular rule set shall apply. The results of the alternative dispute resolution shall be considered a binding agreement enforceable in a court proceeding, as may be permitted by law.

(vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case plausibly falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC who was not previously involved in the proceedings shall conduct a private investigation of the complaint. The CC shall adopt and publish rules of procedure for its private investigations. The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties, including notice of their right to appeal, and to the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(viii) The complainant or respondent may appeal the results of the investigation within forty-five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of three (3) members of the CC chosen by its Chair, including at least two civil rights professionals, at least one of whom is an attorney, other than the CC member or members involved in prior stages of the procedure, and the hearing shall be held within thirty (30) days of the appeal filing date, or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix). Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(x).

(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, provided that such process shall be utilized at the reasonable request of either complainant or respondent. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

(x) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the CC shall seek relief within thirty (30) days of the panel's report, through one or more of the following actions:
(a) If the respondent is an employee, agent or official of the Town or the Town itself, the CC shall provide written findings of fact and recommendations to the Select Board. If the respondent is an employee, agent or official of the School Department, the CC shall provide written findings of fact and recommendations to the Superintendent of Schools and, in the case of the Superintendent, to the School Committee.
(b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) issue a notice of violation to the respondent and provide written findings of fact and recommendations to the Select Board or to the Superintendent of Schools as appropriate.
(xi) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission. Administrative or judicial claims for sanctions, compensation or equitable or other relief shall not constitute a violation of this Section 3.14.3(B)(xi).
(xii) The CDICR shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and the civil or human rights of persons or organizations who come into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.
(xiii) The CDO shall develop a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be required by the Massachusetts public records law. Such log and report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy.
(~~B~~C) To carry out the foregoing responsibilities, the Commission is also 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;
(i) Conduct or receive research in the field of employment discrimination, human rights, and 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;

(i) 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;
(ii) 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 Bylaws.
(~~C~~D) At least every two years, the Commission shall 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 applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), 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 such notifications shall respect and protect to the fullest extent possible the right to privacy and confidentiality of all, discussing the complaints and problems presented only in general terms, or in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. All departments and agencies ~~in~~ of 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~~ respond to questions and provide information and feedback. 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 written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information. ~~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. Such report shall respect and protect the rights of privacy and confidentiality of all to the fullest extent possible and provide information regarding complaints only in general terms, and in specific terms only with the consent of all parties, provided, however, that doing so does not violate any person's rights to privacy. 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 (5) years thereafter, the Commission shall review this By-law 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.

~~**SECTION 3.14.8 EFFECTIVE DATE OF DECEMBER 12, 2019 AMENDMENTS**~~

~~The amendments, as indicated in strikethrough, bold and underlined, adopted on December 12, 2019, become effective July 1, 2021.~~

SECTION 3.14.8 EFFECTIVE DATE OF SPRING 2022 ANNUAL TOWN MEETING AMENDMENTS

The amendments, as indicated in strikethrough, bold and underlined, adopted at the Spring 2022 Annual Town Meeting, become effective upon the later of (a) six months after compliance with G.L. c.40, §32; or (b) the completion of the required initial training and adoption of regulations and rules of procedure as provided herein.

SECTION 3.14.8~~9~~ SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.9~~1~~0 RESOLUTION OF CONFLICTING PROVISIONS
In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.~~1~~011 APPLICATION OF THIS BY-LAW
Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

* * *

POTENTIAL AMENDMENTS UNDER ARTICLE 12 (NOT VOTED BY CTO&S)

Potential Amendment to Petitioners' Language to Remove Fines

If Petitioners' language is used as the "starting point" for amendments, the following deletion would remove the ability of the Complaint Committee to issue fines (alternatively, the CTO&S language, which does not include fines, could be used as a substitute motion):
MOVED:
To delete the following language from Section 3.14.3(B)(x)(b):
To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.

Potential Amendment to and Petitioners' Language and to "Base" Language to Remove Subpoena Power

If Town Meeting does not wish to give the CC the authority to subpoena witnesses, compel testimony, and so on, the following changes to both the Petitioners' "starting point" language and the CTO&S "starting point" language would delete the subpoena authority without requiring the renumbering of paragraphs:
MOVED:
To delete the following Section 3.14.3(B)(ix):
(ix) The CC shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, provided that such process shall be utilized at the reasonable request of either complainant or respondent. Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.
and to substitute the following Section 3.14.3(B)(ix):
(ix) [Reserved]
and to delete the following language from Section 3.14.3(B)(vii):
or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix).

POTENTIAL VOTES UNDER WARRANT ARTICLE 13

A) If Warrant Article 12 is REFERRED, Article 13 should also be REFERRED. (Voted by CTO&S)

B) If Warrant Article 12 (Amendments to By-Law Article 3.14) is passed with authority of the CC to impose fines, a "FAVORABLE ACTION" vote on Article 13 would be consistent.

C) If Warrant Article 12 is passed without authority of the CC to impose fines, the following votes would be consistent:
   1. "FAVORABLE ACTION" on the amendment to By-Law Article 5.5 (Fair Housing By-Law) proposed in Warrant Article 13 (incorporating the Article 3.14.3(B) complaint procedures)
   2. "FAVORABLE ACTION" on the amendment to By-Law Article 10.2 proposed in Warrant Article 13 (CDICR prosecution and enforcement of By-Law Article 3.14)
   3. "NO ACTION" on the amendment to By-Law Article 10.3 proposed in Warrant Article 13 (would have provided $300 per day penalty for violations of By-Law Section 3.14.3(B)).

D) If "NO ACTION" is voted on Article 12, a "NO ACTION" vote on Article 13 would be consistent.

ARTICLE 12 & 13

MOTION OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE TO REFER THE SUBJECT MATTER OF ARTICLES 12 AND 13

The Committee on Town Organization & Structure (CTO&S) moves that Warrant Articles 12 and 13 be referred as follows:

> VOTED:
> To refer the subject matter of Articles 12 and 13 back to the Commission on Diversity, Inclusion and Community Relations (CDICR) for further study, potential revision and, if warranted, resubmission to the Spring 2023 Annual Town Meeting.

Moved on behalf of CTO&S by Richard Benka (TMM14) and seconded by Sean Lynn-Jones (TMM1).

ARTICLE 12 & 13

AMENDMENT OFFERED BY
DENNIS DOUGHTY, TMM3, AND DAVID POLLAK, TMM11

MOVED:

To Amend the Petitioner's amended motion as follows:

MOVED:

To delete the following language from Section 3.14.3(B)(x)(b):

To the extent the law allows, the CC may additionally levy a civil fine of three hundred dollars ($300) for each such violation or other such sum as allowed by law. Each day or separate violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c.40 §21D.

ARTICLE 12

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 12 was submitted by petition to strengthen the existing investigative authority of the Commission on Diversity, Inclusion and Community Relations (CDICR). This investigative authority was initially adopted by Town Meeting in 2019, but its implementation was deferred until July 1, 2022 in order to compel Commission on Diversity, Inclusion and Community Relations (CDICR) to submit refined legislation. The 2019 amendment will take effect at that time unless otherwise amended under Article 12 of this Warrant.

Article 12 would establish a new Complaint Committee and create a mechanism to issue monetary fines if the Committee determines that a party acted in a discriminatory manner. The reports of the Advisory Committee and the Committee on Town Organization and Structure (CTOS) are very detailed and do not need to be repeated here. Suffice to say that this article has been the subject of extensive analysis and review by both bodies in consultation with the petitioners, Town Counsel and other staff. Revisions have been discussed and adopted that resolve some, but not all, of the issues in dispute. However, the Advisory Committee has recommended No Action on the article while the CTOS recommends a referral back to the CDICR.

At their meeting on May 25, 2022, and following a prior public hearing on the matter, the Select Board voted 3-2 (Aschkenasy and Sandman opposed) to recommend No Action on this revised article.

ROLL CALL VOTE:

Aye:	No:
Hamilton	Aschkenasy
Greene	Sandman
VanScoyoc	

ARTICLE 12

MOTION OFFERED BY MARTY ROSENTHAL, TMM9

MOVED: To delete the following Section 3.14.3(B)(ix) (*emphases* added by MR)**:**

> (ix) The CC shall have the *power to subpoena witnesses*, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it, *provided that such process shall be utilized at the reasonable request of either complainant or respondent.* Witnesses shall be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.

and to substitute the following Section 3.14.3(B)(ix):

> (ix) [Reserved]

and to delete the following language from Section 3.14.3(B)(viii):

> or as soon thereafter as practicable after completion of any discovery and process as set forth in Section 3.14.3(B)(ix).

EXPLANATION

This motion is in May 24th's updated Combined Reports (hereinafter "**C/R**"), *Supp'mt #3,* p. 18, drafted by our great and under-appreciated CTO&S -- FYI of which I was honored to be a member for maybe three decades, but who's counting? I myself attended their discussions, and most of CDICR's over the last two years, and I was one of the drafters of CTOS' 2019 report, which is in the current *C/R* (but too unexplained), now *Supp'mt #1* pp. 41-71, specifically 53-56.

With maybe the most C/R pages (that I recall in my 4+ decades) for a non-budget WA, today (May 26th) 144 pp., this actual motion seems on the surface clear; but to many TMM's its reasons may need highlighting or expanding. The pertinent provision of what seems **Petitioners' Motion** is above -- in *C/R Supp'mt #1*, p.9, now moved for deletion. Then, they explain, *Id.* p. 15 (emphasis added):

> Subpoena Power. *Town Counsel has opined that the power to issue subpoenas by the CDICR is upheld in Bloom v. Worcester,* in which a similar committee issued a subpoena. Town Counsel has also made clear that should the subpoena be ignored, Town Counsel *would only go to court to enforce* the subpoena at the direction of the Select Board.

And, the A/C offers *C/R Supp'mt #3*, p.5 (emphasis added):

> Subpoena power. The revised motion adds language making clear that *such process shall be utilized at the reasonable request of either complainant or respondent*. The limits of this power are better understood – that *enforcement is only available through*

> *action of the courts* in response to a request made by Town Counsel with authorization of the Select Board.

So, my concerns begin with those in *CTOS' BACKGROUND* summary, *C/R Supp'mt* #3, p. 1, differentiating WA 12 from the 2019 WA24 version, saying the current proposal (emphasis added):

> has changed from providing information, mediation and dispute resolution opportunities (the original 2014 version), to a *more active investigative role* … to a proposal for *a more prosecutorial and punitive role* granting a new Complaint Committee ("CC") within CDICR subpoena power and the authority to levy $300 per day fines (Articles 12 and 13 …).

So, *first*, I think most everyone has thus far underestimated the emotional impact of a subpoena, especially to one who's never gotten one, has no lawyer friend, etc. A SAMPLE is appended hereto; it's designed to look at a minimum very formal, but also coercive (*intimidating*). See also, *supra*, "would *only go to court to enforce*."

2nd, CTOS highlights issues in *C/R p. 12-19*, then later *Supp'mt #3 @* 2, & 5-6, as now pertinent (emphases all added):

> The provision in Article 12 giving the CC the authority and discretion to issue subpoenas, to serve interrogatories, to compel the attendance of witnesses, and so on, *has been controversial*. As noted, CTOS believes that giving these *powers to a Town body such as the CC* is a *"political" decision* to be decided at Town Meeting. …
>
> … Again, CTO&S recognizes that Petitioners in good faith seek subpoena authority to adequately investigate matters, but again there is the *potential for inequitable application* against individuals and small businesses, while *large corporations would be able to "lawyer up" and compel the Town to attempt to enforce* subpoenas through litigation. …
>
> … The provision … giving … the authority and discretion to issue subpoenas, to serve interrogatories, to compel the attendance of witnesses, and so on, was a *source of substantial controversy d*uring hearings. It is argued, on the one hand, that such language will allow the CC to get to the bottom of cases and that the complaint process would have no "teeth" without the ability to seek subpoenas and compel testimony. It is further argued that *a party could refuse to comply* with a subpoena from the CC, and the subpoena could not be enforced without a Select Board decision authorizing Town Counsel to file *a court action* under G.L. c.233, §10. A … [court judge] would then have *discretion to decide whether to enforce* the subpoena. *In the view of Petitioners, these required steps provide adequate protection against abuse of the subpoena power.*
>
> On the other hand, it is argued that the *power to initiate subpoenas should not rest in a local body*. It is argued that the subpoena/compulsory testimony provisions (and Article 12 generally) create an *unnecessary municipal process that is inherently inequitable*. Other agencies such as the MCAD can already enforce anti-discrimination laws. Moreover, they can provide actual relief to injured parties while Articles 12 and 13 can only provide for recommendations and, arguably in some cases, for *fines that would be paid to the Town but not to the injured party.* Moreover, *large deep-pocketed entities* would know that *they could refuse to comply with subpoenas* and thus compel

> *enforcement litigation,* and they could then *readily afford the cost* of such litigation. *Individuals and small local businesses,* on the other hand, *even if not ignorant of their right to challenge* subpoenas, would be *forced* either to comply or to *face burdensome litigation costs.*

I share *all* -- and won't repeat most of -- those (now) *italicized* concerns, adding an unspoken one, that under MA Rule 45 of Civil Procedure, "failure by any person without adequate excuse to obey a subpoena … may be *deemed a contempt* of the court."

So, assuming that all the foregoing suggests that "attention must be paid," two more concerns: I have for many months publicly and adamantly disagreed with Town Counsel's view (*supra*) that the *Bloom v. Worcester* case gives subpoena power to CDICR, or indeed to any committee in *a town* other than a Select Board, School Committee, or Board of Registrars of Voters. [ZBA's have a separate subpoena statute.] While *Bloom* does use some broad language (*dicta*) that would seem to include any "municipality," the case was about subpoenas for a Human Rights Commission in *a city*; and the court relied on a law that's very different for a town, M.G.L. c. 233 § 8, "Bodies authorized to summon witnesses" (essentially and emphasis added):

> Witnesses may be summoned to attend and testify and to produce books and papers at a hearing b*efore a city council,…or before a … special committee of the same* …, or before a *board of selectmen, a board of police commissioners*, … [other irrelevant specific committees/officials] … …, a school board, … a board of registrars of voters, … [various other irrelevant specific committees/officials], as to matters within their authority;

So, aside from at best (very) "*doubtful legality,*" IMHO there are good WA 12 "policy" (or per CTOS, *supra*) *political"* reasons for such a narrow reading of *Bloom*, including specifically for CDICR. Should a committee under the auspices of CDICR be the first one Town Meeting tries to grant such power? For example, as per my last issue, *infra*, why not Human Resources, where there's considerable professional expertise and arguably less credibility issues than CDICR? Somebody has to say what many others think. I've been a five decade proponent of improving/empowering the Commission, as well as its (HRYRC) predecessor, e.g. my & Jeffrey Allen's 1987 (S-Bd) *Police and Community Relations Report*, later on the 2014 drafting committee for the CDICR by-law. On the latter, I and Stanley Spiegel (for PAX) moved the successful amendment that made the Diversity Office "director" (soon to be Lloyd Gellineau, who's done a great job) a *Department Head*, overcoming Town Administrator and (unanimous) Select Board opposition, with an Explanation emphasizing the (revamped) CDICR's importance.

But, one elephant in this room: I and many others feel the recent Commission, albeit out of very good intentions, has been too knee-jerk and one-sided, ignoring both nuances and its implicit mission to "*build bridges, not walls.*" By exaggerating how much racism there is in Brookline, I can attest that people of color too often and too loudly hear "*stay away!*" One of many examples of why many don't view CDICR as sufficiently thoughtful, open-minded, balanced or "fair": They supported (by 10-1-0) the 2020 WA to amend by-law 3.1.3, "Litigation and Claims," by giving Town Meeting the (budgetary) power to foreclose for any reasons/whims any specific litigation. Here's what they said (10-1), with *zero* explanation: "The Commission disagrees with the Select Board's and Town Counsel's interpretation of 3.1.3 that Town Meeting does not in fact have the power to prevent such

appropriations and expenditures." Even in the midst of Gerald Alston prominence, that was defeated (131-88).

Near lastly, revised WA12 very welcomely mandates *later* rules with help of Town Counsel; but bare-bones WA12 is weak on many *DUE PROCESS issues*, like two examples, the meaning of "at *the reasonable request* of either complainant or respondent"; and what is the "*burden of proof"* -- always the most important procedural issue? Cf. Justice Frankfurter: "The history of liberty has largely been the history of the observance of *procedural safeguards*." [*McNabb v. US*, 318 U.S. 332, 347 (1943)(suppressing evidence from improper interrogations).

Lastly, and tangential to the foregoing, some of us have been saying -- to deaf ears -- since 2016, and especially since 2019 (CTOS re WA 24, *supra*) that MULTIPLE PARALLEL/COMPETING COMPLAINT PROCESSES must be reconciled. I believe *there is a real need for a complaint forum for "regular [protected class] person" vs. "regular person"*; and that -- with more study -- CDICR *should be* the forum. But for complaints against Town *staff,* especially those with union contracts, it should generally be the 2016 *Human Resources* process, and for Police their intricate process -- that I've thrice helped write/reform -- that includes S-Bd. "*civilian review*" (with subpoena power). Those two already have jurisdictional confusion, including a court case. Now we'll have a third.

Nobody has yet answered my question, subpoenas included (or aside): *If a complainant calls or goes to the Town Clerk and asks how/where to complain about alleged racism by a DPW worker or a cop, what will they be told, "Well, you have three choices, but I can't help you decide, so good luck*?" That too is not just a legal issue, but is also not "welcoming" to complainants, as we should maximize, even if their complaints are later deemed unfounded.

****

(MR's NB: a boilerplate form for court cases; *fonts* as in original; spacing now altered**)**

The Commonwealth of Massachusetts
Subpoena

_____, ss.

To:_____

You are hereby commanded, in the name of the Commonwealth of Massachusetts, to appear before the _____ Court at _____ in the County of _____ on the _____ day of _____, in the year _____ at ____ am/pm, and from day to day thereafter, until the action hereinafter named is heard by said Court, to give evidence of what you know relating to an action then and there to be heard and tried between_____, Plaintiff, and _____, Defendant, docket number _____, and you are further required to bring with you:

_____

Hereof fail not, as your failure to appear as required will subject you to such pains and penalties as the law provides.

Dated at _____ the _____ day of _____, in the year _____.

_____

Notary Public – Justice of the Peace

****

RETURN OF SERVICE

I, _____, certify that I this day summoned the within named

_____

to appear and give evidence at Court as directed by the attached subpoena by delivering to

_____

____ in hand, - leaving at

_____ *a copy of the subpoena together with _____ fees for attendance and travel.*

I further certify that I am not a party to the above entitled action and that I am not less than 18 years of age.

Signed under penalties of perjury this _____ day of _____, in the year_____

ARTICLE 13

THIRTEENTH ARTICLE
Submitted by: Sandy Batchelder on behalf of the CDICR, with Mariah Nobrega and Deborah Brown

To see if the Town will amend the Town's General By-laws 5.5, 10.2 and 10.3 as follows (language to be stricken appearing in strikeout, language to be added appearing in underline):

ARTICLE 5.5 FAIR HOUSING BY-LAW

SECTION 5.5.1 POLICY OF THE TOWN OF BROOKLINE

It is hereby declared to be the policy of the Town of Brookline ("Town") that all members of Brookline Protected Classes, as defined in Section 3.14.1 of this By-law, shall have equal access to housing accommodations within the Town. Further, it is the policy of the Town to encourage and bring about mutual understanding and respect among all persons in the Town by the elimination of prejudice and discrimination in the area of housing.

SECTION 5.5.2 EXERCISE OF POLICE POWER

This By-law shall be deemed an exercise of the police power of the Town for the protection of the public welfare, prosperity, health and peace of its people.

SECTION 5.5.3 DEFINITION OF TERMS

"Commission" means the Town's Commission for Diversity, Inclusion and Community Relations, its agents and employees.

To "discriminate" means to design, promote, implement or carry out any policy, practice or act which by design or effect segregates, separates, distinguishes or has a disproportionate impact on one or more members of Brookline Protected Classes.

"Person" means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the Town of Brookline and all boards, commissions, offices, and agencies thereof.

"Housing Accommodation" means any building or structure or portion thereof or any parcel of land, developed or undeveloped, which is occupied or to be developed for occupancy as the home, or residence for one or more persons.

"Disability", which includes the term "Handicap", is any person's physical or mental impairment that substantially limits one or

more major life activities, or is regarded as having such an effect or having had such an effect.

"Age" includes any duration of time since an individual's birth of greater than 40 years.

SECTION 5.5.4 UNLAWFUL HOUSING PRACTICES

It shall be an unlawful housing practice:

(a) for any owner, lessee, sub-lessee, assignee, managing agent, real estate agent, or other person having the right to sell, rent, lease, or manage a housing accommodation or an agent of any of those:

1. to discriminate or directly or indirectly make or cause to be made any written or oral inquiry concerning the membership in a Brookline Protected Class of any prospective purchaser, occupant, or tenant of such housing accommodations;

2. to discriminate or directly or indirectly to refuse to sell, rent, lease, let or otherwise deny to or withhold from any person, such housing accommodation because of membership in a Brookline Protected Class;

3. to discriminate or to directly or indirectly print or publish or cause to be printed or published, circulated, broadcasted, issued, used, displayed, posted, or mailed any written, printed, painted or oral communication, notice or advertisement relating to the sale, rental, lease or let of such housing accommodation which indicates any preference, denial, limitation, specification, qualification, or discrimination because of membership in a Brookline Protected Class;

4. to directly or indirectly discriminate against any person because of membership in a Brookline Protected Class in the terms, conditions or privileges of the sale, rental, lease, or let of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(b) for any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured:

1. to discriminate or to directly or indirectly make or cause to be made any written or oral inquiry concerning the membership in a Brookline Protected Class of any person seeking such financial assistance, or of existing or

prospective occupants or tenants of such housing accommodation;

2. to discriminate directly or indirectly in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance because of membership in a Brookline Protected Class;

3. to discriminate or to directly or indirectly deny or limit such application for financial assistance on the basis of an appraiser's evaluation, independent or not, of the property or neighborhood under consideration, when such evaluation is based on membership in a Brookline Protected Class.

(c) for any person, agent, firm, corporation or association whether or not acting for monetary gain, to directly or indirectly induce, attempt to induce, prevent or attempt to prevent the sale, purchase, rental, or letting of any housing accommodation by:

1. implicit or explicit representations regarding the existing or potential proximity of real property owned, used or occupied by a member or members of a Brookline Protected Class;

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

3. implicit or explicit false representations regarding the availability of suitable housing within a particular neighborhood or area, or failure to disclose or offer to show all properties listed or held for sale, rent, lease, or let within a requested price range, regardless of location, on the basis of membership in a Brookline Protected Class.

(d) except where based on a valid affirmative action program or record keeping or reporting requirement approved by any government or adopted pursuant to a court decree for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential:

1. to directly or indirectly make or keep a record of any applicant's, prospective tenant's or existing membership in a Brookline Protected Class;

2. to use any form of housing or loan application which

contains questions or entries directly or indirectly pertaining to membership in a Brookline Protected Class;

3. to establish, announce or follow a pattern, practice, or policy of denying, excluding or limiting housing accommodations by any means whatsoever because membership in a Brookline Protected Class.

(e) for any person to discriminate in any manner against any person or to otherwise deny or to withhold from such person housing accommodations because said person has opposed any practice forbidden by this By-law or has made a charge, testified, or assisted in any manner in any investigation or proceedings under this By-law;

(f) for any person, whether or not acting for monetary gain, to aid, abet, incite, compel or coerce the performance of any act declared by this By-law to be an unlawful housing practice, or to obstruct or prevent any person from complying with the provisions of this By-law or any regulations or orders issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful housing practice.

SECTION 5.5.5 EXERCISE OF PRIVILEGE – EXEMPTIONS

Notwithstanding anything herein contained, the following specific actions shall not be violations of this By-law:

1. for a religious organization or institution to restrict any of its housing accommodations which are operated as a direct part of religious activities to persons of the denomination involved;

2. for the owner of a housing facility devoted entirely to the housing of individuals of one gender, to restrict occupancy and use on the basis of that gender or gender identity;

3. the operation or establishment of housing facilities designed for the exclusive use of persons with disabilities and/or seniors or the establishment of programs designed to meet the needs or circumstances of persons with disabilities and/or seniors, or self-contained retirement communities of at least twenty acres in size a minimum age requirement for residency of at least fifty-five years;

4. the operation or establishment of housing facilities owned by an educational institution and designed and used for the exclusive use of students of that particular institution.

SECTION 5.5.6 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

This By-law shall be administered by the Commission for Diversity, Inclusion and Community Relations. The Commission shall have all powers given to it under other Town By-laws, as well as those given to it by this By-law. All persons who wish to file complaints for violations of this Article 5.5 shall follow the process outlined in 3.14.3 (B). The Commission may adopt rules and regulations consistent with this By-law, By-law 3.14 and the laws of the Commonwealth to carry out the policy and provisions of this By-law and the powers and duties of the Commission outlined in By-law 3.14.

~~SECTION 5.5.7 FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION~~

~~(a) All persons who wish to file complaints for violations of this Article 5.5 shall be strongly encouraged to refer their complaints to the Chief Diversity Officer for assistance in resolving the complaint. If for good cause shown to the CDO or to the Commission's Complaint Screening Committee, the complainant does not wish to refer the complaint to the CDO, or if the CDO requests recusal, the complaint shall then be handled according to the procedures developed under Section 3.14.3(A) and approved by the full Commission, with the approval of the Select Board, after review by Town Counsel. Complaints against the Town or its employees shall follow the procedures developed for 3.14.3(A)(v) – Complaints Against the Town; complaints against other persons, groups, entities or businesses in the Town shall follow the procedures developed for 3.14.3(A)(vii) – Other Complaints.~~

~~(b) Whenever the Commission receives a complaint that is or appears to be within the jurisdiction of the Massachusetts Commission Against Discrimination hereinafter "MCAD", the Commission shall inform the complainant of their right to file a complaint at the MCAD with the Commission's assistance.~~

~~(c) In addition to the aforementioned complaint-processing responsibilities, the Commission shall have the following additional functions, powers and duties:~~

~~1. to make studies and survey and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing against persons who are members of a Brookline Protected Class.~~

~~2. to develop courses of instruction for presentation in public and private schools, public libraries and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination in housing and~~

~~showing the need for mutual respect and the achievement of harmonious relations among various groups in the Town of Brookline.~~

~~3. to render each year to the Select Board a full report of all the Commission's activities and recommendations regarding this By-law;~~

~~4. to create such committees from the members of the Commission as, in the Commission's judgment, will best aid in effectuating the policy of this By-law;~~

~~5. to enter into cooperative working agreements with federal, state and other municipal agencies, and to enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations and other groups in order to effectuate the policy of this By-law with respect to Brookline Protected Classes.~~

~~SECTION 5.5.8 RULES, REGULATIONS AND PROCEDURES OF COMMISSION~~

~~The Commission may adopt rules and regulations consistent with this By-law and the laws of the Commonwealth to carry out the policy and provisions of this By-law and the powers and duties of the Commission.~~

~~Any charge filed under this By-law must be filed within 180 days of the alleged act of discrimination.~~

~~All Commission records shall be public except those that are necessary to insure privacy rights under other local, state or federal laws and those records that must be kept confidential in compliance with laws and rules of evidence.~~

SECTION 5.5.9 SEVERABILITY

If any provision or section of this By-law shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this By-law, which shall remain in full force and effect.

ARTICLE 10.2 PROSECUTIONS AND ENFORCEMENT

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following by-laws and articles shall be by the following department head or their designees:

DEPARTMENT HEAD		**ARTICLE**
BUILDING COMMISSIONER		
Part V-Private Property	Articles	5.2, 5.3, 5.4, 5.6, 5.7, 5.8
Part VI-Public Property	Articles	6.1, 6.5, 6.9, 6.10
Part VII-Streets & Ways	Articles	7.3, 7.5, 7.7, 7.8, 7.9
Part VIII-Public Health & Safety	Articles	8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16,8.37
COMMISSIONER OF PUBLIC WORKS		
Part VI-Public Property	Articles	5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9
Part VII-Streets & Ways	Articles	7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10,7.11
Part VIII-Public Health & Safety	Articles	8.2, 8.6.7,8.8 8.14,8.15,8.16 , 8.18,8.24,
DIRECTOR OF HEALTH & HUMAN SERVICES		
Part V-Private Property	Articles	5.1, 5.2, 5.4, 5.5, 5.7
Part VI-Public Property	Articles	6.2, 6.6
Part VII-Streets & Ways	Articles	7.1, 7.5
Part VIII-Public Health & Safety	Articles	8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10,8.11, 8.12,8.13, 8.14, 8.15,

		8.16, 8.22, 8.23, 8.32, 8.37, 8.38

FIRE CHIEF

Part VIII – Public health & Safety Articles		8.37, 8.38

PRESERVATION COMMISSION

Part V-Private Property	Articles	5.3, 5.6

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

Part III-Executive	Article	3.14
Part V-Private Property	Article	5.5

ARTICLE 10.3
NON-CRIMINAL DISPOSITION

A violation of any provision of these by-laws, the violation of which is subject to a specific penalty under Section 10.1 or in the specific provision which has been violated, except when otherwise provided by law, or any rule or regulation of any municipal officer, board or department may be dealt with as a non-criminal offense in accordance with the provisions of General Laws, Chapter 40,section 21d. If not subject to a specific penalty in the following table, each violation shall be subject to a specific penalty of fifty ($50.00) dollars for each offense, unless a different penalty is provided in the specific by-law, rule or regulation provision being enforced. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense hereunder.
Violations of this Article 10.3 may be enforced by any police officer of the town, by the department head or theirdesignee as set forth with particular reference to specificarticles in Article 10.2, above, and, when a violation involves a rule or regulation of any municipal officer, board or department, by that municipal officer or by that board or the head of that department, by their designee, and in all instances, in accordance with the requirements set forth in General Laws, Chapter 40, section 21d.

TABLE OF SPECIFIC PENALTIES UNDER ARTICLE 10.3

Article 3.14	Commission for Diversity, Inclusion and Community Relations and Office of Diversity, Inclusion and Community Relations		
	Section 3.14.3 (B)	Penalties	$300.00
Article 5.1	Alarm Systems		
	Section 5.1.9	False Alarms	$100.00
	Section 5.1.10	Penalties	$100.00
Article 5.8	Sign By-Law		
	Section 5.8.9	Penalty For Violation	$100.00
Article 6.2	Alcoholic Beverages On PublicProperty		

	Section 6.2.2	Penalty	$100.00
Article 6.3	Grass Borders		$ 75.00
Article 6.4	Damage To Trees		$100.00
Article 6.5	Defacing Public Grounds		$ 75.00
Article 6.6	Discharging Firearms		$100.00
Article 7.1	Alcoholic Beverages		$100.00
Article 7.3	Construction In Streets		
	Section 7.3.3	Penalty	$100.00
Article 7.6	Newsrack Regulation		
	Section 7.6.5	Penalty	$ 25.00

Article 7.7 Removal of Snow and Ice From Sidewalks

Section 7.7.5 Penalties

For Section 7.7.1 and 7.7.2

First Violation $100
Second Violation $150
Third and Subsequent Violations

$20

0For Section 7.7.3

First Violation $50
Second and Subsequent Violations

$10

0For Section 7.7.4

$25

0

Article 7.8	Removal Of Vehicles From Streets	$ 25.00

Article 7.9	Snow Parking Ban	$100.00
Article 8.3	Dwelling Houses UsedIn Common	$100.00
Article 8.5	Disorderly Behavior	
	Section 8.5.5 Specific PenaltyDog Control	$100.00
Article 8.6	Section 8.6.9 Penalty	
	First Violation	$ 15.00
	Second & Third Violations	$ 25.00
	Fourth & Subsequent Violations	$ 50.00
Article 8.7	Food Stores – Hours Of Operation	$ 50.00
Article 8.8	Food Establishments Handling OfRefuse	$100.00
Article 8.9	Toilet Facilities – Restaurants	$ 50.00
Article 8.23	Tobacco Control	
	Section 8.23.5 Violations & Penalties	

For each violation under Article 8.23 –Three HundredDollars ($300.00.

Article 8.24	Water Supply Emergencies	
	Section 8.24.6 Penalties	
	First Violation	$ 50.00
	Second & Subsequent Violations	$100.00

Article 8.25	Water System Backflow And Cross Connections		
	Section 8.25.6	Enforcement	$100.00
Article 8.26	Stormwater Management		
	First Violation		$100.00
	Second Violation		$200.00
	Third and Subsequent Violations		$300.00
Article 8.35	Drinking Water Access By-Law		
	Initial ViolationFirst Offense		Warning $50.00
	Second and Subsequent Offenses		$100.00

HEALTH DEPARTMENT REGULATIONS

Regulations Governing the Handling, Storage,Collection and Disposal of Waste

1. Violations and Penalties for Owners of Commercial Businesses, Corporations and Buildings ContainingMore Than Three Dwelling Units

First Violation	$100.00
Second Violation	$200.00
Third & Subsequent Violations	$300.00

2. Violations and Penalties for Owners of Single,Two and Three Unit Dwellings

First Violation	$20.00
Second Violation	$35.00
Third & Subsequent Violations	$50.00

PETITIONER'S ARTICLE DESCRIPTION

This warrant article is a companion warrant article to the warrant article that seeks to revise Article 3.14 of the Town's bylaws. Please see the other warrant article explanation for further detail of those changes.

This warrant article makes minor associated changes to Articles 5.5, 10.2 and 10.3 that are required due to the proposed changes in Article 3.14.

Article 5.5 is the Fair Housing Bylaw, which had outdated language referring to making a complaint, as well as duplicative language about the CDICR – this has been cleaned.

Articles 10.2 and 10.3 are the official tables of fees and levying authorities for the Town – appropriate references to the new penalties in 3.14 have been added in both locations.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 13.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 13 will be in the supplemental mailing.

XXX

ARTICLE 13

AMENDMENT OFFERED BY
DENNIS DOUGHTY, TMM3, AND DAVID POLLAK, TMM11

This Motion will only be made once the following conditions are met:

- Town Meeting approves the Main Motion under Article 12
- Town Meeting approves our (Doughty/Pollak) Motion to Amend Article 12 (deleting the power to fine)

MOVED:

To Amend the Petitioner's motion as follows:

MOVED:

1. "FAVORABLE ACTION" on the amendment to By-Law Article 5.5 (Fair Housing By-Law) proposed in Warrant Article 13 (incorporating the Article 3.14.3(B) complaint procedures)

2. "FAVORABLE ACTION" on the amendment to By-Law Article 10.2 proposed in Warrant Article 13 (CDICR prosecution and enforcement of By-Law Article 3.14)

3. "NO ACTION" on the amendment to By-Law Article 10.3 proposed in Warrant Article 13 (would have provided $300 per day penalty for violations of By-Law Section 3.14.3(B)).

ARTICLE 14

FOURTEENTH ARTICLE
Submitted by: Department of Planning and Community Development

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

By amending Section 9.05.2, conditions that the Zoning Board of Appeals may attach to a special permit as deemed necessary to protect the neighborhood - to add the following section:

"h. Requirements related to the construction phase of a project to mitigate potential adverse impacts to the neighborhood, which may include:

(i) detailed construction mitigation performance standards such as construction-related parking or standards;
(ii) details and frequency of communication from the applicant's construction liaison to certain abutters and/or the neighborhood generally;
(iii) an applicant-hosted webpage to include: links to approved plans, conditions, and other related documents approved by the Town; periodic construction updates; current construction contact's name, email, and phone number; the name, email, and phone number of any required third-party construction liaison; and a Town-provided construction guide of current enforcement agency contacts.
(iv) required on-site signage including a website for construction-related questions or concerns as well as an emergency phone number contact; and/or
(v) a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will include: on-site presence in support of the Town's enforcement agencies at a frequency recommended by the Building Commissioner, referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, and participating in and/or leading communication between the applicant and abutters or neighborhood."

…or act upon anything else thereto.

PETITIONER'S ARTICLE DESCRIPTION

Brookline has been host to a number of large building projects in the past few years. These have included midrise office and hotel space along Route 9 into Village Square/Gateway East, multifamily development along the Harvard Avenue corridor, and large-scale construction projects within the Hancock Village community in Southwest Brookline. The

permitting pipeline includes multifamily projects on Route 9 and Beacon Street as well as the Waldo-Durgin hotel-residential high-rise project in Coolidge Corner.

Brookline has several departments and committees that touch the construction process at some point. Major Impact Projects usually include review by the following departments, divisions, and boards: Planning, Building, Engineering/Transportation, Fire, Police, Health Department, Public Works, Conservation Commission, Economic Development Advisory Board, Preservation Commission, Tree Planting Committee, and if a residential development, the Housing Advisory Board. Their review includes reviewing blasting permits, conditions and monitoring to route truck traffic away from local roads, or dealing with rodent infestations or trash build up during the construction phase. Public Works may need to investigate potentially damaged underground public utilities such as water and sewer, and will have to coordinate utility hook ups and sometimes-public roadway reconstruction or pedestrian/bike infrastructure mitigation.

Small projects may only impact immediate neighbors and be relatively simple for our Town departments to oversee. However, large projects have larger, more widespread impacts, and day-to-day regulatory oversight of these jobs during the construction phase taxes already thinly staffed departments. The surge in large-scale project activity, as well as construction methodologies in tight urban areas of small to medium projects, are very taxing of Town resources.

Our larger municipal projects are managed to include regular neighborhood meetings, post construction updates on a web page and through email, and provide a main contact for residents to call as issues arise during the construction phase. §9.05 of our Zoning By-Law already gives the Zoning Board of Appeals the responsibility and express authority to not approve special permits unless certain conditions are met, including mitigating adverse affects to the neighborhood. This proposed bylaw change is designed to bring the good construction oversight practices and community communication requirements that the Town imposes on itself to large private construction projects seeking special permits. Most of these will be, by definition, major impact projects.

This proposed bylaw will expressly empower the Zoning Board of Appeals to, as deemed necessary, require the Owner of a large project to pay for a Town-selected construction consultant-liaison to provide an additional oversight presence and to collect and direct complaints from the public to the proper departments. The bylaw also provides the ability for the Zoning Board of Appeals to condition special permits such that the Owner and/or the construction consultant-liaison communicates regularly with the public during the construction phase. Potential construction impacts and the frequency of public communication is not always correlated to the size of a project. Even very small projects may include work near a structural wall near a joint property line, blasting, or other special construction methodologies that warrant more detailed communication with the abutters and/or the neighborhood. These scenarios will be further developed in a joint Policy adopted by the Planning and Building Departments outside of this By-Law amendment, which will provide guidance for when a variety of conditions may be proposed by staff for the Zoning Board of Appeals to include in their decision.

The intent here is to facilitate good communication and planning. With good communication, the Town, Project Owner and contractor can stay on top of anticipated problems so as to mitigate their impact on the neighbors and the Town generally. Through this process, formerly externalized costs will be born more by the Project Owner while the Town Departments will better be able to respond to issues in a timely and efficient manner. Better yet, the process will identify and resolve issues before they even rise to the level of requiring Town Departmental intervention.

PLANNING BOARD REPORT AND RECOMMENDATION

The Department of Planning & Community Development submitted Article 14 to give explicit authority for the Zoning Board of Appeals (ZBA) to attach special permit conditions related to mitigating potential adverse impacts to the neighborhood during the construction phase of a project.

The Planning Board appreciated the amendment offered by Advisory Committee to include language about pedestrian and bicycle safety. Most Board members agreed this was a great step for the Town to move forward with, although one member was concerned that giving the ZBA such explicit authority to set such conditions could have a chilling effect on producing housing.

The Planning Board therefore voted (5-0-1) to recommend Favorable Action on Article 14 as recommended by the Advisory Committee and the Zoning By-Law Committee. The roll call vote on April 27th went as follows: Heikin – aye, Brue – aye, Hiller – abstain, Hines – aye, Zarrillo – aye, Cimpimo – aye. Hamlin was not present.

RECOMMENDED: That the Town amend the Zoning By-Law as follows, with the underlined portion addition language added to the original warrant article:
By amending Section 9.05.2, conditions that the Zoning Board of Appeals may attach to a special permit as deemed necessary to protect the neighborhood - to add the following section:

> "h. Requirements related to the construction phase of a project to mitigate potential adverse impacts to the neighborhood, which may include:
>
> (i) detailed construction mitigation performance standards such as construction-related parking or standards<u>, and requirements for safe pedestrian and bicycle passage</u>;
>
> (ii) details and frequency of communication from the applicant's construction liaison to certain abutters and/or the neighborhood generally;
>
> (iii) an applicant-hosted webpage to include: links to approved plans, conditions, and other related documents approved by the Town; periodic construction updates; current construction contact's name, email, and phone number; the name, email, and phone number of any required third-party construction liaison; and a Town-provided construction guide of current enforcement agency contacts.

(iv) required on-site signage including a website for construction-related questions or concerns as well as an emergency phone number contact; and/or

(v) a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will include: on-site presence in support of the Town's enforcement agencies at a frequency recommended by the Building Commissioner, referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, and participating in and/or leading communication between the applicant and abutters or neighborhood."

SELECT BOARD'S RECOMMENDATION

For the reasons stated in the article explanation, the Board supports giving explicit authority for the Zoning Board of Appeals to attach special permit conditions related to mitigating potential adverse impacts to the neighborhood during the construction phase of a project. The Select Board voted unanimously by roll call vote FAVORABLE ACTION on the following motion:

MOVED: To amend the Zoning By-Law as follows:
By amending Section 9.05.2, conditions that the Zoning Board of Appeals may attach to a special permit as deemed necessary to protect the neighborhood - to add the following section:

"h. Requirements related to the construction phase of a project to mitigate potential adverse impacts to the neighborhood, which may include:

(i) detailed construction mitigation performance standards such as construction-related parking or standards;

(ii) details and frequency of communication from the applicant's construction liaison to certain abutters and/or the neighborhood generally;

(iii) an applicant-hosted webpage to include: links to approved plans, conditions, and other related documents approved by the Town; periodic construction updates; current construction contact's name, email, and phone number; the name, email, and phone number of any required third-party construction liaison; and a Town-provided construction guide of current enforcement agency contacts.

(iv) required on-site signage including a website for construction-related questions or concerns as well as an emergency phone number contact; and/or

(v) a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will

include: on-site presence in support of the Town's enforcement agencies at a frequency recommended by the Building Commissioner, referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, and participating in and/or leading communication between the applicant and abutters or neighborhood."

ROLL CALL VOTE:

Aye:	Absent:
Hamilton	Aschkenasy
Fernandez	
Greene	
VanScoyoc	

*After the Board took their vote, the Advisory voted a slightly different version of Article 14. The Board will address this difference at their May 10th meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 14, as amended, by a vote of 22-0 with 0 abstentions.

Executive Summary:	The Department of Planning and Community Development has submitted Article 14 to give the Town explicit authority to impose certain construction-phase mitigation requirements on any builder seeking a Special Permit. Such requirements are intended to mitigate adverse effects on the neighborhood during a construction project. The requirements identified in the Article include the builder's submission of construction mitigation performance standards such as construction-related parking, a plan for communication with the neighborhood regarding the construction, and the appointment by the builder of a third-party liaison with the neighborhood who would be paid by the builder.
Voting Yes will...	The Article will facilitate the Town's imposing requirements on a builder to prevent or mitigate adverse effects of building construction on the neighborhood. A third-part liaison paid for by the builder would refer complaints about the construction, etc., to the appropriate Town agencies, track the complaints, and facilitate communication between the builder and the neighborhood. The Article is intended to prevent and solve adverse impacts imposed by the construction and save the time and expense of Town staff investigating and resolving complaints.

Voting No will...	The result of no action is that the Town would continue its current practice of following-up, investigating and trying to resolve complaints, which can be a painstaking and time consuming task.
Financial impact	This Article would likely have a favorable financial impact on the Town because instead of employing Town staff and other public resources to address questions and handle communications, such duties would be managed according to the plan submitted by the builder. Any ensuing disputes would be resolved by an on-site third-party liaison paid for by the builder.

Introduction
This article would amend Article 9 of the Zoning By-Law, which provides that building construction or alteration must be in accordance with a permit issued by the Town in accordance with the requirements specified in Article 9. When an applicant seeks approval of a plan that is not in conformance with the Zoning By-law, work cannot proceed unless the applicant has filed for and obtained a Special Permit from the Board of Appeals, in accordance with Article 9.05, determining that a number of conditions have been met. Article 9.05 sets forth mandatory conditions for approval, such as the appropriateness of the site for the use or structure requested, a determination that the use will not adversely affect the neighborhood, etc. Article 9.05 also provides that the Board of Appeals may require additional conditions and safeguards to protect the neighborhood, such as a requirement for front, side, or rear yards greater than the required minimum, modification of exterior features of the structure, regulation of off-street parking, etc.

Evaluation Methodology/Research
The Department of Planning and Community Development has requested an amendment to Article 9.05, "Conditions for Approval of Special Permit." At present, the Article requires the Zoning Board of Appeals to issue Special Permits for construction that does not conform to Town building upon findings that the "specific site is an appropriate location for such a use…", adequate and appropriate facilities will be provided…", etc., and the Zoning Board of Appeals may attach conditions and safeguards to protect the neighborhood. What this Article adds are construction-phase requirements on the builder in order to prevent or mitigate adverse effects on the neighborhood during construction.

Such requirements may include submission of detailed construction mitigation performance standards such as construction-related parking or standards; requirements for details and frequency of communications to the neighbors; hosting a webpage that includes links to approved plans, construction updates, contact information for the builder and appropriate Town staff; on-site signage showing the website and emergency telephone contact; and identification of a third-party liaison paid for by the builder whose role would include an on-site presence in support of the Town's enforcement agencies as recommended by the Building Commissioner. Other provisions may include referring complaints to the appropriate Town agencies, tracking complaints and facilitating communication between the builder and the neighborhood.

Discussion

The Director of Planning and Community Development stated that the Town may have authority to impose these conditions, but that having clear, express authority will make the duties of the building applicant clear. The Department notes, and the Advisory Committee agrees, that good communications and planning can prevent unnecessary adverse effects during construction. With good communication, the Town, the builder, and the neighborhood can stay on top of anticipated problems so as to mitigate the problems. Indeed, with good communication, the builder may identify and resolve issues before they rise to the level of requiring Town intervention, avoiding neighborhood disruption and hazard such as has occurred at Hancock Village, Babcock Place, and construction projects on Harvard Street and Boylston Street. It is anticipated that implementation of the Article's requirements will result in less expense to the Town because the builder is required to handle and fund the measures set forth in the By-Law.

The Advisory Committee has added the authority for the Town to impose "requirements for safe pedestrian and bicycle passage," during construction, with the assent of the Department, based on fraught conditions imposed on pedestrians and bicyclists by recent building projects.

Recommendation

By a vote of 22-0 and no abstentions, the Advisory Committee voted favorable action on this Article, as amended.

VOTED: To amend the Zoning By-Law as follows:

By amending Section 9.05.2, conditions that the Zoning Board of Appeals may attach to a special permit as deemed necessary to protect the neighborhood -- to add the following section:

"h. Requirements related to the construction phase of a project to mitigate potential adverse impacts to the neighborhood, which may include:

i. detailed construction mitigation performance standards such as construction-related parking or standards, and requirements for safe pedestrian and bicycle passage;

ii. details and frequency of communication from the applicant's construction liaison to certain abutters and/or the neighborhood generally;

iii. an applicant-hosted webpage to include: links to approved plans, conditions, and other related documents approved by the Town; periodic construction updates; current construction contact's name, email, and phone number; the name, email, and phone number of any required third-party construction liaison; and a Town-provided construction guide of current enforcement agency contacts;

iv. required on-site signage including a website for construction-related questions or concerns as well as an emergency phone number contact; and/or

v. a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will include: on-site presence in support of the Town's enforcement agencies at a frequency recommended by the Building Commissioner,

referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, and participating in and/or leading communication between the applicant and abutters or neighborhood."

ARTICLE 14 ADVISORY COMMITTEE VOTES

Article Description	construction impact mitigation, as amended
AC recommendation (Favorable Action unless indicated)	**22-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 14

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On May 17th the Select Board reconsidered their vote under Article 14 in order to consider the amendment proposed by Danielle DaSilva and Carolyn Thall. This language is explicitly giving authorization to the Zoning Board of Appeals to write such a condition, but it doesn't limit them to any of this language, it just gives ideas and it has the effect of giving developers a heads up that such conditions could be made, but the ZBA still has entire flexibility of writing any subset or any bigger, larger or smaller condition

The Board agreed that the amendment was useful and could provide a benefit for future projects.

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

MOVED: to amend the Advisory Committee motion as follows:

(language to be stricken appearing in **~~bold strikeout~~**, language to be added appearing in **bold underline**):

a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will include **but not be limited to**: on-site presence in support of the Town's enforcement agencies at a frequency recommended by the Building Commissioner, referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, **~~and participating in and/or leading communication between the applicant and abutters or neighborhood."~~** **and convening monthly meetings with neighbors to hear feedback and/or concerns with the project and update them of upcoming work. In addition, the construction liaison will identify a community liaison (within 30 days of when any construction activity is to commence) to whom they will provide twice-monthly project status updates and look-aheads regarding construction activities. The community liaison shall be a Town Meeting Member in the impacted precinct and/or resident living within ¼ mile radius of the project.**

The revised motion is as follows:

VOTED: To amend the Zoning By-Law as follows:

By amending Section 9.05.2, conditions that the Zoning Board of Appeals may attach to a special permit as deemed necessary to protect the neighborhood -- to add the following section:

"h. Requirements related to the construction phase of a project to mitigate potential adverse impacts to the neighborhood, which may include:

i. detailed construction mitigation performance standards such as construction-related parking or standards, and requirements for safe pedestrian and bicycle passage;

ii. details and frequency of communication from the applicant's construction liaison to certain abutters and/or the neighborhood generally;

iii. an applicant-hosted webpage to include: links to approved plans, conditions, and other related documents approved by the Town; periodic construction updates; current construction contact's name, email, and phone number; the name, email, and phone number of any required third-party construction liaison; and a Town-provided construction guide of current enforcement agency contacts;

iv. required on-site signage including a website for construction-related questions or concerns as well as an emergency phone number contact; and/or

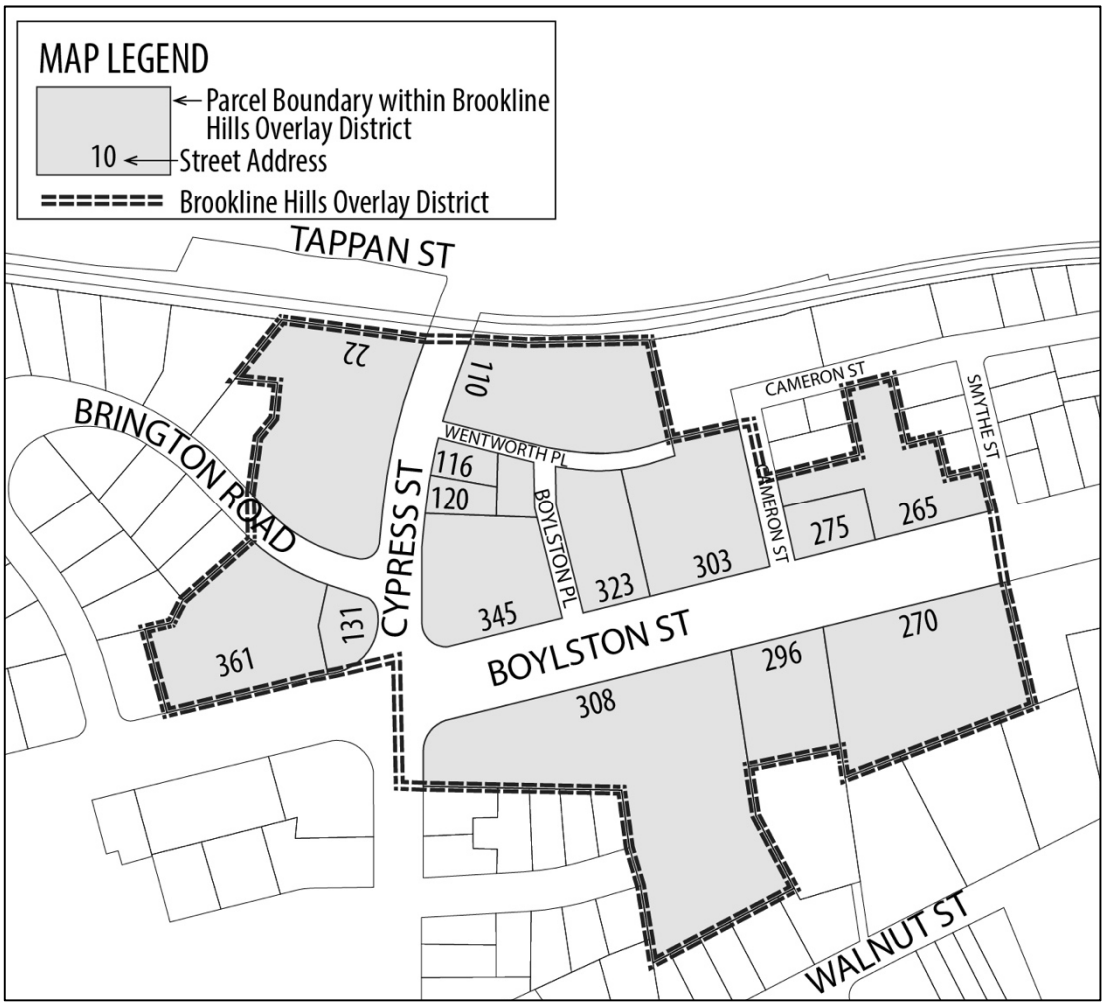
(v) a third-party construction liaison directed by the Building Commissioner and paid for by the applicant, whose role will include but not be limited to: on-site presence in support of the Town's enforcement agencies at a frequency recommended by the Building Commissioner, referring complaints to the appropriate Department, tracking resolution of such complaints as a public record, and convening monthly meetings with neighbors to hear feedback and/or concerns with the project and update them of upcoming work. In addition, the construction liaison will identify a community liaison (within 30 days of when any construction activity is to commence) to whom they will provide twice-monthly project status updates and look-aheads regarding construction activities. The community liaison shall be a Town Meeting Member in the impacted precinct and/or resident living within ¼ mile radius of the project.

ARTICLE 15

FIFTEENTH ARTICLE
Submitted by: Department of Planning & Community Development

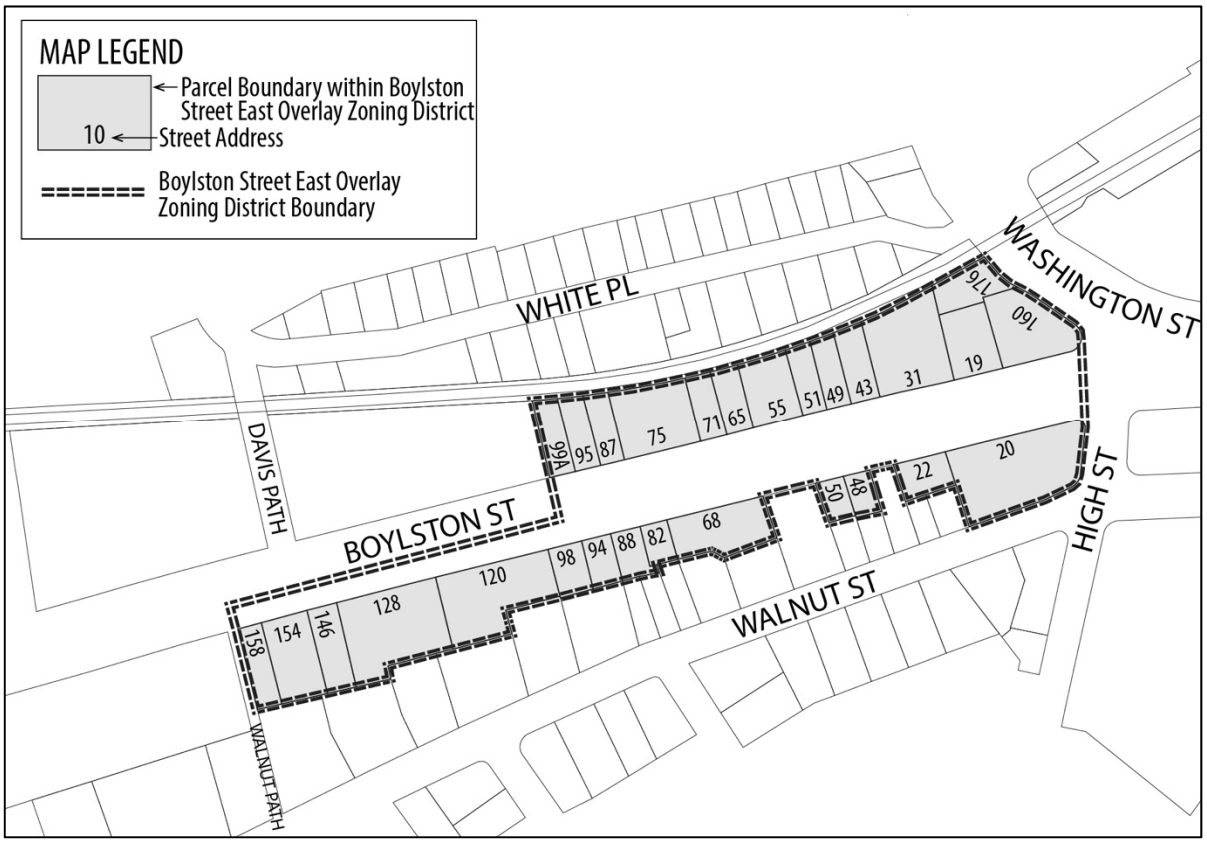
To see if the Town will amend the Zoning By-Law and Zoning Map as follows:

1) By adopting the following map change, adding a Brookline Hills Overlay District as shown below, including: parcels with Tax Parcel Identifications 191-01-01 (22 Tappan Street), 189-32-00 (110 Cypress Street & 323 Boylston Street), 189-31-00 (116 Cypress Street), 189-30-00 (120 Cypress Street), 189-24-29 (345 Boylston Street), 189-11-15 (303 Boylston Street), 188-07-00 (275 Boylston Street), 188-04-06 (265 Boylston Street), 318-18-00 (270 Boylston Street), 318-17-00 (296 Boylston Street), 318-14-16 (308 Boylston Street), 190-02-00 (361 Boylston Street), and 190-01-00 (131 Cypress Street); and portions of Brington Road, Cypress Street, Wentworth Place, Boylston Place, Cameron Street, and Boylston Street.



Brookline Hills Overlay District

2) By adopting the following map change, adding a Boylston Street East Overlay District as shown below, including: parcels with parcels with Tax Parcel Identifications 185-17-00 (99A Boylston Street), 185-16-00 (95 Boylston Street), 185-15-00 (87 Boylston Street), 185-13-00 (75 Boylston Street), 185-12-00 (71 Boylston Street), 185-11-00 (65 Boylston Street), 185-09-10 (55 Boylston Street), 185-08-00 (51 Boylston Street), 185-07-00 (49 Boylston Street), 185-06-00 (43 Boylston Street), 185-04-05 (31 Boylston Street), 185-03-00 (19 Boylston Street), 185-01-00 (176 Washington Street), 185-02-00 (160 Washington Street), 318-41-45 (20 Boylston Street), 318-40-00 (22 Boylston Street), 318-38-00 (48 Boylston Street), 318-37-00 (50 Boylston Street), 318-34-35 (68 Boylston Street), 318-33-00 (82 Boylston Street), 318-32-00 (88 Boylston Street), 318-31-00 (94 Boylston Street), 318-30-00 (98 Boylston Street), 318-28-29 (120 Boylston Street), 318-25-27 (128 Boylston Street), 318-24-00 (146 Boylston Street), 318-23-00 (154 Boylston Street), 318-22-00 (158 Boylston Street); and portions of Boylston Street and Walnut Path.



Boylston Street East Overlay District

3) By amending Section 2.10, "S" Definitions - to add the following definition and renumber the subsequent definitions of Section 2.10 as necessary:

"4. STORY - that portion of a building included between the upper surface of a floor and the upper surface of a floor or roof next above, whether or not such space is enclosed."

4) By amending Section 3.01.4 by adding the following items at the end:

"l. Brookline Hills Overlay District
m. Boylston Street East Overlay District"

5) By amending Section 4.07 – Table of Use Regulations – to allow for certain office, retail and restaurant uses by Special Permit in the Brookline Hills Overlay District, as follows:
   a) Use 21, Business, professional, or governmental office - Adding "**" after "No" in column "M" and amending the underlined text to the last footnote as follows: "**Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j and in the Brookline Hills Overlay District in accordance with 5.06.4.l." and
   b) Use 29, Store of less than 5,000 square feet – Adding "*" after "No" in column "M" and amending the underlined text to the last footnote as follows: "**Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j and in the Brookline Hills Overlay District in accordance with 5.06.4.l." and
   c) Use 30, Eating places of less than 5,000 square feet - Adding "*" after "No" in column "M" and amending the underlined text to the last footnote as follows: "**Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j and in the Brookline Hills Overlay District in accordance with 5.06.4.l."

6) By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 22 after the words "L-0.5" in the row for the L-0.5 District, after the words "M-1.0 (CAM)" for the M-1.0 (CAM) District, and after the words "G-2.0" in the row for the G-2.0 District which Footnote 22 shall read as follows:
   "22. See Section 5.06.4 – Special Districts, subsection l. Brookline Hills Overlay District with respect to uses and all dimensional requirements."

7) By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 23 after the words "G-1.0" in the row for the G-1.0 District which Footnote 23 shall read as follows:
   "23. See Section 5.06.4 – Special Districts, subsection m. Boylston Street East Overlay District with respect to uses and all dimensional requirements."

8) By amending Section 5.06.4 – Special Districts – by adding a new item as follows:
   "l. Brookline Hills Overlay District

      1) It has been determined through study by the Boylston Street Corridor Study Committee that for properties near the intersection of Cypress Street and Boylston Street potential exists for careful, planned redevelopment. It has further been determined that, due to the circulation patterns as well as the adjacency of this area to municipal uses, retail businesses, transit systems and residential neighborhoods, that appropriate uses include residential, commercial, institutional, recreational, and educational uses. An analysis of the existing

conditions, including existing floor area ratios of properties within and adjacent to this Overlay District, as well as a preference for additional affordable housing units and most commercial uses, provide reasons why additional density may be allowed by Special Permit under the criteria of this section.

2) The Board of Appeals may grant a Special Permit under this section allowing for a project that meets the following requirements and limitations. Conformance with said requirements and limitations shall be made conditions of the Special Permit.

    a. Any project that proposes demolition of existing Dwelling Units must demonstrate how the project will result in a net increase of at least 20% more Dwelling Units, or one additional Dwelling Unit, whichever is greater.
    b. Any project subject to Section 4.08, Inclusionary Zoning, shall provide all required affordable units on site.
    c. Any building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential or office use without being considered an accessory use.
    d. Building Height
        i. For properties located in an underlying "L" (Local Business) or "G" (General Business) Zoning District, additional height may be granted to accommodate buildings that are six Stories or less.
        ii. For properties located in an underlying "M" (Multifamily) Zoning District, additional height may be granted to accommodate buildings that are five Stories or less.
    e. Parking - Any fees charged for parking must be separate from any rental, lease, sale, employment, contract or other arrangement permitting a user to occupy the building.
    f. The Gross Floor Area Ratio (FAR) for a project permitted pursuant to this section may be granted an increased FAR as follows:
        i. Up to 3.0 for any project; and
        ii. An additional bonus FAR for the equivalent size Gross Floor Area that is utilized for:
            1. Uses 11 through 18A inclusive, 20, 20A, 20C, 21, 29, 30, 32 through 36A inclusive, 36C, 37 and 44;

2. Affordable Units in excess of Affordable Housing Requirements as defined in Section 4.08; and/or
3. Subsidized non-residential space, as affirmatively recommended by the Economic Development Advisory Board.

iii. The total FAR shall not exceed 3.5, except for projects that are located on the south side of Boylston Street and on a site at least one acre in size in which case the total FAR shall not exceed 4.0.

g. Tree Canopy & Urban Heat Island Mitigation
   i. Any project that removes trees 8 inches or greater in diameter, as measured 4.5' above ground level, must include a mitigation plan as affirmatively recommended by the Tree Warden. Such mitigation plan shall result in no loss of overall tree canopy within a quarter mile of the property, as affirmatively recommended by the Tree Warden.
   ii. Street trees shall be provided at regular intervals approximately every 25 feet adjacent to any public sidewalks. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public or private way shall be approved by the Director of Parks and Open Space or their designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or their designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site at similar elevations of the public sidewalk level, or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
   iii. Any project within the Overlay District shall be required to demonstrate to the Planning Board measures taken to reduce urban heat island effects, which may include landscaping, green roofs, cool roofs, etc.

h. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such

buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.

3) Any application that seeks relief under this Overlay District shall be deemed a Major Impact Project with respect to Section 5.09, Design Review."

9) By amending Section 5.06.4 – Special Districts – by adding a new item as follows:
"m. Boylston Street East Overlay District

1) It has been determined through study by the Boylston Street Corridor Study Committee that for properties between Davis and Walnut Path and High Street, potential exists for careful, planned infill development in addition to incentivizing the reuse of existing buildings to the extent possible. It has further been determined that, due to the circulation patterns as well as the adjacency of this area to municipal uses, retail businesses, transit systems and residential neighborhoods, that both residential and commercial uses are appropriate. An analysis of the existing conditions, including existing floor area ratios of properties within and adjacent to this Overlay District are reasons why additional density and other dimensional requirements, as well as flexibility of uses, may be allowed by Site Plan Review under the criteria of this section.

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

a. Demonstrated design compliance with any General By-Law related to erosion and sediment control and stormwater management;
b. Property lines and physical features, including roads, driveways, parking for vehicles and bicycles, loading areas and trash storage for the project site;
c. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, and exterior lighting.
d. The extent to which the project complies with any applicable Design Guidelines adopted by the Planning Board.
e. Compliance with other requirements related to zoning relief provided under this Overlay District as described below.

3) The Planning Board may grant a Site Plan Review Permit under this section allowing for a project that meets the following requirements and limitations.
    a. Any project that proposes demolition of existing Dwelling Units must demonstrate how the project will result in a net increase of at least 20% more Dwelling Units, or one additional Dwelling Unit, whichever is greater.
    b. Any project subject to Section 4.08, Inclusionary Zoning, shall provide all required affordable units on site. No special permit is required pursuant to Section 4.08 as long as the Site Plan Review Permit provided under this Overlay District includes conditions that document how all other compliance under Section 4.08 and related Affordable Housing Guidelines will be met, per the positive recommendation by the Housing Advisory Board.
    c. No special permit or related Design Review process is required pursuant to Section 5.09.2.a-d, h, or i, for projects that:
        i. Include at least 5% of the property area as Landscaped Open Space, and
        ii. Provide a 12’ clear height on the ground floor. Clear height is defined as the vertical height from the surface of the finished floor to the surface of the finished floor above at all points. When there is no floor above, such measurement shall be to the top of the structural beam or joists above or the top of the wall plate, whichever is more.

    d. Use Flexibility
        i. The ground floor of a residential building may have maximum residential use frontage that exceeds Use 6 in Section 4.07 – Table of Use Regulations, if the

applicant adequately demonstrates that: (i) the location of residential and non-residential uses of the ground floor are appropriate given the transition between residential and commercial neighborhoods; and (ii) for projects of 10 or more residential units, at least 1,200 square feet of floor space on the ground floor is designed to accommodate retail and restaurant uses with regards to utility access, ventilation design, plumbing and utilities, accessibility and egress design, fire suppression systems, and ceiling height.

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

e. Building Envelope - The Floor Area Ratio, maximum building height, setbacks, open space and other dimensional requirements otherwise applicable may be exceeded as long as the project does not exceed the following building envelope as described further below:
   i. The ground floor of a building must be setback from the Boylston Street property line by 8';
   ii. Maximum of 4 Stories; and
   iii. Allowable height envelope is also formed by a plane that is sloped 1:1, beginning at the rear property line at a height of 10'.

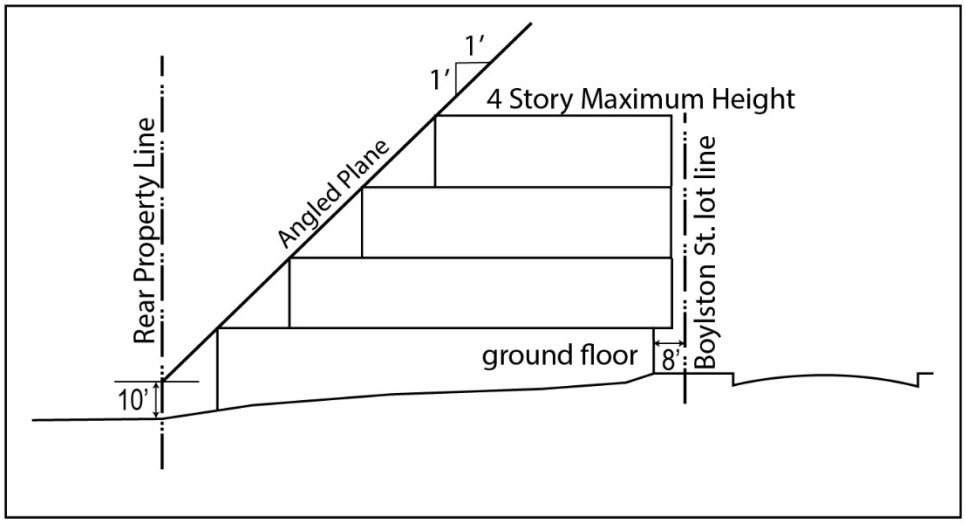


Figure 5.06.4.m.1 As-of-Right Building Envelope

f. Parking - Any fees charged for parking must be separate from any rental, lease, sale, employment, contract or other arrangement permitting a user to occupy the building.
g. Tree Canopy & Urban Heat Island Mitigation
    i. Any project that removes trees 8 inches or greater in diameter, as measured 4.5' above ground level, must include a mitigation plan as affirmatively recommended by the Tree Warden. Such mitigation plan shall result in no loss of overall tree canopy within a quarter mile of the property, as affirmatively recommended by the Tree Warden.
    ii. Street trees shall be provided at regular intervals approximately every 25 feet adjacent to any public sidewalks. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public or private way shall be approved by the Director of Parks and Open Space or their designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or their designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site at similar elevations of the public sidewalk level, or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
    iii. Any project within the Overlay District shall be required to demonstrate to the Planning Board measures taken to reduce urban heat island effects, which may include landscaping, green roofs, cool roofs, etc.

h. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.

…or act upon anything else thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Boylston Street Corridor Study Committee (BSCSC) recommends Town Meeting approval a two new Overlay Zoning Districts for portions of property along Boylston Street between Brington Road and High Street/Washington Street. Following the work of the Boylston Street Visioning Committee, BSCSC conducted extensive outreach, survey work, property and business owner interviews, and analyzed the existing and potential built form, as well as testing the financial feasibility of some potential scenarios within the corridor. BSCSC intends for these zoning amendments to support a transformation of this portion of the Boylston Street Corridor by incentivizing land uses that are less auto-oriented in the western part of this corridor and providing the opportunity for non-discretionary, as-of-right permitting for smaller infill opportunities in the eastern part of this corridor.

In addition to these zoning amendments, the BSCSC spent a significant amount of time with Toole Design Group to create three options for the state right-of-way of Boylston Street itself. While not part of this zoning amendment, the Committee strongly believes that any transformation must include supporting the Massachusetts Department of Transportation (MassDOT) as they work through their own complete streets policies prior to repaving/ rehabilitating this portion of Boylston Street (Route 9). BSCSC will be presenting their preferred option to the Select Board in the coming weeks and requesting Select Board support to move forward with a second phase of consulting work in collaboration with MassDOT. Additionally, the Department of Planning & Community Development believes that demonstrating local action such as zoning amendments to permit additional residential and commercial development will to some extent help any prioritization of available funds for these right-of-way improvements. The three concepts put forward by BSCSC and Toole Design Group are posted on the Committee's website at https://www.brooklinema.gov/1605

BSCSC Charge

The BSCSC charge was to comprehensively examine opportunities for preservation of housing stock, redevelopment, and infrastructure improvements along the Boylston Street Corridor, from Brington Road to High Street. Special attention was paid to studying improvements that help realize the community's vision of transforming the corridor into a place defined by walkability, multi-modal transportation, and contextually-appropriate urban character - a mix of uses, open space, and an active public realm. Additionally, the Select Board charged the Committee to consider the following Town Policy Objectives: improved streetscape; housing - especially for households between 100 and 120% Area Median Income, which may include preservation of existing housing stock; strategies to increase housing rental and ownership opportunities for historically excluded populations in Town, particularly African-American and Hispanic families; plan for denser development adjacent to MBTA stations while balancing appropriate scale and use for each neighborhood; appropriate opportunities for new businesses and other uses in the corridor, especially ones that provide a "third" social surrounding opportunity (i.e., third to home and work); increase daytime population presence along the corridor (employees, customers); strategies to incentivize business ownership by minority groups underrepresented in Brookline, women, and/or members of the LBGTQ community; growth of commercial property taxes; and sustainability. The BSCSC Committee is

working on their final report, which will be posted on the Committee website and detail how their proposed recommendations (infrastructure, zoning, design guidelines, and other policy recommendations) met their charge.

Previous Planning Studies

As included on the Committee's webpage, previous planning studies that informed this Committee's work included the Town's Comprehensive Plan to create district plans that encourage mixed-use development and promote commercial growth along Route 9, the vision articulated in the 2015 MIT study of Route 9 East, the 2018 Boylston Street Visioning Group, and the 2020 Central Transportation Planning Study of Boylston Street (Route 9).

Community Input

Although a variety of community engagement methods were conducted, the public forum held on June 2, 2021 succinctly summarizes the survey work and individual interviews. All Committee meetings, including this forum, were recorded and are available on the Committee's website. The presentation for the June 2, 2021 meeting is a helpful reference and available at https://www.brooklinema.gov/DocumentCenter/View/24756

As a result of this work, the Committee heard that the overarching opportunity was to transform the entire corridor through redesign of the highway into a street. The community felt that although there was a strong market for development here, constraints including the narrow depth of parcels, narrow sidewalks, and heavy traffic on Boylston Street would require incentives to change some of the auto-centric incompatible uses in the corridor. The community expressed particular interest in building affordable housing, especially with the proximity to transit. Heat island mitigation for this area was an important piece for the Committee to consider in their recommendations. Finally, the Committee heard that the Old Lincoln School could be more utilized as a community asset.

Overall Vision

The Boylston Street Area Study Committee sees the transformation of the Route 9 right-of-way as the most important effort that can be made to improve the corridor. As shown in the visioning concepts, the Committee believes the right-of-way must be transformed from a highway to a street in character, including wider sidewalks for safe pedestrian travel, bicycle lane infrastructure, full width on-street parking where provided, and street tree canopy.

Additionally, the north-south pedestrian movements along Cypress Street, from Walnut Path to a restored Davis Path footbridge, and from High Street to Washington Street are key considerations reflected in the Draft Design Guidelines for the corridor, through consideration of massing setbacks, as well as recommendations to add pedestrian crossings near Walnut Path/Davis Path and support the reconstruction of the Davis Path Footbridge. With regards to zoning recommendations on the western part of the corridor (Brookline Hills Overlay District), the Committee determined that preserving the block of smaller business located on shallower parcels southwest of Cypress and Boylston Street as well as the curved, red brick Madris building on the northwest corner of Cypress and Boylston Street were important keystones. Zoning recommendations surrounding this intersection then utilized the height of the Madris building as a height reference. Uses the Committee

wanted to especially incentivize were affordable housing units, commercial spaces that are already included in the Transit Planning Overlay District, daycares, and Libraries/Museums. The Committee spent a lot of time discussing the financial feasibility to incent existing auto-centered uses to be replaced with residential, commercial, and community uses.

The Committee views the middle of the corridor as more of a residential neighborhood character, with the Old Lincoln School providing an underutilized community anchor. Some initial visioning was done to contemplate how the above-ground garage closest to Walnut Path could be redesigned to perhaps provide a new, more accessible entrance to the school while also providing separate community space that at the same time provide more pedestrian activity along the frontage of the Old Lincoln School structure.

Moving to the eastern part of the Corridor, the Committee studied in great detail the much smaller parcel size and shallow depth of existing parcels. They did not want to necessarily incentivize tear-downs of some of the residential buildings that provide a mix of housing stock types. On the other hand, the Committee worked hard to find incentives to over time incent residential and ground floor commercial space in lieu of auto-centered uses. Additionally, the Committee thought providing a four-story building envelope that steps down as it gets closer to residential abutters on Walnut Place and White Place could be a design check to then incentivize infill development through an as-of-right permitting process. In this case, the Planning Board would still conduct design review through a Site Plan Review process, but the overall permitting would be significantly less lengthy and would not be discretionary (i.e., at the end of the day, the applicant would be guaranteed a building permit as long as it was within the building envelope and met other requirements described in the Boylston Street East Overlay District).

<u>Brookline Hills Overlay District</u>
This proposed Overlay District is constructed similar to other recently passed Overlay Districts. Property owners retain the rights to the underlying (existing) Zoning. Additionally, if an applicant chooses to permit a project through the Overlay District, they would then be subject to additional requirements and allowable building incentives. In this case, a development would be subject to Special Permits, Design Review, and considered a Major Impact Project.

As noted in the amendment, the Overlay permits the height to be exceeded to accommodate six story buildings for most of the parcels, except only five stories northeast of Cameron Street and Boylston Street. The underlying zoning permits a height of 35’ to 45’ by right, and up to 70’ with public benefits east of Cypress Street and southwest of Cameron and Boylston Streets. As noted above, the existing Madris building height was set at a reference point, which is an example of a very tall four-story building, and which height could accommodate a five to six story building.

The Floor Area Ratio (FAR, ratio of Gross Floor Area divided by the lot area) is generally set to 3.0 whereas the underlying zoning permits 2 to 2.5 with public benefits for all parcels east of Cypress Street and southwest of Cameron and Boylston Street. The underlying zoning northeast of Cameron Street and Boylston Street is currently set at 1.0, and at 0.5

for parcels east of Cypress Street. The already built FAR in this Overlay District ranges from 0 to 4.0.

To adequately incent infill development of the parking lot immediately to the west of the Madris building, redevelopment of the property between Cypress Street and Boylston Place, redevelopment of the car-centered uses between Cameron and Smythe Street, and redevelopment of the car-centered uses between Cypress Street and the Old Lincoln School, a range of 2.5 to above 5 would be required. After significant discussion, 3D modeling, and further financial feasibility testing, the Committee determined that permitting a maximum of 3.5 FAR as a standard for the Overlay District would be most appropriate. For the larger parcel (larger than an acre) southeast of Cypress and Boylston Street, the Committee recommended a maximum of 4.0 could be permissible. These allowable FARs would also be restricted by the building height maximum of five to six stories.

To incentivize particular development outcomes, the Committee set the allowable FAR to 3.0 in this District, with 1:1 additional FAR allowed for affordable units beyond what is otherwise required, commercial uses already incentivized by the Transit Planning Overlay District, daycares, libraries/museums, and other subsidized non-residential space. Again, the maximum FAR allowed would be 3.5 to 4.0 as described above.

The zoning amendment would also allow office and smaller retail/restaurant uses for the property currently zoned M, Multifamily between Cameron Street and Smythe Street, where currently Valvoline and Dunkin' Donuts businesses are located.

Finally, requirements that must be adhered to in order to access the dimensional relief provided in this Overlay District include mitigating for existing tree canopy, provision of street trees, and LEED Silver building standards. The Committee intended to use fossil-fuel free construction as a standard, however, that idea was recently struck by the Attorney General's Office for a related warrant article attached to the Emerald Isle Overlay District. The LEED Silver standard has already been approved at that District, so the Committee is at least carrying forward this minimum building standard.

<u>Boylston Street East Overlay District</u>
As described above in the Overall Vision section, the mechanism of the Boylston Street East Overlay District is an as-of-right permitting pathway for development four stories or smaller that also meet the building envelope described in the zoning amendment, stepping down towards abutting residential properties to the rear. These developments would still undergo some design review process by the Planning Board conducting Site Plan Review. However, these projects would not necessarily require the lengthy, discretionary special permit process simply triggered by the number of residential units or its location on Boylston Street.

To be clear, projects that are otherwise defined as a Major Impact Project due to their size would still trigger Special Permit and Design Review by a Design Advisory Team. Additionally, lodging houses, hotels, and automotive uses that currently trigger Special Permit Design Review pursuant to Section 5.09 (e, f, g) would still remain subject to that Special Permit Design Review process.

Tree mitigation, street tree provision, and LEED Silver standards are required similar to the Brookline Hills Overlay District.

Where's the Parking?
While no zoning discussion would be complete without talking about parking, the Committee decided to not recommend any parking amendments beyond those recently changed by Town Meeting, including no parking for many commercial uses and reduced parking by Special Permit for residential uses.

Conclusion
The Department of Planning and Community Development is proud to support the Boylston Street Corridor Study Committee in their dedication to balance incentives for improvements with a desire for mid-rise building dimension standards. The Committee membership includes: Chair John VanScoyoc, Rachna Balkrishna, Deborah Brown, Wendy Friedman, Joe Gaudino, Wendy Machmuller, Tom Nally, Carlos Ridruejo, and Mark Zarrillo.

HOUSING ADVISORY BOARD RECOMMENDATION

Warrant Article 15 creates a zoning overlay for two segments of lower Boylston Street that provides for a range of mixed use up-zoning, including for housing. The original article was submitted by the Department of Planning and Community Development.

The Housing Advisory Board (HAB) voted unanimously for FAVORABLE ACTION on an amended version of Article 15 as recommended by the Economic Development Advisory Board (EDAB).

One of several amended provisions recommended by EDAB relates to inclusionary zoning and is of special concern, as the HAB is charged with administering the Inclusionary Zoning Section of the Bylaw. That Section (#4.08) states that a project's affordable housing obligation should be fulfilled by providing the required affordable units onsite. Several possible alternative options are set forth, which may be allowed at the Town's discretion if the alternative is found to produce a more favorable affordable housing outcome.

Article 15 as originally submitted substitutes the requirement under the existing Section 4.08 with an absolute requirement that all affordable units proposed within the Boylston Street zoning overlay corridor be produced onsite.

The HAB believes that, as a matter of policy, the inclusionary zoning bylaw requirements should apply town-wide to all multifamily housing projects and not be subject to a geographic exception prescribed under a specific zoning overlay district. The HAB concurs with the EDAB amended version which omits this more rigid exception to the existing inclusionary zoning bylaw.

The Article 15 proposed zoning overlay includes one provision which the HAB enthusiastically supports: an affordable housing "density bonus" that authorizes increased

density limits for new housing projects that offer a greater number of affordable units than required.

SELECT BOARD'S RECOMMENDATION

The Department of Planning and Community Development, petitioner of Warrant Article 15, asks for no motion to be made on this article. WA 15 was filed on behalf of the Boylston Street Corridor Study Committee. The Committee voted on April 25, 2022 to submit the article again in the fall, plans to submit a redrafted warrant article with modifications addressing concerns raised by stakeholders during an ongoing review process. This additional time will also allow more time to provide additional documentation and analysis of the proposed zoning, which if passed, would permit four to six stories of residential and commercial development along Boylston Street near Brookline Village and Brookline Hills MBTA stations.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 15.

Summary: Warrant Article 15 was submitted by the Department of Planning and Community Development and would create two new zoning overlay districts along Boylston Street in Brookline Village — one at the intersection with Cypress Street and the other between Walnut Path and High Street.

Recommendation: The Boylston Street Corridor Committee met on Monday April 25 and voted to do further study; the Article is therefore not being moved. Accordingly, the Advisory Committee offers no recommendation.

XXX

ARTICLE 16

SIXTEENTH ARTICLE
Submitted by: Department of Planning and Community Development

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

1) Revise Table 4.07 – Table of Use Regulations, Principal Use 6, Principal Use Column, last sentence as follows (inserted text underlined; deleted text shown strikeout).

> In L and G districts, the ground floor of a building must have at least 60% ~~no more than 40%~~ of its frontage along a street, to a depth of at least 15', devoted to uses other than residential use or ~~, including associated~~ parking or lobby use associated with residential use.

…or act upon anything else thereto.

PETITIONER'S ARTICLE DESCRIPTION

This proposed Zoning Amendment adds a standard of 15' minimum depth for non-residential spaces required on the ground floor of multifamily buildings (Use 6) located in Business Zoning Districts L (Local Business) or G (General Business). From time to time, applicants have filed Special Permit applications including a very shallow non-residential use, proposing that such space could be used for an art gallery viewable from the street. This requirement for some non-residential space at the ground floor is an opportunity to add more interest and activity to the Business District; this opportunity is more likely if the space is at least 15 feet deep.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 16 was submitted by the Department of Planning & Community Development to add a minimum dimension of depth for ground floor non-residential spaces that are required in multi-family buildings located in Local Business (L) and General Business (G) zoning districts.

Some members of the Planning Board suggested they might in the future want to further define non-residential use, add other requirements such as a minimum area by square feet or percentage of ground floor area, or perhaps reduce the percentage of non-residential frontage requirements to avoid a series of empty storefronts. In conclusion, there was general agreement that keeping the non-residential ground floor requirement in commercial districts was important, and that adding the proposed minimum 15' depth dimension (similar to the depth of the businesses within the Arcade building) was a good safeguard to add to the Zoning By-Law.

The Planning Board therefore voted unanimously to recommend Favorable Action on Article 16, incorporating edits offered by Advisory Committee and as recommended by the Economic Development Advisory Board, Zoning By-Law Committee, and moved by the Select Board. The roll call vote on April 27th went as follows: Heikin – aye, Brue – aye, Hiller – aye, Hines – aye, Zarrillo – aye, Chipimo - aye. Hamlin was not present.

RECOMMENDED: That the Town amend the Zoning By-Law as follows:
By revising Revise Table 4.07 – Table of Use Regulations, Principal Use 6, Principal Use Column, last sentence as follows (inserted text underlined; deleted text shown strikeout).

In L and G districts, the ground floor of a building must have at least 60% ~~no more than 40%~~ of its frontage along a street, to a depth of at least 15', devoted to uses not to include residential, residential related and parking. ~~residential use, including associated parking or lobby use.~~

SELECT BOARD'S RECOMMENDATION

For the reasons stated in the article explanation, the Board supports adding a minimum dimension of depth for ground floor non-residential spaces that are required in multi-family buildings located in Local Business (L) and General Business (G) zoning districts. The Board thanked the Advisory Committee and the Economic Development Advisory Board for suggesting minor edits to the warrant article for clarity.

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

ROLL CALL VOTE:

Aye:	Absent:
Hamilton	Aschkenasy
Fernandez	
Greene	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: Favorable Action, as amended, by a vote of 19-1 with 3 abstentions.

Executive Summary:	Amend Section 4.07 - Table of Use Regulations, use 6, to require a minimum depth of 15' for any non-residential use on the ground floor of a multi-family building located in L and G business districts. Multi-family buildings located in business districts are required to dedicate 60% of the linear street frontage to non-residential uses.

Voting Yes will...	Impose a minimum 15' depth requirement for the non-residential portion of a multi-family building located in L and G districts. The current Zoning By-law has no minimum depth requirement for the non-residential use in this case.
Voting No will...	Maintain the status quo Zoning By-law, which has no required depth for the non-residential portion of multi-family buildings in business districts.
Financial impact	Primarily N/A. It is potentially possible that the addition of a depth requirement will add slightly to development costs.
Legal implications	The new requirement would be imposed on future multi-family projects in L and G zoning districts.

Introduction
The purpose of this Article, sponsored by the Planning and Community Development Department, is to foster street vitality and business activity in our commercial areas and to preserve business uses on parcels zoned for commercial. In the past, developers have sought Special Permits for multi-family buildings in our business districts with only very shallow spaces running the required 60% width of the street façade. A recent example, 14 Green St., proposed a project that would have had a 9' deep space, running for 60% of the width of the front façade, claiming that this configuration, which they described as an "art gallery", would fulfill the requirement in our current zoning. Over the years, several other such proposals for narrow depth spaces have been proposed, clearly at odds with the intent of the zoning by-law. In fact, these proposed shallow spaces were not suitable for any viable or productive non-residential use and therefore did not fulfill the original intent of the by-law. This Article seeks to close this loophole.

Evaluation Methodology/Research
The Director of Planning and Community Development, Kara Brewton, described instances where developers proposed very narrow spaces running along the required 60% frontage width of multi-family buildings in commercial areas. Ms. Brewton opined that there is no "magic number" for a depth requirement in order to sustain viable non-residential uses, but that the deeper the space the more variety of uses the space could accommodate. Ms. Brewton noted that 15' is the average depth of the business spaces along the interior at the ground floor of the Arcade building.

Discussion
Members of the Advisory Committee raised questions around whether or not 15' was the right depth to require to achieve the goals of the By-Law. The Committee opined that a minimum square footage of non-residential space on the first floor might be an appropriate mechanism to further business activity on the first floors of mixed-use buildings in our commercial areas. Both the Economic Development Advisory Board and the Land-Use, Zoning and Sustainability Sub-Committee of the Advisory Committee expressed an interest in raising the minimum required depth to 20', or increasing the required percentage for non-residential uses above 60%, but these changes were deemed

likely to be out of scope of the original Article. Members of the Advisory Committee noted that there seemed to be a general desire to evaluate this provision in more detail and to continue considering further, more nuanced amendments to our Zoning By-Law to achieve the ultimate goal of the provision of active uses on the first floor. It was also noted that by locating goods and services in mixed-use buildings, residents have better access to nearby amenities, making for more complete neighborhoods.

In the Advisory Committee discussion, questions arose around whether or not it was advisable to require only the broadly defined "non-residential uses" for the 60%, or rather should we be specifying certain uses such as retail, restaurants, certain services, etc. to more directly achieve active first floors. The Director of the Planning and Community Development Department made a strong case for maximum flexibility of potential uses beyond residential, expressing the opinion that there may be interesting cultural or non-profit uses that could be wonderful additions to our commercial areas that we are not currently contemplating. The Advisory Committee amended the Article to better clarify that any use related to the residential portion of the building is to be counted as part of the 40% of the façade frontage dedicated to residential uses.

Recommendation

The Advisory Committee voted 19-1 with 3 abstentions to recommend FAVORABLE ACTION on the following motion:

VOTED: To revise Table 4.07 - Table of Use Regulations, Principal Use 6, Principal Use Column last sentence as follows (inserted text underlined; deleted text shown strikeout):

> In L and G districts, the ground floor of a building must have <u>at least 60%</u> ~~no more than 40%~~ of its frontage along a street, <u>to a depth of at least 15</u>', devoted to ~~residential use, including associated parking or lobby use.~~ <u>uses not to include, residential, residential related and parking.</u>

ARTICLE 16 ADVISORY COMMITTEE VOTES

Article Description	Depth requirement zoning
AC recommendation (Favorable Action unless indicated)	**19-1-3**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	A
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	A
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	A
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Advisory Committee amendments from the originally filed warrant article. Deletions are in ***~~italic strikethrough bold~~*****,** additions are ***italic underline bold.***

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

1) Revise Table 4.07 - Table of Use Regulations, Principal Use 6, Principal Use Column, last sentence as follows (inserted text underlined; deleted text shown strikeout).

> In L and G districts, the ground floor of a building must have at least 60% ~~no more than 40%~~ of its frontage along a street, to a depth of at least 15', devoted to ***~~uses other than~~ ~~residential use~~ or, ~~including associated~~ ~~parking or lobby use~~ ~~associated with residential use~~. uses not to include, residential, residential related and parking.***

XXX

ARTICLE 17

SEVENTEENTH ARTICLE
Submitted by: The Department of Planning and Community Development

To see if the Town will amend **Article VI-Vehicular Service Uses Requirements** of the Brookline Zoning By-Law as follows:

1 - By amending Section 6.00 with following new Paragraph 7 after Paragraph 6:

7. Parking facilities shall be equipped with EV Ready Spaces C or EV Ready Spaces R as defined in Section 6.10 or with EV Ready Spaces as defined in the latest edition of the Massachusetts State Building Code to provide scalable, reliable, and accessible EV charging, to implement the Town's sustainability policy, and to minimize the challenges associated with retrofits.

2 - By amending Section 6.04 deleting Paragraph 15 in its entirety (strike-through indicates deleted text):

~~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.~~

3 - By amending Article VI adding the following new Section 6.10 after Section 6.09:

Section 6.10 – OFF-STREET EV READINESS

1. Definitions

Terms used in Section 6.10 shall be defined as follows. Capitalized terms in Section 6.10 not defined below shall be as defined in Article II.

a. Massachusetts State Building Code - International Building Code Volume ("MSBC-IBC"): The volume of the latest edition of the Massachusetts State Building Code, which regulates buildings including but not limited to:

   (1) Three-Family Dwellings of any number of stories
   (2) Buildings four stories or more
   (3) Buildings not covered by the International Residential Code

b. Massachusetts State Building Code - International Residential Code Volume ("MSBC-IRC"): The residential volume of the latest edition of the Massachusetts State Building Code, which regulates buildings including but not limited to:

(1) One-Family Dwellings three stories and under
(2) Two-Family Dwellings three stories and under
(3) Townhouses three stories and under

c. Electric Vehicle ("EV') and Electric Vehicle Supply Equipment ("EVSE") are as defined in the latest edition of the Massachusetts State Building Code, as may be amended.

d. Electric Vehicle Charging Space Commercial ("EV Ready Space C"): Pertains to buildings regulated by the MSBC-IBC. Each parking space shall be designed to accommodate Level 2 EVSE servicing EVs in one of the following standards:

(1) **Minimum Prescriptive Standard:** 100% of parking spaces are EV Ready as defined in the latest edition of the Massachusetts State Building Code; or

(2) **Minimum Performance Standard:** An Automatic Load Management System may be used to deliver a minimum of 2.1 kW of power each hour to each EV Ready Space C or EVSE controlled by the ALMS, assuming that 100% of parking spaces are occupied by a charging EV. The installation of EVSE is not required to demonstrate compliance.

(3) A combination of (1) and (2) to serve 100% of parking spaces.

e. Electric Vehicle Charging Space Residential ("EV Ready Space R"): Pertains to buildings regulated by the MSBC-IRC. At least one parking space per Dwelling Unit shall be equipped with one individual branch circuit rated for at least 50 amperes @ 208/220 volts for charging an EV, defined as Level 2 EV charging in the latest edition of the Massachusetts Electrical Code.

f. EV Space: When the term EV Ready Space is used, it shall be as defined in the MSBC-IBC.

g. Automatic Load Management System ("ALMS"): An ALMS allows multiple EVSE to share a circuit or panel automatically reducing power at each EVSE when multiple EVs are charging concurrently as allowed by the latest edition of the Massachusetts Electrical Code. Where ALMS are used, EVSE shall:

(1) be fixed in place;

(2) have restricted access only by the means allowed in the latest edition of the Massachusetts Electrical Code;

3) be sized and rated as required under the latest edition of Massachusetts Electrical Code; and

(4) In case of disruption of the ALMS, each EVSE served by the ALMS shall operate at a reduced level that allows all EVSE to operate concurrently without resulting in overcurrent conditions as specified in the latest edition of the Massachusetts Electrical Code.

h. New Building: A building not in existence on the date the application for a building permit is received by the Building Department.

i. Significantly Rehabilitated Residential Buildings regulated by the MSBC-IBC: The reconfiguration of space and/or building systems in which the Work Area exceeds 50% of the existing Gross Floor Area as defined by the MSBC-IBC, as may be amended.

j. Significantly Rehabilitated Residential Buildings regulated by the MSBC-IRC: The reconfiguration of space and/or building systems in which the Work Area exceeds 75% of the existing Gross Floor Area as defined by the MSBC-IRC, as may be amended.

k. Work Area: The aggregate area of those portions of a building affected by alterations for the reconfiguration of space or building systems, including new floor area added as a result of the alteration, as indicated in the drawings associated with a building permit application. Excluded from the calculation of Work Area are those portions of a building where only repairs, or refinishing or incidental work occur or where work not initially intended by the Applicant is specifically required by an inspector from the Building pursuant to the applicable building code.

l. Level 2 EVSE or Level 2 EV Charging: Shall be as defined in the latest edition of the Massachusetts Electrical Code.

2. Applicable Uses and Requirements

a. In stand-alone Residential Parking Areas or Parking Garages and Parking Areas or Parking Garages of New or Significantly Rehabilitated Residential Buildings regulated by the MSBC-IBC, a minimum of 100% of the total number of parking spaces, and not less than one, shall be EV Ready C.

b. In stand-alone Non-Residential Parking Areas or Parking Garages and Parking Areas or Parking Garages of New or Significantly Rehabilitated Non-Residential Buildings regulated by the MSBC-IBC and with seven parking spaces or more, at least 15% of the total number of parking spaces and not less than one shall be EV Ready as defined in the latest edition of the MSBC-IBC.

c. In Residential Parking Areas or Parking Garages for One- and Two-Family Dwellings meeting the definitions of New Building or Significantly Rehabilitated Residential Buildings regulated by the MSBC-IRC at least one parking space shall be EV Ready R.

d. If the total number of existing parking spaces for Applicable Uses subject to Section 6.10 is increased or expanded by 10 parking spaces or more, the Requirements of Section 6.10.2 (b) shall apply.

e. EV Ready Spaces shall be maintained and shall remain functional for charging EVs.

3. Exemptions

The requirements of Section 6.10 shall not apply to:

a. Uses 25, 25A, 26, 27, 28, and 28A in Section 4.07, Table of Use Regulations

b. Parking Areas or Parking Garages are separated from the meter by a public right-of-way;

c. Loading Bays and Loading Facilities as specified in Sections 6.06 and 6.07;

d. Waldo-Durgin Overlay District: The requirements of Section 6.10 shall not apply to any building being constructed subject to the Waldo-Durgin Overlay District as described in Section 5.06.4.k;

e. Fisher Hill Special Overlay District: The requirements of Section 6.10 shall not apply to any building being constructed subject to the Fisher Hill Special Overlay District as described in Section 5.06.4.l.

4. Exceptions

Reserved

5. Waivers

The Board of Appeals may grant by Special Permit a reduction in whole or in part of the minimum number of EV Ready Spaces C required under Section 6.10 if the Board of Appeals grants or has granted a Special Permit pursuant to Section 6.03.1.b.

6. Rounding

Fractional numbers one-half (0.5) and above shall be rounded up to the nearest whole number.

7. Ventilation

Parking Areas and Parking Garages used for charging EVs indoors shall meet ventilation requirements as specified in the Massachusetts Electrical Code, Massachusetts Mechanical Code, and MSBC-IRC, as applicable. EVSE shall be installed as required per specifications of the EV manufacturer.

8. Materials Required for Plan Reviews, Site Plan Review and/or Design Review, Special Permit and Building Permit Applications:

Plans stamped by an electrical engineer shall meet the Building Department's requirements for plan submissions and shall indicate total calculated continuous duty load.

…or act upon anything else relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Department of Planning and Community Development (DPCD), in extensive consultation with the Building Department[i], proposes an amendment to the Zoning By-Law that would add new Electric Vehicle (EV) Charging requirements (Section 6.10) to replace paragraph Section 6.04.15. The change would require 100% of the parking spaces be **EV-Ready Spaces C**—as defined by staff distinctly from the State Commercial Building Code—in new construction and substantially rehabilitated residential uses. In addition, one- and two-family buildings regulated by the State Residential Building Code would be required to have a least one individual branch circuit rated for Level 2 charging (**EV Ready Spaces R**). Note that three-family buildings of any number of stories are regulated by the State Commercial Building Code. No change is proposed to non-residential uses; that is, 15% of those parking spaces are still required to be **EV-Ready** as defined in the latest edition of the Commercial Building Code.

The submission of this article fulfills the vote of Town Meeting in Fall 2021 that staff propose a zoning amendment requiring 100% EV readiness to support Level 2 charging in multifamily uses, and a Level 2 charging requirement for smaller residential uses.

Introduction

Petitioners Jesse Gray, Scott Englander et al. submitted a warrant article to Fall Town Meeting 2021 that would require all residential parking spaces to be EV Ready as defined in the State Building Code. Staff readily agreed with the petitioners' objective; namely, to avoid costly retrofits as demand for reliable EV charging increases in residential uses. However, the article relied on the Building Code's definition EV-ready that would (a) require an excessive and enormously expensive electrical service demand not likely to be approved by the utility and (b) preclude the use of the Automatic Load Management Systems (ALMS), a provision allowed under Article 625.42 of the Massachusetts Electrical Code (MEC) that provides an inexpensive and pragmatic 100% EV readiness solution.

The Massachusetts Department of Energy Resources (DOER) agreed with the Town's Chief Electrical Inspector that the definition of EV-Ready in the Commercial Building Code does *not* allow for the use ALMS.[ii] DOER acknowledges that a working group is drafting a revision for the tenth edition of the Building Code and a Net Zero Stretch Code option to be implemented in January 2023 that would allow ALMS to be installed as an

alternative to meet the State's EV ready mandate, though staff has not seen any language that would ensure reasonable charging rates for residential uses. (DOER encourages the Town to submit public comment.) Therefore, staff devised a new definition that would rely on a minimum power-transfer performance standard that would ensure reasonable overnight charging rates when 100% of parking spaces are occupied by a charging EV.

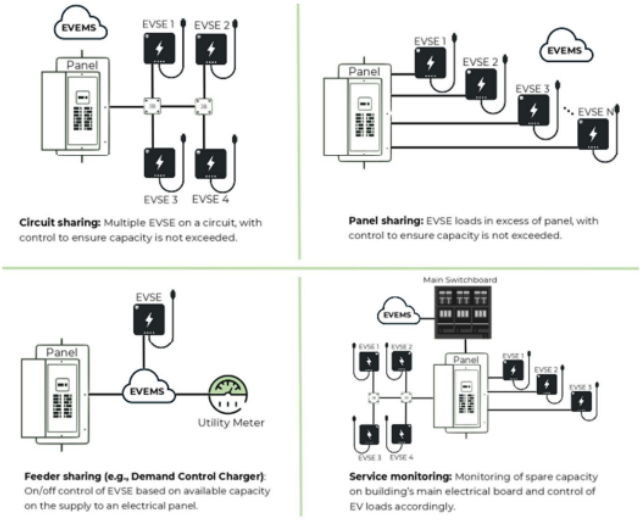
The concept of the minimum power-transfer standard has been widely adopted in various counties in Canada that mandate 100% EV readiness in residential parking areas. As part of its due diligence, the DPCD has had discussions with Brendan McEwen of AES Engineering, a firm that has advised Canada on its EV charging zoning policy and that is active in recommending changes to the International Energy Conservation Code (IECC) and the National Electric Code (NEC) to leverage ALMS technology—referred to as Electric Vehicle Energy Management System (EVEMS) in Canada.

How ALMS Work

ALMS allow multiple Electric Vehicle Service Equipment (EVSE) to charge safely on one electrical circuit rated for one EVSE. Although the speed of charging slows when multiple EVs are charging at EVSE served by an ALMS, a ratio of four EVSE to one circuit is reasonable for overnight charging in residential uses.

Drivers of internal combustion engine (ICE) vehicles wait until the gas tank is near empty to fill up. Unlike drivers of ICE vehicles, EV drivers do not wait for the EV's battery to be depleted but instead "top off" or replenish their daily driving range, which is an average of 39 miles per day for the typical American driver, according to the U.S. Department of Transportation (2019). Therefore, slower charging times are appropriate when vehicles are parked for longer periods such as overnight.

Figure: Different electrical configurations enabled by ALMS.
Source: Brendan McEwen, AES Engineering[iii]



To clarify, if four parking spaces are served by one circuit managed by an ALMS, the maximum power will need to be shared if more than one EV is charging at one time. If only one EV is charging, it would draw full Level 2 charging power.

Why Is the Building Code Definition of EV Ready Insufficient?

The State Building Code defines EV Ready Space as "a designated parking space which is provided with one *dedicated* 50-ampere branch circuit for EVSE servicing Electric Vehicles." The term "dedicated" or "individual" is defined in Article 100 of the Massachusetts Electrical Code (MEC) as "a branch circuit that supplies *only one utilization equipment*." Under this definition, multiple EVSE would not be allowed to connect to one circuit rated for one EVSE. Note that the Building Code does not prohibit the installation of ALMS, but it does *mandate* the installation of at least one EV-Ready space.

In addition, the ratio of EVSE to one circuit may change depending on use. A 12:1 ratio may be appropriate for an airport where vehicles are parked for days, but unreasonable for residential use, where a 4:1 ratio would provide a reasonable charging rate for overnight parking. Therefore, zoning can be a a more nimble tool in regulating acceptable minimum charging rates for different uses when ALMS are used, unlike the Building Code.

Why ALMS Provide a 100% EV Ready Solution

Under the State's definition, 16 **EV Ready** parking spaces would require16 dedicated branch circuits, or a 800-amp service demand for just the parking area.

In contrast, with ALMS and a 4:1 EVSE to circuit ratio, 16 **EV Ready Spaces C** would require just 4 circuits, or a 200- amp service.

An EV does not need to draw full Level 2 charging power for overnight parking to replenishing daily driving range. However, regulations do need to ensure a minimum reduced charging rate when 100% of parking spaces are occupied with charging vehicles in residential applications.

Staff's New Definition

For **EV Ready Spaces C**, a power transfer minimum of 2.1 kW per hour for each parking space would achieve:

- Flexibility: Level 2 charging up to full power if fewer EVs are charging concurrently

- Scalability: No requirement to install EVSE up front to demonstrate compliance (just a calculation of total continuous duty load to ensure that service capacity is

designed adequately and safely to serve 100% of parking spaces occupied with EVs charging concurrently)[iv]

- Reasonable reduced charging rate: Typical daily driving range could be replenished during overnight charging when 100% of parking spaces are occupied with EVs charging concurrently

- Cost-effectiveness: Electrical service capacity does not need to be upgraded each time an EVSE is installed, providing an optimal option for multifamily uses.

The standard of 2.1 kW of power is derived from the equivalent of one Level 2 EV charger drawing 42 amps of power on a 50-amp branch circuit. However, instead of one EVSE connect to this circuit, we would allow up to four EVSE. By maintaining a ratio of 4:1, we can guarantee a reasonable overnight charging rate of 2.1 kW per hour. Whereas a charging rate of 6.7 kW would provide 60 to 75 miles of driving range in three hours, a reduced charging of 2.1 kW would require about 9 hours of charging to provide an equivalent driving range—perfectly reasonable for residential uses.

The standard of 2.1 kW is derived as follows:

42 amps / 1 EVSE = 10.5 amps

10 amps x 208 volts = 2,184 watts or 2.1 kilowatts

Although it is not final, DOER has drafted an update to the Residential Building Code mandating a provision for Level 2 charging in one- and two-family buildings. Staff's proposal for **EV Ready Spaces R** is consistent with DOER's recommendation for one- and two-family structures. For one- and two-family applications, the By-Law must avoid cross-referencing definitions in Commercial Building Code, even if the definitions themselves are identical.

Avoiding Conflicts with Building Code

Recall that the State Building Code not only defines EV Ready, it mandates that at least one parking space be EV Ready. Therefore, property owners would not be able to implement an ALMS system for 100% of parking spaces without either installing one dedicated 50-amp branch circuit for one of the spaces not served by an ALMS (doable but inefficient) or requesting a waiver from the State's Board of Building Regulations and Standards (BBRS) . The implications, though not ideal, are practical workarounds until the Building Code is updated to allow ALMS exceptions.

Because an ALMS option might not be the right for every project, this article provides an alternative prescriptive standard that requires compliance with EV Ready as defined in the State Building Code, and yet a third option that would be a combination of the two standards.

Because different EVSE-to-circuit ratios are possible depending on the use, staff is not addressing ALMS provisions in non-residential uses at this time.

Town Counsel's Opinion

Because the Attorney General has disapproved two recent zoning amendments prohibiting fossil fuel free infrastructure, Town Counsel Jonathan Simpson is skeptical that the Attorney General will approve this amendment, which address EV readiness infrastructure under land use. Nonetheless, he did not discourage staff from submitting this article to Town Meeting.

Staff is hopeful that the three standards provided in our definition of **EV Ready Spaces C** serve not only to assist multifamily property owners with a cost-effective solution for EV charging but also to offer parameters around minimum charging rates in a way that the Building Code might not be nuanced enough to provide.

Resources

Making Parking "EV Ready": Requirements for New Construction & Incentives for Existing Buildings (Brendan McEwan/AES Engineering and Electric Mobility Canada February 2022)
https://emc-mec.ca/wp-content/uploads/EMC-Position-Paper-EV-Ready-Parking-2022.02.24-Formatted-EMC-Format.pdf

EV Ready" Requirements for New Buildings: A Best Practice Guide for BC Local Governments (Brendan McEwan/AES Engineering April 2021)
https://docs.communityenergy.ca/wp-content/uploads/EV-Ready-Requirements-for-New-Buildings-Final.pdf

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JOINT PLANNING BOARD AND ZONING BYLAW COMMITTEE REPORT

Purpose of the Article
Town Meeting voted in Fall 2021 to refer to the Planning Department, in partnership with the Building Department, the task of preparing for Spring 2022 Town Meeting, a Warrant Article that would mandate Level 2 EV charging infrastructure for 100% of parking spaces in multifamily uses and a Level 2 EV charging solution for one- and two-family uses. The vote was in response to a warrant article that mandated 100% EV readiness predicated on the definition in the State Building Code.

Although Staff commended the intent of the petitioners' proposal, the Planning and Building Department stated that applying the State Building Code definition of EV-Ready—one dedicated 50-amp branch circuit per parking space—was impractical for several reasons:

1. A circuit for each parking space is expensive infrastructure design.
2. The utility would likely not approve such a large electrical service.
3. Dedicated circuits preclude the connection of multiple EV chargers to one circuit, which is technology behind Automatic Load Management Systems (ALMS), a provision in the Massachusetts Electrical Code that is designed for multifamily applications.

Overview
Staff complements the State Code definition (Prescriptive Standard) with an alternative definition (Performance Standard) based on a minimum power transfer per hour that would ensure a reasonable charging rate for multifamily uses. The Performance is based on a concept used by many cities in British Columbia and parts of California that are adding it to their zoning ordinances for EV charging. It is anticipated that the International Energy Conservation Code and National Electrical Code will adopt similar language in the near future.

Applicability and Requirements

A. One- and Two Family: At least one parking space per dwelling unit shall be equipped with one individual 50-amp branch circuit.

B. Non-Residential: For parking area with at least 7 parking spaces, 15% of parking spaces shall be equipped with one individual 50-amp branch circuit.

C. Three-Family and Multifamily:

1. **Prescriptive Standard:** One individual 50-amp branch circuit per parking space for 100% of parking spaces. Alternatively, one individual 20-amp branch circuit at 240 volts per parking space for 100% of parking spaces.

2. **Performance Standard:** An Automatic Load Management System (ALMS) may be used to deliver a minimum of 1.92 kW of power per hour to each parking space or charger served by the ALMS when 100% of parking spaces are occupied by EVs charging at the same time. Alternatively, a Level 2 charger with dual ports may be used as long as the minimum power transfer to each parking space is 1.92 KW per hour.

3. Any combination of (1) and (2) above.

Exemptions are provided for automotive uses (i.e., loading areas) and parking areas that are separated from the meter by a public right of way. Waivers are provided if the ZBA grants or has granted a special for parking on lots within 400 feet (Sec. 6.03.1.b) or 1400 feet of the Site (Use 22), as those scenarios would present impractical logistical challenges.

Amendments Recommended by the Advisory Land Use Subcommittee and Subsequently Approved by the Planning Board

Several edits were proposed by Staff (red text only), which this subcommittee approved. In addition, the subcommittee recommended that the Article include a null and void clause (red text plus yellow highlight), drafted by Town Counsel, should the Attorney General strike down the Performance Standard language, leaving the Prescriptive Standard (the Building Code definition) applicable—which could be onerous in some scenarios, as Staff warned at Fall 2021 Town Meeting.

Staff noted the support of both the petitioners and the Building Department, and the Land Use subcommittee was satisfied that the Fall 2021 Town Meeting's charge was met. Moreover, property owners would have optimal flexibility in designing their infrastructure for 100% EV charging solution.

Amendments Recommended by the Planning Board
The Planning Board held a joint hearing with the Zoning Bylaw Committee. Chairperson Steve Heikin recommended that the version of the article approved by the Advisory's Land Use subcommittee, dated April 14, 2022, (with the red text, plus green highlight edits) be approved, as well as the following minor addition in red in Paragraph 2.d:

Paragraph 2.d: Add "per Dwelling Unit". This is a minor copyediting change to make this paragraph consistent with the current language in Definitions Paragraph 1.e. (Staff confirmed that this change does not change meaning or intent.)

The Zoning Bylaw Committee voted favorable action on the article as amended above: 12-0 (4 absent).

The Planning Board voted 7-0 to recommend Favorable Action of the article as amended above.

SELECT BOARD'S RECOMMENDATION

For reasons stated above the Select Board supports adding new Electric Vehicle (EV) Charging requirements for new construction permits.

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

ROLL CALL VOTE:

Aye:	Absent:
Hamilton	Aschkenasy
Fernandez	
Greene	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation:

Favorable Action, as amended by the Advisory Committee, by a vote of 22-0 with 1 abstention.

Executive Summary:	The Petitioners' motion would amend Zoning By-Law Section 6.00 and Section 6.04 as follows: 1. In Section 6.00 adds Paragraph 7 (parking facilities). 2. In Section 6.04 deletes paragraph 15 (Electric Vehicles). 3. Adds a new Section 6.10 (Off-Street EV Readiness) 4. For Residential Parking Areas (all uses) with 1 (down from 15) parking space or more, increase the proportion of EV Ready Spaces from 15% to 100% (Multifamily/Three-Family only; does not apply to one/two family residential) 5. For Non-Residential Parking Spaces with 7 (down from 15) parking spaces still requiring that the proportion of EV-Ready Spaces be 15% 6. Adds the option of a Minimum Prescriptive Standard and a Minimum Performance Standard using an Automatic Load Management System (ALMS) (Multifamily/Three-Family only; does not apply to one/two family residential)
Voting Yes will...	Instruct the Building Department to require new Construction Permits to provide in Residential Parking Areas 100% EV Ready Spaces using either the Prescriptive or Performance Standards provided in the Zoning By-Law and in Non-Residential Parking Areas with 7 or more spaces at least 15% EV Ready Spaces
Voting No will...	Leave Zoning By-Law Section 6.00, Section 6.04 and current EV Ready Space requirements unchanged.
Financial impact	Unlikely, as the Building Commissioner does not believe there would an increase in work load for the staff at the Building Department.
Legal implications	The Attorney General Office would need to evaluate if this Warrant Article is in conflict with the Massachusetts Electrical Code or the Massachusetts State Building Code.

Introduction

Warrant Article 17 is the result of the vote of Fall Town Meeting 2021 on Article 25 to refer the then proposed by-law amendments to the Department of Planning and Community Development (DPCD) for further development. The Department of Planning and Community Development, in extensive consultation with the Building Department,

proposes these new amendments to the Town's Zoning By-Law in order to increase availability of Electric Vehicle Ready Spaces in both residential and non-residential parking areas throughout town. As there is an increase in the adoption of electric vehicles, there is a clear need for a greater number parking spaces with electric chargers. The goal of the Town's departments is to provide adequate charging standards so that most of the charging can take place overnight at the owner's residence. Research also shows that the cost of EV Ready spaces is lower in new construction that when retrofitting existing spaces, so the departments believe it is reasonable to require that new parking spaces be EV Ready in anticipation of future adoption.

This Warrant Article is one more step towards combating climate change and reaching the Town's carbon reduction goals.

Evaluation Methodology/Research

- The Building and Planning and Community Development department worked together.
- Massachusetts Electrical Code, Massachusetts State Building Code, International Building Code and the International Residential Building Code.
- Brookline Zoning By-Law
- Explanation EV Charging memo March 9, 2022
- Making Parking "EV Ready": Requirements for New Construction & Incentives for Existing Buildings (Brendan McEwan/AES Engineering and Electric Mobility Canada February 2022) https://emc-mec.ca/wp-content/uploads/EMC-Position-Paper-EV-Ready-Parking-2022.02.24-Formatted-EMC-Format.pdf
- EV Ready" Requirements for New Buildings: A Best Practice Guide for BC Local Governments (Brendan McEwan/AES Engineering April 2021) https://docs.communityenergy.ca/wpcontent/uploads/EV-Ready-Requirements-for-New-Buildings-Final.pdf

Discussion

The Land Use, Zoning and Sustainability Subcommittee of the Advisory Committee held a (virtual) public hearing on Warrant Article 17 on Tuesday April 5, 2022 and a (virtual) public meeting on Thursday, April 14, 2022. The full Advisory Committee held a public meeting on April 26, 2022.

The Advisory Committee is very supportive of this Warrant Article and its goals towards combating the effects of climate change and reducing the carbon footprint of the Town. The Committee reviewed the differences between the current WA17 and its predecessor, WA 25, submitted for the Fall 2021 Town Meeting, to evaluate how the town departments have amended the original warrant article. In essence, the goals of both articles are the same, but the new version (WA17) allows compliance of the proposed Warrant Article to be achieve through three options: (1) Performance Standard, such as an Automatic Load Management System (ALMS) option, (2) Prescriptive Standard, which requires compliance with EV Ready as defined in the State Building Code, or (3) a combination of the two aforementioned standards.

The addition of the Performance Standard introduces the option of using an Automatic Load Management System (ALMS), which makes compliance of larger projects much more easy and at a reduced cost.

When an ALMS is used, multiple chargers can be connected to one circuit rated for one charger. When all chargers are charging simultaneously, they must share power the maximum allowed power distributed by the ALMS. The standard requires that the ALMS provide a minimum of 1.92 kW per hour, which is reasonable for an overnight charge. The concept of the minimum power-transfer standard has been widely adopted in various counties in Canada that mandate 100% EV readiness in residential parking areas. Article 17 also allows for an alternative to an ALMS through the use of a level 2 EVSE with dual ports that meet the requirements of the by-law.

The Advisory Committee introduced an amendment to the Warrant Article which requires verification that the ALMS actually be installed. This amendment will try to prevent any loopholes if an ALMS is specified but never installed. It should be noted that the actual installation of the EVSE (Electric Vehicle Supply Equipment) is not required by the Warrant Article.

Members of the Committee were concerned on how the Attorney General's Office (AGO) would rule on such a Warrant Article, especially after the AGO struck down recent Fossil Fuel Free Warrant Articles approved by Town Meeting, as being in conflict with the State Building Code and other Massachusetts regulations. The Committee learned that Town Counsel is skeptical of the AGO approving this Warrant Article for the same reasons, so there was extensive discussion of what would happen if the Article were struck down. The unintended consequence of this situation could be that the Town would either lose the existing requirement of 15% EV Ready, or perhaps have a requirement of 100% EV ready without a Performance Standard, such as an ALMS, which would be economically infeasible for owners and developers.

After further discussion with Town Counsel on the possibility of the AGO striking a portion of the Warrant Article, an additional amendment, a Null and Void clause, was introduced for inclusion in the Warrant Article. The Advisory Committee understands that if this clause goes into effect, the existing 15% EV Ready requirement would be eliminated, and the current Building Code requirements (1 EV Ready space) would go into effect. A new Warrant Article would have to be introduced and voted on in order to raise the minimum percentage back up to 15%.

Town staff informed the Committee that currently there is a lot of work being done at the State level to include these charging options in future Building Code editions or new Stretch Code options.

There was a lengthy discussion between the Building Commissioner and Committee members on how Town Officials would enforce the Warrant Article. The Building Commissioner is very comfortable with this referred version of the original Warrant Article 25 and explained the difference between the two building codes, the International Building Code (IBC) and the Residential Building Code (IRC), and how to determine which code applies to which projects. The Warrant Article has clear definitions on which

code applies to what: One- and Two-Family Dwellings (including Townhouses three stories and under) are all under the IRC. All other projects are under IBC. Mixed-use, multi-unit projects and all-residential multi-unit (more than 2) projects are all included under the IBC. For projects under the IRC, at least one parking space per dwelling unit would need to be EV Ready. Projects under the IBC would be required to have 100% of the spaces EV-Ready.

Town staff is hopeful that the three standards provided in the Warrant Article of EV Ready Spaces, will not only to assist multifamily property owners with a cost-effective solution for EV charging, but also to offer parameters around minimum charging rates in a way that the Building Code might not be nuanced enough to provide.

Recommendation
By a vote of 22-0 with 1 abstention, the Advisory Committee recommends Favorable Action on Article 17, as amended.

Advisory Committee Motion:

VOTED:

To amend **Article VI-Vehicular Service Uses Requirements** of the Brookline Zoning By-Law as follows:

1 - By amending Section 6.00 with following new Paragraph 7 after Paragraph 6:

7. Parking facilities shall be equipped with EV Ready Spaces C or EV Ready Spaces R as defined in Section 6.10 or with EV Ready Spaces as defined in the latest edition of the Massachusetts State Building Code to provide scalable, reliable, and accessible EV charging, to implement the Town's sustainability policy, and to minimize the challenges associated with retrofits.

2 - By amending Section 6.04 deleting Paragraph 15 in its entirety (strike-through indicates deleted text):

~~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.~~

3 - By amending Article VI adding the following new Section 6.10 after Section 6.09:

Section 6.10 – OFF-STREET EV READINESS

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1. Definitions

Terms used in Section 6.10 shall be defined as follows. Capitalized terms in Section 6.10 not defined below shall be as defined in Article II.

a. Massachusetts State Building Code - International Residential Code Volume ("MSBC-IRC"): The residential volume of the latest edition of the Massachusetts State Building Code, which regulates buildings including but not limited to:

1. One-Family Dwellings three stories and under
2. Two-Family Dwellings three stories and under
3. Townhouses three stories and under

b. Massachusetts State Building Code - International Building Code Volume ("MSBC-IBC"): The volume of the latest edition of the Massachusetts State Building Code, which regulates buildings including but not limited to:

1. Three-Family Dwellings of any number of stories
2. Buildings four stories or more
3. Buildings not covered by the International Residential Code

c. Electric Vehicle ("EV') and Electric Vehicle Supply Equipment ("EVSE") are as defined in the latest edition of the Massachusetts State Building Code, as may be amended.

d. Electric Vehicle Charging Space Commercial ("EV Ready Space C"): Pertains to buildings regulated by the MSBC-IBC. Each parking space shall be designed to accommodate Level 2 EVSE servicing EVs in one of the following standards:

1. **Minimum Prescriptive Standard:** 100% of parking spaces are EV Ready Space as defined in the latest edition of the Massachusetts State Building Code.

a. For Sec. 6.10.1.d.1: If the latest edition of the MSB-IBC allows the installation of a 20-amp branch circuit for EV Ready Spaces as an exception, such installation shall be as follows: one individual 20-amp branch circuit at 240 volts per one parking space for a minimum of 100% of parking spaces.

Or

2. **Minimum Performance Standard:** An Automatic Load Management System may be used to deliver a minimum of 1.92 kW of power each hour to each EV Ready Space C or EVSE controlled by the ALMS, assuming that 100% of parking spaces are occupied by a charging EV. The installation of the ALMS and energized outlet(s) adjacent to EV Ready Spaces C is required to demonstrate compliance. The installation of EVSE is not required to demonstrate compliance.

a. Alternatively, instead of an ALMS, use of Level 2 EVSE with dual ports meets the requirements of this Section, as long as the minimum power transfer to each parking space charging an EV meets the minimum power transfer per hour specified in the Minimum Performance Standard. Use of Level 2 EVSE with dual ports shall be installed to demonstrate compliance.

Or

3. A combination of (1) and (2) to serve 100% of parking spaces.

e. Electric Vehicle Charging Space Residential ("EV Ready Space R"): Pertains to buildings regulated by the MSBC-IRC. At least one parking space per Dwelling Unit shall be equipped with one individual branch circuit rated for at least 50 amperes @ 208/240 volts for charging an EV, defined as Level 2 EV charging in the latest edition of the Massachusetts Electrical Code.

f. EV Ready Space: When the term EV Ready Space is used, it shall be as defined in the MSBC-IBC.

g. Automatic Load Management System ("ALMS"): An ALMS allows multiple EVSE to share a circuit or panel automatically reducing power at each EVSE when multiple EVs are charging concurrently as allowed by the latest edition of the Massachusetts Electrical Code. Where ALMS are used, EVSE shall:

1. be fixed in place;

(2) have restricted access only by the means allowed in the latest edition of the Massachusetts Electrical Code;

3) be sized and rated as required under the latest edition of Massachusetts Electrical Code; and

(4) In case of disruption of the ALMS, each EVSE served by the ALMS shall operate at a reduced level that allows all EVSE to operate concurrently without resulting in overcurrent conditions as specified in the latest edition of the Massachusetts Electrical Code.

h. New Building: A building not in existence on the date the application for a building permit is received by the Building Department.

i. Significantly Rehabilitated Residential Buildings regulated by the MSBC-IBC: The reconfiguration of space and/or building systems in which the Work Area exceeds 50% of the existing Gross Floor Area as defined by the MSBC-IBC, as may be amended.

j. Significantly Rehabilitated Residential Buildings regulated by the MSBC-IRC: The reconfiguration of space and/or building systems in which the Work Area exceeds 75% of the existing Gross Floor Area as defined by the MSBC-IRC, as may be amended.

k. Work Area: The aggregate area of those portions of a building affected by alterations for the reconfiguration of space or building systems, including new floor area added as a result of the alteration, as indicated in the drawings associated with a building permit application. Excluded from the calculation of Work Area are those portions of a building where only repairs, or refinishing or incidental work occur or where work not initially intended by the Applicant is specifically required by an inspector from the Building pursuant to the applicable building code.

l. Level 2 EVSE or Level 2 EV Charging: Shall be as defined in the latest edition of the Massachusetts Electrical Code.

2. Applicable Uses and Requirements

a. In stand-alone Residential Parking Areas or Parking Garages and Parking Areas or Parking Garages of New or Significantly Rehabilitated Residential Buildings regulated by the MSBC-IBC, a minimum of 100% of the total number of parking spaces shall be EV Ready Space C.

b. In stand-alone Non-Residential Parking Areas or Parking Garages and Parking Areas or Parking Garages of New or Significantly Rehabilitated Non-Residential Buildings regulated by the MSBC-IBC and with seven parking spaces or more, at least 15% of the total number of parking spaces and not less than one shall be EV Ready Space as defined in the latest edition of the MSBC-IBC.

c. In Residential Parking Areas or Parking Garages for One- and Two-Family Dwellings meeting the definitions of New Building or Significantly Rehabilitated Residential Buildings regulated by the MSBC-IRC at least one parking space shall be EV Ready Space R.

d. If the total number of existing parking spaces for Applicable Uses subject to Section 6.10 is increased or expanded by 10 parking spaces or more, the Requirements of Section 6.10.2 (b) shall apply.

e. EV Ready Spaces, EV Ready Spaces C, and EV Ready Spaces R shall be maintained and shall remain functional for charging EVs.

3. Exemptions

The requirements of Section 6.10 shall not apply to:

a. Uses 25, 25A, 26, 27, 28, and 28A in Section 4.07, Table of Use Regulations

b. Parking Areas or Parking Garages that are separated from the meter by a public right-of-way;

c. Loading Bays and Loading Facilities as specified in Sections 6.06 and 6.07;

d. Waldo-Durgin Overlay District: The requirements of Section 6.10 shall not apply to any building being constructed subject to the Waldo-Durgin Overlay District as described in Section 5.06.4.k;

e. Fisher Hill Special Overlay District: The requirements of Section 6.10 shall not apply to any building being constructed subject to the Fisher Hill Special Overlay District as described in Section 5.06.4.l.

4. Exceptions

Reserved

5. Waivers

The Board of Appeals may grant by Special Permit a reduction in whole or in part of the minimum number of EV Ready Spaces C required under Section 6.10 if the Board of Appeals grants or has granted a Special Permit pursuant to (a) Section 6.03.1.b or (b) Table 4.07 Use 22.

6. Rounding

Fractional numbers one-half (0.5) and above shall be rounded up to the nearest whole number.

7. Ventilation

Parking Areas and Parking Garages used for charging EVs indoors shall meet ventilation requirements as specified in the Massachusetts Electrical Code, Massachusetts Mechanical Code, and MSBC-IRC, as applicable. EVSE shall be installed as required per specifications of the EV manufacturer.

8. Materials Required for Plan Reviews, Site Plan Review and/or Design Review, Special Permit and Building Permit Applications:

For EV Ready Spaces R, plans stamped by a licensed and qualified electrician shall meet the Building Department's requirements for plan submissions and shall include an electrical service load calculation.

For EV Ready Spaces C and EV Ready Spaces, plans stamped by an electrical engineer shall meet the Building Department's requirements for plan submissions and shall include an electrical service load calculation.

9. Null and Void

If Section 6.10 is modified by any order, decree, decision, ruling, or other directive from the Massachusetts Office of the Attorney General or a court having jurisdiction, and the modification would have the effect of altering the impacts, effects, or standards of the Section in any way, then such order, decree, decision, ruling, or other directive shall instead have the effect of rendering the Section null and void in its entirety.

ARTICLE 17 ADVISORY COMMITTEE VOTES

Article Description	EV-ready Parking, as amended
AC recommendation (Favorable Action unless indicated)	**22-0-1**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	A
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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APPENDIX

Warrant Article showing Advisory Committee amendments.
Additions Underlined. Deletions ~~*Strikethrough Italics*~~

To see if the Town will amend **Article VI-Vehicular Service Uses Requirements** of the Brookline Zoning By-Law as follows:

1 - By amending Section 6.00 with following new Paragraph 7 after Paragraph 6:

7. Parking facilities shall be equipped with EV Ready Spaces C or EV Ready Spaces R as defined in Section 6.10 or with EV Ready Spaces as defined in the latest edition of the Massachusetts State Building Code to provide scalable, reliable, and accessible EV charging, to implement the Town's sustainability policy, and to minimize the challenges associated with retrofits.

2 - By amending Section 6.04 deleting Paragraph 15 in its entirety (strike-through indicates deleted text):

~~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.~~

3 - By amending Article VI adding the following new Section 6.10 after Section 6.09:

Section 6.10 – OFF-STREET EV READINESS

1. Definitions

Terms used in Section 6.10 shall be defined as follows. Capitalized terms in Section 6.10 not defined below shall be as defined in Article II.

a. Massachusetts State Building Code - International Residential Code Volume ("MSBC-IRC"): The residential volume of the latest edition of the Massachusetts State Building Code, which regulates buildings including but not limited to:

4. One-Family Dwellings three stories and under
5. Two-Family Dwellings three stories and under
6. Townhouses three stories and under

b. Massachusetts State Building Code - International Building Code Volume ("MSBC-IBC"): The volume of the latest edition of the Massachusetts State Building Code, which regulates buildings including but not limited to:

4. Three-Family Dwellings of any number of stories
5. Buildings four stories or more
6. Buildings not covered by the International Residential Code

c. Electric Vehicle ("EV') and Electric Vehicle Supply Equipment ("EVSE") are as defined in the latest edition of the Massachusetts State Building Code, as may be amended.

d. Electric Vehicle Charging Space Commercial ("EV Ready Space C"): Pertains to buildings regulated by the MSBC-IBC. Each parking space shall be designed to accommodate Level 2 EVSE servicing EVs in one of the following standards:

4. **Minimum Prescriptive Standard:** 100% of parking spaces are EV Ready Space as defined in the latest edition of the Massachusetts State Building Code.

b. For Sec. 6.10.1.d.1: If the latest edition of the MSB-IBC allows the installation of a 20-amp branch circuit for EV Ready Spaces as an exception, such installation shall be as follows: one individual 20-amp branch circuit at 240 volts per one parking space for a minimum of 100% of parking spaces.

Or

5. **Minimum Performance Standard:** An Automatic Load Management System may be used to deliver a minimum of 1.92 kW of power each hour to each EV Ready Space C or EVSE controlled by the ALMS, assuming that 100% of parking spaces are occupied by a charging EV. <u>The installation of the ALMS and energized outlet(s) adjacent to EV Ready Spaces C is required to demonstrate compliance.</u> The installation of EVSE is not required to demonstrate compliance.

b. Alternatively, instead of an ALMS, use of Level 2 EVSE with dual ports meets the requirements of this Section, as long as the minimum power transfer to each parking space charging an EV meets the minimum power transfer per hour specified in the Minimum Performance Standard. Use of Level 2 EVSE with dual ports shall be installed to demonstrate compliance.

Or

6. A combination of (1) and (2) to serve 100% of parking spaces.

e. Electric Vehicle Charging Space Residential ("EV Ready Space R"): Pertains to buildings regulated by the MSBC-IRC. At least one parking space per Dwelling Unit shall be equipped with one individual branch circuit rated for at least 50 amperes @ 208/240 volts for charging an EV, defined as Level 2 EV charging in the latest edition of the Massachusetts Electrical Code.

f. EV Ready Space: When the term EV Ready Space is used, it shall be as defined in the MSBC-IBC.

g. Automatic Load Management System ("ALMS"): An ALMS allows multiple EVSE to share a circuit or panel automatically reducing power at each EVSE when multiple EVs are charging concurrently as allowed by the latest edition of the Massachusetts Electrical Code. Where ALMS are used, EVSE shall:

2. be fixed in place;

(2) have restricted access only by the means allowed in the latest edition of the Massachusetts Electrical Code;

3) be sized and rated as required under the latest edition of Massachusetts Electrical Code; and

(4) In case of disruption of the ALMS, each EVSE served by the ALMS shall operate at a reduced level that allows all EVSE to operate concurrently without resulting in overcurrent conditions as specified in the latest edition of the Massachusetts Electrical Code.

h. New Building: A building not in existence on the date the application for a building permit is received by the Building Department.

i. Significantly Rehabilitated Residential Buildings regulated by the MSBC-IBC: The reconfiguration of space and/or building systems in which the Work Area exceeds 50% of the existing Gross Floor Area as defined by the MSBC-IBC, as may be amended.

j. Significantly Rehabilitated Residential Buildings regulated by the MSBC-IRC: The reconfiguration of space and/or building systems in which the Work Area exceeds 75% of the existing Gross Floor Area as defined by the MSBC-IRC, as may be amended.

k. Work Area: The aggregate area of those portions of a building affected by alterations for the reconfiguration of space or building systems, including new floor area added as a result of the alteration, as indicated in the drawings associated with a building permit application. Excluded from the calculation of Work Area are those portions of a building where only repairs, or refinishing or incidental work occur or where work not initially intended by the Applicant is specifically required by an inspector from the Building pursuant to the applicable building code.

l. Level 2 EVSE or Level 2 EV Charging: Shall be as defined in the latest edition of the Massachusetts Electrical Code.

2. Applicable Uses and Requirements

f. In stand-alone Residential Parking Areas or Parking Garages and Parking Areas or Parking Garages of New or Significantly Rehabilitated Residential Buildings regulated by the MSBC-IBC, a minimum of 100% of the total number of parking spaces shall be EV Ready Space C.

g. In stand-alone Non-Residential Parking Areas or Parking Garages and Parking Areas or Parking Garages of New or Significantly Rehabilitated Non-Residential Buildings regulated by the MSBC-IBC and with seven parking spaces or more, at least 15% of the total number of parking spaces and not less than one shall be EV Ready Space as defined in the latest edition of the MSBC-IBC.

h. In Residential Parking Areas or Parking Garages for One- and Two-Family Dwellings meeting the definitions of New Building or Significantly Rehabilitated Residential Buildings regulated by the MSBC-IRC at least one parking space shall be EV Ready Space R.

i. If the total number of existing parking spaces for Applicable Uses subject to Section 6.10 is increased or expanded by 10 parking spaces or more, the Requirements of Section 6.10.2 (b) shall apply.

j. EV Ready Spaces, EV Ready Spaces C, and EV Ready Spaces R shall be maintained and shall remain functional for charging EVs.

3. Exemptions

The requirements of Section 6.10 shall not apply to:

f. Uses 25, 25A, 26, 27, 28, and 28A in Section 4.07, Table of Use Regulations

g. Parking Areas or Parking Garages that are separated from the meter by a public right-of-way;

h. Loading Bays and Loading Facilities as specified in Sections 6.06 and 6.07;

i. Waldo-Durgin Overlay District: The requirements of Section 6.10 shall not apply to any building being constructed subject to the Waldo-Durgin Overlay District as described in Section 5.06.4.k;

j. Fisher Hill Special Overlay District: The requirements of Section 6.10 shall not apply to any building being constructed subject to the Fisher Hill Special Overlay District as described in Section 5.06.4.l.

4. Exceptions

Reserved

5. Waivers

The Board of Appeals may grant by Special Permit a reduction in whole or in part of the minimum number of EV Ready Spaces C required under Section 6.10 if the Board of Appeals grants or has granted a Special Permit pursuant to (a) Section 6.03.1.b or (b) Table 4.07 Use 22.

6. Rounding

Fractional numbers one-half (0.5) and above shall be rounded up to the nearest whole number.

7. Ventilation

Parking Areas and Parking Garages used for charging EVs indoors shall meet ventilation requirements as specified in the Massachusetts Electrical Code, Massachusetts Mechanical Code, and MSBC-IRC, as applicable. EVSE shall be installed as required per specifications of the EV manufacturer.

8. Materials Required for Plan Reviews, Site Plan Review and/or Design Review, Special Permit and Building Permit Applications:

For EV Ready Spaces R, plans stamped by a licensed and qualified electrician shall meet the Building Department's requirements for plan submissions and shall include an electrical service load calculation.

For EV Ready Spaces C and EV Ready Spaces, plans stamped by an electrical engineer shall meet the Building Department's requirements for plan submissions and shall include an electrical service load calculation.

9. Null and Void

If Section 6.10 is modified by any order, decree, decision, ruling, or other directive from the Massachusetts Office of the Attorney General or a court having jurisdiction, and the modification would have the effect of altering the impacts, effects, or standards of the Section in any way, then such order, decree, decision, ruling, or other directive shall instead have the effect of rendering the Section null and void in its entirety.

XXX

[i] The DPCD's Regulatory Division especially credits the partnership of Daniel Bennett, Building Commissioner; Paul R. Campbell, Deputy Building Commissioner; and Brian Richard, Chief Electrical Inspector.

[ii] The Building Department and the DPCD's Regulatory Division staff met with Ian Finlayson, Director of DOER's Energy Efficiency Division in February 2022 to confirm this fact.

[iii] https://emc-mec.ca/wp-content/uploads/EMC-Position-Paper-EV-Ready-Parking-2022.02.24-Formatted-EMC-Format.pdf

[iv] Note that the MEC requires that EVSE served by ALMS must be hard-wired and not removable as equipment plugged into a receptacle would be. Therefore, installing receptacles are not permitted for EV ready spaces served by an ALMS.

ARTICLE 18

EIGHTEENTH ARTICLE
Submitted by: The Department of Planning and Community Development

To see if the Town will amend **Article II-Definitions** and **Article VI-Vehicular Service Uses Requirements** of the Brookline Zoning By-Law as follows:

1 – By amending Section 2.07 "G" DEFINITIONS (strike-through indicates deletion and underline indicates new text):

1. GROSS FLOOR AREA — The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to the parking in Coolidge Corner and as required in §5.06, paragraph 4, subparagraph d(1)(c)(iv) relating to the parking in the GMR-2.0 District, any floor space in accessory buildings or in the main building intended and designed for parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in the basement; ~~and~~ (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed; and (f) Bicycle Parking Spaces shall not count toward Gross Floor Area. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. For one-, two- and three-family buildings where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

2 – By amending Article VI as follows (underline indicates new text):

ARTICLE VI - VEHICULAR AND BICYCLE SERVICE USES REQUIREMENTS

3 – By amending Section 6.01 as follows (strike-through indicates deletion)

2. Whenever there is an alteration of a structure or a change or extension of a use which increases the parking requirements by 15 percent or more according to the standards of §6.02 ~~and §6.05~~, the total additional parking requirements for the alteration, change, or extension shall be provided in accordance with the requirements of that section. The

calculation of a 15 percent increased requirement shall be based on the aggregate of alterations, changes, or extensions undertaken since July 27, 1962, or since the effective date of any later change in the parking requirements applicable to the premises prior to any alteration, change or extension.

a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements of §6.02 ~~and §6.05~~. However, the Board of Appeals by special permit under Article IX may reduce or eliminate the number of parking spaces required under §6.02 ~~and §6.05~~.

4 - By amending Section 6.01 to add new Paragraph 6 after Paragraph 5:

6. Wherever else in this Zoning By-Law the term "parking" is used without specific reference to bicycle parking, such term shall refer only to parking for Motor Vehicles and not to bicycle parking.

5 – By amending Section 6.05 to delete Section 6.05 in its entirety and insert with new Section 6.05 (strike-through indicates deleted text).

§6.05 ~~BICYCLE SPACE AND DESIGN REGULATIONS~~

~~1. Spaces for off-street parking of bicycles shall be provided for the residents of each multi-family residential building in the amount of one space per five housing units or fraction thereof, not counting units having a ground floor entrance, and wherever else the Board of Appeals requires bicycle spaces as part of design review under Section 5.09.4.d "Circulation" and/or as transportation mitigation measures, subject to the further provisions of this section, § 6.01, and adopted Planning Board Bicycle Guidelines. The requirements of this section shall not apply to that portion of a housing development designed exclusively for elderly persons.~~

~~2. The design, location and maintenance of bicycle parking facilities shall be guided by the Bicycle Guidelines approved by the Planning Board pursuant to Section 5.09.4.n, Design Review- Guidelines.~~

~~3. Changes in the requirements of this section, consistent with the intent of this Article, may be approved by the Board of Appeals for an individual building by special permit.~~

§6.05 OFF-STREET SPACE AND DESIGN REGULATIONS FOR BICYCLE PARKING

1. General

a. Bicycle Parking Areas and Spaces shall be regulated by Sec. 6.05 of the Zoning By-Law and the BICYCLE PARKING DESIGN STANDARDS maintained by the Building Commissioner separate from the Zoning By-Law.

b. Section 6.05 authorizes the Building Commissioner to:

(1) set forth BICYCLE PARKING DESIGN STANDARDS;

(2) enforce BICYCLE PARKING DESIGN STANDARDS, with all requirements of conformance to the BICYCLE PARKING DESIGN STANDARDS enforceable as though said STANDARDS were included in this Section; and

(3) in conjunction with the Planning Director amend BICYCLE PARKING DESIGN STANDARDS consistent with contemporary industry practices for bicycle parking.

2. Definitions

Terms not defined in this Section shall be as defined in Article II and in the BICYCLE PARKING DESIGN STANDARDS.

a. **Bicycle Parking Space**: A physical space at least 2 feet by 6 feet that securely stores one bicycle, including Electric Bicycles, and which may also be referred to as a Standard Bicycle Parking Space.

A **Large Bicycle Parking Space** is a physical space at least 3 feet by 10 feet that securely stores a bicycle larger than what can fit in a Standard Bicycle Parking Space, including but not limited to recumbent bicycles, cargo bicycles, bicycles with a trailer, bicycles with a child seat or child trailer, and tandem bicycles--all of which may referred to as Large Bicycles.

Large Bicycle Parking Spaces shall be prioritized for, but not reserved exclusively for, bicycles that accommodate the mobility needs of different users and the functions of different bicycles that do not fit in a Standard Bicycle Parking Space.

A Bicycle Parking Space of any size and any type shall be served by a Bicycle Rack, unless the Bicycle Parking Space is in a Bicycle Locker.

No part of a bicycle parked in a Bicycle Parking Space of any size or type shall create an obstruction in pedestrian aisles and drive aisles.

Bicycle Parking Spaces shall not be installed in the public way or Street without the approval and specifications of the Public Works Department.

Bicycle Parking Spaces of any size may be Long-Term or Short-Term.

b. **Bicycle Parking Space, Long-Term**: A Bicycle Parking Space that serves users staying more than two hours at a site.

c. **Bicycle Parking Space, Short-Term**: A Bicycle Parking Space that serves users staying less than two hours at a site.

d. **Bicycle Parking Area:** A physical space not in the public way reserved for Bicycle Parking Spaces. Bicycle Parking Areas may be Long-Term or Short-Term.

e. **Bicycle Parking Area, Long-Term**: An area meeting the performance criteria in the BICYCLE PARKING DESIGN STANDARDS that is (1) made up to Long-Term Bicycle Parking Spaces and (2) located in an unoccupied area in a building or an enclosed area within a Parking Garage or (3) served by a Bicycle Locker or Bicycle Shed

f. **Bicycle Parking Area, Short-Term**: An area that is (1) made up Short-Term Bicycle Parking Spaces and (2) located on a private parcel and easily identified and accessed by the public.

g. **Bicycle Locker**: A fixed-in-place, lockable container closed on all sides that is fabricated to industry standards and that shall meet all of the following performance criteria: (1) can accommodate one Long-Term Bicycle Parking Space, (2) is made of durable material, (3) is designed to fully protect the bicycle against inclement weather, (4) provides secure protection against theft, (5) opens sufficiently to allow bicyclists easy access, (5) has a perforated area to allow air flow for security and safety, and (6) is of a character and color that adds aesthetically to the immediate environment. Bicycle Racks are not required in Bicycle Lockers.

   Bicycle Lockers shall be:

   (1) Stored within unoccupied areas within a Building or outside of a Building;
   (2) Used only for the storage of bicycles;
   (3) Prohibited in Short-Term Bicycle Parking Spaces; and
   (4) Bicycle Lockers stored outside of a Building shall be considered Accessory Structures.

h. **Bicycle Shed**: A covered and lockable enclosure that is fabricated to industry standards and that shall meet all of the following performance criteria: (1) can contain multiple Long-Term Bicycle Spaces equipped with Bicycle Racks, (2) provides secure protection against theft, (3) provides at least overhead protection against inclement weather, (4) opens sufficiently to allow bicyclists easy access and (5) is of a character and color that adds aesthetically to the immediate environment.

   Bicycle Sheds shall be:

   (1) Stored within unoccupied areas within a Building or outside of a Building;
   (2) Used only for the storage of bicycles;
   (3) Prohibited in Short-Term Bicycle Parking Spaces; and

(4) Bicycle Sheds stored outside of a Building shall be considered Accessory Structures.

i. **Bicycle Rack** also **Rack**

One Bicycle Rack shall serve one or two Bicycle Parking Spaces of any type as long as the minimum distance between Racks complies with the manufacturer's specifications or the BICYCLE PARKING DESIGN STANDARDS.

Racks are not required in Bicycle Lockers.

Acceptable Racks shall include Post-and-Ring and Inverted-U and equivalent versions of these aforementioned types and shall meet the performance criteria specified in the BICYCLE PARKING DESIGN STANDARDS.

j. Bicycle Rack, High-Density: Racks installed that require bicycles to be hung on a wall (Vertical Bicycle Racks) or lifted off the floor (Two-Tier Bicycle Racks)

k. **Electric Bicycle:** Shall be as defined as under Massachusetts General Laws. In the absence of a definition in Massachusetts General Laws, Electrical Bicycle shall be as defined under federal law.

l. The terms "**Motor Vehicle(s)**," "Motorized Bicycle(s)," "**Motorcycle(s)**," "**Motorized Scooter(s)**," and "**Moped**" shall be as defined under Massachusetts General Laws. Such categories of vehicles with the exception of Electric Bicycles shall be prohibited from parking in Bicycle Parking Spaces.

3. Bicycle Parking Spaces and Areas: Applicable Uses and Requirements

a. Long-Term Bicycle Parking Spaces are required in Residential Uses with 8 units or more.

b. Any quantity of Bicycle Parking Spaces, Short-Term or Long-Term, that are provided though not required under **Table 6.05-1** shall comply with the requirements of Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS, unless other otherwise specified.

c. At least 75% of Long-Term Bicycle Parking Spaces shall be on the ground and secured with either an Inverted U Rack or Post-and-Ring Rack. One Inverted U Rack or Post-and-Ring Rack may serve one or two Bicycle Parking Spaces, as long as the required minimum distance between Racks complies with the BICYCLE PARKING DESIGN STANDARDS.

d. Required Minimum Quantity of Bicycle Parking Spaces

Table 6.05-1

General Use Category	Building Use	Number of Long-Term Bicycle Parking Spaces	Number of Short-Term Bicycle Parking Spaces
Residential Uses	1 to 7 Dwelling Units, including Accessory Dwelling Units	No Minimum	No minimum
	Multiple Dwellings, including Microunits, 8 units and above	1.1 per Dwelling Unit	
	Multiple Dwellings in which at least 100% of total units are Affordable Units as defined in Sec. 4.08	0.5 per Dwelling Unit	
	Age Restricted Dwelling	0.5 per Dwelling Unit	
	All Other Residential Uses	No Minimum	
Non-Residential Uses	All	No Minimum	

e. Large Bicycle Parking Spaces

(1) Required Minimum Quantity: Where 16 or more Long-Term Bicycle Parking Spaces are required, the required minimum quantity of Large Bicycle Parking Spaces shall be 5% of the total number of Long-Term Bicycle Parking Spaces Required and no fewer than 2.

(2) All Large Bicycle Parking Spaces shall be on the ground with the bicycle frame horizontal to the ground and shall be equipped with either an Inverted U Rack or Post-and-Ring Rack.

(3) Large Bicycle Parking Spaces shall be prioritized for, but shall not be restricted to, parking Large Bicycles.

(4) Large Bicycle Parking Spaces shall count toward the required minimum quantity of Long-Term Bicycle Parking Spaces specified in Table 6.05-1.

f. High-Density Bicycle Parking Spaces

(1) No more than 25% of Long-Term Bicycle Parking Spaces shall be High-Density Racks.

(2) Clearances above, below, and around Vertical Bicycle Racks or Two-Tier Bicycle Racks shall comply with the manufacturers' instructions.

(3) High-Density Bicycle Racks shall be prohibited in Short-Term Bicycle Parking Spaces.

g. Any Short-Term Bicycle Parking Spaces that are provided voluntarily or are required shall not count toward the number of required Long-Term Bicycle Parking Spaces.

4. Required Materials for Plan Reviews, Site Plan and/or Design Review, and Special Permit and Building Applications

Plans for Bicycle Parking Areas, Long-Term and Short-Term, shall be stamped and signed by a registered architect, professional engineer, qualified transportation planner or transportation designer certifying that such plans meet the performance criteria and requirements of Sec. 6.05 the BICYCLE PARKING DESIGN STANDARDS. Such plans shall also show compliance with any and all applicable State Building and Fire Codes.

5. Layout Standards for All Bicycle Parking Areas, Bicycle Parking Spaces, Clearances, and Aisles

Plans for Bicycle Parking Areas shall be stamped by a registered architect, professional engineer, qualified transportation planner or transportation designer showing evidence of compliance with dimensions recommended by the Rack, Bike Locker, and/or Bicycle Shed manufacturer for layout of Racks; clearances above, below, around, and between Racks; slope of and widths of the aisle used by a pedestrian walking a bicycle. In lieu of a manufacturer's specifications for layout for Bicycle Parking Spaces and Racks, Bicycle Parking Areas shall comply with the minimum standards indicated in the BICYCLE PARKING DESIGN STANDARDS and shall not conflict with the latest edition of the Massachusetts State Building Codes.

6. Exemptions

Uses indicated in Table 6.05-1 are exempt from required minimum quantities only. Any Short-Term and Long-Term Bicycle Spaces provided shall comply with Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS.

7. Exceptions and Waivers

a. The Board of Appeals may waive by Special Permit up to one-half the bicycle parking spaces
required in the following cases as long as the change or conversion does not meet the definition of
demolition as defined in Article 5.3 of the General By-Laws:

(1) conversion to residential use with eight units or more, or

(2) an existing residential use with at least seven units or more in which the number
of dwelling units is increased by one or more

b. Use of High-Density Bicycle Racks, Bicycle Lockers, and Bicycle Sheds are permitted in compliance with Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS.

8. Rounding

Fractional numbers one-half (0.5) and above shall be rounded up to the nearest whole number.

…or act upon anything else relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Department of Planning and Community Development (DPCD), in consultation with the Building Department, proposes an amendment to Section 6.05, bicycle parking and design requirements.

DPCD wishes to acknowledge Town Meeting Members Anthony Ishak and David Kroop for proposing that bicycle parking requirements in the Brookline Zoning By-Law be amended to address the lack of reliable facilities in multifamily housing. Their discussions with staff were informed by their thoughtful research of best practices and engagement with the Brookline community.

This amendment would (a) increase the required minimum bicycle parking ratios and (b) specify enforceable design standards to ensure that bicycle parking areas are accessible and feasible facilities that provide protection from theft, vandalism, and inclement weather. The new requirements would better implement several strategies in the Town's Climate Action Plan and would support the Town's affordable housing goals by increasing options for less expensive, multi-modal transportation.

A newly revised Section 6.05 in the Zoning By-Law—along with the companion Bicycle Parking Design Standards residing outside of the By-Law (see Exhibit A)—would regulate bicycle parking areas and would be enforceable by the Building Commissioner.

Applicability and Required Minimums

Multiple dwellings of eight or more units would be required to provide 1.1 long-term bicycle parking spaces for each dwelling unit. This ratio is consistent with contemporary standards for urban areas as well as conditions applied to several recent multifamily developments, including c.40B projects, permitted by the Board of Appeals. The current ratio of 1 bicycle space for every 5 dwelling units excluding ground floor units has long been outdated and insufficient.

Multiple dwellings that are either 100% affordable or age-restricted would be required to provide 0.5 bicycle parking spaces per dwelling unit.

No minimum parking spaces would be required for short-term parking (less than two-hours of parking) and for non-residential uses in this proposal. For a future amendment, staff is researching possible ratios for customer and employee parking in commercial uses, in tandem with colleagues in the Department of Public Works, who are assessing opportunities for increased bicycle parking supply in the public way.

In addition to parking demand, the compact nature of bicycle parking supports this increase in ratio: Eight bicycle parking spaces and a five-foot wide aisle would be equivalent to just one standard motor vehicle parking stall. Twenty bicycle parking spaces, plus two large-bicycle parking spaces, with a five-foot wide aisle would require approximately 459 square feet—equivalent to three standard motor vehicle parking stalls (excluding the drive aisle).

In addition, the Bicycle Parking Design Standards would allow for a limited number of high-density bicycle racks as well as bicycle lockers and bicycle sheds to provide even more flexibility in configuring parking plans.

Inclusiveness

When 16 or more long-term bicycle parking spaces are required, then 5% (no less than 2) large-bicycle spaces shall be prioritized for, but not exclusively reserved for, non-standard bicycle types such as recumbent bicycle or bicycles with cargo trailers and child seats.

Waivers

To avoid regulatory barriers to developing infill housing and to encourage adaptive reuse instead of demolition, the Board of Appeals may waive by Special Permit up to one-half the bicycle parking spaces required in the following cases *as long as the change or conversion does <u>not</u> meet the definition of demolition as defined in Article 5.3 of the General By-Laws*:

(a) conversion to residential use with eight units or more, or

(b) an existing residential use with at least seven units or more in which the number
of dwelling units is increased by one or more

Enforcement

The proposed amendment would authorize the Building Commissioner to set forth and enforce Bicycle Parking Design Standards. Because contemporary industry standards for bicycle parking may evolve in regard to dimensional requirements and clearances to be more accessible and inclusive, the amendment would authorize the Building Commissioner, in conjunction with the Planning Director, to amend the Bicycle Parking Design Standards to be consistent with accepted best practices.

Town Counsel's Opinion

Town Counsel Jonathan has reviewed the language of both the proposed amendment and the standalone Design Standards, and staff has incorporated his recommended language to specify how the Building Commissioner would be authorized to set forth, enforce, and (with the Planning Director) amend the Design Standards as contemporary bicycle parking best practices continue to evolve.

EXHIBIT A: BICYCLE PARKING DESIGN STANDARDS

Bicycle Parking Spaces and Areas not in the public way are regulated under the Zoning By-Law Sec. 6.05 and the Bicycle Parking Design Standards.

Performance Criteria and Requirements for Location of and Access to Long-Term Rack Areas

The Long-Term Bicycle Parking Area shall be:

1. [Security] Located in an enclosed space room in a building such a dedicated Bicycle Parking Area or portion of a Parking Garage that provides protection from theft and vandalism with secured or supervised access limited to defined user groups, such as but not limited to residents of the building;

2. [Weather Protection] Located within a roof-covered enclosure to provide protection from weather;

3. [Fixtures] Equipped with securely installed Racks to resist tampering and theft and that accommodate a wide variety bicycle types;

4. [Convenience] Located preferably on the ground floor or comparably to the nearest non-accessible Vehicular Parking Spaces. When that is not possible, ramps with slopes no steeper than 5% or elevators large enough to accommodate a pedestrian walking a bicycle are provided;

5. [Separated] Physically protected from Vehicular Parking Spaces and Loading Areas by an enclosure, bollards, or other physical barrier;

6. Aisles providing access to the Long-Term Bicycle Parking Area shall comply with all of the following:

a. [Clear of Obstructions] Are at least 5 feet wide and have at least 7 feet of vertical clearance to accommodate at least one pedestrian walking a bicycle and the entire width of which is clear from overhead or other obstructions;
b. Have a slope no greater than 5%;
c. Be protected from vehicular traffic traveling on the same access way;
d. Be illuminated to provide safe access; and
e. Constriction points, such as a doorway, shall be not be less than 3 feet wide and shall not conflict with the MA State Building Code.

Short-Term Bicycle Parking Spaces and Areas

Short-Term Bicycle Parking Spaces and Areas shall meet all of the following requirements:

1. Be easily identified and accessible by the public;
2. Be equipped with Bicycle Racks as specified and required in this Section;
3. Be conveniently located near building entrances or, if applicable, as approved by the permit granting authority;
4. Provide at least 4 feet of clearance for pedestrian access;
5. Be separated from vehicular traffic and vehicular parking areas;
6. Not count toward the required minimum quantity of Long-Term Bicycle Parking Spaces; and
7. Not be installed in Bicycle Lockers and Bicycle Sheds.

Layout Requirements for All Bicycle Parking Areas, Bicycle Parking Spaces, Clearances, and Aisles

The Applicant shall comply with these Standards. Layout of Bicycle Parking Areas shall comply these standards or with manufacturers' dimensional specifications. Layouts shall not conflict with the latest edition of the Massachusetts State Building Codes.

Performance Criteria: The following standards are the minimum requirements for Bicycle Parking Areas. Plans for Rack Areas submitted for projects that require a Building Permit such demonstrate:

1. Safe and feasible clearance on all sides of a Parking Spaces for Bicycles of any type is provided that does not require the removal of a bicycle is to access a Bicycle Parking Space;

2. Safe and feasible access to Parking Spaces for Bicycles of any type, including turning radius;

3. At least one aisle at least 5 feet wide to allow for maneuvering. Aisles shall free from obstructions and shall accommodate at least one-way traffic with one pedestrian walking beside a Bicycle. Providing aisles wider than 5 feet or providing more than one aisle may be necessary in high-traffic areas;

4. Bicycles parked in Bicycle Parking Areas do not create obstructions for pedestrians or motor vehicles;

5. Adequate clearance around hydrants and wall hydrants is provided in compliance with State Fire and Building Codes.

6. Bicycle Parking Areas shall have at least one means of egress way no less than 3 feet wide. High-traffic Bicycle Parking Areas may need more than means of egress;

7. Bicycle Lockers and Bicycle Sheds shall be located so that doors can open fully to allow access and not create obstructions in pedestrian aisles and drive aisles; and

8. The minimum distance between Rack shall comply with the requirements of this Section or as required by the Rack manufacturer.

9. Minimum Dimensional Requirements

	TYPE OF BICYCLE PARKING SPACE		
	Long-Term Standard	Long-Term Large	High-Density
ONE BICYCLE SPACE ▪ Assumes that two bicycles secured to one Rack are not staggered	2 feet by 6 feet	3 feet by 10 feet	Follow Manufacturer's Instructions
CLEARANCE, Distance Between Center of Rack and Wall			
▪ Rack Parallel to Wall	3 feet	Follow Manufacturer's Instructions	Follow Manufacturer's Instructions
▪ Rack Perpendicular to Wall	3 feet		
▪ Rack Angled 45-Degrees ▪ to Any Wall	3 feet		
CLEARANCE, Distance Between Racks			
▪ Side-by-Side Racks	▪ One Bicycle Secured: 2.5 feet on center ▪ Two Bicycles Secured: 4 feet on center	Follow Manufacturer's Instructions Or plans shall demonstrate safe and feasible access and turning radius	Follow Manufacturer's Instructions
▪ In-Line Racks ▪ Distance between rows of Side-by-Side Racks	10 feet on center		
▪ Racks Angled 45-Degrees	▪ One Bicycle Secured: 2.5 feet on center ▪ Two Bicycles Secured: 4 feet on center		
▪ Racks of One Configuration and Racks of Any Other Configuration	4 feet on center		
WIDTH OF PEDESTRIAN AISLE, Measured between Bicycle Parking Spaces	5 feet minimum and shall not be in conflict with the State Building Codes		
WIDTH OF MEANS OF EGRESS	3 feet minimum and shall not be in conflict with the State Building Codes		

Bicycle Racks

A Bicycle Rack shall meet all of the following performance criteria:

1. Supports the bicycle upright by its frame horizontally: Highest point is at a minimum of 32 inches above the ground. Provides two points of contact with the bicycle. Keeps both wheels on the ground and prevents bicycle from tipping over.

2. Allows locking of bicycle frame and at least one wheel with a U-lock: Diameter of locking pole is no more than 1.5 inches.

3. Materials are durable and secure: Resists tampering and cutting, such as steel or stainless steel.

4. Use is intuitive and does not require written instructions

5. Installation method protects against theft or vandalism: Rack is installed with either the In-Ground Mount or Surface Mount method. Free-standing Racks are not acceptable.

    a. **In-Ground Mount:** Rack is installed on a permanent concrete-pad foundation.
    b. **Surface-Mount:** Rack is secured to the surface with a tamper-proof method.

Sample layouts to be provided.

JOINT PLANNING BOARD AND ZONING BYLAW COMMITTEE REPORT

The current bicycle parking regulation requires one bicycle parking space for every five residential units and references Planning Board Bicycle Design Guidelines that do not exist. This regulation is out of date and not consistent with higher ratios that multifamily developers voluntarily provide.
This amendment would (a) increase the required minimum bicycle parking ratios and (b) specify enforceable design standards to ensure that bicycle parking areas are accessible and feasible facilities that provide protection from theft, vandalism, and inclement weather. The new requirements would better implement several strategies in the Town's Climate Action Plan and would support the Town's affordable housing goals by increasing options for less expensive, multi-modal transportation.

A newly revised Section 6.05 in the Zoning By-Law—along with the companion Bicycle Parking Design Standards residing outside of the By-Law (see Exhibit A of the Explanation)—would regulate bicycle parking areas and would be enforceable by the Building Commissioner.

For multifamily housing of eight units or more, a minimum of 1.1 bicycle parking spaces per dwelling unit would be required. For age-restricted and 100% affordable housing, a minimum of 0.5 bicycle parking space per dwelling unit would be required. A waiver of up to half the required bicycle parking spaces would be allowed by Special Permit for housing projects that do not trigger demolition as defined in the General By-Laws. No more than 25% of total bicycle parking spaces may be high-density (compact) parking spaces. For areas with 16 spaces or more, at least 5% of the spaces shall be sized to accommodate large bicycles (recumbent bikes and bikes with trailers, for example).

Planning Board Discussion
One Board member believed that parking ratios for age-restricted and 100% affordable housing should not be lower than the standard 1.1 ratio proposed. Staff responded that the lower ratios are consistent with the ratios mandated in nearby communities and have the added benefit of reducing regulatory barriers for this type of much needed housing, which is challenging to finance. Board members asked what types of permitting activities would prompt application of the bylaw. Staff responded that the bicycle parking space requirement is tied to number of units; therefore, if the number of units are increased (or if construction is new), this bylaw would be applicable.

Planning Board Vote

The Planning Board held a joint hearing with the Zoning Bylaw Committee. The Zoning Bylaw Committee voted favorable action on the version of the article that was presented: 8-0-1 (9 absent). The Planning Board voted 6-0 (1 absent) to recommend Favorable Action of the version of the Warrant Article dated April 14, 2022, which reflects the Advisory Land Use subcommittee's minor copyediting amendments, also approved by the Advisory Committee and Select Board.

SELECT BOARD'S RECOMMENDATION

The Select Board agree with the recommendations of the Planning Board and Zoning By-Law Committee and Advisory Committee to create design standards for bicycle parking areas and require a certain number of bicycle parking spaces in certain housing types.

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

ROLL CALL VOTE:

Aye:	Absent:
Hamilton	Aschkenasy
Fernandez	
Greene	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: Favorable Action, as amended, by a vote of 22-0 with no abstentions.

Executive Summary:	This article is brought by the Department of Planning and Community Development and if approved by Town Meeting, would amend Section 6.05 of the Zoning By-Law to create design standards for bicycle parking areas and require a certain number of bicycle parking spaces in certain housing types. At least 1.1 long-term bicycle parking spaces per dwelling unit would be required for multiple dwellings of 8 units and above, while 0.5 long-term bicycle parking spaces per dwelling unit would be required for multiple dwellings where 100% of the units are affordable units, and age-restricted dwellings. Article 18 also proposes a change to Section 2.07 "G" Definitions, (1) Gross Floor Area.

Voting Yes will...	Amend Section 6.05 of the Zoning By-Law to add design requirements for bicycle parking areas and require 0.5 or 1.1 long-term bicycle parking spaces per dwelling unit in certain multifamily residential dwellings.
Voting No will...	Leave Section 6.05 unchanged, with no design requirements for bicycle parking areas and 0.2 "spaces for off-street parking of bicycles" per dwelling unit required for "each multifamily residential building" excluding "that portion of a housing development designed exclusively for elderly persons" (existing Section 6.05).
Financial impact	The Building Commissioner does not believe there would be an increase in workload for the staff at the Building Department. although the Building Commissioner would (a) create and amend the Bicycle Parking Design Standards in conjunction with the Planning Director, and (b) enforce these standards.
Legal implications	Changes to the Zoning By-Law are subject to Attorney General review; the inclusion of Bicycle Parking Design Standards by reference in the Zoning By-Law is somewhat novel, although the Transportation Access Plan guidelines for Major Impact Projects are similar.

Introduction

The Department of Planning and Community Development (DPCD), in consultation with the Building Department, proposes making changes to Section 2.01 and Section 6.01 of the Zoning By-law and significantly amending the existing Section 6.05, "Bicycle Space and Design Regulations". DPCD acknowledges Town Meeting Members Anthony Ishak and David Kroop for the initial suggestion that zoning address the lack of reliable bicycle facilities in multifamily housing.

This amendment would (a) increase the required minimum bicycle parking ratios and (b) specify enforceable design standards to ensure that bicycle parking areas are accessible and feasible facilities that provide protection from theft, vandalism, and inclement weather. DPCD staff suggests that the new requirements would implement several strategies in the Town's Climate Action Plan and would support the Town's affordable housing goals by increasing options for less expensive, multi-modal transportation.

A newly revised Section 6.05 in the Zoning By-Law — along with the companion Bicycle Parking Design Standards residing outside of the By-Law — would regulate bicycle parking areas and would be enforceable by the Building Commissioner, while Section

2.07 "G" of the Zoning By-Law, as amended, would exempt Bicycle Parking Space from the Gross Floor Area, in particular when calculating Floor Area Ratio (FAR).

Evaluation Methodology/Research

- The Planning Department worked together with Town Meeting Members Anthony Ishak and David Kroop, as representatives of Brookline's bicycling community, to draft this article.
- The specific bicycle design requirements are heavily based on the similar bicycle design requirements next door in Cambridge, MA.

Discussion

Several concerns were raised, as follows:

1. The basis for the 1.1 long-term bicycle parking space per dwelling unit minimum. This number was taken from the Cambridge Bicycle Parking Standards, on which this warrant article was based, although the citizen petitioners originally wanted a higher figure (1.5). DPCD reports that developers are voluntarily building spaces at a 1:1 ratio. A question was asked about the parking area cost to provide these spaces, and whether requiring bicycle parking would add exorbitant costs to the developer. In response, an example was given: given a multifamily dwelling that currently requires 22 parking spaces, the required additional bicycle parking space that would be required would be equivalent to an additional 3 parking spaces, including the drive aisle. Concern was expressed that 1.1 long-term bicycle parking spaces per dwelling unit may not be the "right" number.

2. Detailed bicycle parking space design requirements are not written into the proposed amendment, but instead would be part of a separate document maintained by the Building Commissioner in conjunction with the Planning Department. Legally this is similar to the way that Section 5.09 of the Zoning By-Law requires a Transportation Access Plan (TAP) for developments denoted as Major Impact Projects, but the TAP guidelines are maintained by the Planning Department and are not written into the By-law itself. Concern was expressed that Town Meeting Members would need to know the precise standards being set in order to cast a knowledgeable vote on this amendment; a copy of the standards was distributed with the Warrant Article Explanations distributed to every Town Meeting Member, and was additionally included in the subcommittee report on this article.

DPCD staff explained that the Bicycle Design Standards provisions were written in this manner to allow the standards to evolve over time. The definitions which are stable were written into the By-Law, but DPCD expects that there may be, for example, additional technology improvements in bicycle racks which could be accommodated, or future improvements to the standards with respect to clearance requirements or slope of the access path.

3. The conditions under which existing properties must be brought into compliance. There are no specific provisions for "significant renovations" in the proposed By-Law amendment, so the new zoning requirements would take effect in the same way as most other changes to the By-Law: a "significant alteration" to the portion of the property affected by the amendment would need to be performed in order to require the property to be in compliant with the newly-amended By-Law.

4. Narrow scope for minimums. Concerns were expressed about the reduced requirement for 100% affordable buildings, and the lack of a requirement for commercial properties—expressing a hope that something for workplace bicycle parking could be brought to a future Town Meeting.

Some minor amendments were made to the motion in the article with the cooperation of the DPCD staff: two copyediting fixes and the deletion of the mention of "microunits" as unnecessary. These changes are shown in the Appendix.

Recommendation
The Advisory Committee, by a vote of 22-0 with no abstentions, recommends FAVORABLE ACTION WA18 as amended.

MOVED THAT the Town will amend **Article II-Definitions** and **Article VI-Vehicular Service Uses Requirements** of the Brookline Zoning By-Law as follows:

1 – By amending Section 2.07 "G" DEFINITIONS (strike-through indicates deletion and underline indicates new text):

1. GROSS FLOOR AREA — The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph
b (3) relating to the parking in Coolidge Corner and as required in §5.06, paragraph 4, subparagraph d (1)(c)(iv) relating to the parking in the GMR-2.0 District, any floor space in accessory buildings or in the main building intended and designed for parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in the basement; ~~and~~ (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed; and (f) Bicycle Parking Spaces shall not count toward Gross Floor Area. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. For one-, two- and three-family buildings where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas

where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

2 – By amending Article VI as follows (underline indicates new text):

ARTICLE VI - VEHICULAR AND BICYCLE SERVICE USES REQUIREMENTS

3 – By amending Section 6.01 as follows (strike-through indicates deletion)

2. Whenever there is an alteration of a structure or a change or extension of a use which increases the parking requirements by 15 percent or more according to the standards of §6.02 ~~and §6.05~~, the total additional parking requirements for the alteration, change, or extension shall be provided in accordance with the requirements of that section. The calculation of a 15 percent increased requirement shall be based on the aggregate of alterations, changes, or extensions undertaken since July 27, 1962, or since the effective date of any later change in the parking requirements applicable to the premises prior to any alteration, change or extension.

a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements of §6.02 ~~and §6.05~~. However, the Board of Appeals by special permit under Article IX may reduce or eliminate the number of parking spaces required under §6.02 ~~and §6.05~~.

4 - By amending Section 6.01 to add new Paragraph 6 after Paragraph 5:

6. Wherever else in this Zoning By-Law the term "parking" is used without specific reference to bicycle parking, such term shall refer only to parking for Motor Vehicles and not to bicycle parking.

5 – By amending Section 6.05 to delete Section 6.05 in its entirety and insert with new Section 6.05 (strike-through indicates deleted text).

§6.05 ~~BICYCLE SPACE AND DESIGN REGULATIONS~~

~~1. Spaces for off-street parking of bicycles shall be provided for the residents of each multi-family residential building in the amount of one space per five housing units or fraction thereof, not counting units having a ground floor entrance, and wherever else the Board of Appeals requires bicycle spaces as part of design review under Section 5.09.4.d "Circulation" and/or as transportation mitigation measures, subject to the further provisions of this section, § 6.01, and adopted Planning Board Bicycle Guidelines. The requirements of this section shall not apply to that portion of a housing development designed exclusively for elderly persons.~~

~~2. The design, location and maintenance of bicycle parking facilities shall be guided by the Bicycle Guidelines approved by the Planning Board pursuant to Section 5.09.4.n, Design Review Guidelines.~~

~~3. Changes in the requirements of this section, consistent with the intent of this Article, may be approved by the Board of Appeals for an individual building by special permit.~~

§6.05 OFF-STREET SPACE AND DESIGN REGULATIONS FOR BICYCLE PARKING

1. General

a. Bicycle Parking Areas and Spaces shall be regulated by Sec. 6.05 of the Zoning By-Law and the BICYCLE PARKING DESIGN STANDARDS maintained by the Building Commissioner separate from the Zoning By-Law.

b. Section 6.05 authorizes the Building Commissioner to:

1. set forth BICYCLE PARKING DESIGN STANDARDS;

2. enforce BICYCLE PARKING DESIGN STANDARDS, with all requirements of conformance to the BICYCLE PARKING DESIGN STANDARDS enforceable as though said STANDARDS were included in this Section; and

3. in conjunction with the Planning Director amend BICYCLE PARKING DESIGN STANDARDS consistent with contemporary industry practices for bicycle parking.

2. Definitions

Terms not defined in this Section shall be as defined in Article II and in the BICYCLE PARKING DESIGN STANDARDS.

a. **Bicycle Parking Space**: A physical space at least 2 feet by 6 feet that securely stores one bicycle, including Electric Bicycles, and which may also be referred to as a Standard Bicycle Parking Space.

A **Large Bicycle Parking Space** is a physical space at least 3 feet by 10 feet that securely stores a bicycle larger than what can fit in a Standard Bicycle Parking Space, including but not limited to recumbent bicycles, cargo bicycles, bicycles with a trailer, bicycles with a child seat or child trailer, and tandem bicycles--all of which may referred to as Large Bicycles.

Large Bicycle Parking Spaces shall be prioritized for, but not reserved exclusively for, bicycles that accommodate the mobility needs of different users and the functions of different bicycles that do not fit in a Standard Bicycle Parking Space.

A Bicycle Parking Space of any size and any type shall be served by a Bicycle Rack, unless the Bicycle Parking Space is in a Bicycle Locker.

No part of a bicycle parked in a Bicycle Parking Space of any size or type shall create an obstruction in pedestrian aisles and drive aisles.

Bicycle Parking Spaces shall not be installed in the public way or Street without the approval and specifications of the Public Works Department.

Bicycle Parking Spaces of any size may be Long-Term or Short-Term.

b. **Bicycle Parking Space, Long-Term**: A Bicycle Parking Space that serves users staying more than two hours at a site.

c. **Bicycle Parking Space, Short-Term**: A Bicycle Parking Space that serves users staying less than two hours at a site.

d. **Bicycle Parking Area:** A physical space not in the public way reserved for Bicycle Parking Spaces. Bicycle Parking Areas may be Long-Term or Short-Term.

e. **Bicycle Parking Area, Long-Term**: An area meeting the performance criteria in the BICYCLE PARKING DESIGN STANDARDS that is (1) made up to Long-Term Bicycle Parking Spaces and (2) located in an unoccupied area in a building or an enclosed area within a Parking Garage or (3) served by a Bicycle Locker or Bicycle Shed

f. **Bicycle Parking Area, Short-Term**: An area that is (1) made up Short-Term Bicycle Parking Spaces and (2) located on a private parcel and easily identified and accessed by the public.

g. **Bicycle Locker**: A fixed-in-place, lockable container closed on all sides that is fabricated to industry standards and that shall meet all of the following performance criteria: (1) can accommodate one Long-Term Bicycle Parking Space, (2) is made of durable material, (3) is designed to fully protect the bicycle against inclement weather, (4) provides secure protection against theft, (5) opens sufficiently to allow bicyclists easy access, (5) has a perforated area to allow air flow for security and safety, and (6) is of a character and color that adds aesthetically to the immediate environment. Bicycle Racks are not required in Bicycle Lockers.

Bicycle Lockers shall be:

1. Stored within unoccupied areas within a Building or outside of a Building;
2. Used only for the storage of bicycles;
3. Prohibited in Short-Term Bicycle Parking Spaces; and
4. Bicycle Lockers stored outside of a Building shall be considered Accessory Structures.

h. **Bicycle Shed**: A covered and lockable enclosure that is fabricated to industry standards and that shall meet all of the following performance criteria: (1) can contain multiple Long-Term Bicycle Spaces equipped with Bicycle Racks, (2) provides secure protection

against theft, (3) provides at least overhead protection against inclement weather, (4) opens sufficiently to allow bicyclists easy access and (5) is of a character and color that adds aesthetically to the immediate environment.

Bicycle Sheds shall be:

1. Stored within unoccupied areas within a Building or outside of a Building;
2. Used only for the storage of bicycles;
3. Prohibited in Short-Term Bicycle Parking Spaces; and
4. Bicycle Sheds stored outside of a Building shall be considered Accessory Structures.

i. **Bicycle Rack** also **Rack**

One Bicycle Rack shall serve one or two Bicycle Parking Spaces of any type as long as the minimum distance between Racks complies with the manufacturer's specifications or the BICYCLE PARKING DESIGN STANDARDS.

Racks are not required in Bicycle Lockers.

Acceptable Racks shall include Post-and-Ring and Inverted-U and equivalent versions of these aforementioned types and shall meet the performance criteria specified in the BICYCLE PARKING DESIGN STANDARDS.

i. **Bicycle Rack, High-Density:** Racks installed that require bicycles to be hung on a wall (Vertical Bicycle Racks) or lifted off the floor (Two-Tier Bicycle Racks)

j. **Electric Bicycle:** Shall be as defined as under Massachusetts General Laws. In the absence of a definition in Massachusetts General Laws, Electric Bicycle shall be as defined under federal law.

k. The terms "**Motor Vehicle(s)**," "Motorized Bicycle(s)," "**Motorcycle(s)**," "**Motorized Scooter(s)**," and "**Moped**" shall be as defined under Massachusetts General Laws. Such categories of vehicles with the exception of Electric Bicycles shall be prohibited from parking in Bicycle Parking Spaces.

3. Bicycle Parking Spaces and Areas: Applicable Uses and Requirements

a. Long-Term Bicycle Parking Spaces are required in Residential Uses with 8 units or more.

b. Any quantity of Bicycle Parking Spaces, Short-Term or Long-Term, that are provided though not required under **Table 6.05-1** shall comply with the requirements of Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS, unless otherwise specified.

c. At least 75% of Long-Term Bicycle Parking Spaces shall be on the ground and secured with either an Inverted U Rack or Post-and-Ring Rack. One Inverted U Rack or Post-and-Ring Rack may serve one or two Bicycle Parking Spaces, as long as the required minimum distance between Racks complies with the BICYCLE PARKING DESIGN STANDARDS.

d. Required Minimum Quantity of Bicycle Parking Spaces

Table 6.05-1

General Use Category	Building Use	Number of Long-Term Bicycle Parking Spaces	Number of Short-Term Bicycle Parking Spaces
Residential Uses	1 to 7 Dwelling Units, including Accessory Dwelling Units	No Minimum	No minimum
	Multiple Dwellings, 8 units and above	1.1 per Dwelling Unit	
	Multiple Dwellings in which at least 100% of total units are Affordable Units as defined in Sec. 4.08	0.5 per Dwelling Unit	
	Age Restricted Dwelling	0.5 per Dwelling Unit	
	All Other Residential Uses	No Minimum	
Non-Residential Uses	All	No Minimum	

e. Large Bicycle Parking Spaces

1. Required Minimum Quantity: Where 16 or more Long-Term Bicycle Parking Spaces are required, the required minimum quantity of Large Bicycle Parking Spaces shall be 5% of the total number of Long-Term Bicycle Parking Spaces Required and no fewer than 2.

2. All Large Bicycle Parking Spaces shall be on the ground with the bicycle frame horizontal to the ground and shall be equipped with either an Inverted U Rack or Post-and-Ring Rack.

3. Large Bicycle Parking Spaces shall be prioritized for, but shall not be restricted to, parking Large Bicycles.

4. Large Bicycle Parking Spaces shall count toward the required minimum quantity of Long-Term Bicycle Parking Spaces specified in Table 6.05-1.

f. High-Density Bicycle Parking Spaces

1. No more than 25% of Long-Term Bicycle Parking Spaces shall be High-Density Racks.

2. Clearances above, below, and around Vertical Bicycle Racks or Two-Tier Bicycle Racks shall comply with the manufacturers' instructions.

3. High-Density Bicycle Racks shall be prohibited in Short-Term Bicycle Parking Spaces.

g. Any Short-Term Bicycle Parking Spaces that are provided voluntarily or are required shall not count toward the number of required Long-Term Bicycle Parking Spaces.

4. Required Materials for Plan Reviews, Site Plan and/or Design Review, and Special Permit and Building Applications

Plans for Bicycle Parking Areas, Long-Term and Short-Term, shall be stamped and signed by a registered architect, professional engineer, qualified transportation planner or transportation designer certifying that such plans meet the performance criteria and requirements of Sec. 6.05 the BICYCLE PARKING DESIGN STANDARDS. Such plans shall also show compliance with any and all applicable State Building and Fire Codes.

5. Layout Standards for All Bicycle Parking Areas, Bicycle Parking Spaces, Clearances, and Aisles

Plans for Bicycle Parking Areas shall be stamped by a registered architect, professional engineer, qualified transportation planner or transportation designer showing evidence of compliance with dimensions recommended by the Rack, Bike Locker, and/or Bicycle Shed manufacturer for layout of Racks; clearances above, below, around, and between Racks; slope of and widths of the aisle used by a pedestrian walking a bicycle. In lieu of a manufacturer's specifications for layout for Bicycle Parking Spaces and Racks, Bicycle

Parking Areas shall comply with the minimum standards indicated in the BICYCLE PARKING DESIGN STANDARDS and shall not conflict with the latest edition of the Massachusetts State Building Codes.

6. Exemptions

Uses indicated in Table 6.05-1 are exempt from required minimum quantities only. Any Short-Term and Long-Term Bicycle Spaces provided shall comply with Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS.

7. Exceptions and Waivers

a. The Board of Appeals may waive by Special Permit up to one-half the bicycle parking spaces
required in the following cases as long as the change or conversion does not meet the definition of
demolition as defined in Article 5.3 of the General By-Laws:

1. conversion to residential use with eight units or more, or

2. an existing residential use with at least seven units or more in which the number of dwelling units is increased by one or more

b. Use of High-Density Bicycle Racks, Bicycle Lockers, and Bicycle Sheds are permitted in compliance with Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS.

8. Rounding

Fractional numbers one-half (0.5) and above shall be rounded up to the nearest whole number.

ARTICLE 18 ADVISORY COMMITTEE VOTES

Article Description	**Bicycle parking space requirements, as amended**
AC recommendation (Favorable Action unless indicated)	**22-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Advisory Committee modifications from the originally filed warrant article are in ~~*italic strikethrough.*~~

MOVED THAT the Town will amend **Article II-Definitions** and **Article VI-Vehicular Service Uses Requirements** of the Brookline Zoning By-Law as follows:

1 – By amending Section 2.07 "G" DEFINITIONS (strike-through indicates deletion and underline indicates new text):

1. GROSS FLOOR AREA — The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to the parking in Coolidge Corner and as required in §5.06, paragraph 4, subparagraph d(1)(c)(iv) relating to the parking in the GMR-2.0 District, any floor space in accessory buildings or in the main building intended and designed for parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in the basement; ~~and~~ (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed; and <u>(f) Bicycle Parking Spaces shall not count toward Gross Floor Area.</u> Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. For one-, two- and three-family buildings where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

2 – By amending Article VI as follows (underline indicates new text):

ARTICLE VI - VEHICULAR <u>AND BICYCLE</u> SERVICE USES REQUIREMENTS

3 – By amending Section 6.01 as follows (strike-through indicates deletion)

2. Whenever there is an alteration of a structure or a change or extension of a use which increases the parking requirements by 15 percent or more according to the standards of §6.02 ~~and §6.05~~, the total additional parking requirements for the alteration, change, or extension shall be provided in accordance with the requirements of that section. The calculation of a 15 percent increased requirement shall be based on the aggregate of alterations, changes, or extensions undertaken since July 27, 1962, or since the effective date of any later change in the parking requirements applicable to the premises prior to any alteration, change or extension.

a. In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements of §6.02 ~~and §6.05~~. However, the Board of Appeals by special permit under Article IX may reduce or eliminate the number of parking spaces required under §6.02 ~~and §6.05~~.

4 - By amending Section 6.01 to add new Paragraph 6 after Paragraph 5:

6. Wherever else in this Zoning By-Law the term "parking" is used without specific reference to bicycle parking, such term shall refer only to parking for Motor Vehicles and not to bicycle parking.

5 – By amending Section 6.05 to delete Section 6.05 in its entirety and insert with new Section 6.05 (strike-through indicates deleted text).

§6.05 ~~BICYCLE SPACE AND DESIGN REGULATIONS~~

~~1. Spaces for off-street parking of bicycles shall be provided for the residents of each multi-family residential building in the amount of one space per five housing units or fraction thereof, not counting units having a ground floor entrance, and wherever else the Board of Appeals requires bicycle spaces as part of design review under Section 5.09.4.d "Circulation" and/or as transportation mitigation measures, subject to the further provisions of this section, § 6.01, and adopted Planning Board Bicycle Guidelines. The requirements of this section shall not apply to that portion of a housing development designed exclusively for elderly persons.~~

~~2. The design, location and maintenance of bicycle parking facilities shall be guided by the Bicycle Guidelines approved by the Planning Board pursuant to Section 5.09.4.n, Design Review Guidelines.~~

~~3. Changes in the requirements of this section, consistent with the intent of this Article, may be approved by the Board of Appeals for an individual building by special permit.~~

§6.05 OFF-STREET SPACE AND DESIGN REGULATIONS FOR BICYCLE PARKING

9. General

c. Bicycle Parking Areas and Spaces shall be regulated by Sec. 6.05 of the Zoning By-Law and the BICYCLE PARKING DESIGN STANDARDS maintained by the Building Commissioner separate from the Zoning By-Law.

d. Section 6.05 authorizes the Building Commissioner to:

4. set forth BICYCLE PARKING DESIGN STANDARDS;

5. enforce BICYCLE PARKING DESIGN STANDARDS, with all requirements of conformance to the BICYCLE PARKING DESIGN STANDARDS enforceable as though said STANDARDS were included in this Section; and

6. in conjunction with the Planning Director amend BICYCLE PARKING DESIGN STANDARDS consistent with contemporary industry practices for bicycle parking.

10. Definitions

Terms not defined in this Section shall be as defined in Article II and in the BICYCLE PARKING DESIGN STANDARDS.

m. **Bicycle Parking Space**: A physical space at least 2 feet by 6 feet that securely stores one bicycle, including Electric Bicycles, and which may also be referred to as a Standard Bicycle Parking Space.

A **Large Bicycle Parking Space** is a physical space at least 3 feet by 10 feet that securely stores a bicycle larger than what can fit in a Standard Bicycle Parking Space, including but not limited to recumbent bicycles, cargo bicycles, bicycles with a trailer, bicycles with a child seat or child trailer, and tandem bicycles--all of which may referred to as Large Bicycles.

Large Bicycle Parking Spaces shall be prioritized for, but not reserved exclusively for, bicycles that accommodate the mobility needs of different users and the functions of different bicycles that do not fit in a Standard Bicycle Parking Space.

A Bicycle Parking Space of any size and any type shall be served by a Bicycle Rack, unless the Bicycle Parking Space is in a Bicycle Locker.

No part of a bicycle parked in a Bicycle Parking Space of any size or type shall create an obstruction in pedestrian aisles and drive aisles.

Bicycle Parking Spaces shall not be installed in the public way or Street without the approval and specifications of the Public Works Department.

Bicycle Parking Spaces of any size may be Long-Term or Short-Term.

n. **Bicycle Parking Space, Long-Term**: A Bicycle Parking Space that serves users staying more than two hours at a site.

o. **Bicycle Parking Space, Short-Term**: A Bicycle Parking Space that serves users staying less than two hours at a site.

p. **Bicycle Parking Area:** A physical space not in the public way reserved for Bicycle Parking Spaces. Bicycle Parking Areas may be Long-Term or Short-Term.

q. **Bicycle Parking Area, Long-Term**: An area meeting the performance criteria in the BICYCLE PARKING DESIGN STANDARDS that is (1) made up to Long-Term Bicycle Parking Spaces and (2) located in an unoccupied area in a building or an enclosed area within a Parking Garage or (3) served by a Bicycle Locker or Bicycle Shed

r. **Bicycle Parking Area, Short-Term**: An area that is (1) made up Short-Term Bicycle Parking Spaces and (2) located on a private parcel and easily identified and accessed by the public.

s. **Bicycle Locker**: A fixed-in-place, lockable container closed on all sides that is fabricated to industry standards and that shall meet all of the following performance criteria: (1) can accommodate one Long-Term Bicycle Parking Space, (2) is made of durable material, (3) is designed to fully protect the bicycle against inclement weather, (4) provides secure protection against theft, (5) opens sufficiently to allow bicyclists easy access, (5) has a perforated area to allow air flow for security and safety, and (6) is of a character and color that adds aesthetically to the immediate environment. Bicycle Racks are not required in Bicycle Lockers.

Bicycle Lockers shall be:

5. Stored within unoccupied areas within a Building or outside of a Building;
6. Used only for the storage of bicycles;
7. Prohibited in Short-Term Bicycle Parking Spaces; and
8. Bicycle Lockers stored outside of a Building shall be considered Accessory Structures.

t. **Bicycle Shed**: A covered and lockable enclosure that is fabricated to industry standards and that shall meet all of the following performance criteria: (1) can contain multiple Long-Term Bicycle Spaces equipped with Bicycle Racks, (2) provides secure protection against theft, (3) provides at least overhead protection against inclement weather, (4) opens sufficiently to allow bicyclists easy access and (5) is of a character and color that adds aesthetically to the immediate environment.

Bicycle Sheds shall be:

5. Stored within unoccupied areas within a Building or outside of a Building;
6. Used only for the storage of bicycles;
7. Prohibited in Short-Term Bicycle Parking Spaces; and
8. Bicycle Sheds stored outside of a Building shall be considered Accessory Structures.

u. **Bicycle Rack** also **Rack**

One Bicycle Rack shall serve one or two Bicycle Parking Spaces of any type as long as the minimum distance between Racks complies with the manufacturer's specifications or the BICYCLE PARKING DESIGN STANDARDS.

Racks are not required in Bicycle Lockers.

Acceptable Racks shall include Post-and-Ring and Inverted-U and equivalent versions of these aforementioned types and shall meet the performance criteria specified in the BICYCLE PARKING DESIGN STANDARDS.

l. **Bicycle Rack, High-Density:** Racks installed that require bicycles to be hung on a wall (Vertical Bicycle Racks) or lifted off the floor (Two-Tier Bicycle Racks)

m. **Electric Bicycle:** Shall be as defined as under Massachusetts General Laws. In the absence of a definition in Massachusetts General Laws, Electric~~al~~ Bicycle shall be as defined under federal law.

n. The terms "**Motor Vehicle(s)**," "Motorized Bicycle(s)," "**Motorcycle(s)**," "**Motorized Scooter(s)**," and "**Moped**" shall be as defined under Massachusetts General Laws. Such categories of vehicles with the exception of Electric Bicycles shall be prohibited from parking in Bicycle Parking Spaces.

11. Bicycle Parking Spaces and Areas: Applicable Uses and Requirements

h. Long-Term Bicycle Parking Spaces are required in Residential Uses with 8 units or more.

i. Any quantity of Bicycle Parking Spaces, Short-Term or Long-Term, that are provided though not required under **Table 6.05-1** shall comply with the requirements of Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS, unless ~~*other*~~ otherwise specified.

j. At least 75% of Long-Term Bicycle Parking Spaces shall be on the ground and secured with either an Inverted U Rack or Post-and-Ring Rack. One Inverted U Rack or Post-and-Ring Rack may serve one or two Bicycle Parking Spaces, as long as the required minimum distance between Racks complies with the BICYCLE PARKING DESIGN STANDARDS.

k. Required Minimum Quantity of Bicycle Parking Spaces

Table 6.05-1

General Use Category	Building Use	Number of Long-Term Bicycle Parking Spaces	Number of Short-Term Bicycle Parking Spaces
Residential Uses	1 to 7 Dwelling Units, including Accessory Dwelling Units	No Minimum	No minimum
	Multiple Dwellings, ~~*including Microunits,*~~ 8 units and above	1.1 per Dwelling Unit	
	Multiple Dwellings in which at least 100% of total units are Affordable Units as defined in Sec. 4.08	0.5 per Dwelling Unit	
	Age Restricted Dwelling	0.5 per Dwelling Unit	
	All Other Residential Uses	No Minimum	
Non-Residential Uses	All	No Minimum	

l. Large Bicycle Parking Spaces

5. Required Minimum Quantity: Where 16 or more Long-Term Bicycle Parking Spaces are required, the required minimum quantity of Large Bicycle Parking Spaces shall be 5% of the total number of Long-Term Bicycle Parking Spaces Required and no fewer than 2.

6. All Large Bicycle Parking Spaces shall be on the ground with the bicycle frame horizontal to the ground and shall be equipped with either an Inverted U Rack or Post-and-Ring Rack.

7. Large Bicycle Parking Spaces shall be prioritized for, but shall not be restricted to, parking Large Bicycles.

8. Large Bicycle Parking Spaces shall count toward the required minimum quantity of Long-Term Bicycle Parking Spaces specified in Table 6.05-1.

m. High-Density Bicycle Parking Spaces

4. No more than 25% of Long-Term Bicycle Parking Spaces shall be High-Density Racks.

5. Clearances above, below, and around Vertical Bicycle Racks or Two-Tier Bicycle Racks shall comply with the manufacturers' instructions.

6. High-Density Bicycle Racks shall be prohibited in Short-Term Bicycle Parking Spaces.

n. Any Short-Term Bicycle Parking Spaces that are provided voluntarily or are required shall not count toward the number of required Long-Term Bicycle Parking Spaces.

12. Required Materials for Plan Reviews, Site Plan and/or Design Review, and Special Permit and Building Applications

Plans for Bicycle Parking Areas, Long-Term and Short-Term, shall be stamped and signed by a registered architect, professional engineer, qualified transportation planner or transportation designer certifying that such plans meet the performance criteria and requirements of Sec. 6.05 the BICYCLE PARKING DESIGN STANDARDS. Such plans shall also show compliance with any and all applicable State Building and Fire Codes.

13. Layout Standards for All Bicycle Parking Areas, Bicycle Parking Spaces, Clearances, and Aisles

Plans for Bicycle Parking Areas shall be stamped by a registered architect, professional engineer, qualified transportation planner or transportation designer showing evidence of compliance with dimensions recommended by the Rack, Bike Locker, and/or Bicycle Shed manufacturer for layout of Racks; clearances above, below, around, and between Racks; slope of and widths of the aisle used by a pedestrian walking a bicycle. In lieu of a manufacturer's specifications for layout for Bicycle Parking Spaces and Racks, Bicycle Parking Areas shall comply with the minimum standards indicated in the BICYCLE PARKING DESIGN STANDARDS and shall not conflict with the latest edition of the Massachusetts State Building Codes.

14. Exemptions

Uses indicated in Table 6.05-1 are exempt from required minimum quantities only. Any Short-Term and Long-Term Bicycle Spaces provided shall comply with Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS.

15. Exceptions and Waivers

a. The Board of Appeals may waive by Special Permit up to one-half the bicycle parking spaces
required in the following cases as long as the change or conversion does not meet the definition of
demolition as defined in Article 5.3 of the General By-Laws:

3. conversion to residential use with eight units or more, or

4. an existing residential use with at least seven units or more in which the number of dwelling units is increased by one or more

c. Use of High-Density Bicycle Racks, Bicycle Lockers, and Bicycle Sheds are permitted in compliance with Sec. 6.05 and the BICYCLE PARKING DESIGN STANDARDS.

16. Rounding

Fractional numbers one-half (0.5) and above shall be rounded up to the nearest whole number.

XXX

ARTICLE 19

NINETEENTH ARTICLE
Submitted by: Transportation Board

To see if the Town will adopt the following resolution:

WHEREAS the Town of Brookline, as a community that is immediately outside the City of Boston with both an urban and suburban mixture, has implemented regulations and supported transportation related programs with the goal of creating a healthy and sustainable multi-modal transportation system that encourages the use of public transportation, walking, cycling, and micro-mobility over single occupancy vehicle commuting;

WHEREAS the Brookline Transportation Board, in 2001, adopted a Traffic Calming Policy for the purpose of

- Improving the livability and safety of Brookline neighborhoods by mitigating the impact of traffic and promoting safer conditions for residents, motorists, bicyclists, and pedestrians;
- Installing traffic calming measures on streets where their implementation will reduce traffic speeds, minimize cut-through traffic, or improve the safety of movements by pedestrians and bicyclists;
- Implementing traffic calming techniques that are both effective and compatible with the character of the affected neighborhoods and improve public safety without jeopardizing emergency response needs, creating hazards, or reducing mobility;
- Encouraging citizen involvement in all phases of neighborhood traffic management;
- Influencing driver behavior through education and design; Ensuring that limited Town resources are utilized in a cost-effective and efficient manner;

WHEREAS the Brookline Transportation Board, in 2006, approved the DPW Crosswalk Policy and Design Guidelines to provide for safe pedestrian crossings of public streets by installing and maintaining marked crosswalks at all locations where there is substantial conflict between vehicle and pedestrian movements, where significant pedestrian concentrations occur, where pedestrians would not otherwise recognize the proper place to cross, and where traffic movements are controlled;

WHEREAS the Brookline Bicycle Advisory Committee, since 2008, has annually released the Green Routes Master Network Plan to identify projects that will improve conditions for cycling, including provisions for bicycle parking, safety education, traffic law enforcement, and ensuring that every street project undertaken or permitted by the Department of Public Works includes all reasonable accommodation of bicycles and pedestrians;

WHEREAS the Brookline Select Board, in 2017, adopted a Complete Streets Policy that committed the Town to

1. plan, construct, and maintain its public ways in a manner that enhances safety, access, inclusion, convenience, and comfort for all users;
2. ensuring that transportation projects are designed and implemented to provide safe and comfortable access for healthful transportation choices such as walking, bicycling, and mass transit;
3. prioritizing the needs and safety of the town's most vulnerable users shall be given special consideration during project planning;

WHEREAS in recognition of the role that motor vehicle speeds play in determining the severity of crashes, Brookline Town Meeting, in 2017, accepted Massachusetts General Laws Chapter 90, Section 17C to allow the Transportation Board the authority to establish a 25mph statutory speed limit on all public ways, not under MGL Chapter 90, Section 18, in thickly settled and business districts;

WHEREAS in recognition of the role that motor vehicle speeds play in determining the severity of crashes, Brookline Town Meeting, in 2017, accepted Massachusetts General Laws Chapter 90, Section 18B to allow the Transportation Board the authority to establish a 20mph Safety speed limits on public ways that are adjacent to a land use that is likely to attract vulnerable road users and that contain one or more areas that have potential conflicts between motor vehicles and vulnerable road users that warrant a reduction in speeds such as crosswalks, driveways, or side streets;

WHEREAS in recognition of the role that motor vehicle speeds play in determining the severity of crashes, the Brookline Transportation Board, in 2022, in accordance with the Massachusetts Department of Transportation's "Procedures for Speed Zoning on State Highways and Municipal Roads" voted to remove all posted speed limits under MGL Ch. 90, Section 18 that were in excess of 25mph and return those public ways to the statutory speed limit of 25 mph under MGL Ch. 90, Section 17C;

WHEREAS the Brookline Transportation Board has regularly lobbied our state delegation requesting favorable action on pending legislation aimed at improving roadway safety and reducing severe or fatal crashes on the public way through a combination of roadway design, operations, and enforcement;

WHEREAS public health professionals have documented the correlation between motor vehicle speeds and death rates showing that the risk of death to a pedestrian struck by an automobile traveling at 20 mph is 1 out of 10, 5 out of 10 at 30 mph, and 9 out of 10 for motor vehicles traveling at 40 mph;

WHEREAS these same studies have shown that multiple factors contribute to the problem of unsafe traffic speed including roadway designs that encourage higher speeds, speed limits that are set too high, and speeding (people driving faster than the speed limit or too fast for road conditions) and have concluded that small traffic speed reductions can lead to fewer motor vehicle crashes, injuries, and deaths;

WHEREAS the Massachusetts Department of Transportation has released preliminary data showing an increase in number of fatalities due to motor vehicle crashes from 336 in 2019, 343 in 2020, and 415 in 2021;

WHEREAS the Massachusetts Department of Transportation has released preliminary data showing an average of 70 pedestrian fatalities annually between 2017 and 2021 with 76 pedestrian fatalities in 2021;

WHEREAS despite the adoption of these policies and an investment of over 3 million dollars in traffic calming elements and several million dollars expended in other pedestrian and bicycle safety improvement projects, the Town of Brookline continues to experience motor vehicle crashes including 1062 in 2021, including severe and fatal crashes involving pedestrians and other vulnerable roadway users;

WHEREAS Vision Zero is a strategy acknowledging that many factors contribute to safe mobility -- including roadway design, speeds, behaviors, technology, and policies -- and sets clear goals to achieve the

- elimination of all traffic fatalities and severe injuries,
- increased safety, health, and equitable mobility for all by recognizing that people will sometimes make mistakes, and thus designing the road system and related policies to ensure those inevitable mistakes do not result in severe injuries or fatalities; and
- creation of roadway environments, policies (such as speed management), and other related systems that lessen the severity of crashes;

WHEREAS the adoption of a Vision Zero Plan makes available to the Town both state and federal aid and grants for implementation of the policy and failure to have a plan has a demonstrated detrimental effect on accessing state and federal aid related to infrastructure improvements.

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls upon the Select Board to appoint a Vision Zero Study Committee to:

1) Gather and review information with respect to the development of a Vision Zero Policy, including but not necessarily limited to existing relevant Town by-laws and policies, Vision Zero policies other municipalities have put in place, available guidelines, analysis of best practices in Vision Zero policy development, and the current and projected operating and capital funding levels required to successfully implement the policy,

2) Develop a Vision Zero Policy to be proposed for adoption by the Town. The VZSC shall determine the most appropriate form(s) for the policy to take (e.g., by-law and/or administrative policy), and shall identify the recommended bodies, individuals, or entities responsible for approving and carrying out the policy.

3) Draw up and submit a proposed work plan and schedule to the Select Board. The work plan and schedule shall indicate the bodies, individuals, or entities responsible for approving the policy, the optimum dates by which the draft policy

will be presented to them, and dates by which such approvals will be sought. The VZSC shall have a goal of submitting the work plan and schedule to the Select Board within 2 months of appointment.

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 provide sufficient funds necessary to retain professional and technical consulting services to work with the VZSC and relevant staff to develop a Vision Zero Action Plan to implement the policy.

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 2023 Annual (May) Town Meeting.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Vision Zero Study Committee Warrant Article Explanation

In 1999, when the first traffic calming elements were installed, the Town of Brookline became a regional leader in advancing infrastructure change to advance safety for vulnerable users on our public way. Since that time, under the leadership of the Transportation Board, Select Board, Advisory Committee, and Town Meeting, the Town has adopted several overarching policies, planning documents, and guidelines for staff to utilizes when developing changes to the public way for consideration by the Transportation Board. However, none of these allows for a quick response that is envisioned as part of Vision Zero and all of them act as independent policies with no relationship between them. Below is a summary of these:

Traffic Calming Policy

Originally adopted by the Transportation Board in 2001, the May 2011 Town Meeting passed a resolution requesting that the Transportation Board, following a public hearing, adopt updated Traffic Calming Policy & Procedures for the Town of Brookline that reflected current federal and state regulations & guidelines, industry standards, and best practices. Then Transportation Board Chair, Michael Sandman, appointed a sub-committee of Pamela Zelnick, Gustaaf Driessen, and Janice Khan to develop a proposed policy that the Board could amend and adopt. Joining the subcommittee at most, if not all, meetings to help craft the proposed policy was Town Meeting members Regina Frawley and Hugh Mattison. This policy, adopted in July 2012, was intended to be a more open and responsive process that includes an initial application; development of an Initial Needs Assessment and determination by staff on whether traffic calming is warranted; if warranted and approved by the Board - 2 tracks led by the Transportation Board or Design Review Committee; a minimum number of neighborhood meetings; submittal of final concept plan and cost estimates for the budgeting process; and a post installation review. The appendices included examples of traffic calming elements, the process that would be

followed, and the application for submittal. Additionally, it created several benchmarks on the most commonly requested raised elements, specifically that staff should only consider them if the 85th percentile speed was 10+ miles per hour above the posted or statutory speed limit. The goal of this new policy was to create a deliberative and extended public process that ensured all voices were heard by the Board and ensure that the community had many opportunities to weigh in before a decision was made. Once a project is approved, it is entered into the future years Traffic Calming line item in the Capital Improvement Plan budget and awaits funding.

This is one of the only policies implemented by the Town that has a funding source attached to it for implementation purposes. Based on the constraints of the CIP, it has taken anywhere from 1 to 5 years to secure the funding necessary to construct the safety improvements.

When combined with the Transportation Division's stagnated staffing levels and underfunded budgets, the real effect of this extended process and the amount of staff time it takes to develop the required studies and plans is that staff has been unable to keep up with the resident requests for traffic calming as more community members become more sensitive to safety and access for vulnerable roadway users including pedestrians and cyclists. Pre-COVID staff was getting 1-2 completed per year and because COVID diverted their attention to other issues, they have an even larger backlog. In addition to the growing backlog, the policy itself and the high bar it sets for deploying traffic calming measures has also not kept up with current thinking in the Town, the region, or the industry when it comes to using traffic calming elements on almost every roadway project to protect vulnerable roadway users and design for the traffic we want to see and not the traffic that we have. This includes using elements to create an environment that proactively promotes safe walking and biking on all streets within the Town.

Crosswalk Policy

In 2006, the Transportation Board approved the Crosswalk Policy Design Guidelines to provide guidance to staff and the Transportation Board when addressing requests for the installation of crosswalks to facilitate pedestrian access on the public way. The policy is meant as a summary of federal and state guidelines and industry best practices for installation, design types, signage, and safety enhancements for locations determined to require them based on motor vehicle speed and volume. Additionally, it outlines the information that staff should incorporate into the reports for consideration by the Transportation Board. As with the Complete Streets Policy, this policy has no funding source dedicated toward implementing the approved plans. Therefore, once a crosswalk is approved, it is constructed by the Engineering Division using either the Sidewalk Maintenance line item or the Roadway Reconstruction line item in the Capital Improvement Plan budget.

Complete Streets Policy

Following a warrant article in Town Meeting, the Select Board created the Complete Streets Study Committee to propose a Complete Streets policy that complied with the

requirements of the MassDOT program, determine the most appropriate form for the policy to take, and identify the recommended bodies, individuals, or entities responsible for approving and carrying out the policy. The CSSC met for several months and ultimately established a robust policy that went beyond the confines of the MassDOT program and instead sought to advance a new approach to pavement management and other construction projects that occurred within the Town. The Policy was based on Smart Growth America's 10 guidelines for a comprehensive Complete Streets policy with the goal of planning, constructing, and maintaining the Town's public ways in a manner that best enhances safety, access, inclusion, convenience, and comfort for all users and accommodates people of all ages and abilities, whether traveling by foot, bicycle, wheelchair, mass transit, or motor vehicle. Specifically it called for staff to prioritize the needs and safety of the town's most vulnerable users (pedestrians, those with disabilities, seniors, and school-aged children) and provide them special consideration during project planning. Unlike other policies adopted by other municipalities, our policy goes further and applies to all projects affecting the public way, regardless of the funding source. The only projects that it does not apply to are pavement preservation treatments that do not include hard construction or emergency work.

The policy was deemed one of the top 10 policies in the country by Smart Growth America and while it has moved the community forward in developing a multi-modal transportation network that prioritizes the safe movement of people over automobiles, it has come at a cost. Instead of allowing the Department of Public Works to simply pick up and put down pavement as part of our roadway management program, this policy and the guidelines contained in it require staff to conduct a full study for every roadway segment identified by the pavement management program from the complete streets lense and develop concept designs for Transportation Board approval. Once again, given the stagnated staffing levels and consultant services budget of the division, the affect has been that the study and development typically adds a year onto the process.

Additionally, the end projects cost significantly more as they now include traffic calming elements, new sidewalks, ADA complaint ramps, enhanced signage, and pavement markings that were not part of the roadway and the program came with no corresponding increase in the capital budget. Given the increase in the cost of projects, the level funded roadway budget line item resulted in less streets being reconstructed annually and the roadway surface rating for the Town's infrastructure is at risk of significant decline in the coming years.

<u>Healthy & Sustainable Warrant Article 31</u>

At the Fall 2019 Town Meeting, a coalition of transportation and climate activist filed warrant article 31 to promote and prioritize healthy and sustainable transportation modes within the Town. Realizing the part that transportation plays in the climate crisis the warrant article

> 1) Called for the prioritization of 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.

2) Called for the use of pilots and demonstrations to evaluate the affects of proposed changes to the public way that improve travel conditions for those using healthy and sustainable transportation modes
3) Called for the aligning of planning and zoning regulations and the Town budget priorities with our healthy and sustainable transportation goals
4) Called for the encouragement of conversion to electric vehicles and other modes that will reduce our greenhouse gas emissions
5) Called for the establishment of a mode shift goal 75% of all trips to and through the Town be done via walking, biking, micro-mobility, shared mobility, and electrified public transit and 25% of trips by electrified single occupant vehicles by the year 2050
6) Called for the creation of a Sustainable Planner or Engineer position to support the advancement of these goals.

The warrant article passed overwhelmingly and although it is technically non- binding, like all resolutions passed by Town Meeting, staff treats them as binding resolutions that establish the direction that their work should be focused on and moving in. Therefore, as we develop plans and programs involving the public way we try to do so through the lens of achieving these goals. While Town Meeting called for the creation of the additional staff person to work on these projects, to date that position remains unfunded in the Town's operating budget, limiting their ability and placing extra burden the level funded capital budgets to achieve many of these community goals.

Creation of a Safe Routes to School Townwide Task Force

In 2017, Transportation Division staff spearheaded an effort to create a Safe Routes to School Townwide Task Force and coordinate efforts between relevant Town departments and K-8 School PTOs (https://greenteamsbrookline.weebly.com/transportationssrts.html). The Brookline SRTS Task Force is a coalition of stakeholders including parents and teachers representing the town's K-8 schools and BHS, and representatives from the School Committee, Transportation Division, Police Department, Public Health Department, and the PSB Facilities Department. They meet monthly and work closely with school principals.

The task force is an alliance partner of the Massachusetts SRTS Program (https://www.mass.gov/safe-routes-to-school), which "works to increase safe biking and walking among elementary and middle school students by using a collaborative, community-focused approach that bridges the gap between health and transportation.

SRTS utilizes the six E's to implement its program: Education, Encouragement, Engagement, Evaluation, Engineering, and Equity."

By working with the regional MA SRTS coordinator, the Taskforce is able to access a multitude of benefits, including grant funds for school safety improvements, school walkshed mapping, walkability and arrival/dismissal audits, free pedestrian and bicycle safety training opportunities, as well as curriculum options that integrate across many K-8 subject areas.

Since its inception in 2017, the task force has been gaining momentum and focusing on several interrelated issues including:

- Identifying and addressing safety issues in the vicinity of Brookline schools.
- Promoting walking/biking/rolling/busing to school to improve health, ease congestion, and reduce CO2 emissions, including via the state's flagship fall, winter, and spring car-free days.
- Encouraging adherence to the state's anti-idling laws adjacent to schools.

They primarily address these issues by bringing them to the attention of town personnel; promoting them through school communities and PTOs; and taking advantage of the many offerings from the state SRTS Program. In addition to these ongoing school-specific topics, they are currently pursuing two additional goals that are more district-wide and that may be of particular interest to you:

1) Promoting attention to SRTS issues in the design of new school facilities, focusing on the current Pierce redesign project.
2) Incorporating SRTS concepts, particularly pedestrian and bike safety, into the school curriculum.

Miscellaneous

Over the last 10+ years the Transportation Board, Select Board, and others have enacted miscellaneous rules, regulations, programs, and policies that contribute toward the development of a safer and more accessible multi-modal transportation network that prioritizes the movement of people over vehicles in a more healthy and sustainable manner. These include:

- Acceptance of MGL Chapter 90, Section 17C and the adoption of a townwide statutory speed limit of 25mph

- Acceptance of MGL Chapter 90, Section 18B and the adoption of designated 20 mph Safety Zones
- Promoting the implementation of Transportation Demand Management programs at private developments, in accordance with our Transportation Access Guidelines, to promote alternative modes of transportation by employees and residents
- Development of the Green Routes Master Network Plan by the Bicycle Advisory Committee to outline projects that should be implemented to construct a network of low stress local and regional bike routes in town
- Development of various pedestrian related plans and reports by the Pedestrian Advisory Committee that staff uses to identify and improve safety and access for pedestrians
- Excercising local authority to remove posted speed limits in excess of 25mph to reduce speed limits townwide on all streets and public ways under Town jurisdiction
- Staff's new Transportation & Mobility Improvement Program that looks to revamp the pavement management program by prioritizing the construction to understand the condition of our infrastructure assets related

to Transportation and Mobility on the public way and use the data to establish benchmarks and coordinate infrastructure improvements to leverage available funding in an efficient manner benefiting all users and modes. (https://www.brooklinema.gov/1773/Transportation-Mobility-Improvement-Prog)

Despite all of these efforts, and the early positioning as a regional leader in roadway safety, the Town of Brookline has failed to keep up with our neighbors when it comes to making progress on roadway safety for our most vulnerable users. This progress is largely the result of underfunding, fragmented standalone policies, and an inability of policies to keep up with changing state, federal, and industry standards. This became clear to all when, in a serious of two weeks this past fall, Brookline experienced several severe and fatal motor vehicle crashes. This included 2 motor vehicle on motor vehicle crashes in a 24 hour period at the intersection of Naples Road and Abbotsford Road, a motor vehicle crash into a pedestrian in a crosswalk at the signalized intersection of Longwood Avenue and Kent Street, a minor pedestrian struck by a motor vehicle in an unsignalized crosswalk on St. Paul Street at Stearns Road, and a senior pedestrian fatality as the result of motor vehicle crash in an unsignalized crosswalk. All locations that had been previously enhanced through the policies discussed above.

While some may attribute this to a rare occasion, these are just localized examples of a larger safety issue playing out on the state and federal level and a reminder that Brookline is not an island when it comes to roadway users. The fact is that despite investing of over 3 million dollars in traffic calming elements and several million dollars expended in other pedestrian and bicycle safety improvement projects, the Town continues to experience motor vehicle crashes including 1062 in 2021 alone. In addition to these local crashes, officials from the Massachusetts Department of Transportation and the Federal Highway Administration has released initial data that shows, despite less motor vehicles being on the roadways as a result of the COVID pandemic, 2020 continued the upward trend of severe motor vehicle crashes with initial data from 2021 indicating it will be even worse.

At the December meeting of the Transportation Board, the Board suspended all normal issues and conducted listening session to discuss the growing concerns that the community has with the condition of our roadways and the inability of our current policies and practices to provide safety for all users, but the most vulnerable in particular as compared to our neighboring communities. The overwhelming sentiment was that the Town needed to act, act swiftly, and adopt a Vision Zero policy similar to those adopted by the Cities of Boston, Cambridge, and Somerville.

VISION ZERO

According to the Vision Zero Network (https://visionzeronetwork.org), Vision Zero is best summarized as an approach to roadway design that seeks to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all. It starts with the ethical belief that everyone has the right to move safely in their communities, and that system designers and policy makers share the responsibility to ensure safe systems for travel. Its a significant departure from the status quo in two major ways:

1) Vision Zero recognizes that people will sometimes make mistakes, so the road system and related policies should be designed to ensure those inevitable mistakes do not result in severe injuries or fatalities. This means that system designers and policymakers are expected to improve the roadway environment, policies (such as speed management), and other related systems to lessen the severity of crashes.

2) Vision Zero is a multidisciplinary approach, bringing together diverse and necessary stakeholders to address this complex problem. In the past, meaningful, cross-disciplinary collaboration among local traffic planners and engineers, policymakers, and public health professionals has not been the norm. Vision Zero acknowledges that many factors contribute to safe mobility -- including roadway design, speeds, behaviors, technology, and policies -- and sets clear goals to achieve the shared goal of zero fatalities and severe injuries.

In addition to infrastructure projects similar to what the Town is currently doing, the Vision Zero initiative requires consistent political support from a wide range of stakeholders and a comprehensive approach to advance policy changes including slower roadway speed limits and design speeds through a more liberal use of the Safety Zones than currently used, using traffic calming devices as a regular design element to improve safety and access, promoting educational opportunities that would dovetail well with the Safe Routes to School programs, and providing sufficient staffing levels and budgetary support that allow for a timely response to identified safety issues. While the Town does some of these things as standalone, unlinked policies and initiatives, Vision Zero combines them into a single, unified approach.

The program has been adopted locally by the cities of Boston, Cambridge, and Somerville, the three who are recognized as leading the way locally and regionally on implementing sustainable changes to the public right of way that prioritizes changes to benefit access and safety for pedestrians, cyclists, micro-mobility users, and public transit riders in all projects.

Somerville: **https://www.somervillema.gov/departments/programs/vision-zero- somerville,**
Cambridge: **https://www.cambridgema.gov/streetsandtransportation/policiesordinancesandplans/vi sionzero,**
Boston: **https://www.boston.gov/transportation/vision-zero.**

In addition to these local policies, in the last 3 months both the Massachusetts Department of Transportation and the Federal Highway Administration have released similar policies to advance safety and achieve zero severe and fatal crashes as a result of motor vehicles. These new policies can be found here:

Federal Highway Administration: https://safety.fhwa.dot.gov/zerodeaths/

Massachusetts Department of Transportation: https://www.mass.gov/safe-speeds

Following up on their December 2021 meeting, on March 3, 2022 the Transportation Board held a special meeting to learn more about how a Vision Zero plan is created, implemented, and the potential benefits that a community experiences as a result. Attending the meeting was Stacy Thompson, the Executive Director of Livable Streets Alliance and Brad Rawson, Director of Mobility and Infrastructure for the City of Somerville. They shared the positive effects that adoption of a Vision Zero policy has to unify various policies, create the political will for implementation through community and official buy-in, sufficiently fund staff and infrastructure projects, develop data tracking and base decisions on safety related data, and create accountability to the community through annual and real time tracking. Essentially – Vision Zero will create a commitment to achieve near zero severe and fatal crashes through data analysis, investments, and collaborative partnerships between decision makers and the community they serve.

They also highlighted the fact that by adopting a Vision Zero Policy, the Town will improve eligibility and success in accessing state and federal aid programs for safety programs and infrastructure improvements. In fact, just this year, the Town lost out on points related to our application for federal Transportation Improvement Project funding by the Boston Region MPO of the Washington Street Complete Streets Project because we did not have an adopted Vision Zero Policy. Based on all of the information shared with the board and the public, the Transportation Board voted unanimously to advance a warrant article requesting the following action by Town Meeting:

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls upon the Select Board to appoint a Vision Zero Study Committee to:

1) Gather and review information with respect to the development of a Vision Zero Policy, including but not necessarily limited to existing relevant Town by-laws and policies, Vision Zero policies other municipalities have put in place, available guidelines, analysis of best practices in Vision Zero policy development, and the current and projected operating and capital funding levels required to successfully implement the policy,

2) Develop a Vision Zero Policy to be proposed for adoption by the Town. The VZSC shall determine the most appropriate form(s) for the policy to take (e.g., by-law and/or administrative policy), and shall identify the recommended bodies, individuals, or entities responsible for approving and carrying out the policy.

3) Draw up and submit a proposed work plan and schedule to the Select Board. The work plan and schedule shall indicate the bodies, individuals, or entities

responsible for approving the policy, the optimum dates by which the draft policy will be presented to them, and dates by which such approvals will be sought. The VZSC shall have a goal of submitting the work plan and schedule to the Select Board within 2 months of appointment.

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 provide sufficient funds necessary to retain professional and technical consulting services to work with the VZSC and relevant staff to develop a Vision Zero Action Plan to implement the policy.

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 2023 Annual (May) Town Meeting.

1) *Traffic Calming Policy*
   https://www.brooklinema.gov/DocumentCenter/View/7137/Traffic- Calming-Policy-PDF?bidId=
2) *Crosswalk Policy*
   https://www.brooklinema.gov/DocumentCenter/View/29608/DPW-Crosswalk-Policy-Design-Guidelines
3) *Complete Streets Policy*
   https://www.brooklinema.gov/DocumentCenter/View/10212/Brookline- Complete-Streets-Policy-and-Record-of-Vote-PDF#:~:text=The%20Town%20of%20Brookline%20shall,of%20all%20ages%20and%20abiliti es%2C

SELECT BOARD'S RECOMMENDATION

The Transportation Board and the Select Board agreed that a positive vote to move forward with the creation of a Vision Zero Study Committee would eliminate the need for Town Meeting action under this article. The Transportation Board has withdrawn this article.

The Select Board offers no motion under Article 19.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 19.

Summary: Warrant Article 19 calls upon the Select Board to appoint a Vision Zero Study Committee with various responsibilities.

Recommendation: Because this article is not being moved by the petitioner(s), the Advisory Committee offers no recommendation.

XXX

ARTICLE 20

TWENTIETH ARTICLE
Submitted by: David Trevvett, Jesse Hefter

To see if the Town will adopt the following resolution:

WHEREAS walking is a healthy and sustainable mode of transit, with almost all of Brookline's 63,000 residents being pedestrians at some point; and

WHEREAS in 2012 Brookline was accepted into the World Health Organization's Global Network of Age-Friendly Cities, and good pedestrian street lighting is an essential element of the Town's infrastructure for residents of all ages, especially older adults; and

WHEREAS in 2016 the Select Board adopted a Complete Streets Policy which, among other requirements, stated that "Sidewalks and crosswalks should be adequately lit"; and

WHEREAS most of Brookline's streets lack sufficient lighting of sidewalks to keep them safe, accessible, and comfortable for all ("pedestrian-friendly lighting"); and

WHEREAS Spring 2019 Town Meeting unanimously passed Warrant Article 22 calling for the appointment of a Select Board Committee on Pedestrian-Friendly Street Lighting, and in July 2019 the Select Board did appoint such a Committee; and

WHEREAS in July and August 2021 that Committee's final report was delivered, a presentation on the report and its recommendations was delivered at a Select Board Meeting, and the Report was included in the Combined Reports for the Fall 2021 Special Town Meeting; and

WHEREAS a starting point for ongoing improvement in Brookline's pedestrian-friendly lighting is a Town commitment in the form of policy and goals,

NOW THEREFORE BE IT HEREBY RESOLVED THAT Town Meeting urges the Select Board to adopt as policy that the Complete Streets Policy of the Town of Brookline should be understood and interpreted as including effective lighting for pedestrians as an essential component of what makes a street "complete" as defined in that Complete Streets Policy;

BE IT FURTHER RESOLVED that it is a long-term goal of the Town to provide good lighting for pedestrians in all of the Town's commercial areas, including routes within and between those areas; in the densely developed residential areas immediately surrounding commercial areas; along approaches to public transportation; and along all major routes in and through Brookline for walking as a means of transportation, especially to key destinations such as the High School, the Senior Center, the Teen Center, and the Longwood Medical Area.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The 2019 Annual Town Meeting voted unanimously for the creation of a Select Board Pedestrian-Friendly Lighting Committee (PFLC). Now that the final report[1] from that Committee, chaired by the late Frank Caro, has been submitted, it has delivered specific recommendations that the Town can and should act on. This Article addresses two of them: the need for clear policy to guide planning and decision-making, and a commitment to long-term goals.

Most of Brookline today does not have "pedestrian-friendly" street lighting to help illuminate its sidewalks and keep them safe at night. Instead, especially outside the major commercial areas, most Brookline streets have overly bright "highway-style" lighting perched high above the roadways, mounted on poles spaced too widely apart. Such lighting causes glare, lights sidewalks at best unevenly, sends unwanted light into nearby residences, and is commonly obscured by tree canopy so sidewalks remain dark and potentially hazardous.

As the Advisory Committee noted in 2019, "The Town has a public safety responsibility to all of its residents to provide sufficient lighting on its sidewalks and crosswalks with heavy pedestrian traffic after dark . . . " If residents are fearful of falling because they can't see tripping hazards on dimly lit sidewalks, or are nervous about venturing down darkened streets, many will choose to drive cars even to nearby destinations. Providing good lighting for pedestrians can help promote walking and reduce car use in Brookline, and even helps bicycle riders traveling near the curb.

The Town of Brookline has had a Complete Streets Policy for six years, yet pedestrian-friendly street lighting has only rarely been included in the Town's planning, design, or construction of "Complete Streets" projects. In the recent reconstruction of Winchester Street, for example, pedestrian-friendly lighting was deemed "not in scope." This was in spite of the presence of the Senior Center on that street, which over the years has held many evening events specifically for older adults, a vulnerable population that would be significantly aided by better sidewalk lighting.

Since the submission of the PFLC report, the Department of Public Works (DPW) has taken several steps to acknowledge the need, including placing an initial annual amount for pedestrian lighting beginning in the sixth year of its long-term Capital Improvement Plan, and separately considering such lighting to be "in scope" for at least the conceptual design for the reconstruction of Washington Street. However, funding for any implementation is by no means assured.

Implementing pedestrian-friendly lighting in even the most important areas and corridors of the Town is likely to take decades. This long-term endeavor needs to be guided and

[1] The Aug 2021 report is available from the PFLC web page at https://www.brooklinema.gov/1600/Pedestrian-Friendly-Lighting-Committee

strengthened by clearly stated policy and goals. Furthermore, when the Town inevitably seeks regional, state, or Federal funding for pedestrian lighting, its case will be aided immensely by such a commitment.

This resolution is a starting point. Passing it will not commit funding, but it will go a long way to ensure that "pedestrian-friendly" lighting is part of the conversation and is given a fair hearing in the planning and design for every major street project in Brookline.

This Article therefore asks Town Meeting to support key policy and goal recommendations stemming from the PFLC report: that good lighting for pedestrians is essential to "complete streets" policy and that providing such lighting should be a long-term goal of the Town.

SELECT BOARD'S RECOMMENDATION

The Select Board was able to work with the petitioners on an acceptable solution and vote on Resolutions Expressing the Importance of Pedestrian Friendly Street Lighting and Commitment to the Creation of a Pedestrian Friendly Street Lighting Master Plan. Because of these actions, the petitioner is not moving his article.

The Select Board offers no motion under Article 20.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 20.

Summary: Warrant Article 20 calls for effective lighting for pedestrians to be an official component of Brookline's Complete Streets Policy and that providing such lighting for pedestrians throughout Brookline become a long-term policy for the Town. On April 5th, the Select Board approved two resolutions in favor of pedestrian-friendly street lighting and the development of a pedestrian lighting master plan.

Recommendation: In light of the Select Board's actions, the petitioners have decided not to move their article. Accordingly, the Advisory Committee has no recommendation.

XXX

ARTICLE 21

TWENTY-FIRST ARTICLE
Submitted by: David Lescohier, Paul Harris. TMM P9, Susan Martin, John Harris, TMM P8

To see if the Town will adopt the following resolution:

A Resolution Urging the Select Board to Promote Increasing the Use of Renewable Electricity through Community Choice Aggregation

WHEREAS, the Earth is facing a climate crisis and, to avoid the worst impacts of this crisis, the burning of fossil fuel mustbe drastically curtailed;

WHEREAS, Brookline has shown significant awareness of the severity of the climate crisis, has shown an ongoing commitment to reducing its greenhouse gas emissions, and is committed to leading in the curtailment of greenhouse gas emissions in the future;

WHEREAS, in 1997 the Commonwealth of Massachusetts enacted a public policy called "Community Choice Aggregation" (CCA) enabling cities and towns to aggregate the buying power of individual electricity customers;

WHEREAS, prior to adoption of Community Choice Aggregation in Brookline, approximately 21 percent of Brookline citizens' climate change-causing emissions had come from generating electricity by fossil fuel and that increasing the sources of our electric generation from renewable sources is a single step that allows for an immediate and substantial decrease in emissions;

WHEREAS, Community Choice Aggregation provides a layer of consumer protection both because plans are reviewed by the Massachusetts Attorney General's office and the Massachusetts Department of Public Utilities, and because any electric customer can opt out of the CCA plan at any time and at no cost;

WHEREAS, in November 2015, Town Meeting authorized the Select Board to commence a Community Choice Electrical Aggregation Program and contract for electric supply for Brookline residents and businesses as authorized by M.G.L. 164, Section 134;

WHEREAS, in November 2015, Town Meeting urged "the Select Board to develop a Community Choice Aggregation plan that, at a minimum shall increase participants' use of renewable sources of electricity by an estimated 25 percent of retail sales, at an incremental cost to the average participating household of approximately $7.00 per month based on individual household consumption and [f]urther, the Community Choice Aggregation plan shall

include, if feasible and appropriate, provisions that entitle participants to charitable deductions on their income tax filings to give consumers the additional benefit of potential tax savings";

WHEREAS the Select Board entered into a Community Choice Aggregation contract in 2017 and signed a second contract in 2019;

WHEREAS, Brookline's Community Choice Aggregation plan, known as Brookline Green Electricity, by voluntarily purchasing Massachusetts Class One Renewable Energy Certificates (RECs), in excess of the state Renewable Portfolio Standard (RPS), creates increased near-term demand for renewable power from sources such as wind and solar, beyond the renewable power that the Commonwealth of Massachusetts requires investor-owned utilities like Eversource and National Grid to procure, signaling the market to construct additional wind and solar projects;

WHEREAS, the Brookline Green Electricity program, in partnership with the Green Energy Consumers Alliance is now retiring approximately 42,000 RECs per year, equivalent to investment in the construction of 10-14 large-scale on-shore wind turbines or the installation of solar panels on the roofs of about 7,000 homes;

WHEREAS, the default tiers of the Brookline Green Energy plan increased participants' use of renewable sources by 25% from July 2017 to December 2019, and by 30% beginning in January 2020 in addition to the state's mandate;

WHEREAS, the current Brookline Green Electricity contract with Direct Energy is due to expire at the end of 2022, requiring the Select Board to enter into a new contract in order to extend the program;

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting recommends the Select Board maintain a Brookline Green Electricity program that has, at a minimum, the below stated requirements:

1. The Brookline Green Electricity program shall continue to include as a goal increasing use of renewable resources and a corresponding decreased use of carbon dioxide emitting sources for the generation of electricity for Brookline participants and call for BGE to support the purchase and retirement of only Massachusetts Class One RECs;

2. The Select Board shall make relentless efforts such that each community choice aggregation plan contract renewal delivers an increasing percentage of renewable sources of electricity (in addition to the state mandate) than the contract for the prior period, in order to make progress toward an ultimate goal of as close as possible to 100% green electricity (including the state mandate), ideally by 2030;

3. That the Select Board ask its broker to issue a request for proposals soliciting a range of bids for multiple REC percentage increases, in addition to the state mandate, including a bid of as close as possible to 100% renewable energy;

4. The Community Choice Aggregation plan shall continue to include, if feasible and appropriate, provisions that entitle participants to charitable deductions on their income tax filings to give consumers the additional benefit of potential tax savings;

5. The Community Choice Aggregation plan shall continue to include clear and easily executed steps allowing consumers to opt in, up, down, or out, initially or later, from the Aggregation program, as provided for by the Brookline Community Choice Aggregation plan, with no penalty or other cost, and at any time;

6. That, in addition to all other requirements for notice in Massachusetts General Laws or regulations of the Department of Public Utilities, the Town of Brookline will communicate directly with citizens , including those experiencing difficulty paying their electricity bill, about Community Choice Aggregation and the opt-out provision and Eversource's available discounts for low-income customers;

Or act on anything thereto.

PETITIONER'S ARTICLE DESCRIPTION

Brookline has a powerful tool to reduce greenhouse gas emissions that cause climate change: The Brookline Green Electricity (BGE) program. BGE is the Town of Brookline's electricity supply program, also known as Community Choice Aggregation (CCA), which has been in effect since 2017. This Warrant Article urges an enhancement of the BGE program.

The science is settled - the carbon emissions released by burning fossil fuels is what is causing climate change. The need is clear - we must reduce the quantity of fossil fuels that we use as individuals, communities, and nations. Brookline has shown significant leadership on local climate action. This Town Meeting has passed warrant articles and resolutions tackling various aspects of the climate crisis, we have a climate action plan, and our Select Board is always looking at ways to be better on the climate emergency.

According to a best estimate, in 2015, before the initiation of BGE, a major source of Brookline's climate change-causing pollution was electricity generation – 21% of Brookline's climate change causing pollution came from making electricity. BGE has made significant progress reducing that pollution by providing cleaner electricity to the community. Today, the BGE program's default electricity supply – which is used by the majority of households in Brookline – contains 30% of renewable energy above and beyond the state mandate. BGE also offers other electricity supply options with more and

less renewable energy. All combined, through BGE our community is currently purchasing approximately 42,000 megawatt-hours of renewable energy above the state mandate, which is the equivalent to the output of 10-13 large-scale on-shore wind turbines or solar PV arrays on the roofs of about 7000 homes.

Brookline's program is definitely producing the desired effect of increasing demand for renewable energy But we cannot stand still. We must continue to expand our impact. We must get to 100%.

The BGE program is overseen by the Select Board, and the parameters in which the Select Board can operate the program are governed by the Brookline Community Choice Aggregation Plan, a document approved by the Massachusetts Department of Public Utilities in 2017. Thankfully, this Aggregation Plan already enables Brookline to increase our renewable energy content, if desired. Therefore, this Article provides guidance to our Select Board on how much renewable energy above the state mandate to include.

For more detail on the BGE program, see the Program's website: https://brooklinegreen.com/

MASSACHUSETTS RENEWABLE ELECTRICITY MANDATE

Massachusetts has a number of different renewable energy standards that are required for all electricity suppliers. Some standards are designed to keep old renewables operating and others are designed to support the construction of new renewables. Class I is the primary standard that supports the construction of new renewables.

Since it began in 2003, the Class I standard has increased annually, requiring electricity suppliers to include more and more renewable energy. Each year, electricity suppliers must verify that they purchased enough renewable energy to meet the required percentage, and if they do not, they pay a penalty. This system creates guaranteed, increasing demand for new renewable energy generation.

The BGE program is designed to purchase a significant amount of Class I Renewable Energy Certificates (RECs) above and beyond the state standard. By doing so, BGE effectively drives up demand even higher than the state standard would, and therefore incentivizes more growth than would happen otherwise.

Green Energy Consumers Alliance – the non-profit that procures the additional renewable energy for BGE - estimates that in 2022, the demand for Class I RECs attributed to Community Choice Aggregation programs, including BGE, will be about 700,000 RECs. By 2023, it will be about one-million RECs. This means aggregating municipalities are adding about 20% to the state mandate's demand for Class I resources. That is really significant.

https://www.greenenergyconsumers.org/greenpowered/faqs/wherethenergycomesfrom

As of January 1, 2022, the Department of Public Utilities amended the renewable energy content standard, to take into account the full scope of renewable energy resources. Previously, the focus had been on Class I RECs. Now, the Department is shifting to

including a full scope of renewable content, not only Class I which incentivizes new development, but also existing renewable energy content.

Department of Public Utilities Amended Renewable Energy Content Standard (January 1, 2022)						
1.	2.	3.	4.	5.	6.	7.
	New		**Existing**			
	Clean Energy Standard		**Clean Energy Standard - Existing**	**RPS Class II**	**RPS Class II Waste-to-Energy**	**Total**
Year	**RPS Class I**	**Net Additional for Clean Energy Standard**				
	Increases Each Year		**Total Existing – 27.1% Each Year**			
2020	16.0%	4.0%		3.2%	3.5%	26.7%
2021	18.0%	4.0%	20.0%	3.6%	3.5%	49.1%
2022	20.0%	4.0%	20.0%	3.6%	3.5%	51.1%
2023	22.0%	4.0%	20.0%	3.6%	3.5%	53.1%
2024	24.0%	4.0%	20.0%	3.6%	3.5%	55.1%
2025	27.0%	3.0%	20.0%	3.6%	3.5%	57.1%
2026	30.0%	2.0%	20.0%	3.6%	3.5%	59.1%
2027	33.0%	1.0%	20.0%	3.6%	3.5%	61.1%
2028	36.0%	0.0%	20.0%	3.6%	3.5%	63.1%
2029	39.0%	0.0%	20.0%	3.6%	3.5%	66.1%
2030	40.0%	0.0%	20.0%	3.6%	3.5%	67.1%
State mandates for "Renewable energy content" as defined by the State of Massachusetts. See https://www.mass.gov/guides/contract-summary-form#-4.-product-information-						

Energy Sources detailed in the Chart:

- Column 1: Year
- Column 2: RPS Class I is met by certain qualifying types of renewable energy – mostly wind and solar. ("RPS" means Renewable Portfolio Standard)
- Column 3: The "net additional for Clean Energy Standard" could be met by either Class I renewable energy and/or new large-scale hydro from Canada (which is on hold).
- Column 4 - The Clean Energy Standard Existing (currently allowed) is from large-scale hydro that has been in the region's mix for a long time.
- Column 5 - RPS Class II consists of renewable energy sources that existed prior to 1997, such as old hydro and landfill gas.
- Column 6 - The Class II Waste-to-Energy standard supports long-existing trash to energy facilities that municipalities use to dispose of solid waste.

The purpose of BGE is to add Class I resources such as wind and solar to our electricity mix. Each megawatt hour of Class I will displace one megawatt hour of fossil fuels on the grid.

ABOUT BROOKINE GREEN ELECTRICITY (BGE)

Brookline can decrease the use of fossil fuels in generating its electricity by choosing to use renewable, clean energy instead. This significant carbon emissions reduction doesn't require any change in our homes, our vehicles, or our behavior – it simply requires Community Choice Aggregation (CCA), known as Brookline Green Electricity or BGE.

Brookline has a current CCA plan, which sets a default of 30% green electricity, over and above the, as of January 1, 2022, State of Massachusetts's requirement of 51.1% green electricity This requirement continue to increase annually (Column 7).

This Warrant Article is intended to increase the town's green electricity default by urging relentless efforts to ensure that each contract renewal increases the default for renewable electricity, to an amount greater than the prior contract, ideally to 100%, as a goal. Increasing the share of renewable electricity in Brookline's portfolio would be a major step for Brookline to reach our clean energy goal.

BGE IS VOLUNTARY

BGE is mandated by law to be a voluntary program for individuals, with an easy opt-out structure. Individuals who do not wish to participate in Brookline's BGE can opt out via a simple procedure at any time, and at no cost. Those who opt out would continue to get or return to getting their electric energy from Brookline's current supplier, NSTAR Electric Company d/b/a Eversource.

BGE IS SIMPLE

No new paperwork is required to join the BGE program. Customers will continue to pay just one bill per month, and that bill will continue to be mailed to customers by Eversource. The electricity will arrive at each participant's home using the same wires it uses today. The only change is from where the electricity comes - more from solar, wind, and anaerobic digester gas, less from the current mix of predominantly fossil fuels.

BGE PROVIDES CONSUMER PROTECTION

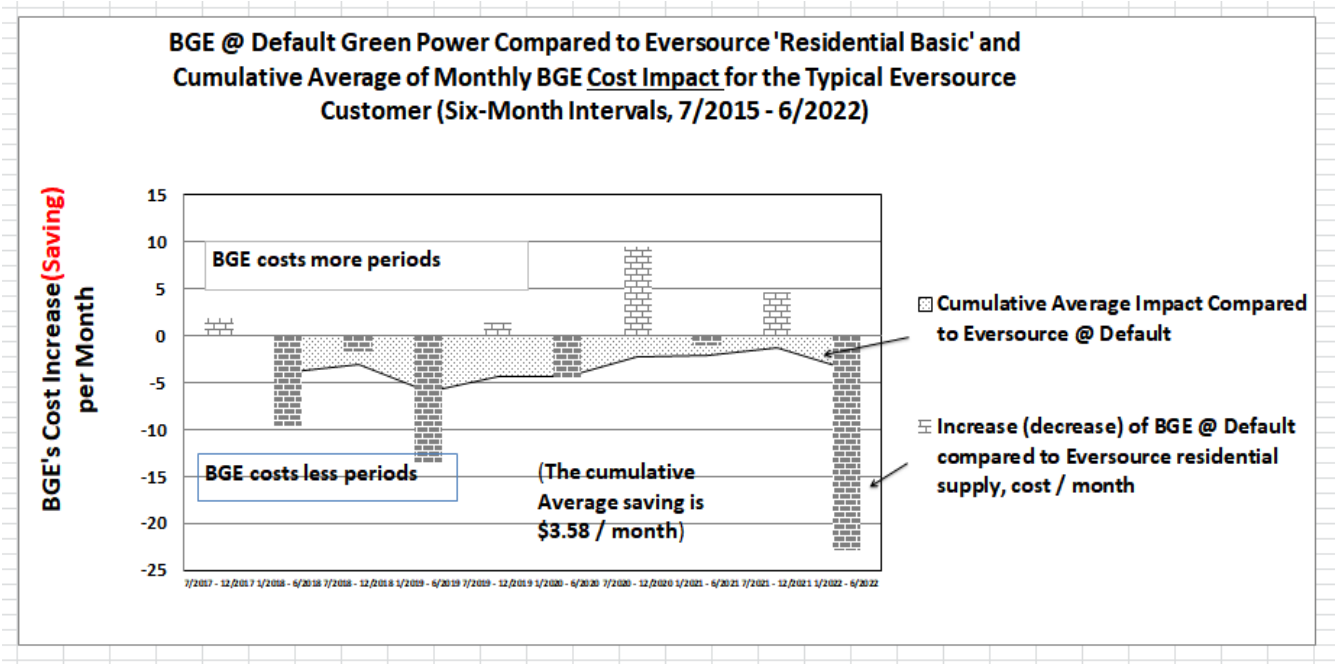
Electricity customers are being bombarded with advertisements about signing up for many different programs to help stop climate change. Some of these claims are legitimate and helpful, while others are legitimate but less helpful, and some are simply misleading. This situation is confusing for customers. The BGE provides Brookline residents with consumer protection in two ways.

First, BGE allows for the development of a legitimate plan that lowers Brookline resident's carbon footprint in a cost-effective manner.

Second, BGE ensures that customers can opt out at any time, for any reason, at no cost. Both the Massachusetts Attorney General's office and the Department of Public Utilities scrutinize each proposed CCA plan to ensure that it is well designed to achieve its described goals and to ensure that the opt-out provisions comply with state requirements.

BGE OVER THE LAST FIVE YEARS COST LESS THAN EVERSOURCE

While the Eversource Basic rate for electricity supply changes every six months, BGE has kept its rate steady for three-year periods. Over the five years of BGE, to date, the cost for the typical BGE customer on BGE Green has actually averaged $3.58 per month less than Eversource Basic Residential. While BGE was more expensive than Eversource for four of the six-month periods, it was less expensive than Eversource for six of the six-month periods. The periods with savings more than offset the costly periods.



BGE MAXIMIZES CARBON REDUCTIONS

Community Choice Aggregation is a remarkably powerful tool. Every Brookline resident can ensure more than half of their electricity comes from renewable resources. No contractors required. No long-term commitments. No regrets. There's no other action the Select Board can offer that can result in carbon emissions reductions of this magnitude.

BGE HELPS INCREASE RENEWABLE SOURCES OF ELECTRICITY

The current electricity mix that serves Brookline customers is approximately 81% renewable (51% mandated plus Brookline's 30% default in 2022): small and large hydro, wind, solar, biomass, and methane fueled electric generation. The remaining 19% comes from natural gas, coal, and oil. An enhanced BGE could replace more fossil power with additional renewable electricity from wind, solar PV, and anaerobic digester gas, and as a result more of Brookline's electricity would then come from renewable resources.

ZERO EMISSIONS ADVISORY BOARD'S RECOMMENDATION

SUMMARY

The **Brookline Green Electricity (BGE) program has saved money for residents** and is arguably **the most successful Community Choice Aggregation (CCA) program in the Commonwealth**. It is also one of our most powerful emissions-reduction instruments.

The program reduces our community's emissions from electricity and also reduces pollution in other areas of New England, where our electricity is generated. Participants in the program, which include most town residents, typically pay less in the program than the cost of dirtier electricity from Eversource. The program is administered by staff.

BACKGROUND

The petitioners graciously withdrew their motion under this Article, given that staff and the Zero Emissions Advisory Board (ZEAB) were aligned with the petitioners' desire to reduce emissions to the maximum extent possible, while adhering to previously determined affordability criteria. See the Petitioners' excellent summary included in their original explanation.

ZEAB hopes to continue to accelerate climate action by working directly with climate advocacy groups, petitioners, and staff as we did in this instance. This kind of collaboration will enable our community to maximally accelerate climate action. In this spirit, **ZEAB urges anyone proposing climate actions** — especially those that do not necessitate Town Meeting's involvement — **to bring their proposals to the ZEAB first**, so that we can:

(1) Preserve Town Meeting's time for the climate actions that require it
(2) Maximally accelerate climate action
(3) Improve the efficiency of our town government

SELECT BOARD'S RECOMMENDATION

The petitioners began drafting this article before the creation of the Zero Emissions Advisory Board. There has been some work between the petitioners and the Zero Emissions Advisory Board to come to an agreement; therefore, the petitioners are withdrawing their article.

The Select Board offers no motion under Article 21.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 21.

Summary: Article 21 is a resolution that urges the Select Board to promote increasing the use of renewable energy through maintaining and enhancing the Town's Green Energy Program.

Discussion: In discussions with the Town's Zero Emissions Advisory Board (ZEAB), it was noted that Brookline's Green Energy Program was already one of the most successful Community Choice Aggregation programs in the state and that it reduced emissions to the greatest extent possible while adhering to affordability criteria.

Recommendation: In light of these discussions, the petitioners decided not to move their article. Accordingly, the Advisory Committee has no recommendation.

XXX

ARTICLE 22

TWENTY-SECOND ARTICLE
Submitted by: Clint Richmond TMM6, Claire Stampfer, Deane Coady

To see if the Town will amend the General Bylaws by adding the following Article:

ARTICLE 8.XFLUORINATED CHEMICALS REDUCTION BY-LAW

ARTICLE 8.X.1 DEFINITIONS

Bulk packaging: Packages of more than one of the same item.

Fabric treatment: a substance usually liquid applied by a consumer to fabric, carpets, rugs, shoes or textiles to impart characteristics, including, but not limited to, stain resistance or water resistance.

Fluorinated hydrocarbons: chemicals that contain fluorine and carbon. These include certain propellants (such as 1,1-Difluoroethane also known as hydrofluorocarbon-152a) and PFAS.

PFAS: Per- and Polyfluorinated Alkyl Substances, a large class of synthetic industrial chemicals defined as containing at least one fully fluorinated carbon atom. PFAS are a subset of fluorinated hydrocarbons.

ARTICLE 8.X.2 RESTRICTIONS

(a) No retailer shall sell or distribute:

(1) Over-the-counter cosmetic or personal care products to which fluorinated hydrocarbons have been intentionally added in any amount.

(2) Food ware products packaged in bulk to which fluorinated hydrocarbons have been intentionally added in any amount. Any fiber or plastic product marketed as Compostable must be certified by the Biodegradable Product Institute.

(3) New non-stick cookware that contain fluorinated hydrocarbons.

(4) Fabric treatment products that contain fluorinated hydrocarbons.

(b) No retailer shall sell or distribute any products containing fluorinated hydrocarbons as may be identified in regulations promulgated by the Select Board to further the purposes of this Bylaw, following a duly noticed public hearing.

ARTICLE 8.X.3 EXCLUSIONS

(a) This by-law does not regulate prescription products.

(b) This by-law does not apply to businesses that are primarily service businesses such as restaurants, medical and dental offices, and hair and nail salons.

ARTICLE 8.X.4 ENFORCEMENT

The Brookline Department of Public Health shall be responsible for enforcement and any regulation.

This by-law shall not be enforced prior to January 1, 2023.

ARTICLE 8.X.5 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

And amend section 10.2 PROSECUTIONS AND ENFORCEMENT as follows:

DIRECTOR OF HEALTH & HUMAN SERVICES
Part VIII-Public Health & Safety
Articles 8.1, 8.2, 8.3,
8.4, 8.6, 8.7,
8.8, 8.9,
8.10,8.11,
8.12,8.13,
8.14, 8.15,
8.16, 8.22,
8.23, 8.32,
8.37, 8.38

By adding this article number to the list of Articles following “8.38”.

And amend section 10.3 NON-CRIMINAL DISPOSITION to include the following enforcement schedule:

ARTICLE 8.XFLUORINATED CHEMICALS REDUCTION BY-LAW

Per product:

Initial Violation	Warning
First Offense	$50.00
Second and Subsequent	$100.00

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Fluorinated hydrocarbons rarely occur in nature. The manufacturing of fluorocarbons can be more problematic than typical hydrocarbons. For example, many fluorinated hydrocarbons build on elemental fluorine or hydrogen fluoride, both highly dangerous chemicals. The general public became aware of the hazards from fluorinated chemicals during the 1980's with chlorofluorocarbon gases used as propellants and blowing agents (e.g., in Styrofoam) that depleted the ozone layer of the atmosphere and have been generally phased out. These have been replaced with other fluorinated products many of which have relatively high global warming potential (such as 1,1-Difluoroethane also known as hydrofluorocarbon-152a, which has a global warming potential of 124) or other hazards.

PFAS is a large class of synthetic fluorinated hydrocarbons that have been in widespread commercial use since the 1940s. PFASs are called "forever chemicals" since they never break down completely due to the strength of the fluorine-carbon bond. Many of them bioaccumulate in fish and mammals, or migrate from contaminated water to food crops such as lettuce and strawberries. PFAS are linked to deadly diseases like thyroid cancer, harm to immune and reproductive systems, damage to developing fetuses, and may permanently compromise children's brain development and behavior. Many PFASs also have serious health concerns even at very low levels (parts per *trillion* - ppt).

PFAS has been found in over ninety Massachusetts public water systems at high levels, in MWRA sewage sludge at high levels, and in Massachusetts rain at low levels (but that are still high nationally). The state recently started regulating PFAS in drinking water and soil (at 20 ppt). The Town can eliminate sources of PFAS starting with unnecessary uses such as in cosmetics.[1] Their use in cosmetics is currently unregulated.[2] This will help reduce the toxicity of our solid waste and improve water quality.

For products such as dental floss made of PFAS, there are many alternatives (such as nylon). For propellants, only a few use fluorinated gases and most use non-fluorinated gases (e.g., carbon dioxide, propane, butane, and dimethyl ether) or use pumps instead of gases.

PFAS in food ware can expose consumers during use and can also contaminate compost products. Similar PFAS ban laws for food ware have been enacted in Denmark, Maine, New York, Connecticut, and Washington state, and proposed in Massachusetts and Vermont. Passing this by-law will demonstrate support for the pending Massachusetts laws

[1] This scientific paper classified PFAS as non-essential to cosmetics: "The concept of essential use for determining when uses of PFASs can be phased out" *Environmental Science: Processes and Impacts*, May 2019

[2] "Per- and polyfluoroalkyl substances and fluorine mass balance in cosmetic products from the Swedish market: implications for environmental emissions and human exposure" *Environmental Science: Processes and Impacts*, 2018, p. 1681

(S.1494 / H.2348). Certification programs for PFAS in food packaging have been in operation for manufacturers and distributors in the U.S. since 2019 from the Biodegradable Product Institute (BPI). Several jurisdictions require BPI certification for their composting program such as San Francisco, Minneapolis, and Hastings county, N.Y. Brookline's composting partner, Black Earth Compost, already requires that all paper and plastic product be BPI certified.

In 2021, Maine passed a law to ban PFAS in carpets and fabric treatment in 2023 and all unavoidable PFAS by 2030. This by-law will support the newly proposed Massachusetts comprehensive PFAS law (S.1387 / H.2350).

Non-stick cookware can be coated with fluoropolymers such as polytetrafluoroethylene (PTFE), a PFAS that may be sold under trademarks such as Teflon. For cookware, all the traditional materials have remained available such as stainless steel and cast iron.

PFAS chemicals used in cosmetics include propellants (e.g., hydrofluorocarbon-152a in hair spray) as well as ingredients in lipstick, nail polish, and shampoos (e.g., polytetra-fluoroethylene and Perfluorodecalin).

Under current state and Federal regulation all of these are treating as ordinary non-hazardous waste so they can end up in our landfills and incinerators where they become dispersed into the environment. As with mercury and electronics, we need to eliminate toxics from the waste stream.

Because there are so many products containing fluorinated hydrocarbons and their number is growing, this by-law also allows the Select Board to further regulate them. The expectation is that the list of regulated products could be extended in the future. In this process, the Select Board could consult with other town bodies such as the Solid Waste Advisory Committee or Advisory Council on Public Health.

The Climate Justice Committee of First Parish in Brookline, and the Massachusetts Sierra Club have already endorsed this warrant article with other organizations expected to follow.

MOTION OFFERED BY THE PETITIONERS

MOVED: To amend the General Bylaws by adding the following Article:

ARTICLE 8.XFLUORINATED CHEMICALS REDUCTION BY-LAW

ARTICLE 8.X.1 DEFINITIONS

Bulk packaging: Packages of more than one of the same item.

Fabric treatment: a substance usually liquid applied by a consumer to fabric, carpets, rugs, shoes or textiles to impart characteristics, including, but not limited to, stain resistance or water resistance.

Fluorinated hydrocarbons: chemicals that contain fluorine and carbon. These include certain propellants (such as 1,1-Difluoroethane also known as hydrofluorocarbon-152a) and PFAS.

PFAS: Per- and Polyfluorinated Alkyl Substances, a large class of synthetic industrial chemicals defined as containing at least one fully fluorinated carbon atom. PFAS are a subset of fluorinated hydrocarbons.

ARTICLE 8.X.2 RESTRICTIONS

No retailer shall sell or distribute specific products containing fluorinated hydrocarbons as may be identified in regulations promulgated by the Select Board to further the purposes of this Bylaw, following a duly noticed public hearing.

ARTICLE 8.X.3 EXCLUSIONS

(a) This by-law does not regulate prescription products.
(b) This by-law does not apply to businesses that are primarily service businesses such as restaurants, medical and dental offices, and hair and nail salons.

ARTICLE 8.X.4 ENFORCEMENT

The Brookline Department of Public Health shall be responsible for enforcement.

This by-law shall not be enforced prior to January 1, 2024.

ARTICLE 8.X.5 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

And amend section 10.2 PROSECUTIONS AND ENFORCEMENT as follows:

DIRECTOR OF HEALTH & HUMAN SERVICES
Part VIII-Public Health & Safety
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By adding this article number to the list of Articles following "8.38".

And amend section 10.3 NON-CRIMINAL DISPOSITION to include the following enforcement schedule:

ARTICLE 8.XFLUORINATED CHEMICALS REDUCTION BY-LAW

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Initial Violation	Warning
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Second and Subsequent	$100.00

ADVISORY COUNCIL ON PUBLIC HEALTH
REPORT ON ARTICLE 22

On April 7, 2022, a public hearing was held to hear presentations from petitioners and Health Department staff on the health implications and potential harms related to PFAS in specific consumer products, as well as to listen to citizens' comments and concerns regarding Warrant Articles 22. The following week on April 14th, the Advisory Council on Public Health (ACPH) deliberated and voted on Warrant Articles 22. Discussion of Warrant Article 22 begins at 1:20:30 of the recording.

During deliberation, ACPH members expressed concern about PFAS exposure and the potential health impacts. There was unanimous support for strong federal and state action to regulate and mitigate exposure to PFAS. ACPH members were appreciative of the petitioners for helping raise awareness about PFAS exposure, the health risks, and ways to reduce exposure. It was noted by Commissioner Sigalle Reiss that the Health Department would begin a consumer health education campaign to raise awareness in the community about the dangers of PFAS and tips for reducing certain exposures. Several members raised concerns that the proposed warrant article does not address occupational exposure to PFAS for firefighters and employees of hair and nail salons. ACPH recommends to the Health Department that as part of their outreach campaign, they include employees who are at increased risk of PFAS exposure including firefighters and nail and hair salon employees. ACPH members were mixed on how best to regulate PFAS in the Town of Brookline. ACPH members recognized the challenges inherent in the warrant article including the inconsistent labeling of PFAS in consumer products and the burden it would put on the Health Department to try and implement and enforce the proposed bylaw without additional staff. Several members shared the opinion that the warrant article should be narrowed in focus. There was additional discussion about revisiting this proposed regulation once a federal or state standard is set for labeling PFAS in consumer products. Several members expressed concerns that there might not be alternative products for all of the items on the list. Where alternative product do exist, cost might be a prohibitive factor for some residents.

Outcome Warrant Article 22

Dr. Schlaff made a motion not to support Warrant Article 22 as written however the ACPH strongly supports the elimination of fluorinated hydrocarbons from our world, second by Charles Homer.

- Natalia Linos - No
- James Perrin – Excused Absence
- Tony Schlaff - Yes
- Pat Maher - Yes
- Charles Homer - Yes
- Rosemarie Roque Gordon - Yes

ACPH voted on April 14, 2022 4 in favor of the motion and 1 opposed to not recommend Warrant Article 22 to Town Meeting.

Public Health Background: Prepared by Department of Public Health and Human Services

Per- and poly-Fluoroalkyl Substances (PFAS) are a group of over 9,000 manmade chemicals that are persistent and have a number of known negative effects (United States Environmental Protection Agency, 2021). They were first created in the 1930s and commercialized in the 1940s and 50s. PFAS are often used to manufacture non-stick, and water- and stain-resistant products. According to the Agency for Toxic Substances and Disease Registry, PFAS are in a variety of consumer products including firefighting foam, fast food containers/wrappers, nonstick cookware, stain resistant coatings in fabrics, water resistant clothing, cleaning products, personal care, cosmetics, and paints (2021). PFAS can enter the environment through production or waste streams and are very persistent in the environment. Because these chemicals persist and are water soluble, they can be found in contaminated drinking water and soil, eating fish from contaminated bodies of water or from inhaling or dermal exposure to the list of products above (United States Environmental Protection Agency, 2021). Another area of exposure is to workers who manufacture or work with products containing PFAS (e.g., chemical manufacturers (Heydebreck, et al., 2016), firefighters (Rotander et al., 2015), ski wax technicians (Freberg et al., 2010)).

PFAS Health Risks. There is toxicological evidence that some PFAS have adverse reproductive, developmental and immunological effects in animals and humans (United States Environmental Protection Agency, 2021). PFAS may interference with the body's natural hormones, increase cholesterol levels, increase the risk of kidney disease, damage the liver, affect the immune system, lower birth weight, and increase the risk of certain cancers (Fenton et al., 2020; United States Environmental Protection Agency, 2021).

Regulations. Both the EPA and the Mass Dept. of Environmental Protections are working hard to understand and address PFAS contamination. The EPA published a health advisory regarding PFAS in drinking water back in 2016 and in 2019 developed a PFAS Action Plan (2019). In the past year, the EPA has developed a strategic roadmap for addressing PFAS (2021). The EPA's roadmap addresses three main areas: 1) researching the impact of PFAS of the environment and human health; 2) restricting PFAS exposure; and 3) remediating PFAS contamination to protect the environment and human health.

In 2021, the Massachusetts Legislature established a PFAS Interagency Task Force. Almost one year later, the PFAS Interagency Task Force released a report with 30 recommendations in the areas of: funding PFAS detection and remediation; supporting environmental justice communities; phasing out PFAS from consumer goods; expanding the regulation of PFAS;
encouraging private well PFAS testing and remediation; supporting firefighters and fire departments; addressing accountability for PFAS contamination; and enhancing public awareness of PFAS (2022). In the short term, we anticipate the Massachusetts legislature will continue to fund mitigation efforts in the current legislative cycle, while addressing the more significant pieces of the Task Force recommendations in the next legislative cycle.

Proposed Warrant Article. The Spring 2022 Town Meeting will review and vote on proposed Warrant Article 22. This Warrant article seeks to amend the general bylaws to add the regulation of a specific subset of consumer products that contain PFAS. The restrictions are as follows:

- (a) No retailer shall sell or distribute:
- (1) Over-the-counter cosmetic or personal care products to which fluorinated hydrocarbons have been intentionally added in any amount.
- (2) Food ware products packaged in bulk to which fluorinated hydrocarbons have been intentionally added in any amount. Any fiber or plastic product marketed as Compostable must be certified by the Biodegradable Product Institute.
- (3) New non-stick cookware that contain fluorinated hydrocarbons.
- (4) Fabric treatment products that contain fluorinated hydrocarbons.

Benefits

There are a number of benefits to reducing exposure to both the environment and the residents of Brookline. As noted above, exposure to PFAS might lead to a number of potential negative health outcomes. The proposed warrant article would require the Health Department to regulate retail stores to reduce PFAS exposure. A reduction in the number of consumer products with PFAS in local retail stores could potentially reduce some exposure to PFAS and be better for residents and the environment. It would have the added benefit of helping to raise broader awareness of PFAS in consumer products. It might also spur action on PFAS products at the state and federal level. It is important to note that although the proposed warrant article has a number of potential benefits several including engaging the public and raising awareness can be done without the need for additional regulations at the local level.

Challenges

The proposed warrant article is not without its own challenges. The Health Department would be required to regulate consumer products without any federal or state standards for labeling PFAS. Without labeling or disclosure requirements on manufacturers it would be impossible for the Department to determine if some products listed in Warrant Article 22 contain PFAS and would therefore be regulated. The regulation excludes items purchased online or in neighboring municipalities limiting its effectiveness. As a result of the pandemic, consumer shopping habits have continued to move towards online

shopping making this regulation even less effective as it is currently drafted. Therefore, the regulation would only address a portion of the intended items.

The proposed warrant article is an unfunded mandate on the Health Department. To properly enforce this bylaw would require additional staff time and would require some combination of hiring new staff or increasing the hours of existing part-time staff. The additional staff time is required to help write and implement the regulation, engage and educate the business community and public regarding the new regulation, inspect stores, write reports, hold hearings, fine stores that are not in compliance, reinspect stores, and respond to complaints. At this point it is unclear how many retail stores carry PFAS containing products, and many of the local businesses are not currently regulated by the Health Department.

The enforcement of an existing Sustainable Containers and Packaging bylaw (Article 8.32) is informative with regard to this potential new bylaw. As originally passed the Sustainable Containers and Packaging bylaw would require only one part-time staff to enforce. However, a number of factors outside the Health Department's control have made this impossible. Turnover both at the Health Department and among regulated businesses have added challenges in establishing relationships and coming into compliance. The Health Department has faced considerable difficulty in retaining staff in this role due to its part-time status. There are approximately 250 businesses that need to be inspected as part of the existing bylaw. The role includes education, outreach, and inspection. After an initial inspection, a business that is in full compliance would require Health Department staff to write a report and continue to be re-inspected to ensure compliance is maintained. Those businesses found to be out of compliance would still be issued a report. In addition, a reinspection would be scheduled and if the business cannot come into compliance, they can request a hearing and a waiver if they can show an inability to purchase recommended alternative products. Unfortunately, the pandemic has exacerbated supply chain issues and a number of businesses in Brookline have had difficulty coming into compliance. This adds to the workload because businesses are given temporary waivers which then require additional inspections and staff time in the same year. If this bylaw is passed, we will need to fund additional staff to identify retail stores and products to be regulated, address education and outreach, inspections, reports, hearings, and the potential for alternatives products not to be available and the potential for waivers or other unforeseen challenges.

Health Commissioner Perspective

The contamination of land, drinking water, and food supplies and general exposure to PFAS are important public health issues in need of a whole of government response. The proposed warrant article would be difficult to properly enforce without State and/or Federal labeling requirements. Beyond the labeling challenges, enforcing the proposed bylaw would be difficult for the Health Department given our current staffing challenges and the inability to identify PFAS in many consumer products. The proposed bylaw would create an unfunded mandate that would require the Town of Brookline to fund additional staff in FY24 to enforce. My recommendation is to support the work at the Federal and State level to regulate PFAS, work on consumer education, and conduct

environmental scans to identify known PFAS products. To begin to address PFAS exposure at the local level, the Health Department is actively recruiting for a summer intern to work with our policy analyst and community health staff on an education and outreach campaign. As part of this effort, we plan to work with community groups, such as Mother's Out Front to identify known PFAS products in retail stores

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SELECT BOARD'S RECOMMENDATION

Article 22 is a petitioned article that would restrict the sale of certain products containing fluorinated hydrocarbons in the Town of Brookline. While the Board agrees that these chemicals are a health hazard it is clear that enforcing a ban is a complicated matter that, in its current form, would be difficult to implement. The Board is supportive of the recommendation of referral from the Advisory Committee that would provide more information and analysis on the best approach to reduce these chemicals in Brookline.

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

ROLL CALL VOTE:

Aye:	Absent:
Fernandez	Hamilton
Greene	
Aschkenasy	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: Favorable Action on Referral of the Subject Matter of Article 22 to a Moderator's Committee, with a Preliminary Report due by the Fall 2022 TM and a Final Report and possible Warrant Article for the Spring 2023 Annual Meeting, by a vote of 21-3 with no abstentions.

Executive Summary	WA 22 was filed to restrict the sale of certain products containing fluorinated hydrocarbons in the Town of Brookline for the purpose of reducing the risk of exposure to people and the environment. The products to be banned include those with fluorinated hydrocarbons within certain categories of goods (personal care and cosmetics, foods packaged in bulk, non-stick cookware and fabric treatments) as well as those identified by the Select Board, to be specified in regulations. The proposed by-law, as amended, would go into effect on July 1, 2023, with compliance by retailers enforced by the Department of Public Health and Human Services. The Advisory Committee was concerned that the by-law as written was too difficult to comply with and to enforce. Product labels often do not provide the information needed to identify which products fall under the by-law, and the current staffing of DPH likely is inadequate to properly enforce the by-law. Also, the responsibility of the Select Board to add items without guidance as to priority of additions could be improved upon. The Advisory Committee therefore recommends that a committee be established to consider how best to implement the goal of this warrant article to reduce the presence of fluorinated hydrocarbons, which the Advisory Committee agrees should be curtailed due to its harm to health and the environment.
Voting Yes will...	Voting Yes will reduce the volume of products containing fluorinated hydrocarbons that may be sold in Town. It assigns the role of promulgating regulations to the Select Board and enforcement responsibility to the Department of Public Health and Human Services.
Voting No will...	Voting No will have no impact on Town operations.
Financial impact	Enactment of this by-law will have a financial impact on the Town if there is a need for additional staffing to provide adequate enforcement. It also will have a financial impact on retailers who will need to invest in research to determine which products may no longer be sold, find alternative products that may be more costly, and potentially lose customers to retailers in other communities.
Legal implications	The by-law as proposed may be subject to legal scrutiny if retailers are unable to comply with the law because they lack the information needed to determine whether they are in compliance.

Introduction

Fluorinated hydrocarbons are a type of chemical compound. The most well-known of these compounds, of which there are thousands, are PFAS. Their strong chemical bonds

prevent them from degrading, which has earned them the moniker of "forever chemicals." This property makes them useful for a variety of purposes and consequently are found in many products. They are used in firefighter turnout gear to make it water-resistant, reduce moisture-related skin burns and to protect from steam. They are found in other products because of their water, oil and stain resistance.

Because these chemical compounds do not break down, they remain in the environment and in our bodies, and their presence in our bodies has been shown to cause a variety of harms, including weakening the immune system and related to that, reducing a person's resistance to infectious diseases. They have also been linked to a variety of cancers, an increase in cholesterol levels, alterations in liver enzymes, reductions in infant birth weights and high blood pressure in pregnant women.

Warrant Article 22 proposes a new by-law to Article 8 of the Town's General By-Laws – Public Health and Safety to restrict the sale of products within the following categories if they contain fluorinated hydrocarbons:

1. Over-the-counter cosmetic or personal care products, if fluorinated hydrocarbons were intentionally added.
2. Food ware products packaged in bulk if fluorinated hydrocarbons were intentionally added
3. New non-stick cookware
4. Fabric treatment products

The proposed by-law also would restrict the sale of other products containing fluorinated hydrocarbons if these are identified in regulations promulgated by the Select Board.

The by-law specifically excludes products sold in service businesses such as restaurants, medical offices, and hair and nail salons, as well as prescription products, and, as amended, would go into effect on July 1, 2023, with enforcement carried out by the Department of Public Health and Human Services, which currently has a single, part-time (19 hour/week) health specialist who enforces the plastic, polystyrene and other bans passed by TM some years ago.

Evaluation Methodology/Research

- Letter from the Massachusetts Sierra Club received April 5, 2022 in support of WAs 22 and 25.
- Letter from the Brookline Chamber of Commerce dated March 31, 2022 in opposition to WA 22, WA25 and WA30.
- Letters in support from 2 residents.
- Boston Globe webinar "Forever Chemicals: Understanding and Mitigating Impacts of PFAS, March 23, 2022
- Consumer Reports article "How PFAS Can Harm Your Health" March 22, 2022
- CNN Health article on the health and environmental risks of PFAS, March 25, 2022

- Two warrant articles passed by Town Meeting in November 2012 that ban polystyrene and plastic bags. See Section 8.32 Sustainable Food Containers and Packaging (effective dates 1/1/2019 and 1/1/2020); and Section 8.33 Sustainable Bags (effective date 7/1/2017 with up to a 1-year waiver).
- A warrant article passed by Town Meeting in May 2015 that regulates the sale of bottled water. https://www.brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws
- H.2350 An Act restricting toxic PFAS chemicals in consumer products to protect our health, which has 30 sponsors including Reps. Vitolo and Balser. Currently in committee. https://malegislature.gov/Bills/192/H2350
- H.2348 An Act to ban the use of PFAS in food packaging, which has 39 sponsors, including Reps. Vitolo, Elugardo and Balser. Currently in committee. https://malegislature.gov/Bills/192/H2348/BillHistory
- Input from Sigalle Reiss, Director of the Department of Public Health and Human Services

Discussion
With little scientific debate that fluorinated hydrocarbons have harmful effects on human health and the environment, the focus of the Advisory Committee discussion was whether the particular approach taken by the proposed by-law was the most effective to address the potential for harms created by these chemicals in our community.

Of the greatest concern was whether the by-law was workable. It would ban the sale of products within certain categories of merchandise; however, more frequently than not, product packaging does not provide information on whether fluorinated hydrocarbons are an ingredient, and manufacturers when contacted, do not always provide accurate information. Thus, Brookline's retailers, and particularly the smaller stores, would lack the ability to identify which of the many items for sale within these categories contain the prohibited chemicals.

An approach suggested by Sigalle Reiss, the Director of the Department of Public Health and Human Services, as a first step would be to narrowly target businesses that expose people to the highest concentrations of fluorinated hydrocarbons. Not only would this focus restrictions where fluorinated carbons potentially cause the most harm to human health, it also would make regulation, compliance and enforcement easier to implement. One such business is nail salons. Yet the proposed by-law excludes products that are sold by service industries.

Another approach suggested by Reiss was to educate the public about the dangers of fluorinated hydrocarbons prior to implementing restrictions on the sale of products that include them.

More general concerns brought up by some Advisory Committee members were whether there had been sufficient consideration of the degree to which a product containing fluorinated hydrocarbons causes risk of harm and an assessment of whether alternative products exist. Related to this, there was discussion regarding in which instances the benefit of having the chemical in a product outweighs the harm. For example, firefighter

gear continues to contain PFAS because it is so effective in protecting firefighters from burns.

The petitioner noted that the choice of which products to include in the ban was taken from legislation currently pending at the State House. One reason that this warrant article was filed at this time was to support the State level legislation.

Given the concerns cited above, the Advisory Committee concluded that the substance of the proposed by-law would benefit from more analysis, with the goal of developing a by-law that would be a more workable and more effective tool to help curtail the harms caused by this chemical compound, the risks of which the public is becoming increasingly aware.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the following motion, by a vote of 21-3 with no abstentions.

MOVED: That the subject matter of Article 22 be referred to a Moderator's Committee, with a Preliminary Report due by the Fall 2022 TM and a Final Report and possible Warrant Article for the Spring 2023 Annual Meeting.

ARTICLE 22 ADVISORY COMMITTEE VOTES

Article Description	Referral of WA22
AC recommendation (Favorable Action unless indicated)	**21-3-0**
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	Y
Neil Gordon	N
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	N
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 22

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The Select Board report under article 22 is incorrect. The Select Board have not taken a position on this article. The Board will vote on this at their next meeting.

ARTICLE 22

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

At their meeting on May 24th the Select Board discussed Article 22 which seeks to restrict the sale of certain products containing fluorinated hydrocarbons in the Town of Brookline. The Board agreed that these products are dangerous and felt that the revised petitioner motion would allow the Board to work with the Advisory Council on Public Health (ACPH) to develop regulations that identify products that should be restricted.

A unanimous Select Board voted FAVORABLE ACTION on the petitioner motion.

ARTICLE 23

TWENTY-THIRD ARTICLE
Submitted by: Mike Toffel (TMM 8)

To see if the Town will adopt the following Resolution:

WHEREAS Town Meeting is responsible for funding capital and operating budgets to install and maintain Brookline's athletic fields; and

WHEREAS the Park and Recreation Commission recently oversaw the completion of the *2020 Athletic Fields Needs Assessment and Master* and the *Parks, Open Space and Recreation 2020 Strategic Master Plan Update*, which concluded "The quantity and size of Brookline's athletic fields, especially multi-use turf fields, continue to not meet the current demand or the Level of Service standards for Brookline;" and

WHEREAS Brookline has recently installed a synthetic turf athletic field at the Ridley School, a grass turf athletic field at the Cypress Street Playground, and is planning to install a synthetic turf athletic field at the new Driscoll School where building construction has already begun; and

WHEREAS Brookline is implementing several best practices when procuring synthetic turf athletic field, including (a) procuring only organic infill for its synthetic turf athletic fields to avoid potential health risks associated with crumb rubber and to dramatically reduce "heat island" effects; (b) developing additional technical specifications in its Request for Proposals, such as requiring manufacturers to disclose whether their products contain certain chemicals of concern; and, requiring vendors to indicate whether and how they will recycle or repurpose turf components when Brookline uninstalls them; and

WHEREAS some concerns have been expressed about the environmental, safety, and health impacts of synthetic turf and of grass turf, and that installing grass turf in locations with high usage quickly transforms the surface to compacted dirt, reducing its safety, availability, and aesthetics; and

WHEREAS the decision between installing grass turf or synthetic turf at a particular athletic field entails many complicated tradeoffs, including: (1) how much time the field can be used each week to prevent compaction that can impede safety, (2) how much time the field will be unavailable for use during and following wet weather, (3) how much time the field will be unavailable for use each spring and fall for "rest periods", (4) how consistently and for how long the playing surface will retain its original desirable properties given anticipated usage intensity (e.g., soft grass versus compacted dirt), (5) equity concerns associated with accessing alternative field space—often beyond walking range, necessitating driving—when field closures occur due to wet weather or seasonal rest periods, or if program constraints are imposed to preserve field surface conditions; (6) risk of user injury, (7) risk of user safety associated with possible heat island effects, (8) possible health risks associated with chemical exposure, (9) end-of-life disposition, (10)

installation costs; (11) maintenance costs, (12) replacement or revitalization frequency, and perhaps additional criteria; and

WHEREAS the Brookline Park and Recreation Commission lacks a formal policy guiding the circumstances under which it will recommend that athletic fields should be grass turf or synthetic turf; and

WHEREAS a nuanced understanding of the many factors involved should inform such a policy, diverse expertise should be brought to bear to consider their tradeoffs, consult with the wide array of effected stakeholders, and be developed through a public meeting process, and Town Meeting itself does not possess all the required expertise or the time to sufficiently consider the tradeoffs to develop an appropriate policy for Brookline.

NOW THEREFORE BE IT RESOLVED THAT:

Town Meeting urges the Parks and Recreation Commission to:

(1) Appoint an Athletic Field Surface Task Force, consisting not only of a few Parks and Recreation Commission members, but also other community and staff members that bring diverse perspectives such as athletics, recreation, the Public Schools of Brookline, environment/climate, toxicology, risk assessment, public health, children's socioemotional and physical development, capital planning, and perhaps other domains;

(2) Charge the Task Force to conduct its meetings in a manner that is consistent with the provisions and intent of the Open Meeting Law;

(3) Charge the Task Force with proposing a draft Athletic Field Surface Policy to the Parks and Recreation Commission by September 1, 2022;

(4) Hold at least one Public Hearing to receive feedback on the draft policy, notifying Town Meeting Members of the Public Hearing;

(5) Finalize the Athletic Field Surface Policy, and notify Town Meeting Members of its completion, by October 15, 2022.

PETITIONER'S ARTICLE DESCRIPTION

The rationale for this resolution is described in its whereas clauses.

PARK AND RECREATION COMMISSION STATEMENT

On April 26, 2022, the Park and Recreation Commission voted 7 to 0 to support the Advisory Committee's recommendation on Article 23 as amended. Voting in favor were J. Bain, N. O'Connor, W. Sheridan Ames, C. Batchelor, A, Bellalta, T. Mooney and J. Pan. None opposed. No Abstentions.

The Park and Recreation Commission heard the petitioner's explanation of the Warrant Article at their regular meeting on April 12, 2022. More information was requested and it was discussed again at a special meeting on April 26, 2022. In light of the possibility of a moratorium as is suggested in Warrant Article 24, the commission overall felt that more study should be done about the concerns that have surfaced in regards to synthetic turf. With the shortage of fields in town and the difficulty in keeping fields playable, synthetic turf has become an important tool in terms of field availability and playability.

There is a significant deficit in playing fields in town. Synthetic playing fields increase the available use specifically during inclement weather, when natural grass fields should not be played on to avoid damage to soil and turf. This is particularly important during the early spring months when the grass fields cannot be open for spring sports until after April 1 or later due to saturated field conditions. We do feel that an appointed group of individuals with the professional backgrounds and expertise stipulated in the Petitioner's motion would be exceedingly helpful to the Commission as we work to develop a policy about the future of synthetic turf and grass fields. The Commission would be pleased to work with the Advisory Council on Public Health and the Select Board in assembling this Task Force. More time is needed to review all of the information that has been presented in order to evaluate the results and make the best decision for the health and safety of Brookline residents.

ADVISORY COUNCIL ON PUBLIC HEALTH
REPORT ON ARTICLES 23 AND 24

On April 7, 2022, a public hearing was held to hear presentations from petitioners and Health Department staff on the health implications and potential harms related to the expansion of synthetic turf fields, as well as to listen to citizens' comments and concerns regarding Warrant Articles 23 & 24. The following week on April 14th, the Advisory Council on Public Health (ACPH) deliberated and voted on Warrant Articles 23 & 24.
In their deliberation, members acknowledged the work of the Parks and Open Space Division in developing the Athletic Field Needs Assessment and Master Plan. ACPH members expressed a desire to increase opportunities for physical activity through the development of additional athletic fields in town. However, members expressed concerns about addressing that need with synthetic turf fields given the potential health risks. Areas of concern addressed included PFAS in synthetic turf and the potential to leach into the ground and drinking water, numerous questions about health concerns when exposed to chemicals, the buildup of heat from synthetic turf, the potential for MRSA outbreaks, and barriers to recycling synthetic turf. Several members underscored that climate change is a priority when ACPH talks about health impacts of policy decisions, and the need to consider both immediate and long-term health impacts of Warrant Articles. ACPH members spoke favorably about forming a town committee to review and develop a policy

for the Town of Brookline on the uses of natural and synthetic turf athletic fields. They were concerned that the timeline presented in Warrant Article 23 was too short and that a three-year moratorium as presented in Warrant Article 24 would give the community more time to review and discuss options. ACPH members felt the three-year moratorium would also give the industry time to begin to remove PFAS from synthetic turf manufacturing and incentivize them to also address the obstacles to recycling the materials at the end of its useful life.

Outcome Warrant Article 23

Dr. Anthony Sclaff made a motion to recommend no action on Warrant Article 23, second by Pat Maher.

- Natalia Linos - Yes
- James Perrin - No
- Tony Schlaff - Yes
- Pat Maher - Yes
- Charles Homer - No
- Rosemarie Roque Gordon - Yes

ACPH voted on April 14, 2022 4 in favor of the motion and 2 opposed to recommend no action on Warrant Article 23 to Town Meeting.

Outcome Warrant Article 24

Dr. Rosemarie Roque Gordon made a motion to recommend Warrant Article 24 as written, second by Pat Maher.

- Natalia Linos - Yes
- James Perrin – Excused Absence
- Tony Schlaff - Yes
- Pat Maher - Yes
- Charles Homer - No
- Rosemarie Roque Gordon - Yes

ACPH voted on April 14, 2022 4 in favor of the motion and 1 opposed to recommend Warrant Article 24 to Town Meeting.

Public Health Background: Prepared by Department of Public Health and Human Services

The Town of Brookline is a densely populated community with significant need for additional recreation space. The challenge facing Brookline is similar to discussions happening across the Commonwealth and the country, how best do we provide the community with necessary and safe infrastructure for physical activity? Athletic fields exist on a continuum of risk based on the type of field (i.e., natural vs synthetic), staff and equipment, maintenance schedules, chemicals necessary to keep the fields in good working order, and space. The Town of Brookline needs to balance the demand for regulation size athletic fields against the need for additional space, and this continuum of risk that comes with building athletic fields that are synthetic turf.

The Town of Brookline has a total population of 63,191 residents living across approximately 6.8 square miles. According to the Massachusetts Department of Elementary & Secondary Education (DESE), there are 6,928 students, including almost 2100 at the high school level in the Public Schools of Brookline. In a densely populated

urban area like the Town of Brookline one challenge is finding sufficient open space to expand opportunities for organized athletic activities for residents of all ages. As the Parks and Open Space Division indicated in the 2020 Athletic Fields Needs Assessment and Master Plan more than a third of the fields are not regulation size. A number of fields are multi-use and demand for field time is higher than the supply of athletic fields in Brookline. Excess demand forces the recreation department to book fields above what is recommended by the industry. The average athletic field in Brookline is used over 1,000 hours between the spring and fall. At that level of use, natural turf is destroyed and fields are damaged leading to an increased potential for injury. Excess demand for playing fields prevents the Parks and Open Space Division from resting fields for growing season to help the turf regenerate. In addition to natural turf conditions, this excess demand makes it difficult for Brookline High School to schedule the necessary field time for its competitive athletic programs and makes it impossible to offer club sports. A lack of club sports offerings means there's a potential for improving access to regular physical activity for Brookline youth if we could increase access to athletic fields.

Benefits

The benefits of installing new synthetic turf fields in Brookline are multifaceted. The Town of Brookline's Master Plan proposes a combination of synthetic and natural turf fields to meet this increased demand. Increasing the supply provides the Town of Brookline with an opportunity to improve equity in access to fields through a combination of distributing fields across town and providing access to club sports. Adding additional synthetic turf fields has the potential to improve opportunities for physical activity through a combination of longer playing seasons and fewer rain delays. Synthetic turf fields that are properly weighted and distributed with organic infill can help reduce the potential for injuries that we see in our overused and uneven athletic fields. In contrast natural turf that is treated organically, properly maintained, and allowed the proper periods of rest is the ideal. By its very nature, natural turf is an organic organism that captures small amounts of carbon, absorbs water, reduces the heat island effect, and allows for insects and animals to live.

Risks

Along with benefits, comes the potential risks of using synthetic turf. Due to the dermal proximation of individuals using the turf, there is the potential for dermal exposure. Methicillin-resistant Staphylococcus aureus (MRSA) has been found to be responsible for one-third of the outbreaks in athletes at high school and collegiate levels (Keller, 2020). The risk of MRSA transmission in the turf environment is partially a function of organism survival and its availability in the turf materials (Keller, 2020). MRSA was available for up to 96 hours on infill and 24 hours on turf fibers. Toxicity assays showed over 90% of MRSA cells remained viable after 6 hours of exposure to cork infill and sands while 79%, 71%, 68% and 17% of MRSA remained viable after exposure to polymer coated materials, crumb rubber, thermoplastic elastomer (TPE) rubber and ethylene propylene diene monomer (EPDM) rubber (Keller, 2020).

Another concern of synthetic turf is the potential to be exposed to polycyclic aromatic hydrocarbons (PAHs) and semi-volatile organic compounds (SVOCs). A study conducted by Pavilonis, evaluated the potential exposures from playing on artificial turf fields and associated risks to trace metals, SVOCs and PAHs by examining typical artificial turf fibers, different types of infill and samples from actual fields. Overall, the results found that the PAHs were below the limit of detection and no SVOCs were identified at

quantifiable levels based on a match of their mass to compounds regulated in soil. The study did recommend using lead-free infill as there are no set regulations for lead by the EPA (Pavilonis, 2014).

The New York State Department of Environmental Conservation conducted an assessment of chemical leaching, releases to air, and temperature of crumb rubber infilled synthetic turf fields. Although the assessment focuses on crumb rubber infill, the results may still be beneficial. Three metals were detected, Zinc was detected in all samples with an average of 1947.4 ± 419.3 ug/L in the first sample and an average of 1150.1 ± 95.4 ug/L in the second sample. However, the findings were still below the groundwater standard/guidance value of 2000 µg/L. Iron and copper were detected above the groundwater standard in a small percentage of the samples, primarily from crumb rubber derived from truck tires. The remaining analytes detected were below the groundwater standard (NYSDEC, 2009).

Another chemical of concern, per-and polyfluoroalkyl substances (PFAS), which are found in many everyday items such as, packaging, non-stick, stain repellent, and waterproof products. PFAS can enter the environment through production or waste streams and are very persistent in the environment and the human body. There is toxicological evidence that some PFAS have adverse reproductive, developmental and immunological effects in animals and humans (EPA, 2021). As a result of this, leaching of PFAS has been a concern of synthetic turf fields. Stated in the Select Board-Advisory Committee Memorandum, the predominant processing agent being used by the synthetic turf manufacturers is the copolymer polyvinylidene fluoride-co-hexafluoropropylene (PVDF-HFP), this is a polymeric PFAS. PVDF-HFP is a common component used in medical devices such as stents, meshes, and replacement joints. The PVDF-HPV copolymer is a very large molecule that is not soluble in water. Since the PVDF-HPV copolymer is large, it has a high molecular weight and is believed to be too large to cross cell membranes. Thus, believed to pose less risk to human and ecological health (Weston & Sampson Engineers, 2022).

Injuries on synthetic turf have also been thought to be more prevalent. Meyers focused on game-related high school football injuries. They found that as infill surfaces decreased, injuries significantly increased across numerous playing conditions. Meyers suggests, based on findings, high school football fields should minimally contain 6 pounds of infill per square foot (Meyers, 2019). In another study lower extremity injury rates on artificial turf versus natural playing grass were reviewed. The study found that overall injury and knee injury were similar between the two playing surfaces. Although artificial turf may be associated with a higher rate of foot and ankle injuries compared to natural playing grass (Gould, 2022).

Synthetic turf has also been known to create a “heat island” effect due to the sun beating on the materials in the synthetic turf. Compared to natural grass fields which release water vapor and lead to a cooling effect rarely rising above 100°F. Turf fields, on the other hand, rise well above 100°F (Myrick, 2019). With what seems to be longer, hotter periods the heat island effect may be a cause for concern as the high surface levels can lead to dehydration, burns and blisters. Though concerning, there are ways to avoid health effects. It is recommended to use the turf fields outside of peak sun times, if the turf must be used during those times, researchers from Penn State’s Center for Sports Surface Research notes

that heavy watering before going on the turf can help reduce surface temperatures (Myrick, 2019).

Health Commissioner Perspective

The challenge for the Advisory Council on Public Health and Town Meeting is how do we address the poorly growing natural turf, the need to rest fields so they can be sustained in proper condition for the long term, the excess demand for regulation size athletic fields, and the lack of open space to build sufficient athletic fields? The Town of Brookline needs to balance this demand for additional regulation size athletic fields against the continuum of risk that comes with building athletic fields that use synthetic turf. The Town of Brookline Parks and Open Space Division has addressed some of the known risks by: committing to only use organic material/sand infill; using only turf systems that do not include regulated PFAS compounds; testing turf materials for PFAS, and requiring all future projects to be recycled or repurposed at the end of their life. As next steps, the Health Department recommends a committee or task force with diverse representation and expertise to fully explore these issues and develop a turf field policy for the Town of Brookline.

Works Cited

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New York State Department of Environmental Conservation. (2009). An Assessment of Chemical Leaching, Releases to Air and Temperature at Crumb-Rubber Infilled Synthetic Turf Fields. http://www2a.cdc.gov/han/archivesys/ViewMsgV.asp?AlertNum=00275.

Pavilonis, B. T., Weisel, C. P., Buckley, B., & Lioy, P. J. (2014). Bio-accessibility and Risk of Exposure to Metals and SVOCs in Artificial Turf Field Fill Materials and Fibers. *Risk Analysis : An Official Publication of the Society for Risk Analysis*, *34*(1), 44. https://doi.org/10.1111/RISA.12081

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Myrick, Sonia. *(2019). Synthetic Sports Fields and the Heat Island Effect* | *Operations* | *Parks and Recreation Magazine* | NRPA. (n.d.). Retrieved March 31, 2022, from https://www.nrpa.org/parks-recreation-magazine/2019/may/synthetic-sports-fields-and-the-heat-island-effect/

Vecchio, A., Gallentine C, E. (March 29, 2022). *Warrant Articles 23 and 24* [Memorandum]. Department of Public Works. PDF.

SCHOOL COMMITTEE STATEMENT

On April 7, 2022, the School Committee voted 8-1-0 to recommend passage of WA23. Voting in favor were Mr. Pearlman, Ms. Charlupski, Ms. Ditkoff, Dr. Ehrenberg, Ms. Frias, Dr. Liu, Ms. Monopoli, and Ms. Nobrega. Voting opposed was Ms. Federspiel. The School Committee values the process of gathering information, soliciting community input, and pursuing informed evidence-based decision-making. Creation of an Athletic Field Surface Task Force would enable stakeholders to better understand the logistical, social, economic, and health (mental and physical) impacts on various proposals regarding field surfaces.

SELECT BOARD'S RECOMMENDATION

Article 23 is a petitioned resolution that asks the Park and Recreation commission to appoint an Athletic Field Surface Task Force charged with creating a draft Athletic Field Surface Policy for Parks and Recreation Commission to consider by September 1, 2022 and for the commission to hold a public hearing on this draft, which would then be finalized by October 15th.

The Board is supportive of the Advisory Committee's motion, which provides referral to a broader committee with a town-wide perspective.

A unanimous Select Board voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ROLL CALL VOTE:

Aye:	Absent:
Fernandez	Hamilton
Greene	
Aschkenasy	
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

Note: This report is a "master report" which covers Warrant Article 23 and Warrant Article 24.

Recommendations:
By a vote of 22-0-2, the Advisory Committee recommends **Favorable Action** on **Article 23**, as amended.

By a vote of 15-7-1 the Advisory Committee recommends **Referral** of the subject matter of **Article 24** to the Athletic Field Surface Task Force, appointed pursuant to Article 23 at the 2022 Annual Town Meeting, with the understanding that maintenance or replacement of synthetic/artificial turf that has been installed and is existing prior to the adoption of this resolution, including, but not limited to, the synthetic/artificial turf fields at Skyline Park and at Soule Recreation, is permitted.

Executive Summary:	**Article 23**, as amended by the Advisory Committee, calls for the Select Board, in consultation with the Park and Recreation Commission and the Advisory Council on Public Health, to appoint an Athletic Field Surface Task Force consisting of individuals with diverse backgrounds in such areas as athletics, recreation, risk assessment, public health, toxicology, children's socio-emotional development, etc. to develop decision guidelines relative to installing artificial turf or natural grass on the town's athletic fields and to notify Town Meeting members of a required public hearing and of the results of its work, to be completed by October 15, 2022. By a vote of 22-0-2, the Advisory Committee recommends Favorable Action on Article 23, as amended **Article 24**, as filed and subsequently amended by the petitioner (see Appendix at the end of this report), amends the Town's By-Laws to create a three-year moratorium on the installation of synthetic turf on any Town property, but allows the replacement of the existing synthetic turf fields at Skyline Park and Soule Recreation. This would effectively bar the installation of a synthetic turf field at the new Driscoll School as is currently planned. After June 1, 2025, any new synthetic turf field would have to be free of organic fluorine, and after June 1, 2030, any replacement synthetic turf field would have to be free of organic fluorine. By a vote of 15-7-1, the Advisory Committee recommends referral of **Article 24** to the Task Force identified in Article 23.

Voting Yes will...	Voting Yes on **Article 23**, as amended by the Advisory Committee, will result in the Select Board, in consultation with the Park and Recreation Commission and the Advisory Council on Public Health (ACPH), appointing a Task Force to develop decision guidelines relative to installing artificial turf or natural grass on the town's athletic fields and to notify Town Meeting members of a public hearing and of the results of its work, to be completed by October 15, 2022. Voting Yes to **refer Article 24** would prevent the imposition of Article 24's moratorium on the installation of new artificial turf fields, including the one proposed for the new Driscoll School, and would refer the subject matter of the article to the Athletic Field Surface Task Force. Voting Yes on the **Petitioner's motion under Article 24** would permit the replacement of the artificial turf fields at Skyline Park and Soule Recreation but would impose a three-year moratorium (until June 1, 2025) on the installation of new artificial turf fields, including the one currently planned for the new Driscoll School. Voting Yes would effectively require that the new Driscoll School field to be natural grass, consequently delaying the field's opening for a year
Voting No will...	Voting No on **Article 23**, as amended, would result in the Park and Recreation Commission having no guidelines generated by an expert panel to assist them in developing a policy by October 15, 2022 regarding the use of artificial turf versus natural grass for athletic fields. Voting No **to refer Article 24** and No **on the Petitioner's motion** under Article 24 would result in no study of artificial turf and natural grass fields by the Task Force described in Article 23 and no restrictions on installing artificial turf on any Town-owned properties, including Driscoll.

Financial impact	Artificial turf is more expensive than natural grass sod to purchase but less expensive to maintain. An analysis done for Harry Downes Field comparing the per-hour-of-use capital and maintenance costs for a natural grass field against those of an artificial field over a 20-year cycle concluded that: (a) the costs of the grass field ($73/hour) would be slightly higher than those of the artificial field ($64/hour) if the grass field were not closed for rest periods; and (b) would be about three times higher for the grass field ($198/hour) than those of the artificial field ($64/hour) if the grass field were closed for the recommended rest periods in order to preserve the quality of the field. Under current policy, if fields are not being used by the Brookline Public Schools or by the Recreation Department, they may be rented out to private user groups. Artificial turf fields can be rented out for a longer period during the year and under more varied conditions (i.e. after a rain storm), thus increasing potential revenue. The season for renting out grass fields is shorter and the weather conditions during which the grass fields can be rented are more limited.
Enforcement impact	Not Significant
Legal implications	Not Significant

Introduction

Article 23, as amended by the Advisory Committee, asks the Select Board, in consultation with the Park and Recreation Commission and the Advisory Council on Public Health, to form an Athletic Field Surface Task Force, composed of individuals who offer expertise in and perspective on such matters as athletics, recreation, education, environment/climate, toxicology, risk assessment, capital planning, public health, and the socio-emotional and physical development of children. The group would be tasked with developing decision guidelines relative to installing artificial turf or natural grass on the Town's athletic fields and subsequently notifying Town Meeting members of any public hearings and of the results of its work, to be completed by October 15, 2022, the deadline proposed by the petitioner. With the information generated by the Task Force, the Park and Recreation Commission would be able to develop a policy on the use of artificial turf or grass for athletic fields.

As originally proposed by the petitioner, the Park and Recreation Commission would appoint the Athletic Field Surface Task Force and request that it draft a policy regarding the uses of artificial turf and natural grass for athletic fields, after which the Park and

Recreation Commission would hold a public hearing and finalize the policy. As stated above, the deadline for completing this work would be October 15, 2022.

Article 24, as amended by the petitioners, proposes a by-law with the following provisions:
1) Brookline shall not install artificial turf on any town-owned property for three years except to maintain or replace existing artificial turf fields.
2) Beginning June 1, 2025, any new artificial turf field installed on town property must be free of organic fluorine as confirmed by the supplier and by tests conducted by an independent laboratory.
3) Beginning June 1, 2030, any replacement artificial turf field installed on town property must be free of organic fluorine as confirmed by the supplier and by tests conducted by an independent laboratory.

Evaluation Methodology/Research

- Memorandum from Alexandra Vecchio, Director of Parks and Open Space and Erin Gallentine, DPW Commissioner relative to Articles 23 and 24 https://www.brooklinema.gov/DocumentCenter/View/30426/Article-23-and-24-Memorandum-03-30-2022?bidId=
- Brookline's Athletic Field Deficit Challenge and FAQs (https://www.brooklinema.gov/DocumentCenter/View/30427/Athletic-Playing-Field- Deficit--Solution-Summary-and-FAQs-03-30-2022)
- "Intense Summer Heat Fluxes in Artificial Turf Harm People and Environment". C.Y. Jim, *Landscape and Urban Planning*, 157 (2017) 561-576.
- Park School Flyer on Turf (https://www.brooklinema.gov/DocumentCenter/View/30475/Park-School-Flyer-on-Turf)
- MAPC Brookline Vulnerability Assessment (https://www.brooklinema.gov/DocumentCenter/View/30744/MAPC_Brookline_Vulnerability_Assess_2017-12_p24-25)
- October 19, 2021 Solid Waste Advisory Committee memo on Artificial Turf Field (https://www.brooklinema.gov/DocumentCenter/View/30688/SWAC-Memo-on-Artificial-Turf-10-19-21)
- April 6, 2022 Letter from Kayla Bennett, Director, Science Policy, Public Employees for Environmental Responsibility (https://www.brooklinema.gov/DocumentCenter/View/30530/BrooklineTurfLtrFinal)
- Letter from the co-chairs of the Select Board's Climate Action Committee re Cypress Playground Improvements/Synthetic Turf, October 23, 2017 https://www.brooklinema.gov/DocumentCenter/View/30748/Lttr-P-R-Cypress-Field- SCAC-2017-10-23
- Multiple emails from members of the public
- Town Meeting's Vote on Special Appropriation 71 under Article 7 of the 2018 Town Meeting prohibited installing "plastic turf" on Cypress Field.

Discussion

May 24, 2022 Annual Town Meeting

23-14

The Advisory Committee held a meeting to discuss, deliberate, and vote on Warrant Articles 23 and 24 on April 14th at 7:00 pm.
https://brooklinema.zoomgov.com/rec/share/fV4Yn_D0SZnbd5Bm7vl1iOHU_PsxDZV6a4FrsnDO3OWp4zHWOQ1lj-Z5_MIQ3HFj.8lKQyQZbE0eXRWd8
Access Passcode: Q.T^=Wh2

Article 23, filed in response to Article 24, recognizes that deciding whether to install artificial turf or natural grass surfaces on athletic fields requires technical expertise from across a variety of disciplines. It also requires balancing the demand for outdoor athletic opportunities against the potential health risks resulting from exposure to certain chemicals and the potential environmental impacts of an artificial surface, including the creation of heat islands, and the challenge to recycle or repurpose artificial turf that has outlived its useful life. Therefore in response to the need for the public in general and Town Meeting members in particular to have access to relevant and accurate information to consider the issue of artificial turf versus natural grass fields, the article, as amended by the Advisory Committee, presents a resolution by which Town Meeting would urge the Select Board, in consultation with the Park and Recreation Commission and the Advisory Council on Public Health, to appoint a Task Force on Athletic Field Surfaces.

The Task Force would comprise individuals with specified relevant expertise and experience. The Advisory Committee further recommends that the Task Force be charged with developing decision guidelines (a "decision-making tree" or rubric of pros and cons for synthetic turf versus natural grass) to help inform any policy developed by the Park and Recreation Commission that addresses materials to be used for athletic field surfaces. The Advisory Committee has adopted the completion date of October 15, 2022 as originally proposed by petitioner. While the Committee recognizes that this is an ambitious timeline, it also notes that the role of the Task Force will not be to undertake new research or to develop policies, but rather to review and synthesize existing relevant information into guidelines that can be considered by the Park and Recreation Commission. Moreover, it notes that the timeline may be critical to the necessary final decision on the Driscoll School field.

As noted previously, the original article stipulated that the Park and Recreation Commission be the appointing authority and that the Task Force produce an Athletic Field Surface Policy identifying the circumstances under which synthetic turf or natural grass should be utilized for athletic fields. The Advisory Committee, however, believes that the appointing authority should have a Town-wide perspective and access to a wide range of networks, including those with expertise relating to the concerns relevant to this issue. Consequently its recommended motion requests that the Select Board, in consultation with the Commission and Advisory Council on Public Health, make Task Force appointments. The Advisory Committee also believes that the responsibility for developing the policy for athletic field surfaces, as with other policies pertaining to recreational activities and recreational facilities, should rest with the Park and Recreation Commission.

Article 24 was filed to amend the Town's General By-Laws by adding a new By-Law that, in addition to imposing a three -year moratorium on the creation of additional artificial turf fields, also provides a timeframe that would prohibit any new artificial turf from being used unless it is composed of materials that meet specific standards. Two tests

are required in the proposed By-Law to meet those standards; one is broad in nature, while the other is more precise but limited, at the present time, to testing for only 12 out of more than 12,000 chemicals. Under the proposed By-Law, the testing requirement for replacing existing artificial turf with new artificial turf becomes effective on June 1, 2030, but for new artificial turf fields, the effective date is June 1, 2025.

There are currently four artificial turf fields in the town: Skyline Park, Soule Recreation, Ridley School, and Harry Downes Field. Article 24, as amended by the petitioner, would permit new artificial turf to replace existing artificial turf at Skyline Park (a project scheduled for FY 23) and at Soule Recreation (a project scheduled for FY 27). It would prohibit the currently planned installation of artificial turf on the field at the new Driscoll School. The cost of changing the current plan and designing and installing a grass field is not fully known as this time; an initial analysis, however, reflects a neutral project budget impact but a significant delay in the opening of the field.

The petitioners note that the presence of toxic chemicals in materials that are used to manufacture synthetic turf are of concern and that the relatively recent identification of PFAS in artificial turf makes that concern even greater. In addition, once artificial turf can no longer be played upon, its disposal becomes problematic because there are currently few ways that it can be recycled or repurposed. Furthermore, the Green House Gas emissions associated with the manufacture and installation of synthetic turf contribute to climate change, as do the documented urban heat islands that synthetic turf fields create in sunshine. Although acknowledging additional costs to the Town both in terms of maintaining grass fields (see "Financial Impact" above) and renting fields elsewhere to meet the demand for athletic fields, Article 24's petitioners and supporters emphasize that the environmental costs of artificial turf fields are far more significant.

The petitioners have noted that Article 24 is supported by the Advisory Council on Public Health and the Solid Waste Advisory Committee and further note that that the continuing use of artificial turf contradicts the Town's Zero Waste Framework and Town Meeting's Declaration of a Climate Change Emergency. In addition, in response to the argument that artificial turf has already been approved and budgeted for the field at the new Driscoll School, the petitioners point out that PFAS information was not available to the Driscoll Building Committee when it reviewed and approved those plans.

The Advisory Committee recognizes the validity of the issues raised by Article 24's petitioners and supporters. At the same time, it notes the arguments that studies regarding adverse health effects from PFAs focus on such things as their presence in drinking water rather than in playing fields. It also recognizes the legitimacy of the arguments made by its opponents who note the scarcity of playing fields in general, the demands on the fields that do exist, the restricted use of grass fields due to weather, the inability of grass to withstand constant use and the need to "rest" grass fields to maintain the grass, the resulting loss of recreational opportunities on grass fields due to weather and maintenance needs, and the very real need of people - and children in particular - to have access to outdoor recreational activities, exercise, and social interaction with their peers through informal and formal athletic opportunities. Based on the majority of emails received and comments made at the Capital Subcommittee's hearings, the Advisory Committee finds that many members of the Driscoll School Community favor an

artificial turf field, and moreover do not want an additional, unnecessary delay in the availability of a field after the new Driscoll School opens.

The Advisory Committee further notes that for the near future, Article 24 would have no practical impact on plans for athletic fields in the town were it not for the current plans for an artificial turf field at the Driscoll School and the time pressure that its installation schedule imposes. If Town Meeting approves Article 24 as proposed, the replacement of the artificial turf at Skyline Park and Soule Recreation could proceed, but an artificial turf field at Driscoll would be prohibited without the Park and Recreation Commission or Town Meeting having the benefit of the analysis and guidance to be generated by the Task Force.

A majority of Advisory Committee members recommends referral of Article 24 to the Task Force identified in Article 23 with the belief that this panel, with its diverse perspectives and expertise, will be helpful in pinpointing the critical factors that should be considered in developing a policy that seeks to strike a balance between the current conflicting goals expressed by supporters and opponents of Article 24.

Recommendations

ARTICLE 23
By a vote of 22-0-2, the Advisory Committee recommends Favorable Action on the following motion under Article 23, as amended: (Additions are underlined and bolded, and deletions appear in stricken text.)

VOTED:

WHEREAS Town Meeting is responsible for funding capital and operating budgets to install and maintain Brookline's athletic fields; and

WHEREAS the Park and Recreation Commission recently oversaw the completion of the 2020 Athletic Fields Needs Assessment and Master and the Parks, Open Space and Recreation 2020 Strategic Master Plan Update, which concluded "The quantity and size of Brookline's athletic fields, especially multi-use turf fields, continue to not meet the current demand or the Level of Service standards for Brookline;" and

WHEREAS Brookline has recently installed a synthetic turf athletic field at the Ridley School, a grass turf athletic field at the Cypress Street Playground, and is planning to install a synthetic turf athletic field at the new Driscoll School where building construction has already begun; and

WHEREAS Brookline is implementing several best practices when procuring synthetic turf athletic field, including (a) procuring only organic infill for its synthetic turf athletic fields to avoid potential health risks associated with crumb rubber and to dramatically reduce "heat island" effects; (b) developing additional technical specifications in its Request for Proposals, such as requiring manufacturers to disclose whether their products

contain certain chemicals of concern; and, requiring vendors to indicate whether and how they will recycle or repurpose turf components when Brookline uninstalls them; and

WHEREAS some concerns have been expressed about the environmental, safety, and health impacts of synthetic turf and of grass turf, and that installing grass turf in locations with high usage quickly transforms the surface to compacted dirt, reducing its safety, availability, and aesthetics; and

WHEREAS the decision between installing grass turf or synthetic turf at a particular athletic field entails many complicated tradeoffs, including: (1) how much time the field can be used each week to prevent compaction that can impede safety, (2) how much time the field will be unavailable for use during and following wet weather, (3) how much time the field will be unavailable for use each spring and fall for "rest periods", (4) how consistently and for how long the playing surface will retain its original desirable properties given anticipated usage intensity (e.g., soft grass versus compacted dirt), (5) equity concerns associated with accessing alternative field space—often beyond walking range, necessitating driving—when field closures occur due to wet weather or seasonal rest periods, or if program constraints are imposed to preserve field surface conditions; (6) risk of user injury, (7) risk of user safety associated with possible heat island effects, (8) possible health risks associated with chemical exposure, (9) end-of-life disposition, (10) installation costs; (11) maintenance costs, (12) replacement or revitalization frequency, **(13) climate change mitigation** and adaptation and perhaps additional criteria; and

WHEREAS the Brookline Park and Recreation Commission lacks a formal policy guiding the circumstances under which it will recommend that athletic fields should be grass turf or synthetic turf; and

WHEREAS a nuanced understanding of the many factors involved should inform such a policy, diverse expertise should be brought to bear to consider their tradeoffs, consult with the wide array of ~~effected~~ **affected** stakeholders, and be developed through a public meeting process, and Town Meeting itself does not possess all the required expertise or the time to sufficiently consider the tradeoffs to develop an appropriate policy for Brookline.

NOW THEREFORE BE IT RESOLVED THAT:

Town Meeting ~~urges the Parks and Recreation Commission to~~ **requests the Select Board, in consultation with the Park and Recreation Commission and the Advisory Council on Public Health, to take the following actions:**

(1) **Understanding that time is of the essence, that by June 30, 2022,** ~~A~~ **a**ppoint an Athletic Field Surface Task Force, consisting not only of ~~a few Parks~~ **Park** and Recreation Commission **and Advisory Council on Public Health** members, **or their designees,** but also other community **members, individuals with professional expertise** and **Town and School** staff ~~members~~ that bring diverse perspectives such as athletics, recreation, **turf management**, ~~the Public Schools of Brookline~~, **education**, environment/climate, toxicology, risk assessment, public health, children's socio-emotional and physical development, capital planning, and perhaps other domains;

(2) Charge the Task Force to conduct its meetings in a manner that is consistent with the provisions and intent of the Open Meeting Law;

(3) Charge the Task Force with proposing ~~a draft~~ Athletic Field Surface ~~Policy~~ **Decision Guidelines** to the Park~~s~~ and Recreation Commission **and to the Select Board** by September 1, 2022;

(4) **Charge the Task Force to h**~~H~~old at least one Public Hearing to receive feedback on the ~~draft policy~~ **Decision Guidelines**, notifying **the public and** Town Meeting Members of the Public Hearing;

(5) **Charge the Task Force to report out** ~~Finalize and adopt~~ the **final** Athletic Field Surface ~~Policy~~ **Decision Guidelines**, and notify Town Meeting Members **and the public** of ~~its~~ **their** completion, by October 15, 2022.

ARTICLE 23 ADVISORY COMMITTEE VOTES

Article Description	Athletic Field Task Force
AC recommendation (Favorable Action unless indicated)	**22-0-2**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	A
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 23

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The Select Board reconsidered Article 23 and discussed the motion as proposed by the Advisory Committee. The Board expressed concerns about the timing of the report for the Task Force given how difficult it can to be coordinating schedules of already very busy volunteers. The Board understands the petitioner's intent to provide information in advance of Town Meeting. The Board agreed that a November 4th deadline was more realistic and would provide enough time for Town Meeting to consider the recommendations in the report.

The Select Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: To adopt the following resolution:

WHEREAS Town Meeting is responsible for funding capital and operating budgets to install and maintain Brookline's athletic fields; and

WHEREAS the Park and Recreation Commission recently oversaw the completion of the 2020 Athletic Fields Needs Assessment and Master and the Parks, Open Space and Recreation 2020 Strategic Master Plan Update, which concluded "The quantity and size of Brookline's athletic fields, especially multi-use turf fields, continue to not meet the current demand or the Level of Service standards for Brookline;" and

WHEREAS Brookline has recently installed a synthetic turf athletic field at the Ridley School, a grass turf athletic field at the Cypress Street Playground, and is planning to install a synthetic turf athletic field at the new Driscoll School where building construction has already begun; and

WHEREAS Brookline is implementing several best practices when procuring synthetic turf athletic field, including (a) procuring only organic infill for its synthetic turf athletic fields to avoid potential health risks associated with crumb rubber and to dramatically reduce "heat island" effects; (b) developing additional technical specifications in its Request for Proposals, such as requiring manufacturers to disclose whether their products contain certain chemicals of concern; and, requiring vendors to indicate whether and how they will recycle or repurpose turf components when Brookline uninstalls them; and

WHEREAS some concerns have been expressed about the environmental, safety, and health impacts of synthetic turf and of grass turf, and that installing grass turf in locations with high usage quickly transforms the surface to compacted dirt, reducing its safety, availability, and aesthetics; and

WHEREAS the decision between installing grass turf or synthetic turf at a particular athletic field entails many complicated tradeoffs, including: (1) how much time the field can be used each week to prevent compaction that can impede safety, (2) how much time the field will be unavailable for use during and following wet weather, (3) how much time the field will be unavailable for use each spring and fall for "rest periods", (4) how consistently and for how long the playing surface will retain its original desirable properties given anticipated usage intensity (e.g., soft grass versus compacted dirt), (5) equity concerns associated with accessing alternative field space—often beyond walking range, necessitating driving—when field closures occur due to wet weather or seasonal rest periods, or if program constraints are imposed to preserve field surface conditions; (6) risk of user injury, (7) risk of user safety associated with possible heat island effects, (8) possible health risks associated with chemical exposure, (9) end-of-life disposition, (10) installation costs; (11) maintenance costs, (12) replacement or revitalization frequency, (13) climate change mitigation and adaptation and perhaps additional criteria; and

WHEREAS the Brookline Park and Recreation Commission lacks a formal policy guiding the circumstances under which it will recommend that athletic fields should be grass turf or synthetic turf; and

WHEREAS a nuanced understanding of the many factors involved should inform such a policy, diverse expertise should be brought to bear to consider their tradeoffs, consult with the wide array of affected stakeholders, and be developed through a public meeting process, and Town Meeting itself does not possess all the required expertise or the time to sufficiently consider the tradeoffs to develop an appropriate policy for Brookline.

NOW THEREFORE BE IT RESOLVED THAT:

Town Meeting requests the Select Board, in consultation with the Park and Recreation Commission and the Advisory Council on Public Health, to take the following actions:

(1) Understanding that time is of the essence, that by June 30, 2022, appoint an Athletic Field Surface Task Force, consisting not only of Park and Recreation Commission and Advisory Council on Public Health members, or their designees, but also other community members, individuals with professional expertise and Town and School staff that bring diverse perspectives such as athletics, recreation, turf management, education, environment/climate, toxicology, risk assessment, public health, children's socio-emotional and physical development, capital planning, and perhaps other domains;

(2) Charge the Task Force to conduct its meetings in a manner that is consistent with the provisions and intent of the Open Meeting Law;

(3) Charge the Task Force with proposing Athletic Field Surface Decision Guidelines to the Park~~s~~ and Recreation Commission and to the Select Board by September 1, 2022;

(4) Charge the Task Force to hold at least one Public Hearing to receive feedback on the Decision Guidelines, notifying the public and Town Meeting Members of the Public Hearing;

(5) Charge the Task Force to report out the final Athletic Field Surface Decision Guidelines, and notify Town Meeting Members and the public of their completion, by November 4, 2022.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

At its May 17th meeting, the Advisory Committee considered the Select Board's motion under Article 23. The Committee agreed to amend its original motion under the article to conform with that of the Select Board by changing the deadline for the report of the Athletic Field Surface Task Force from October 15, 2022 to November 4, 2022.

By a vote of 20-1-1, the Advisory Committee now recommends FAVORABLE ACTION on the motion offered by the Select Board.

ARTICLE 24

TWENTY-FOURTH ARTICLE
Submitted by: Clint Richmond TMM6, Claire Stampfer, Susan Helms Daley TMM1, Andrew Fischer TMM13

To see if the Town will amend the General Bylaws by adding the following Article:

ARTICLE 8.XARTIFICIAL TURF SURFACES

ARTICLE 8.X.1 DEFINITIONS

"Synthetic/artificial turf" means any of various artificial, synthetic or partially synthetic carpet-like materials made to resemble natural grass used as a surface for athletics, sports or other recreational activities.

“Targeted PFAS testing” uses EPA approved Methods such as 533, 537.1 and others that are appropriate to solid materials to detect specific PFAS (Per- and polyfluoroalkyl substances).

“Total organic fluorine test” refers to any test that measures total fluorine such as Total Organic Fluorine (TOF) Assay.

ARTICLE 8.X.2 RESTRICTIONS

(a) The Town of Brookline shall neither install nor authorize or allow the installation of synthetic/artificial turf on any property owned by the Town, for a period of three years from the effective date of this moratorium. This moratorium shall not apply to the maintenance or replacement of any synthetic/artificial turf field that has been installed and is existing prior to the adoption of this bylaw amendment.

(b) Beginning June 1, 2025, any new or replacement artificial turf field on Town property must be free of organic fluorine as attested by the supplier, and determined by total organic fluorine test and targeted PFAS testing conducted by an independent laboratory acceptable to the Town of Brookline.

ARTICLE 8.X.3 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

There is a legitimate need for more athletic fields and the ability to extend the use time for the existing fields, which are too often not available due to too much or too little rain or the "rest" time necessary for natural grass to stay healthy. Given the lack of available space for new parks, there is a Town plan to install plastic turf in place of natural grass.

Artificial turf was commercialized in the late 1960s. Turf only recently arrived in Brookline. The first field was at Downes in 2006 largely funded by two major outside grants from professional football interests. Today, the Town has 6.75 acres of grass that have been converted to plastic artificial turf, while private schools and universities have additional ones that the Town can use. Brookline Town Meeting voted down an artificial field at Cypress Field in May 2018, which was before we learned about PFAS. And now a small field is being proposed for Driscoll. This background is why this by-law is needed.

We have only recently started to learn the full hazards of plastic turf. The hazards of turf can be divided as follows:

1. Human health issues:
    - The known toxicity of the various synthetic chemicals used in these artificial systems. PFAS has been found in nearly all fields tested, particularly in the blades including fluorinated co-polymers. The lab report from the manufacturer showed one PFAS in the blades of the new Downes field. Testing at Martha's Vineyard also found PFAS in the samples for the shock pad and the adhesive used to seal the seams between pieces of turf carpet.[1]There are at least 900 known plastic additives and 5% of them are PFAS or similarly hazardous chemicals. Turf plastics also often contains toxic heavy metal fillers such as lead, chromium, and cadmium. Turf blades come in direct contact with field users, such as soccer goalies, and particles can adhere to players.
    - Turf fields can be so hot that they can even cause skin burns and heat-related illness.[2]
2. Environmental concerns. These include:
    - Carbon emissions that result from the manufacture of fossil-fuel based plastics and additives.

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[1] Synthetic Turf Laboratory Testing and Analysis Summary Report
Martha's Vineyard Regional High School Athletic Fields Project (DRI 352-M4) Oak Bluffs Massachusetts.
https://www.mvcommission.org/sites/default/files/docs/2021-02-26%20%28TurfAnalysisReport_FINAL%29.pdf

[2] TURI, Athletic Playing Fields: Choosing Safer Options for Health and the Environment,

- Turf creates heat islands. Natural grass is cooling, while turf is 37° hotter than asphalt. Synthetic turf also can stress nearby vegetation with dryness and heat
- Runoff off water, both by replacing natural drainage with the equivalent of paved surfaces that require drainage systems. The run-off from the turf can contain turf chemicals and particles which are passed on to plants and animals and, ultimately the human food chain.

3. Solid Waste - each full-size field generates over 100 tons of waste at the time of disposal. The waste is landfilled or incinerated, because it cannot be recycled, which generates further environmental hazards from landfill runoff or incinerator products.
4. Injuries to athletes. This is such a serious risk that the National Football League Players Association has called for the elimination of all plastic turf fields, both practice fields and game fields due to elevated injuries.[3]

The US EPA tracks over twelve thousand PFAS compounds. EPA's analytical Method 537 only tests 14 of them (or 18 depending on the version), which is less than 0.2% of the possible total. So there can be no assurance about the presence of PFAS in turf that relies on this limited method, which is why this by-law also requires total organic fluorine testing.

Environmental groups such as NRDC and Earthjustice often suggest "no safe level of exposure to PFAS". We should not be exposing our vulnerable schoolchildren to PFAS and other toxic chemicals, nor adding them to the environment via artificial turf. When turf is at school playgrounds such as Ridley or as proposed at Driscoll, there is no way for the students to fully opt out of this exposure, which is unfair.

Economic costs are also not favorable. Plastic turf has a high initial capital cost, a short lifetime on the order of ten years, and high maintenance costs.

There is no state or Federal comprehensive environmental regulation of plastic turf. Chemicals in infill are just one piece of the picture. Crumb rubber made from recycled tires, also referred to as **tire crumb** or as styrene butadiene rubber (SBR), is present in a large number of artificial turf fields. Some of the chemicals found in tire crumb are endocrine disrupters (e.g., phthalate esters); some are known or suspected carcinogens (e.g., arsenic, cadmium, benzene, styrene); and some are associated with other human health effects.[4] Three out of the four Town artificial fields were originally installed with highly toxic crumb rubber, and one of those has since been replaced with a corkanut infill (cork and nut shells). The Department of Public Works has committed to organic infill since 2019.

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[3] See https://nflpa.com/posts/only-natural-grass-can-level-the-nfls-playing-field

[4] See Turf Report Dec., 2018, Toxic Use Reduction Institute (TURI), University of Mass. Lowell https://www.turi.org/var/plain_site/storage/original/application/b9727dedf5860ae7e83e3226d058b7ee.pdf

The justification for plastic turf fields is that they allow greater playing time with less maintenance. However the town has not assessed the true costs of plastic turf, including both the health and environmental costs and the real economic costs compared to viable organic alternatives. The Toxic Use Reduction Institute at UMass Lowell has developed a program of organic maintenance, without using toxic fertilizers, that has proven effective in maintaining healthy natural grass athletic fields in communities as diverse as Marblehead, Martha's Vineyard, Springfield, Natick, Newton, Wellesley and Lowell.[5]

Our neighbors in Wayland and Concord have imposed three-year moratoria on plastic turf on town property. Concord renewed its moratorium in 2019 and is the process of renewing again in 2022. A three-year moratorium will allow us to assess, balance and compare the cost, risks and benefits of plastic turf versus a proper organic maintenance system. Before committing town funds and town open space to being covered with an artificial chemical surface, we owe our children and our environment a fair and open cost benefit analysis of what we are doing.

The Climate Justice Committee of First Parish in Brookline, and the Massachusetts Sierra Club have already endorsed this warrant article with other organizations expected to follow.

MOTION OFFERED BY THE PETITIONERS

MOVED: That the Town will amend the General Bylaws by adding the following Article:

ARTICLE 8.XARTIFICIAL TURF SURFACES

ARTICLE 8.X.1 DEFINITIONS

"Synthetic/artificial turf" means any of various artificial, synthetic or partially synthetic carpet-like materials made to resemble natural grass used as a surface for athletics, sports or other recreational activities.

"Targeted PFAS testing" uses EPA approved Methods such as 533, 537.1 and others that are appropriate to solid materials to detect specific PFAS (Per- and polyfluoroalkyl substances).

"Total organic fluorine test" refers to any test that measures total fluorine such as Total Organic Fluorine (TOF) Assay.

ARTICLE 8.X.2 RESTRICTIONS

[5] See https://www.turi.org/Our_Work/Community/Organic_Grass_Care

(a) The Town of Brookline shall neither install nor authorize or allow the installation of synthetic/artificial turf on any property owned by the Town, for a period of three years from the effective date of this moratorium. This moratorium shall not apply to the maintenance or replacement of any synthetic/artificial turf field that has been installed and is existing prior to the adoption of this bylaw amendment.

(b) Beginning June 1, 2025, any new ~~or replacement~~ artificial turf field on Town property must be free of organic fluorine as attested by the supplier, and determined by total organic fluorine test and targeted PFAS testing conducted by an independent laboratory acceptable to the Town of Brookline.

(c) Beginning June 1, 2030, any replacement artificial turf field on Town property must be free of organic fluorine as attested by the supplier, and determined by total organic fluorine test and targeted PFAS testing conducted by an independent laboratory acceptable to the Town of Brookline.

ARTICLE 8.X.3 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

PARK AND RECREATION STATEMENT

On April 26, 2022 the Park and Recreation Commission voted 6 – 1, No Action on Article 24. Voting in favor of No Action were J. Bain, N. O'Connor, W. Sheridan Ames, C. Batchelor, T. Mooney and J. Pan. Voting against was A. Bellalta.

The Park and Recreation Commission has strong opposition to a moratorium on installing synthetic turf in Brookline. Based on current information and information outlined in the Athletic Fields Needs Assessment and Master Plan, the Commission feels that the strategic placement of synthetic turf fields in town should be part of how we work to meet the overwhelming demands for our limited athletic fields. There is an increase in the overall desire to be outside and recreating. There is an increase in both adult and youth users. There is an increase in the school population that relies on these fields for physical education, recess, and after-school play.

Currently there is no plan for a new synthetic turf playing field for the next 6 or more years in the Department of Public Works – Park and Open Space Division's Capital Improvement Plan. The synthetic fields that we do have are incredibly important to many residents in town as well as the programming needs. The commission strongly favors studying all of the information that is available in order to make a sound decision.

SCHOOL COMMITTEE STATEMENT

On April 7, 2022, the School Committee voted 3-4-2 on whether to recommend passage of WA24. Voting in favor were Ms. Federspiel, Ms. Monopoli, and Ms. Nobrega. Voting

opposed were Ms. Charlupski, Ms. Ditkoff, Ms. Frias, and Dr. Liu. Dr. Ehrenberg and Mr. Pearlman abstained.

The School Committee was divided on whether to support a moratorium on installing new artificial turf surfaces. Multiple School Committee members expressed concern for the toxicity of synthetic chemicals, such as PFAS, utilized in artificial turf surfaces, and the health risks that such chemicals could pose to students, the community, and the environment. Other concerns included the hotter surface temperatures of synthetic turf compared to natural grass, potential groundwater contamination, and the broader climate change impact from the manufacture of synthetic turf. On the other hand, some School Committee members noted that the science is not entirely clear yet as to the scope and severity of potential medical harm to individuals, and that artificial turf surfaces allow for greater playing time with less regular maintenance. Absent synthetic surfaces, children would not be able to play as much outside due to the tendency of natural grass to become water logged and/or erode into uneven dirt patches, thereby leading to field closures, a problem which would become further exacerbated by a moratorium on new artificial turf surfaces. Some School Committee members expressed concern about children's social-emotional well-being from less time outside on fields, and how it would be inequitable insofar as children from more affluent families could still play at non-town/school private fields not readily accessible to those of lower economic means. School Committee members acknowledged the difficulty of weighing these competing factors, however some emphasized that community processes at both the Ridley School and Driscoll School ultimately led to the decisions to install synthetic turf surfaces as a part of their new school designs. Some School Committee members were uncomfortable with taking a position on WA24 that could usurp, in the case of the new Driscoll School, existing plans, contracts, and timelines from an already completed process that selected artificial turf. Abstaining School Committee members felt that passage of WA 23 could inform on the risks of artificial turf prior to Fall Town Meeting, and before field surface installation at Driscoll School.

SELECT BOARD'S RECOMMENDATION

A report and recommendation will be included in the Supplement mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

For the full Advisory Committee report on Warrant Article 24, see the "master report" included with the report on Warrant Article 23.

Recommendation:
By a vote of 15-7-1 the Advisory Committee recommends **Referral** of Article 24 to the Task Force identified in Article 23, with the understanding that the maintenance and replacement of the artificial turf installed prior to the adoption of this resolution, including Skyline Park and Soule Recreation, may proceed.

VOTED:

To refer the subject matter of Article 24 to the Athletic Field Surface Task Force, appointed pursuant to Article 23 at the 2022 Annual Town Meeting, with the understanding that maintenance or replacement of synthetic/artificial turf that has been installed and is existing prior to the adoption of this resolution, including, but not limited to, the artificial turf fields at Skyline Park and at Soule Recreation, is permitted.

XXX

ARTICLE 24

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

ARTICLE 24 ADVISORY COMMITTEE VOTES

Article Description	**Referral Motion — Moratorium on Synthetic Turf**
AC recommendation (Favorable Action unless indicated)	**15-7-1**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	A
Neil Gordon	N
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	N
Georgia Johnson	
Alisa Jonas	N
Janice Kahn	N
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	N
Lee Selwyn	N

Alok Somani	Y
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

APPENDIX

ARTICLE 24, as amended by the Petitioner

To see if the Town will amend the General Bylaws by adding the following Article:

ARTICLE 8.XARTIFICIAL TURF SURFACES

ARTICLE 8.X.1 DEFINITIONS

"Synthetic/artificial turf" means any of various artificial, synthetic or partially synthetic carpet-like materials made to resemble natural grass used as a surface for athletics, sports or other recreational activities.

“Targeted PFAS testing” uses EPA approved Methods such as 533, 537.1 and others that are appropriate to solid materials to detect specific PFAS (Per- and polyfluoroalkyl substances).

“Total organic fluorine test” refers to any test that measures total fluorine such as Total Organic Fluorine (TOF) Assay.

ARTICLE 8.X.2 RESTRICTIONS

(a) The Town of Brookline shall neither install nor authorize or allow the installation of synthetic/artificial turf on any property owned by the Town, for a period of three years from the effective date of this moratorium. This moratorium shall not apply to the maintenance or replacement of any synthetic/artificial turf field that has been installed and is existing prior to the adoption of this bylaw amendment.

(b) Beginning June 1, 2025, any new artificial turf field on Town property must be free of organic fluorine as attested by the supplier, and determined by total organic fluorine test and targeted PFAS testing conducted by an independent laboratory acceptable to the Town of Brookline.

(c) Beginning June 1, 2030, any replacement artificial turf field on Town property must be free of organic fluorine as attested by the supplier, and determined by total organic fluorine test and targeted PFAS testing conducted by an independent laboratory acceptable to the Town of Brookline.

ARTICLE 8.X.3 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

or act on anything relative thereto.

ARTICLE 24

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 24 is a bylaw amendment, which seeks to create a three-year moratorium on the installation of synthetic turf on any Town property, but allows the replacement of the existing synthetic turf fields at Skyline Park and Soule Recreation. This would effectively bar the installation of a synthetic turf field at the new Driscoll School as is currently planned. After June 1, 2025, any new synthetic turf field would have to be free of organic fluorine, and after June 1, 2030, any replacement synthetic turf field would have to be

The Board spoke on the public process related to the Driscoll School project and the consideration of artificial turf; some felt the process was not inclusive enough and not properly vetted; others felt it was a very inclusive and open process.

One Board member addressed the final report of the PFAS Interagency Task Force; "PFAS in the Commonwealth of Massachusetts" PFAS is mentioned extensively, but no mention of the word grass or fields. It is obviously not on the minds of the people doing the report. The primary focus is on water supply. The Board felt that there is still a lot of work that is needed to figure out where the community stands on this rather important issue.

The Select Board voted NO ACTION on Article 24.

ROLL CALL VOTE:

Aye:	No:
Hamilton	VanScoyoc
Greene	
Aschkenasy	
Sandman	

ARTICLE 24

AMENDMENT OFFERED BY
CASEY HATCHETT, TMM10 AND JANICE KAHN, TMM15

VOTED: To amend the petitioners' motion as follows:

Add to subsection (a) under SECTION 8.X.2 RESTRICTIONS:

(a) The Town of Brookline shall neither install nor authorize or allow the installation of synthetic/artificial turf on any property owned by the Town, for a period of three years from the effective date of this moratorium. This moratorium shall not apply to the maintenance or replacement of any synthetic/artificial turf field that has been installed, **is scheduled for installation**, ~~**and**~~ is existing**,** prior to the adoption of this bylaw amendment, **or any combination thereof,** and **specifically including the Driscoll School field, which has completed the design review and budget process.**

EXPLANATION:

The Driscoll School Building Advisory Committee has been holding public meetings since June 2018. During that time there has been a great deal of community input into the design of the new Michael Driscoll K-8 School campus. The current designed price for the synthetic turf field is $330,778, a cost not subject to redesign or change order increases. In other words, this field has been incorporated into the specifications after a lengthy public process.

WA24, which was filed for the current warrant, seeks to have town meeting members, most of whom have not been part of the Driscoll community process, make a determination about the Driscoll School field.

This amendment asks Town Meeting to allow the Driscoll School Building Advisory Committee to continue its work, much the way the building committee for the last new school, the Florida Ruffin Ridley School, was allowed to do its work, without legislative intervention.

ARTICLE 24

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

At its May 25th meeting, the Advisory Committee amended its April 14th vote on Article 24 (an amendment to the Town's General Bylaws pertaining to Artificial Turf Surfaces). By a vote of 15-7-1, the Committee had previously voted to refer the subject matter of Article 24 to the Task Force on Athletic Field Surfaces, created by Article 23.

In response to the possibility that Town Meeting may not approve Article 23, by a vote of 20-1-0, the Advisory Committee now recommends the following amended motion under Article 24:

MOVED:
To refer the subject matter of Article 24 to ~~the~~ **an** Athletic Field Surface Task Force, appointed **by the Select Board with membership and tasks as described in** ~~pursuant to~~ **Warrant** Article 23 at the 2022 Annual Town Meeting, ~~with the understanding~~ **provided, however,** that maintenance or replacement of synthetic/artificial turf that has been installed ~~and is existing~~ prior to ~~the adoption of this resolution~~, **such Town Meeting**, including, but not limited to, the artificial turf fields at Skyline Park and at Soule Recreation, is permitted.

If the Motion to Refer fails, the Advisory Committee, by a vote of 16-2-2, recommends supporting the following amendment offered by Casey Hatchett (TMM 10) and Janice Kahn (TMM 15):

MOVED:
Add to subsection (a) under SECTION 8.X.2 RESTRICTIONS:

(a) The Town of Brookline shall neither install nor authorize or allow the installation of synthetic/artificial turf on any property owned by the Town, for a period of three years from the effective date of this moratorium. This moratorium shall not apply to the maintenance or replacement of any synthetic/artificial turf field that has been installed, **is scheduled for installation**, ~~and~~ is existing**,** prior to the adoption of this bylaw amendment, **or any combination thereof**, and **specifically including the Driscoll School field, which has completed the design review and budget process.**

ARTICLE 24 - AMENDMENT ADVISORY COMMITTEE VOTES

Article Description	**Update Referral Motion to change details of referral committee**
AC recommendation (Favorable Action unless indicated)	**20-1-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	
Dennis Doughty*	
* Chairperson does not vote except to break a tie	

ARTICLE 24 HATCHETT/KAHN AMENDMENT ADVISORY COMMITTEE VOTES

Article Description	**Exempt Driscoll from subject matter of WA 24 in the event referral motion fails**
AC recommendation (Favorable Action unless indicated)	**16-2-2**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	A
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	N
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 25

TWENTY-FIFTH ARTICLE
Submitted by: Clint Richmond TMM6, Louise Bowditch, Deane Coady

To see if the Town will amend the General Bylaws by adding the following Article:

ARTICLE 8.XSINGLE-USE PLASTIC PRODUCTS

ARTICLE 8.X.1 DEFINITIONS

Glitter: decorative particles that are shiny or reflective and less than six (6) millimeters along the longest dimension.

Microbeads: Microbeads are a type of microplastic or tiny particles of plastic less than one millimeter in diameter. These plastics are most often polyethylene, but can also be made of other petrochemical plastics such as nylon, polypropylene, polystyrene, acrylic, and polyethylene terephthalate (PET).

Single-use plastic (SUPs) products: plastic products or primary packaging that are generally used only once.

ARTICLE 8.X.2 RESTRICTIONS

(a) No retailer shall sell or distribute:
(1) plastic ear swabs,
(2) single-use floss picks with plastic handles,
(3) over-the-counter cosmetic or health and beauty aid products that contain microbeads or plastic glitter,
(4) plastic wet wipes other than those designed and marketed for medical applications,
(5) plastic balloon sticks,
(6) alcoholic beverages in plastic bottles that are 100 ml or less in volume.

(b) No retailer shall sell or distribute single-use plastic products as may be identified in regulations promulgated by the Select Board to further the purposes of this Bylaw, following a duly noticed public hearing.

ARTICLE 8.X.3 EXCLUSIONS

(a) This by-law does not regulate prescription products.
(b) This by-law does not regulate microbeads that are covered by any preemption provision of the federal Microbead-Free-Waters Act of 2015 or any other state or federal law.
(c) This by-law does not apply to businesses that are primarily service businesses such as restaurants, medical and dental offices, and hair and nail salons.

ARTICLE 8.X.4 ENFORCEMENT

The Brookline Department of Public Health shall be responsible for enforcement and any regulation.

This by-law shall not be enforced prior to January 1, 2023.

ARTICLE 8.X.5 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

And amend section 10.2 PROSECUTIONS AND ENFORCEMENT as follows:

DIRECTOR OF HEALTH & HUMAN SERVICES
Part VIII-Public Health & Safety
Articles 8.1, 8.2, 8.3,
8.4, 8.6, 8.7,
8.8, 8.9,
8.10,8.11,
8.12,8.13,
8.14, 8.15,
8.16, 8.22,
8.23, 8.32,
8.37, 8.38

By adding this article number to the list of Articles following “8.38”.

And amend section 10.3 NON-CRIMINAL DISPOSITION to include the following enforcement schedule:

ARTICLE 8.XSINGLE-USE PLASTIC PRODUCTS BY-LAW

Per product:

Initial Violation	Warning
First Offense	$50.00
Second and Subsequent	$100.00

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Single-use plastics have become a scourge of the modern era. They are found everywhere as litter including in Brookline.

Plastic directly harms human and environmental health. Some intermediate plastic chemicals are toxic (such as benzene and the monomers in PVC and polystyrene, which are carcinogenic). Plastic products contain various undisclosed toxic petrochemical additives such as plasticizers (phthalates), colorants, and ultraviolet blockers. Some health and beauty products contain microbeads, which are intentionally added microplastics. Larger plastic products typically become microplastics and can get into our sewage system, waterways and oceans causing permanent pollution. Microplastics have recently been found in the air (and consequently in rainfall and snowfall[1]) and in tap water (with the US having the highest incidence of 94% and highest concentration)[2]. Plastic products are often ingested by animals injuring them and sometimes leading to their death. Once consumed by animals, they can enter the human food chain. In 2021, Canada added *all plastic* to its list of toxic substances, which opens the door for further Federal regulation.

Plastic contributes significantly to climate impacts from both energy consumption and emissions of greenhouse gases from manufacturing. A recent study was recently titled "The New Coal: Plastics and Climate Change" because "The U.S. plastics industry's contribution to climate change is on track to exceed that of coal-fired power in this country by 2030."[3] Manufacturing workers and locations, which are frequently environmental justice communities, bear disproportionate burdens.

In 2018, the European Union adopted a comprehensive Single-Use Plastics plan that covers products that are "the 10 most found plastic waste items on Europe's beaches". Some (such as plastic shopping bags and food packaging) are already included in Brookline by-laws. This article would begin by covering two additional products banned under this regulation (plastic ear swabs and balloon sticks) and adds others from a new proposed state law. In Massachusetts, Chelsea and Falmouth have already banned nip bottles. Passing this by-law will support legislation in other municipalities and ultimately at the state and Federal level.

None of these items are recyclable (except possibly nip bottles which are generally to small to be sorted and collected automatically). We cannot get to zero waste until we eliminate non-recyclable plastic. Furthermore, plastic and their chemical additives are toxic, and will be released from landfills primarily in leachate, which further argues for restrictions. All of these items except for microbeads are found as visible litter. Floss sticks and nip bottles are found in large volumes and Brookline is not exempt. Plastic floss sticks were invented

[1] "White and wonderful? Microplastics prevail in snow from the Alps to the Arctic" https://advances.sciencemag.org/content/5/8/eaax1157

[2] "Invisibles: The plastic inside us" https://orbmedia.org/stories/Invisibles_plastics/

[3] https://www.beyondplastics.org/plastics-and-climate

in the 1970's. Wet wipes became prevalent only in the 1990's, but have caused significant problems for sewage systems.[4]

This by-law regulates common products with ready substitutes such as wood in the case of ear swabs, floss picks, and balloon sticks; and paper for balloon sticks and ear swabs. Bamboo is a popular alternative for wet wipes, some of which are washable. With the growing concern around plastics, the market for alternatives has been growing significantly over recent years.

Because there are so many plastic products and their number is growing, this by-law also allows the Select Board to further regulate single-use plastic products. The expectation is that the list of regulated products could be extended in the future. In this process, the Select Board could consult with other town bodies such as the Solid Waste Advisory Committee or Advisory Council on Public Health.

The Climate Justice Committee of First Parish in Brookline, and the Massachusetts Sierra Club have already endorsed this warrant article with other organizations expected to follow.

ADVISORY COUNCIL ON PUBLIC HEALTH
REPORT ON ARTICLE 25

On April 7, 2022, a public hearing was held to hear presentations from petitioners and Health Department staff on the health implications and potential benefits related to the expansion of the Sustainable Containers and Packaging bylaw, as well as to listen to citizens' comments and concerns regarding Warrant Article 25. The following week on April 14th, the Advisory Council on Public Health (ACPH) deliberated and voted on Warrant Articles 25. Discussion of Warrant Article 25 begins at 01:02:00 of the recording.

During Deliberations ACPH members shared a desire to reduce the manufacturing and use of plastic products as they are harmful to our health and the environment and many plastic products are not recycled. Several members noted the connection to petroleum and the Town of Brookline's efforts to address climate change. ACPH members were concerned about the scope of the warrant article as it impacts a number of products and retailers placing a significant burden on an understaffed Health Department. There was considerable discussion about the inequitable impact of this warrant article on lower income residents. Although there are alternative products for wet wipes the added cost to lower income parents was of significant concern to ACPH. There was also discussion about the potential negative health impacts of banning floss pics that improve the uptake of flossing, improving oral health. Several members discussed the desire to see a future warrant article that addresses plastic nip bottles. Other communities have already set the precedent on banning all types of nip bottles as a substance misuse prevention tool as well as a litter reduction effort.

[4] "New Study Confirms 'Flushable' Wipes Don't Disperse in Sewer Systems" https://www.mswmag.com/online_exclusives/2019/05/new-study-confirms-flushable-wipes-dont-disperse-in-sewer-systems

Outcome Warrant Article 25
Dr. Schalff made a motion to take no action on Warrant Article 25, but that ACPH supports reduction in the use of plastics, particularly single use plastics, second by Dr. Homer.

- Natalia Linos - Yes
- James Perrin - Excused Absence
- Tony Schlaff - Yes
- Pat Maher - Yes
- Charles Homer - Yes
- Rosemarie Roque Gordon - Yes

ACPH voted on April 14, 2022 5 in favor of the motion and 0 opposed to recommend no action on Warrant Article 25 to Town Meeting.

Public Health Background: Prepared by Department of Public Health and Human Services
In 2020, Brookline produced approximately 8,600 tons of solid waste. In the US, plastic waste makes up about 13% of solid waste. There are numerous health concerns related to single use plastics, from the environmental impact of liter to expanding landfills or sending waste to incinerators. Then there's the issue of micro plastics, the small particles of broken-down plastic that are being found in our soil, our water and even our blood and lungs.

Proposed Warrant Article. The Spring 2022 Town Meeting will review and vote on a proposed Warrant Article 25. This Warrant Article seeks to amend the general bylaws to expand the existing regulation of single use plastics to include additional items listed below.

(a) No retailer shall sell or distribute: (1) plastic ear swabs, (2) single-use floss picks with plastic handles, (3) over-the-counter cosmetic or health and beauty aid products that contain microbeads or plastic glitter, (4) plastic wet wipes other than those designed and marketed for medical applications, (5) plastic balloon sticks, (6) alcoholic beverages in plastic bottles that are 100 ml or less in volume.

Benefits
There are numerous benefits to the environment and human health from reducing our reliance on single use plastics. For the environment, there's an opportunity to reduce our reliance on petroleum-based products and reduce our solid waste. Existing disposable wipes put a significant burden on our waste water systems. The proposed warrant article would provide the Health Department with new opportunities to partner with the business community to reduce plastic waste and engage the community on better alternative products. Removing certain single use plastics might also help reduce litter in Brookline and reduce microplastics that end up in our environment and our bodies

Challenges
The proposed warrant article is an unfunded mandate on the Health Department. To properly enforce this bylaw would require additional staff time and would require some combination of hiring new staff or increasing the hours of existing part-time staff. The additional staff time is required to help write and implement the regulation, engage and

educate the business community and public regarding the new regulation, inspect stores, write reports, hold hearings, fine stores that are not in compliance, re-inspect stores, and respond to complaints. At this point it is unclear how many retail stores carry these plastic products, and many of the local businesses are not currently regulated by the Health Department.

The enforcement of an existing Sustainable Containers and Packaging bylaw (Article 8.32) is informative with regard to this potential new bylaw. As originally passed the Sustainable Containers and Packaging bylaw would require only one part-time staff to enforce. However, a number of factors outside the Health Department's control have made this impossible. Turnover both at the Health Department and among regulated businesses have added challenges in establishing relationships and coming into compliance. The Health Department has faced considerable difficulty in retaining staff in this role due to its part-time status. There are approximately 250 businesses that need to be inspected as part of the existing bylaw. The role includes education, outreach, and inspection. After an initial inspection, a business that is in full compliance would require Health Department staff to write a report and continue to be re-inspected to ensure compliance is maintained. Those businesses found to be out of compliance would still be issued a report. In addition, a reinspection would be scheduled and if the business cannot come into compliance, they can request a hearing and a waiver if they can show an inability to purchase recommended alternative products. Unfortunately, the pandemic has exacerbated supply chain issues and number of businesses in Brookline have had difficulty coming into compliance. This adds to the workload because businesses are given temporary waivers which then require additional inspections and staff time in the same year. If this bylaw is passed, we will need to fund additional staff to address education and outreach, inspections, reports, hearings, and the potential for alternatives products not to be available and the potential for waivers or other unforeseen challenges.

Health Commissioner Perspective

Enforcing the proposed bylaw would be difficult for the Health Department given our current staffing challenges. If passed, the inability to enforce the bylaw erodes at the Department's credibility on this and other enforcement actions. The existing Sustainable Containers and Packaging bylaw is limited to retail food establishments which the department already has a regulatory relationship with the enforcement of the Federal and State food code. Even with this relationship, staff enforcing the existing Sustainable Containers and Packaging bylaw have faced many challenges, as described above. While reducing single use plastics is a public health and environmental concern, because of these challenges, and the issues around equitable access to alternative products such as wipes or flossers, the Department does not support the Warrant Article and the proposed bylaw.

SELECT BOARD'S RECOMMENDATION

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

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: Favorable Action on the amended main motion by a vote of 22 in favor, 0 opposed and 2 abstaining.

Executive Summary:	Warrant Article 25 was filed to restrict the sale of certain plastic products that contain harmful chemicals in the Town of Brookline, for the purpose of reducing the risk of exposure to people and the environment. The proposed by-law would restrict the sale of: (1) plastic ear swabs, (2) single-use floss picks with plastic handles, (3) over-the-counter cosmetic and health and beauty aid products that contain microbeads or plastic glitter, (4) plastic wet wipes, (5) plastic balloon sticks, and (6) alcoholic beverages in plastic bottles 100 ml or less in volume. The by-law specifically excludes service businesses such as restaurants, medical and dental offices, and hair and nail salons. It also does not regulate prescription products or microbeads covered by any state or federal law. The Advisory Committee made several amendments to the article: (1) to remove over-the-counter cosmetics containing microbeads and all references to microbeads in the article; (2) to remove single-use floss picks; and (3) to remove plastic wet wipes. The amended article passed by a vote of 22 in favor, 0 opposed and 2 abstentions.
Voting Yes will...	Voting Yes will reduce the volume of non-biodegradable plastic products sold in Town, but will add another category of enforcement to the Department of Health and Human Services, which currently has a single, part-time (19 hour/week) health specialist who enforces the plastic, polystyrene and other bans passed by TM some years ago. It assigns the role of promulgating regulations to the Select Board and enforcement responsibility to the Health Department.
Voting No will...	Voting No will have no impact on Town operations.
Financial impact	Enactment of this by-law may have a financial impact on the Town if there is a need for additional staffing for enforcement. It may also have a financial impact on retailers who will need to find alternative products that may be more costly and who will not be able to sell their existing inventory beyond the effective date, July 1, 2023.

Legal implications	It is unclear if there are any legal implications.

Introduction
Warrant Article 25 proposes a new by-law to Section 8 of the Town's General By-Laws – Public Health and Safety. The by-law would ban the sale or distribution of certain plastic products containing toxic chemicals sold in retail stores such as supermarkets, drug, liquor and package stores. The products are: (1) plastic ear swabs, (2) single-use floss picks with plastic handles, (3) over-the-counter cosmetic and health and beauty aid products that contain microbeads or plastic glitter, (4) plastic wet wipes, (5) plastic balloon sticks, and (6) alcoholic beverages in plastic bottles 100 ml or less in volume. The Town has already enacted legislation that bans plastic bags and polystyrene for environmental reasons.

This by-law would move the Town further along the goal of reducing plastic products that are harmful to human health and the environment. The Town's Department of Health and Human Services currently employs a part-time health specialist (19 hours/week) to enforce the by-laws that have been passed by Town Meeting that require the enforcement by the Health Department. It is unclear whether that employee will have the capacity to also enforce this by-law; it might require hiring additional staff or converting the part-time position which is not benefit-eligible to one that is. There are also potential negative financial impacts to the affected retail establishments.

Evaluation Methodology/Research
● Letter from the Massachusetts Sierra Club received April 5, 2022 in support of WA25, notes "In the last ten years, more than 150 communities across the state from Williamstown to the Cape have passed local single-use plastic pollution laws."
●Letter from the Brookline Chamber of Commerce dated March 31, 2022 in opposition to WA 22, WA25 and WA30.
● Letters from residents in support of WA25.
● Two warrant articles passed by Town Meeting in November 2012 that ban polystyrene and plastic bags. See Section 8.32 Sustainable Food Containers and Packaging (effective dates 1/1/2019 and 1/1/2020); and Section 8.33 Sustainable Bags (effective date 7/1/2017 with up to a 1-year waiver).
A warrant article passed by Town Meeting in May 2015 that regulated the sale of bottled water. https://www.brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws
● H.869 An Act to Reduce Single-Use Plastics from the Environment, which has 29 sponsors including Reps. Vitolo, Elugardo and Balser. Currently in committee. https://malegislature.gov/Bills/192/H869/BillHistory
● The European Parliament bill passed and went into effect in 2021that bans single-use plastics, including many of the products that Brookline has already banned and those that would be banned upon passage of WA25.
https://www.wastedive.com/news/european-parliament-approves-2021-single-use-plastics-ban/551552/

Discussion
Plastic products contain toxic petrochemicals, often undisclosed, which negatively impact human and environmental health. The petitioners filed WA25 to further the goals of reducing plastic exposures that began in Brookline in 2012 with the passage of two warrant articles – one restricting plastic bags, one restricting polystyrene—at the November Special Town Meeting. Single-use plastics are typically unrecyclable, high-volume products that often end up as litter. The number 1 most-littered item is nip bottles; floss picks are number 2. Newton has already banned all nip bottles; Brookline seeks to ban only plastic ones. Wet wipes, defined as nonwoven sheets, are often plastics which, despite warnings on the label, are flushed down the toilet clogging and polluting our wastewater system.

Article 25 states that no retailer shall sell or distribute the following:

1. Plastic ear swabs
2. Single-use floss picks with plastic handles
3. Over-the-counter cosmetic or health and beauty aid products containing microbeads or plastic glitter
4. Plastic wet wipes (with an exemption for those designed and marketed for medical use)
5. Plastic balloon sticks
6. Alcoholic beverages in plastic bottles (nips) 100 ml or less in volume.

The Advisory Committee received many letters in support of Article 25, noting that there are non-plastic alternatives available. The letters also state that the enforcement of this article will not cost the town additional monies because the Department of Health and Human Services has a staff person already tasked with enforcement. Health Director Sigalle Reiss, spoke to the Committee and noted that there is currently one 19-hour a week health specialist available for enforcement, and expressed concern about the ability of the department to do the additional enforcement Articles 22 and 25 would require. She reported that the Advisory Council on Public Health had just met and was not supporting these articles.

A letter received from the Brookline Chamber of Commerce raised additional concerns about the impacts on Brookline businesses “still reeling from the pandemic, supply chain shortages, and hiring challenges.” Among those concerns are the options for substitution, the availability and the expense of alternatives. The Chamber supports eliminating plastic products outlined in both articles as a state mandate, but also stated that it puts Brookline businesses at a competitive disadvantage to do so only at the local level.

A letter received from the Massachusetts Chapter of the Sierra Club is strongly supportive of the proposed articles and has been active in efforts to reduce the use of plastics at the state and local levels. The letter notes that “[i]n the last ten years, more than 150 communities across the state from Williamstown to the Cape have passed local single-use plastic pollution laws.” The letter further states that the by-laws proposed are partly based on proposed state laws, such as H.869, An Act to Reduce Single-Use Plastics from the Environment, which is currently in committee. That Act has 29

endorsers, including local Reps. Vitolo, Elugardo and Balser. The Single-Use Plastics legislation seeks to reduce plastic bags, polystyrene, plastic straws and plastic water bottles, which are already regulated in Brookline. Additionally, it includes helium balloons, alcohol nips 100 ml or less, plastic-containing wipes and hotel toiletry bottles.

The Advisory Committee discussed each of the six proposed single-use plastic products separately, considering availability, enforceability, and meeting the needs of diverse consumers. Plastic ear swabs and plastic balloon sticks have an easily available alternative (wood); plastic glitter is easy to identify in beauty products, and plastic nip bottles (100 ml or less in volume) were all seen as having available substitutes and easy to enforce. Microbeads were felt to be problematic for retailers to be able to identify, single-use floss sticks have no equally good alternative for those with physical disabilities, for example, and plastic wet wipes, so important during the pandemic, were seen as having no easily available consumer substitutes. The petitioners noted that such wipes could have a medical exemption.

The petitioners met with Health Director Reiss and agreed to change the effective date of both Articles 22 and 25 from January 1, 2023 to July 1, 2023. Section 4 of the proposed by-law reads: “The Brookline Department of Public Health shall be responsible for enforcement and any regulation.” Section 2 of the proposed by-law states that the Select Board is the body that promulgates regulations after holding a public hearing. The Advisory Committee accepted a recommendation to end Section 4 after the word “enforcement” to make it clearer that the Select Board promulgates regulations and the Health Department enforces the regulations.

Recommendation
The Advisory Committee took the following votes:

1. By a vote of 22 in favor, 1 opposed and 1 abstention to amend Article 25 by removing all references to microbeads
2. By a vote of 16 in favor, 6 opposed and two abstentions to amend Article 25 by removing single-use floss picks
3. By a vote of 17 in favor, 6 opposed and 1 abstention to amend Article 25 by removing plastic wet wipes

The Advisory Committee recommends FAVORABLE ACTION on the following amended motion under Warrant Article 25 by a vote of 22 in favor, 0 opposed and 2 abstentions.

VOTED: That the Town amend the General Bylaws by adding the following Article:

ARTICLE 8.XSINGLE-USE PLASTIC PRODUCTS

ARTICLE 8.X.1 DEFINITIONS

Glitter: decorative particles that are shiny or reflective and less than six (6) millimeters along the longest dimension.

Single-use plastic (SUPs) products: plastic products or primary packaging that are generally used only once.

ARTICLE 8.X.2 RESTRICTIONS

(a) No retailer shall sell or distribute:
(1) plastic ear swabs,
(2) over-the-counter cosmetic or health and beauty aid products that contain plastic glitter,
(3) plastic balloon sticks,
(4) alcoholic beverages in plastic bottles that are 100 ml or less in volume.

(b) No retailer shall sell or distribute single-use plastic products as may be identified in regulations promulgated by the Select Board to further the purposes of this Bylaw, following a duly noticed public hearing.

ARTICLE 8.X.3 EXCLUSIONS

(a) This by-law does not regulate prescription products.
(b) This by-law does not apply to businesses that are primarily service businesses such as restaurants, medical and dental offices, and hair and nail salons.

ARTICLE 8.X.4 ENFORCEMENT

The Brookline Department of Public Health shall be responsible for enforcement and any regulation.

This by-law shall not be enforced prior to January 1, 2023.

ARTICLE 8.X.5 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

And amend section 10.2 PROSECUTIONS AND ENFORCEMENT as follows:

DIRECTOR OF HEALTH & HUMAN SERVICES
Part VIII-Public Health & Safety
Articles 8.1, 8.2, 8.3,
8.4, 8.6, 8.7,
8.8, 8.9,
8.10,8.11,
8.12,8.13,
8.14, 8.15,
8.16, 8.22,
8.23, 8.32,
8.37, 8.38

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By adding this article number to the list of Articles following “8.38”.

And amend section 10.3 NON-CRIMINAL DISPOSITION to include the following enforcement schedule:

ARTICLE 8.XSINGLE-USE PLASTIC PRODUCTS BY-LAW

Per product:

Initial Violation	Warning
First Offense	$50.00
Second and Subsequent	$100.00

ARTICLE 25 ADVISORY COMMITTEE VOTES

Article Description	**Restricting certain plastic sales, as amended**
AC recommendation (Favorable Action unless indicated)	**22-0-2**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	A
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 25

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 25 is a petitioned article that would restrict the sale of certain plastic products that contain harmful chemicals in the Town of Brookline. The Board is supportive of the recommendation from the Advisory Committee that amended some of the categories. The AC eliminated microbeads, single use floss picks with plastic handles, plastic wet wipes.

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

ROLL CALL VOTE:

Aye:	Absent:
Fernandez	Hamilton
Greene	
Aschkenasy	
VanScoyoc	

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

ADVISORY COMMITTEE CORRECTION TO REPORT ON WA25

Article 8.X.4 ENFORCEMENT

The Brookline Department of Public Health shall be responsible for enforcement.

This by-law shall not be enforced until the later of July 1, 2023 or 12 months after approval by the Attorney General.

** The Advisory Committee will be taking up new language as recommended by Town Counsel:

"This by-law shall not be enforced until the later of (i) twelve months after the Town's compliance with Chapter 40, section 32 of the General Laws regarding the action or failure to act of the Attorney General with respect thereto, or (ii) January 1, 2023."

ARTICLE 25

MOTION OFFERED BY SELECT BOARD CHAIR HAMILTON, SECONDED BY SELECT BOARD MEMBER ASCHKENASY

MOVED:
To refer the subject matter of Article 25 to the Advisory Council on Public Health (ACPH).

Note: The Select Board will be considering this motion on 5/31 after discussing the revised AC motion on 5/25. The Board expressed that there was still a need for ACPH to provide more guidance on how to best implement article 25, and thought that a referral motion would allow for that to happen.

ARTICLE 26

TWENTY-SIXTH ARTICLE
Submitted by: Deborah Brown, P1, Kimberly Richardson, P2, Luciana Schachnik, Arthur Conquest, Emy Takinami, Wendy MacMillan, Tamu Jackson, Kristin Singleton, Lauren Bernard, Donelle O'Neal, Sr.,

To see if the Town will vote to amend Article 3.16 of the Town's General Bylaws as follows: (deletion appearing in strikeout, addition in bold underline):

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 threenyear staggered terms~~.

SECTION 3.16.1. PURPOSE

The goals of the commission are to deliver programs that are cultural, social, mental, and physically based, which are presented at well-maintained parks and facilities. Brookline seeks programs that meet appropriate community based needs, that are cost efficient and within the reach of the overall community resource base. These programs will also provide the highest level of participant satisfaction.

SECTION 3.16.2. **PARK AND RECREATION AREA PROGRAMS**

The Park and Recreation Commission shall, (a) at least annually, **prepare, consider, and approve a parks and recreation comprehensive plan. An update shall be considered no less frequently than every five (5) years;** (b) promulgate a proposed Program for such substantial construction, alteration or repair of the parks and recreation areas in the Town over the following five (5) years as it may consider appropriate, including estimates of expected costs; (c) advertise such proposed program at least twice in a newspaper of general circulation in the Town and on social media; (d) conduct a public hearing concerning such proposed program at a time and place specified in such advertisement; (e) after such public hearing and such further revision as it may consider necessary, submit such proposed program for approval to the Select Board.

The commissioners will design and produce annually a youth engagement assessment and recommendations to increase participation of low-income families and families suffering extenuating circumstances in recreation programming. When under-engagement is identified, the commissioners will devise programming and seek funding for increased participation, including Limited English Proficiency tools. The commissioners shall submit the analysis and recommendations for increased engagement by low-income families and families suffering extenuating circumstances to Select Board for review and consideration annually.

3.16.3. COMMISSION MEMBERSHIP

There shall be a Park and Recreation Commission that consists of nine (9) residents appointed by the Select Board for three year staggered terms. Vacancies shall be filled for unexpired terms. Of the nine (9) appointees, three shall be low or moderate income tenants who reside in subsidized housing units as defined by the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder) or who receive state or federally sponsored rent subsidies and who demonstrate a knowledge of tenant issues. At least one of the low or moderate-income tenants shall be a resident of a Brookline Housing Authority or a recipient of BHA-administered rent subsidies. In addition to the nine (9) members, Select Board may also appoint two (2) youth members, who hold the same rights and responsibilities as all other members.

SECTION 3.16.4 PARKS AND RECREATION AFFORDABILITY

The commission shall fulfill community-based needs cost efficiently and within the reach of the overall community resources while providing the highest level of participant satisfaction.

Low- or moderate income tenants who reside in subsidized housing units as defined by the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder), those who receive state or federally sponsored rent subsidies or families whose children qualify for free or reduced price meals based on a household income within limits set by the Federal Income Guidelines, if the family receives benefits (such as SNAP or TANF), or if your family is homeless or is a foster child shall receive up to 100% financial aid to participate in Parks and Recreation Programming. Such persons shall be able to attend at least one program per quarter or complete a full program and at least two programs during the summer months.

Other families suffering extenuating circumstances may receive financial aid up to 100% of the cost of a session per quarter and two weeks of programming during the summer. Parks and Recreation regulations will define what constitutes extenuating circumstances.

When enrolling for Parks and Recreation Programming, residents must provide proof of income based on their residing at BHA or in Section 8 housing or they qualify for free or reduced price meals based on a household income within limits set by the Federal Income Guidelines, if the family receives benefits (such as SNAP or TANF), or if your family is homeless or your student is a foster child.

If approved for financial assistance, the household must update records annually for review. However, if a family resides at BHA, in Section 8 housing or receives free or

reduced lunches, in lieu of updating data, BHA or the Brookline Schools may provide documentation on behalf of the household to satisfy proof of financial need.

SECTION 3.16.5 PARKS AND RECREATION FUNDING

Select Board will search for and identify a permanent funding stream to subsidize parks and recreational programming for low income families and families suffering extenuating circumstances for the Commission by 2024.

Commissioners will fundraise for the parks and recreation system, including research and recommendations on grant applications. The Commission may not submit grant applications or receive grant funds without consent of the Select Board.

SECTION 3.16.6 OPEN SPACE DESIGN REVIEW PANEL

In order to ensure that all plans for the substantial construction, alteration or repair of a park or recreation area under the jurisdiction of the Commission respect the historical, cultural, aesthetic, and open space values of the Town and serve the expressed needs of the primary community to be served by the improvement, the Commission shall appoint a Park and Open Space Design Review Panel, hereinafter called the review panel, for each such plan. The review panel shall consist of ~~four~~ five members to be appointed by the Commission from its membership, and three
members to be appointed by the Commission who represent those people who are the likely passive and active users of the improvement including, when appropriate, people from the neighborhood where the improvement is located **and people who reside in low income and subsidized housing as described in SECTION 3.162.** One of the nine (9) shall be trained in landscape architecture or in another relevant field. The review panel shall choose its chair. The review panel shall meet promptly after its appointment and shall carry out the following functions: recommendation of a consultant for the plan, if such a consultant is to be hired; convening of at least two public hearings at times accessible to the broadest range of residents; and review of the plan before contracts for the work are to be let.

3.16.7 WOMEN AND DISADVANTAGED BUSINESS ENTERPRISE

Contracts entered into by the Parks and Recreation Commission shall make best efforts to meet or exceed applicable state and federal racial equity and women and disadvantaged business goals.

3.16.8 PROMULGATION OF REGULATIONS

The Commission shall develop and promulgate regulations and policies as necessary to effectuate the requirements and goals of this Section.

This bylaw, as amended, shall take effect on July 1, 2022

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

"Play is important for the emotional, social, cognitive, and physical development of children. In addition to being critical for general health and a preventative against overweight, play develops life skills for children and communication skills among peers and family members.[1]" "According to the report, play's benefits extend to psychological well-being. Play provides an opportunity for a student to shine in areas that are not strictly academic and thus contributes to the child's personal sense of pride and belonging in her school environment. This has the potential to discourage truancy and encourage children to remain in school to complete their education.[2]" "Having access to quality play spaces and playgrounds gives children the health benefits of being physically active, a way to develop motor skills, a place to improve mental health, and they contribute to the overall health outcomes of a community." It is not just access to build playgrounds and natural environment play spaces, she says, but also the connection to social resources and social capital of the community. "Playgrounds build social cohesion.[3]"

Further, "for kids, playgrounds are equivalent to the "public square" for adults — that is, places where all may freely express themselves. Many play experts and park and recreation professionals attest to the inclusive nature of play and the need for playgrounds to be inclusive.[4]"

Finally, recreation in nature allows one's vitamin D levels rise, get more exercise, be happier and improve one's concentration.

Covid has only exacerbated the need for consistent recreational opportunities.

Income does have a direct relationship between a family's ability to engage in recreation. Median household income in Brookline, MA is $117,326. In 2019, the place with the highest median household income in Brookline, MA was Census Tract 4011 with a value of $189,643, followed by Census Tract 4012 and Census Tract 4006, with respective values of $174,667 and $156,797. Males in Massachusetts have an average income that is 1.33 times higher than the average income of females, which is $67,290. The income inequality in Massachusetts (measured using the Gini index) is 0.483, which is higher than the

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[1] **Recreational Play Can Be Far More Important Than Academics,** The Atlantic, *By Esther Entin* JANUARY 16, 2012.

[2] Id.

[3] Parks and Recreation Magazine, The Value of Play, Playgrounds and Parks During the Pandemic, November 18, 2021, Feature, by Richard J. Dolesh

[4] Id.

national average. The economy of Brookline, MA employs 32.7k people. The median property value is $933,200 and the home ownership rate is 48.9%.

Brookline does have some alarming poverty statistics. Twelve percent (12%) of Brookline's residents live below the poverty level. Nine percent of female residents live in poverty. The race most likely to be in poverty in Brookline is Black, with 32.11% below the poverty level. The race least likely to be in poverty in Brookline is White, with 8.76% below the poverty level. Asians have a 19.05% poverty rate while Latinx have a 18.75% poverty rate, groups identifying as multiple races have a 18.75% rate, Others have a 29.28% rate and Native Americans have a 11.5% poverty rate. The poverty rate among those that worked full-time for the past 12 months was 1.31%. Among those working part-time, it was 19.75%, and for those that did not work, the poverty rate was 27.51%.

BHA has a total of 1,501 residents and 354 are of children 18 years and younger. WE also know that:

#	families	with	1	child	18	years	old	and	younger	= 110
#	families	with	2	children	18	years	old	and	younger	= 57
#	families	with	3	children	18	years	old	and	younger	= 21
#	families	with	4	children	18	years	old	and	younger	= 11
#	families	with	5	children	18	years	old	and	younger	= 4

The average BHA income ranges by property between $14,906 - $23,059. Overall the average income is $18,601.

We also know that camp programs cost approximately $285 per week. Parks will generally only pay 30% of the cost of a class or $85 leaving parents to pay $200 per week per class or $1,000 for one month.

A total of 34 children attended camp for free and approximately 93 received partial scholarships. BHA has 354 who would benefit from the programming, yet there are not the funds. Most do not know how poorly Parks is funded or the needs.

Between FY21 – 22, the Rec Dept. applies for funding through the Brookline Community Foundation and with this grant they are able to send 20 children to camp for free. Eight of those children came through Brookline Community Mental Health (BCMH) and the other 12 children came through Steps to Success (STS).

In addition to this, BREC offered free camp to an additional 12 BCMH children who weren't covered by the grant.

- 3 children received free camp through the voucher program
- 11 additional STS students were able to get free camp at the Park School Summer Program through a partnership between Park School and the Town of Brookline.
- BREC also gave an additional 12 children a partial scholarship to Rec Summer Camp

Also, during FY21-22, the "General Programs Funded through Rec Financial Aid" include:

- 80 students partial scholarships to programming *other than camp* so far for FY22.
- 8 families at the low income level, 5 families at the very low income level and the rest of the families fall under the extremely low income level.

Actual funding does not bridge the gap between youth in need and the total number of children able to participate in the programming.

Ultimately, participation comes down to funding. Rec reserved funds total approximately $686,807 in retained earnings at the end of the last fiscal year. Its utilize Reserve for Rec Capital projects and they currently have $1.2 million in Capital Projects in future years.

This warrant article will not bankrupt the town and in a very real sense could serve to save the town money.

MOTION OFFERED BY THE PETITIONER

MOVED: That the Town will vote to amend Article 3.16 of the Town's General Bylaws as follows: (deletion appearing in strikeout, addition in bold underline):

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 threenyear staggered terms~~.

SECTION 3.16.1. PURPOSE

The goals of the commission are to deliver programs that are cultural, social, mental, and physically based, which are presented at well-maintained parks and facilities. Brookline seeks programs that meet appropriate community based needs, that are cost efficient and within the reach of the overall community resource base. These programs will also provide the highest level of participant satisfaction.

SECTION 3.16.2. PARK AND RECREATION AREA PROGRAMS

The Park and Recreation Commission shall, (a) at least every five (5) years, prepare, consider, and approve a parks and recreation comprehensive plan. An update shall be considered no less frequently than every year; (b) promulgate a proposed Program for such substantial construction, alteration or repair of the parks and recreation areas in

the Town over the following five (5) years as it may consider appropriate, including estimates of expected costs; (c) advertise such proposed program at least twice in a newspaper of general circulation in the Town and on social media; (d) conduct a public hearing concerning such proposed program at a time and place specified in such advertisement; (e) after such public hearing and such further revision as it may consider necessary, submit such proposed program for approval to the Select Board.

The commissioners will design and produce annually a youth engagement assessment and recommendations to increase participation of low-income families and families suffering extenuating circumstances in parks and recreation programming. When under-engagement is identified, the commissioners will devise programming and seek funding for increased participation, including Limited English Proficiency tools. The commissioners shall submit their analysis and recommendations for increased engagement by low-income families and families suffering extenuating circumstances to Select Board for review and consideration annually.

~~3.16.3. COMMISSION MEMBERSHIP~~

~~There shall be a Park and Recreation Commission that consists of nine (9) residents appointed by the Select Board for three year staggered terms. Vacancies shall be filled for unexpired terms. Of the nine (9) appointees, three shall be low or moderate income tenants who reside in subsidized housing units as defined by the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder) or who receive state or federally sponsored rent subsidies and who demonstrate a knowledge of tenant issues. At least one of the low or moderate-income tenants shall be a resident of a Brookline Housing Authority or a recipient of BHA- administered rent subsidies. In addition to the nine (9) members, Select Board may also appoint two (2) youth members, who hold the same rights and responsibilities as all other members.~~

SECTION ~~3.16.4~~ 3.16.3 PARKS AND RECREATION AFFORDABILITY

The commission shall fulfill community-based needs in a cost efficient manner and within the reach of the overall community resources, while providing the highest level of participant satisfaction.

Low- or moderate income tenants ~~who residing~~ residing in subsidized housing units as defined by the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder), those ~~who~~ receiving state or federally sponsored rent subsidies or families whose children qualify for free or reduced price meals based on a household income within limits set by the Federal Income Guidelines, ~~if the family~~ families receiving ~~receives~~ benefits (such as SNAP or

TANF), or ~~if your family is~~ families who are homeless or ~~is a foster child~~ families fostering a child shall receive up to 100% financial aid to participate in Parks and Recreation Programming. ~~Such persons shall be able to attend at least one program per quarter or complete a full program and at least two programs during the summer months.~~

Other families suffering extenuating circumstances may receive financial aid pursuant to this Section 3.16.3. ~~up to 100% of the cost of a session per quarter and two weeks of programming during the summer~~. Parks and Recreation regulations will define what constitutes extenuating circumstances.

When enrolling for Parks and Recreation Programming, residents must provide proof of eligibility based on the requirements described above. ~~income based on their residing at BHA or in Section 8 housing or they qualify for free or reduced price meals based on a household income within limits set by the Federal Income Guidelines, if the family receives benefits (such as SNAP or TANF), or if your family is homeless or your student is a foster child.~~

If approved for financial assistance, the household must update records annually for review. However, if a family resides in a Brookline Housing Authority (BHA) property, in Section 8 housing, other subsidized housing in Brookline, or receives free or reduced lunches, in lieu of updating data, BHA or the Brookline Schools may provide documentation on behalf of the household to satisfy proof of financial need.

SECTION ~~3.16.5~~ 3.16.4 PARKS AND RECREATION FUNDING

~~Select Board will search for and identify a permanent funding stream to subsidize parks and recreational programming for low income families and families suffering extenuating circumstances for the Commission by 2024.~~

Commissioners will fundraise for the parks and recreation system, including proposing funding ~~research~~ and recommendations. ~~on grant applications.~~ The Commission may not ~~submit grant applications or~~ receive grant funds without consent of the Select Board.

SECTION ~~3.16.6~~ 3.16.5 OPEN SPACE DESIGN REVIEW PANEL

In order to ensure that all plans for the substantial construction, alteration or repair of a park or recreation area under the jurisdiction of the Commission respect the historical, cultural, aesthetic, and open space values of the Town and serve the expressed needs of the primary community to be served by the improvement, the Commission shall appoint

a Park and Open Space Design Review Panel, hereinafter called the review panel, for each such plan. The review panel shall consist of four members to be appointed by the Commission from its membership, and three members to be appointed by the Commission who represent those people who are the likely passive and active users of the improvement including, when appropriate, people from the neighborhood where the improvement is located and people who qualify for the affordability subsidies ~~who reside in low income and subsidized housing~~ as described in SECTION 3.16.2. One of the seven (7) shall be trained in landscape architecture or in another relevant field. The review panel shall choose its chair. The review panel shall meet promptly after its appointment and shall carry out the following functions: recommendation of a consultant for the plan, if such a consultant is to be hired; convening of at least two public hearings at times accessible to the broadest range of residents; and review of the plan before contracts for the work are to be let.

~~3.16.7~~ 3.16.6 WOMEN AND DISADVANTAGED BUSINESS ENTERPRISE

Contracts entered into by the Parks and Recreation Commission shall make best efforts to meet or exceed applicable state and federal racial equity and women and disadvantaged business goals.

~~3.16.8~~ 3.16.7 PROMULGATION OF REGULATIONS

The Commission shall develop and promulgate regulations and policies as necessary to effectuate the requirements and goals of this Section.

~~This bylaw, as amended, shall take effect on July 1, 2022~~

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 4/20/2022 in a public hearing. By a vote of 7-0-0 the CDICR recommends FAVORABLE ACTION Warrant Article 26.

DISCUSSION

Warrant Article 26 seeks to amend **Article 3.16 Parks and Recreation Commission**. The article was presented by Deborah Brown, chief petitioner. The article aims to increase participation of low-income children and families in recreational activities by doing an annual youth engagement assessment and, then, to make recommendations to increase participation. The main barrier for some is financial. The Rec Department now provides scholarships for some of these children but only up to 30% of the cost. For context, the average BHA tenant earns $16,000/year. Even with the 30% scholarship, there still is a significant financial impediment for some to join. It is well known that it is important for children (and adults, for that matter) to be able to engage in regular physical activity. This change would have financial impact on the Rec Department, which currently spends $150,000/year on scholarships, paid for from the Revolving Fund. The Department would need additional staff, currently reduced due to COVID, not only for to staff the activities but also to apply for grants. Mel Kleckner has committed some funding for first year, but after that, additional finding would be needed, possibly from the Brookline Community Foundation, to name one. The need to pursue further funding options is paramount. The article has been amended to remove Section 3.16.3, delineating membership of Commission, since this is set by state law. Deborah Brown plans to write a budget amendment to fund costs. Two members of the public spoke in favor of the article.

Therefore, the commission voted FAVORABLE on the warrant article as amended, by a vote of 7-0-0.

Commissioners present and voting: Irving Allen – yes, Sandy Batchelder -yes, Jessica Chicco – yes, Harvey Freishstat -yes, Bob Lepson – yes, Bishnu Tamang – yes, Kea van der Ziel -yes

SELECT BOARD'S RECOMMENDATION

A report and recommendation under Article 26 will be included in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 26 will be included in the supplemental mailing.

XXX

ARTICLE 26

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: By a vote of 19-4 with two abstentions, the Advisory Committee recommends Referral of the subject matter of Article 26 to the Park and Recreation Commission with a request to report back to the Fall 2022 Town Meeting

Executive Summary:	**Article 26** proposes to modify the Town's By-Law pertaining to the Park and Recreation Commission by codifying certain policy directives impacting program eligibility, funding, and contracting relating to Parks and Recreation Commission programs. If Article 26 is approved as submitted by petitioners, the Parks and Recreation Commission will be required to: 1. Prepare a comprehensive plan every 5 years which must be updated annually; 2. Prepare annually a youth engagement assessment, including recommendations regarding participation of low-income families; 3. Provide up to100% financial aid for certain families and children as defined in the Article and with procedures set forth in the By-Law for determining and verifying eligibility; 4. Fundraise for the parks and recreation system; and 5. Use best efforts to "meet or exceed all applicable state and federal racial equity and women and disadvantaged business goals" in the awarding of contracts; and 6. Include low-income residents among those whom the Commission considers for appointment to any Open Space Design Panel, as described in the existing By-Law. .
Voting Yes will...	Voting Yes on Article 26 as proposed by the petitioner will legislate specific responsibilities for members of the Park and Recreation Commission; directly involve the Commission in the selection of vendors, and ensure that low-income residents be considered for appointment to Park and Open Space Design Review Panels. Voting Yes on the Advisory Commission's motion to refer the subject matter of the Article to the Park and Recreation Commission will allow Commission members to develop policies and procedures to address the goals outlined in Article 26 and to report on their work to the Fall 2022 Town Meeting.

Voting No will...	Voting No on Article 26 would not enshrine in law the responsibilities specified in the article to Park and Recreation Commissioners. Voting No on the Advisory Committee's motion would mean that the Park and Recreation Commission would not be required to report back to Town Meeting on efforts to create policies and specific mechanisms to achieve the goals outlined in WA 26.
Financial impact	The petitioner estimates that $1,100,000 will be needed for the subsidy program as defined in Article 26. It would enable approximately 540 children, or 50% of the students in the Brookline Public Schools who qualify for free or reduced lunch, to participate in recreation programs. Included in the $1,100,000 is $200,000 for additional Recreation Department staff and $50,000 for supplies.
Legal implications	None identified

Introduction
Article 26 (see Appendix) proposes to amend Article 3.16 of the Town By-Laws with the goal of ensuring that disadvantaged families are able to participate in the Town's Recreation Programs. Included among the amendments is the requirement that the adults and children defined in Section 3.16.3 receive up to 100% financial aid for such participation.

In addition, the Article introduces into the proposed By-Law the goals of the Commission, using some of the existing language on the Recreation Department's website, and subsequently requires specific actions from its seven volunteer members including the preparation of a parks and recreation Comprehensive Plan (undefined by the article) every five years and an assessment of "youth engagement" every year, along with recommendations for increasing participation among low-income families in recreation programming, and suggestions for additional programming and funding to increase participation, if warranted. Commissioners are also required to fundraise, which, according to the proposed article includes researching and making recommendations on grant applications. In addition, Article 26 stipulates that the contracts entered into by the Commission "shall make the best efforts to meet or exceed racial equity and women and disadvantaged business goals."

Lastly, the Article amends the formation of a Park and Open Space Design Panel, described in the current Section 3.16.6, by including low-income residents among those

whom the Commission should consider appointing to a Design Review Panel for a park or playground.

Evaluation Methodology/Research

https://www.brooklinerec.com/
https://www.brooklinerec.com/DocumentCenter/View/204/Financial-Aid-Policy-PDF?bidId=
https://www.brooklinerec.com/156/Camp-Information
https://www.brooklinema.gov/DocumentCenter/View/30246/2022-Annual-Town-Meeting-Article-Explanations
https://www.brooklinema.gov/DocumentCenter/View/29433/2022-02-25-Admin-and-Finance-Subcommittee-Report-on-FY-23-FINANCE-DEPARTMENT-Budget?bidId=
https://www.brooklinema.gov/DocumentCenter/View/22471/WARRANT-2020-First-Special-Town-Meeting p. 26- Article 15, "Increasing Disadvantaged Business Opportunities in the Town of Brookline"

Discussion

The petitioner has brought forward important issues regarding the ability of disadvantaged families to participate in the Town's recreation programs. The benefits of recreation and play, particularly for children, are well documented, with playgrounds described as the "Public Squares" for young people that offer them the connection to the social resources and social capital of the community.

Of particular relevancy to Article 26 were the following data presented by the petitioner:

Number of children (18 years old or younger) living in Brookline Housing Authority (BHA apartments - 354
Number of children enrolled in the Brookline Public Schools – approximately 7777
Number of students eligible for free or reduced meals – 1100
Cost of Recreation Department Summer Day Camp - $285/week

During the Advisory Committee's discussion of the article, Recreation Director Leigh Jackson referred to the following data regarding the number of Recreation Department scholarships - and their value - distributed in the past five years. (Families are awarded partial scholarships in three categories: 35%, 30% and 25%, depending on the degree of need.)

229 scholarships in FY 18 totaling $81,569
191 scholarships in FY 19 totaling $98,373
170 scholarships in FY 20 totaling $61,040
85 scholarships in FY 21 (Covid) totaling $27,497
162 scholarships (to date) in FY 22 totaling $54,102

The Advisory Committee, though supportive of the Article's intentions, has recommends referring the subject matter of Article 26 to the Park and Recreation Commission for a number of reasons.

1. The Article attempts to codify detailed Park and Recreation Commission policies. Given that there are multiple examples of Town Boards and Commissions as well as Departments that establish policies and the procedures to implement them in accordance with their legal responsibility and/or authority, it is not clear why the Park and Recreation Commission should not be permitted to follow the same model regarding financial aid and other actions related to the Commission's operations. The petitioner has stated that laws are enforceable but policies are not, but this raises the question of why policies would be established without the intention to implement them.

2. The Article does little or nothing to further the petitioner's goal of making recreational programs accessible to everyone, given that under Section 3.16.3, participants are entitled to receive "up to 100% financial aid." If adequate funds are not available to provide as much financial aid as needed, then not all qualified adults and children will be able to participate in recreation programs

3. Although the data provided by the petitioner is a good place to start, determining how many adults and children could qualify for financial aid is not the same as determining how many will want to participate in recreation programs in any given season in any given year. More research and outreach is necessary to develop a realistic financial aid program

4. Members of the Park and Recreation Commission were not approached formally or informally to discuss Article 26 before it was filed. During the Article's vetting process, all members have expressed support for the article's basic goal or equal access to programs, but they have also expressed concern about its specifics, including the additional responsibilities it imposes on them as volunteers.

The Advisory Committee also notes that

1. The Select Board has voted to allocate $500,000 in ARPA money to the Brookline Community Foundation for the purposes of providing recreation scholarships over a two-year period. Consequently in the very near future, there will be a significant amount of funding available to adults and children in need of financial support to access Recreation Department programs.
2. Regarding entering contracts that meet or exceed racial equity and women and disadvantaged business goals (Section 3.16.6): procurement procedures are the domain of the Town's Purchasing Agent, not a board or commission, and the Town's purchasing patterns are subject to legal and constitutional requirements. As a result of Article 15, passed at the Fall 2020 Town Meeting, there is a

working group developing broad and cohesive approaches to providing greater business opportunity for historically marginalized groups. This group includes Town Counsel's office, the Department of Human Resources, the Office of Diversity, Inclusion, and Community Relations, the Purchasing Division of the Finance Department, and the Economic Development Division of the Planning Department.

Recommendation

Given that Article 26 contemplates imposing requirements on both the Park and Recreation Commission and the Recreation Department and that those requirements are significant in terms of the Department's operations and programming, the Advisory Committee recommends that the Commissioners and staff be given the opportunity to respond to the provisions of the proposed By-Law by developing a strategy to accurately assess the needs described in Article 26 and to develop an appropriate budget and work plan and to report back to the November 2022 Town Meeting.

Therefore, by a vote of 19-4 with two abstentions, the Advisory Committee recommends the following motion:

MOVED: To refer the subject matter of Article 26 to the Park and Recreation Commission with a request to report back to the Fall 2022 Town Meeting.

ARTICLE 26 ADVISORY COMMITTEE VOTES

Article Description	**WA26 referral motion**
AC recommendation (Favorable Action unless indicated)	**19-4-2**
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	A
Cliff Brown	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	A
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	N
David Pollak	N
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	N
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 26

PARK AND RECREATION COMMISSION REPORT ON ARTICLE 26

On May 10, 2022 The Park and Recreation Commission voted 6 to 0 to refer Article 26 to the Park and Recreation Commission for further study and to complete the report by November 2022 (with the intention of completing the report prior to Town Meeting). Voting in favor were John Bain, Nancy O'Connor, Clara Batchelor, Antonia Bellalta, Theresa Mooney, Wendy Sheridan Ames. John Pan was absent.

SUMMARY

Article 26 proposes to increase financial assistance for low- and moderate-income families who might not otherwise be able to afford to participate in Brookline Recreation. The Park and Recreation Commission fully agrees with this objective, but the Commissioners feel that the details of financial assistance programs—particularly funding—and any bylaw changes require more detailed analysis. The Commission therefore recommends that Town Meeting refer the subject matter of Article 26 to the Park and Recreation Commission for further study, with a report to be made prior to the November 2022 Town Meeting.

DISCUSSION

Article 26 proposes a bylaw amendment that would require increased financial assistance for under-resourced families who might not be able to afford Brookline Recreation programs. Eligible families would include residents of subsidized housing units, families who receive rent subsidies, families with children who qualify for free or reduced school lunches, and other families who face extenuating circumstances. Article 26 also would amend the Town bylaws regarding the responsibilities of the Park and Recreation Commission. The initial version of Article 26, as placed on the Warrant, included changes to the size and composition of the Park and Recreation Commission. Because, under existing state law, Town Meeting does not have the authority to make such changes, the petitioners deleted those provisions and presented a revised version of Article 26. The revised version of Article 26 did not include any language relative to the size and composition of the Park and Recreation Commission.

The Park and Recreation Commission heard the petitioner's explanation of Article 26 at their regularly scheduled meeting on April 12, 2022. More information was requested, and Article 26 was added to the agenda of a special meeting on April 26, 2022. At the April 26, 2022, special meeting the Commissioners had not received the edited Article for review. More information was again requested. The Commission heard the petitioner's explanation and took public comment again on May 10, 2022.

The Commission thanks the petitioners for offering Article 26. There is strong Commission support of the goals of section 3.16.3, "Parks and Recreation Affordability," in the petitioners' revised Article 26 motion. Several Commissioners recalled that when they were children their families struggled to afford the cost of summer recreation programs. During the Commission's meetings on Article 26, each Commissioner stated their desire to reduce or eliminate costs associated with participation by under-resourced youth in Recreation Department programming. The Commission welcomes the opportunity to review and improve the current financial assistance policy.

Nevertheless, Commissioners were concerned that section 3.16.4 (of the revised Article 26 motion) "Parks and Recreation Commission Funding" did not include the appropriate level of study regarding funding strategies and policies to support section 3.16.3's objectives. The Commission feels strongly that the best strategy to implement the goals of affordability would be to have a fully researched cost analysis with related funding plan(s). The Commission does not have authority to control the Town budget nor does the Commission believe that "Commission fundraising" would be an adequate solution.

Although the Commission's primary concern was the need to further consider the details of designing, funding, and implementing expanded financial assistance policies and programs (sections 3.16.3 and 3.16.4), the Commission also discussed the need to further study, or amend, additional sections of Article 26, including but not limited to 3.16, (Membership/make-up of the Commission), 3.16.2, "Park and Recreation Area Programs," 3.16.6, "Women and Disadvantaged Business Enterprise," and 3.16.7, "Promulgation of Regulations." For example, the petitioners' revised Article 26 motion appears to delete entirely section 3.16, which provides for the Park and Recreation Commission to have seven members. In the petitioners' proposed section 3.16.6, there is a reference to "contracts entered into by the Park and Recreation Commission," but the Commission does not sign contracts. Overall, the Commission was concerned these sections need more clarity regarding the composition and purpose of the Commission, as well as the roles, responsibilities, powers, and duties of Commission members. It is critical to fully define these so that there is no misunderstanding regarding the role of the Commission among our Town departments, boards, committees, and commissions.

For these reasons, the Park and Recreation Commission voted to recommend that Town Meeting refer the subject matter of Article 26 to the Commission.

WHAT WILL HAPPEN AFTER A VOTE TO REFER ARTICLE 26

If Town Meeting votes to refer the subject matter of Article 26 to the Park and Recreation Commission:

- The Park and Recreation Commission will convene a Task Force to consider the issues raised by Article 26.

· The Task Force will consider all aspects of how to enable more children from low- and moderate-income families to participate in Recreation Department Programs, including, the level and sources of required funding, eligibility for financial assistance, the application process for families that are seeking financial aid, how to enhance community outreach, how to provide the necessary capacity in Recreation programs, and whether any changes to the Town Bylaws are necessary.

· The Park and Recreation Commission suggests the Task Force include members of the Park and Recreation Commission as well as Representatives of the Commission for Diversity, Inclusion and Community Relations, the School Committee, the Brookline Housing Authority, and the Committee on Town Organization and Structure. Other interested parties are invited to participate and to provide input. The Commission hopes that the petitioners of Article 26 will continue to contribute to this discussion.

- The Commission will report no later than the November 2022 Town Meeting. (The Commission considered setting a May 2023 deadline, but there was overwhelming support by Commissioners to prioritize this work and thus the motion calls for a report by November 2022.)

- The Task Force will hold public meetings in accordance with the Open Meeting Law.

- The Task Force will hold public hearings on how to enable low- and moderate-income families to participate in Recreation Department programs.

- Consistent with the goals of Article 26, the Commission and the Task Force will give priority to providing financial assistance that will enable children from low-income families or those who face extenuating circumstances to participate in Recreation Department programs, but the Commission also will consider how to enable Brookline residents of all ages to participate in such programs, regardless of ability to pay.

RECOMMENDATION

On May 10, 2022, The Park and Recreation Commission voted 6 to 0 to recommend FAVORABLE ACTION on a motion to refer Article 26 to the Park and Recreation Commission for further study and to complete the report by November 2022 (with the intention of completing the report prior to Town Meeting). Voting in favor were John Bain, Nancy O'Connor, Clara Batchelor, Antonia Bellalta, Theresa Mooney, and Wendy Sheridan Ames. John Pan was absent.

ARTICLE 26

COMMITTEE ON TOWN ORGANIZATION & STRUCTURE
REPORT ON ARTICLE 26

Conclusion

This article casts a light on where the Park and Recreation Commission and the Recreation Department may have opportunities to become stronger and become more effectively supportive of families in need. It also illuminates the need to consider other groups. And, fundamentally, it raises the issue of just how to define the Commission in the context of the Town Bylaws. Much of what is proposed in this article can be addressed in the near- or mid-term as an administrative exercise, the more long-reaching issues should be approached more deliberatively.

Further, this raises a number of significant financial issues, calling into question whether, or should, the Recreation Program continue as a Revolving Fund in the manner it has. This is not a trivial consideration.

As to the elements in the warrant article, it is not clear that a requirement for Commissioners to fundraise should be etched into a bylaw. Likewise, contracts with women and minority owned businesses is coordinated thorough Purchasing and covered elsewhere in our Town Bylaws, and likely does not need a stand-alone reference in this bylaw.

The other provisions are well thought out and well expressed and should be pursued in some manner now, though some sooner than others. This does not require a bylaw change, though it does not rule it out either. The use of well-established policies have been shown to be affective.

Everyone appears to share the same goals, but it will take some work to figure out just how to get there.

The Advisory Committee's referral approach will give a little more time for all of the associated parties to properly reflect on these objectives and how best to accomplish them, working through the specifics in order to make more informed decisions – especially in regards to potentially changing our bylaws.

Background

First created 1963, the authority of the Park and Recreation Commission is established in our Town Bylaws and various Acts of the State Legislature.

- Chapter 32, acts of 1981 (and captured in Town Bylaw 3.17): reorganizes the Park and Recreation Commission allowing it to continue as an "advisory body", appoint a Director of Recreation, and participate in formulating a budget.
- Chapter 198, acts of 1991: authorizes the Park and Recreation Commission "to set the fees and charges for all park and recreation programs, activities, facilities and services, subject to the approval of the Board of Selectmen"
- Town Bylaw 3.16: section 3.16.1 provides for oversight of "area programs", requiring a six-year plan that is annually reviewed. "Program" in this context refers to venue or facility, such as a park project. Section 3.16.2 authorized the establishment of an "open space design review panel", these are specific to new projects.
- Mission Statement: separately, the Commission has its own stated mission statement, "The Park and Recreation Commission is a policy-making board responsible to the town for providing year-round, high quality, indoor and outdoor recreation activities for children and adults. The goals of the commission are to deliver programs that are cultural, social, mental, and physically based which are presented at well maintained parks and facilities. We are concerned with meeting appropriate community-based needs that are cost efficient and within the reach of the overall community resource base while providing the highest level of participant satisfaction. Safety and quality are paramount. All individuals with special conditions are entitled to full participation in any Brookline Recreation and Park program."

The petitioner seeks to amend the current Town Bylaw with a series of changes and requirements, among them,

- Prepare a 5-year Comprehensive Plan to be reviewed annually.
- Produce, annually, a youth engagement assessment.
- Make annual recommendations to increase participation by low-income families.
- Devise new programming and seek funding to address under-engagement.
- Provide financial aid of up to 100% for low-income families as described in the proposed bylaw change (e.g. resident of BHA, Section 8, free or reduced lunch eligible).
- Require Commissioners to actively engage in fundraising.
- Enter contracts with the intent of meeting or beating racial equity, and women and disadvantaged business goals.

Introduction

The petitioner brought this article forward as a way to provide opportunities and scholarship support in the Town's recreation programing for less advantaged families. It reflects a strong desire to ensure children from families in need have improved access to Brookline Town Recreation programs – access improved through better awareness,

program offerings, and financial support. She casts a light on something that can easily go unseen.

The Recreation Department does provide tuition assistance for its programs, within the limited constraints of the Revolving Fund in which it operates, augmented with grant funds from the Brookline Community Foundation for the Summer Camp program.

It is probably fair to assume that many families are unaware of the possibility for assistance. Many may see the tuition and stop there, believing it is not within the financial reach of the family. Or there may be measure of embarrassment in even asking. We can't know all the factors.

We do know that there are opportunities for greater outreach, and opportunities for getting better community feedback and information. And we know that even for those now benefitting from financial assistance, a greater degree of support would likely be appreciated.

There are few things as painful as feeling poor or excluded because of your income - especially for a child.

In a community where many of us have more choices and options than we can act on, we should always look for ways to include those who do not enjoy the same level of resources - especially for families whose children's options are few.

This article seeks to address a bit of that through a proposed re-writing of the existing Town Bylaw defining, and importantly in this proposal, directing the Park and Recreation Commission to take specifically prescribed actions.

In addition to casting a light on an important issue in our town, this exercise has also demonstrated the complexity of formulating immediate solutions to problems that still require some defining, and the need for engagement beyond just the department in question.

Financial considerations.

The Recreation Department operates within a Revolving Fund. That means it is self-supporting and doesn't pull funds from the Town's general budget. Programs, therefore, can only succeed if there are tuition paying participants. Tuition assistance is also funded from these tuition payments, limiting what is available. The Recreation Department provides assistance based on family income ranging, on average, between 30-35%. In FY18 (pre-pandemic figures) 229 scholarships were awarded. No one who asked was denied a scholarship.

Of course, that does doesn't tell us how much of a financial strain was left, or how many people didn't request support. It does demonstrate, however, that the Recreation

Department hasn't been deaf to the issue; they are just constrained in what they can provide. And, both the Department and Park and Recreation Commission have expressed support for the goals of this article – even if not agreeing with the petitioner on the best way to reach those goals.

Accommodating more people and offering assistance up to 100% creates a number of obvious challenges, not the least of which is "where does the money come from?".

Importantly, costs will be derived from need and demand/volume – and those have yet to be determined by the Park and Recreation Commission and Recreation Department.

The petitioner looked at the number of children living in BHA facilities and those eligible for the free and reduced lunch program, made assumptions as to potential participation rates, and applied this to the cost of Summer Camp to propose an annual cost of $1-1.5M. Cost, of course, are driven by a variety of factors.

Capacity issues.

There are capacity issues that limit participation.

For example, the Summer Camp is limited to 300 participants, according to the Recreation Department, because of space and facility constraints. If one were to add, say 200 participants, additional facilities and staff would be needed; not to mention potential transportation issues.

This would likely require the support of the School Committee and School Department, in part, to accomplish. Neither is contemplated in the proposed bylaw.

The same issues would be present throughout the year and across the range of programs. Everywhere in Brookline, programs are stressed with the scarcity of space and facilities – enrichment programs, afterschool programs, etc.

One can easily imagine a situation where there are more applicants than slots. And in the context of providing sufficient financial assistance within the Recreation Revolving Fund, it means choices would need to be made as to who gets a slot and who does not – who gets displaced.

Given these constraints, a model for set-aside slots, first come-first serve, scaling within different programs, or some other approach would need to be carefully devised. This requires policies, business analysis, and collaboration.

Policy vs bylaw

The petitioner contends that a policy says "we would like you to", whereas a bylaw says "you have to". It certainly draws a stark distinction. It also unfairly assumes an ineffectiveness in policies.

The Fire Department has a long-standing policy of "four in four", meaning four Firefighters on site in four minutes. It is something that is taken very seriously – and proudly. And our Town's own policies around the use of Free Cash provide an orderly "waterfall" of distribution, ensuring funds are regularly directed toward the Affordable Housing Trust.

Policies can, and do, work very well, allowing a measure of flexibility to accommodate unforeseen circumstances.

The petitioner has stated very clearly and repeatedly that she simply doesn't trust the Town to do anything, and so she brought this forward as a bylaw change before having any conversation with the Park and Recreation Commission – the very commission that would be affected.

We can all view things through a jaundiced eye, but cynicism can also breed more cynicism. Thoughtful and respectful discussion with a shared commitment to goals is a necessary first step, otherwise we risk failure from a lack of collaboration and trust.

In the case of this proposed bylaw change, it is very specific and narrowly focused. It addresses the very important needs of a given constituency. However, the change would also bring this to primacy relative to other potential constituencies. Is primacy essential, or even advisable? Should we inscribe the needs of seniors in the bylaw? What about the visually or physically impaired? Can this implicitly, or through silence, neglect other groups – either by bylaw reference, or a lack thereof? Some of these things, of course, are outside of the scope of this proposed warrant article, but become natural considerations.

This proposed bylaw also raises a larger concern as to the effect of bylaws in setting overall Town policies, priorities, and appropriations. Things with a cost that are etched into a bylaw, become budget issues – with associated trade-offs or unforeseen hardships elsewhere. A question of parity then naturally arises.

Parity

The use of bylaw can, intentionally or unintentionally, risk re-arranging priorities for a whole community, not merely within the ambit of the Recreation Department. Should the Senior Center policies also be written into bylaw to have the same need, and parity of importance as what is offered in this article? Does the Fire Department need its "four in four" policy written into bylaw to have the same relative priority? What is appropriate for a bylaw, rather than a policy?

If a bylaw does indeed mean "you have to do it", then there are likely many other things that we may need to consider putting into bylaw as well.

The role of Boards and Commissions is to formulate and act on programs and policies that serve the goals we have expressed, not simply follow prescriptive or constraining directives that get patched into bylaws. Admittedly, this is a rather delicate balance at times.

Discussion
CTOS considered this carefully, holding several hearings and meetings, and attending those of the Advisory Committee, Select Board, and Park and Recreation Commission.

One thing that has be particularly striking in this process has been the limited time spent by the Commission (or Commissioners) and petitioner sitting down together to work through the details of attaining the goals in this proposal. Clearly, aligning schedules when there are several participants, tight meeting schedules, numerous issues involved, and all compressed into a relatively short timeline, is a challenge. It is nonetheless a disappointment, especially given the importance of the issue. It also underscores the importance of early engagement among all parties.

CTOS was struck by the thoughtfulness of this article and the draw of such a critical need. The petitioner has done a tremendous service in bringing this issue to the fore.

CTOS is also very aware that saying "solve a problem", in a legislative sense, is not the same as actually solving the problem – particularly if the problem has yet to be well defined.

We don't yet know the true demand for assistance. Nor do we know if new information might inform other programmatic changes within the Recreation Program's offerings, or how those changes could change space and facility needs.

Some facts may prove to be unascertainable, though we can surely generate estimates. As noted, understanding demand and capacity are critical to making informed choices and decisions.

CTOS believes there still needs to be more detailed and quantitative analysis; a determination of cost and scope of programming. Ideally, there will be thoughtful consideration that produces a plan with measurable objectives. There are things that can, and things that cannot, be put into bylaws. Or perhaps, should or should not be put into bylaws. So, any changes should be well informed and considered, before taking such measures because of the potential for precedent and unintended consequences.

The introduction of this article highlighted a particular and important need. But, what is clear is that there has been insufficient time or consideration given to making this significant bylaw change, and it certainly has not been discussed in a broad context.

The petitioner noted that policy flows from bylaw. We note that nothing is preventing the Commission from developing policy right now. The petitioner voices genuine concern about kicking the can down the road in search of perfection, while not attending to the kids' needs. Nothing about seeking a deliberative approach to a major bylaw change prevents

the Commission from acting on this issue right now, and we would expect the Commission to do just that.

The Advisory Committee recommends that this be referred to the Park and Recreation Commission and that it present a report to the fall Town Meeting. The Commission has had a relatively short period to work with this, especially since its time with the petitioner has been so limited. The petitioner believes this will necessarily slow the process. We are not convinced it will or has to. There are aspects that can be acted on now and independently, such as deciding how to reach out to families more effectively and devising a means of data gathering to inform the demand for individual programs and supports for these families - and they should.

A report to Town Meeting will allow it to make a more informed decision around needed bylaw changes. The act of requiring such a "deliverable" from the Park and Recreation Commission ensures continued focus and momentum on the issue(s). And, this civic exercise may also lead to consideration of how the Park and Recreation Commission might be better described within our bylaws.

Before bylaw changes are made, however, there should at least be a serious and thoughtful discussion with the agency to be affected.

Recommendation

CTOS is **unanimously supportive of the Advisory Committee's recommendation for referral** to the Park and Recreation Commission, and expects a substantive report in the fall, even if all the issues have not been fully solved and there is continued work to be done.

Further, though not explicitly part of the article, CTOS encourages that the Park and Recreation Commission in expeditiously form a Task Force or Working Group to begin addressing the issues that have been enumerated, or illuminated, in this article. This group ideally would include a meaningful representation from across the community (e.g. CDICR, BHA, School Cmt./Dept., etc.).

ARTICLE 26

MOTION OFFERED BY THE PETITIONERS

MOVED: That the Town amend Article 3.16 of the Town's General Bylaws as follows: (deletion appearing in strikeout, addition in bold underline):

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 threenyear staggered terms~~.

SECTION 3.16.1. PURPOSE

The goals of the commission are to deliver programs that are cultural, social, mental, and physically based, which are presented at well-maintained parks and facilities. Brookline seeks programs that meet appropriate community based needs, that are cost efficient and within the reach of the overall community resource base. These programs will also provide the highest level of participant satisfaction.

SECTION 3.16.2. **PARK AND RECREATION AREA PROGRAMS**

The Park and Recreation Commission shall, (a) at least every five (5) years, prepare, consider, and approve a parks and recreation comprehensive plan. An update shall be considered no less frequently than every year; (b) promulgate a proposed Program for such substantial construction, alteration or repair of the parks and recreation areas in the Town over the following five (5) years as it may consider appropriate, including estimates of expected costs; (c) advertise such proposed program at least twice in a newspaper of general circulation in the Town and on social media; (d) conduct a public hearing concerning such proposed program at a time and place specified in such advertisement; (e) after such public hearing and such further revision as it may consider necessary, submit such proposed program for approval to the Select Board.

The commissioners will design and produce annually a youth engagement assessment and recommendations to increase participation of low-income families and families suffering extenuating circumstances in parks and recreation programming. When under-engagement is

identified, the commissioners will devise programming and seek funding for increased participation, including Limited English Proficiency tools. The commissioners shall submit their analysis and recommendations for increased engagement by low-income families and families suffering extenuating circumstances to Select Board for review and consideration annually.

~~**3.16.3. COMMISSION MEMBERSHIP**~~

~~There shall be a Park and Recreation Commission that consists of nine (9) residents appointed by the Select Board for three year staggered terms. Vacancies shall be filled for unexpired terms. Of the nine (9) appointees, three shall be low or moderate income tenants who reside in subsidized housing units as defined by the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder) or who receive state or federally sponsored rent subsidies and who demonstrate a knowledge of tenant issues. At least one of the low or moderate-income tenants shall be a resident of a Brookline Housing Authority or a recipient of BHA- administered rent subsidies. In addition to the nine (9) members, Select Board may also appoint two (2) youth members, who hold the same rights and responsibilities as all other members.~~

SECTION ~~3.16.4~~ 3.16.3 PARKS AND RECREATION AFFORDABILITY

The commission shall fulfill community-based needs in a cost efficient manner and within the reach of the overall community resources, while providing the highest level of participant satisfaction.

Low- or moderate income tenants ~~who residing~~ residing in subsidized housing units as defined by the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder), those ~~who~~ receiving state or federally sponsored rent subsidies or families whose children qualify for free or reduced price meals based on a household income within limits set by the Federal Income Guidelines, ~~if the family~~ families receiving ~~receives~~ benefits (such as SNAP or TANF), or ~~if your family is~~ families who are homeless or ~~is a foster child~~ families fostering a child shall receive up to 100% financial aid to participate in Parks and Recreation Programming. ~~Such persons shall be able to attend at least one program per quarter or complete a full program and at least two programs during the summer months.~~

Other families suffering extenuating circumstances may receive financial aid pursuant to this Section 3.16.3. ~~up to 100% of the cost of a session per quarter and two weeks of programming during the summer~~. Parks and Recreation regulations will define what constitutes extenuating circumstances.

When enrolling for Parks and Recreation Programming, residents must provide proof of eligibility based on the requirements described above. ~~income based on their residing at BHA or in Section 8 housing or they qualify for free or reduced price meals based on a household income within limits set by the Federal Income Guidelines, if the family receives benefits (such as SNAP or TANF), or if your family is homeless or your student is a foster child.~~

If approved for financial assistance, the household must update records annually for review. However, if a family resides in a Brookline Housing Authority (BHA) property, in Section 8 housing, other subsidized housing in Brookline, or receives free or reduced lunches, in lieu of updating data, BHA or the Brookline Schools may provide documentation on behalf of the household to satisfy proof of financial need.

SECTION ~~3.16.5~~ 3.16.4 PARKS AND RECREATION FUNDING

~~Select Board will search for and identify a permanent funding stream to subsidize parks and recreational programming for low income families and families suffering extenuating circumstances for the Commission by 2024.~~

(Insert). That pursuant to **Chapter 198. AN ACT AUTHORIZING THE PARK AND RECREATION COMMISSION OF THE TOWN OF BROOKLINE TO SET CERTAIN FEES, SUBJECT TO THE APPROVAL OF THE BOARD OF SELECTMEN, sets out in Section one the scope of their authority. SECTION 1 states that** "Notwithstanding the provisions of any general or special law to the contrary, unless otherwise provided by by-law, the park and recreation commission of the town of Brookline shall have, the authority to set the fees and charges for all park and recreation programs, activities, facilities and services, subject to the approval of the board of selectmen." This Act was approved on September 12, 1991.

Commissioners will fundraise for the parks and recreation system, including proposing funding ~~research~~ and recommendations. ~~on grant applications.~~ The Commission may not ~~submit grant applications or~~ receive grant funds without consent of the Select Board.

SECTION ~~3.16.6~~ 3.16.5 OPEN SPACE DESIGN REVIEW PANEL

In order to ensure that all plans for the substantial construction, alteration or repair of a park or recreation area under the jurisdiction of the Commission respect the historical, cultural, aesthetic, and open space values of the Town and serve the expressed needs of the primary community to be served by the improvement, the Commission shall appoint a Park and Open Space Design Review Panel, hereinafter called the review panel, for each such plan. The

review panel shall consist of four members to be appointed by the Commission from its membership, and three members to be appointed by the Commission who represent those people who are the likely passive and active users of the improvement including, when appropriate, people from the neighborhood where the improvement is located and people who qualify for the affordability subsidies ~~who reside in low income and subsidized housing~~ as described in SECTION 3.16.2. One of the seven (7) shall be trained in landscape architecture or in another relevant field. The review panel shall choose its chair. The review panel shall meet promptly after its appointment and shall carry out the following functions: recommendation of a consultant for the plan, if such a consultant is to be hired; convening of at least two public hearings at times accessible to the broadest range of residents; and review of the plan before contracts for the work are to be let.

~~3.16.7~~ 3.16.6 WOMEN AND DISADVANTAGED BUSINESS ENTERPRISE

Contracts entered into by the Parks and Recreation Commission shall make best efforts to meet or exceed applicable state and federal racial equity and women and disadvantaged business goals.

~~3.16.8~~ 3.16.7 PROMULGATION OF REGULATIONS

The Commission shall develop and promulgate regulations and policies as necessary to effectuate the requirements and goals of this Section.

~~This bylaw, as amended, shall take effect on July 1, 2022~~

Explanation

This first paragraph is less of an explanation than an update. Petitioners made clear weeks if not months ago the need for a budget amendment. They genuinely hoped that the funding could be found. We see no other way to provide services than through this bylaw change in conjunction with a budget amendment. We are concerned that there appears no sense of urgency to resolve how to include low income families in programming. A referral does nothing more than tell families that they don't matter, that the children don't matter. Issues about process leave low income families without. The lack of access to services is far from a new problem, so we should not treat it as such. We have not looked at the racial composition of participants or people who cannot participate.

"All deliberate speed" should be the course of action. Solve the problems in stages, but by all means do not stall everything in pursuit of perfection.

We do not know the racial composition of persons who cannot participate in Parks and Recreation programming. We should all be uncomfortable and even ashamed that families and children lack such basic services. The following offers an explanation about the benefits of recreation, the cost to the community, potential outcome measures and responses to questions raised by some of the Parks and Recreation commissioners.

"Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man." President Lyndon B. Johnson Commencement Address at Howard University June 4, 1965

"Play is important for the emotional, social, cognitive, and physical development of children. In addition to being critical for general health and a preventative against overweight, play develops life skills for children and communication skills among peers and family members.[1]"
"According to the report, play's benefits extend to psychological well-being. Play provides an opportunity for a student to shine in areas that are not strictly academic and thus contributes to the child's personal sense of pride and belonging in her school environment. This has the potential to discourage truancy and encourage children to remain in school to complete their education.[2]" "Having access to quality play spaces and playgrounds gives children the health benefits of being physically active, a way to develop motor skills, a place to improve mental health, and they contribute to the overall health outcomes of a community." It is not just access to build playgrounds and natural environment play spaces, she says, but also the connection to social resources and social capital of the community. "Playgrounds build social cohesion.[3]"

Further, "for kids, playgrounds are equivalent to the "public square" for adults — that is, places where all may freely express themselves. Many play experts and park and recreation professionals attest to the inclusive nature of play and the need for playgrounds to be inclusive.[4]"

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[1] **RECREATIONAL PLAY CAN BE FAR MORE IMPORTANT THAN ACADEMICS,** THE ATLANTIC, *BY ESTHER ENTIN* JANUARY 16, 2012.

[2] Id.

[3] PARKS AND RECREATION MAGAZINE, **THE VALUE OF PLAY, PLAYGROUNDS AND PARKS DURING THE PANDEMIC**, NOVEMBER 18, 2021, FEATURE, BY RICHARD J. DOLESH

[4] Id.

Segregation and Access to Nature

Segregated town programming may also be a more pervasive and ugly issue than the Town is aware of. While we do not have a breakdown of parks and recreation participants, general observations do indicate that low income and children of color participation could be greater than it is presently. "For purposes of the present statement, segregation refers to that restriction of opportunities for different types of associations between the members of one racial, religious, national or geographic origin, or linguistic group and those of other groups, which results from or is supported by the action of any official body or agency representing some branch of government. We are not here concerned with such segregation as arises from the free movements of individuals which are neither enforced nor supported by official bodies, nor with the segregation of criminals or of individuals with communicable diseases which aims at protecting society from those who might harm it.[5]" In this instance, we are speaking about segregating children. While on its face, unintentional, we now know the substantial issues in the distribution of services to low income youth. There is considerable data describing the health and social impacts of segregation.

For most children, you need space to have fun. There are also environmental stewardship values and skills to be learned

"Not only is residential segregation more extreme for children than for adults, but the close links between residential and school segregation mean that children are often isolated from opportunity across multiple environments during the developmental period when neighborhood and school resources critically impact their wellbeing, opportunities, and life chances. Beyond this reality of segmented opportunities lies a greater question—whether such separation and difference in the quality of children's environments by race/income is morally or socially right. Segregation spatially isolates groups and limits social interaction, and, for children, this isolation occurs during the crucial period when racial attitudes are being formed. The degree of this separation challenges the values of unity and equal opportunity that we as a nation espouse, especially to the extent that purposefully exclusionary policies contribute to high levels of residential segregation. Further, segregation reifies notions of difference and supremacy by making separation into a physical reality. As illustrated by the account of a young, black student in a wealthy Boston suburb who was bused into the inner-city after school because of the mistaken assumption that he must be a desegregation program participant rather than a resident of that suburb, segregation fosters powerful perceptions of who belongs where, who deserves "access."2[6] Brookline needs to make sure that it is not the community discussed in this long ago

article. The issues of segregation last for years and impede the growth and development of children.

[5] **THE EFFECTS OF SEGREGATION AND THE CONSEQUENCES OF DESEGREGATION: A SOCIAL SCIENCE STATEMENT**, MINNESOTA LAW REVIEW, Vol. 37:428.

[6] **Consequences of Segregation for Children's Opportunity and Wellbeing**, Nancy McArdle Senior Research Consultant, diversitydatakids.org Dolores Acevedo-Garcia Professor, The Heller School for Social Policy and Management, Brandeis University, pg. 2, 2017 President and Fellows of Harvard College.

My experiences as a child have given me a love for travel and a greater appreciation for conservation

I cannot explain how important being exposed to beauty is for the life of any person. Parks and Recreation is a gateway to beauty. We have allowed our Black, Latinx and Asian as well as low income families to be cut off from nature. I have seen POC fearful of being in Medford's woods. They said that they preferred an urban landscapes to wild or natural environments. But, are these responses and preferences as widespread as reported? Some also argue that women are not particularly comfortable in nature. There is a growing body of research that challenges these assumptions. Researchers say that comfort in nature is more predicated on opportunity. They also say that comfort in nature begins at an early age. Currently children of color are largely being denied this access to beauty through the Town's programming.

We need to engage children while they are young so that good habits set in

Finally, recreation in nature allows one's vitamin D levels rise, get more exercise, be happier and improve one's concentration.

Brookline Income and Poverty Statistics

Covid has only exacerbated the need for consistent recreational opportunities.

Income does have a direct relationship between a family's ability to engage in recreation. Median household income in Brookline, MA is $117,326. In 2019, the place with the highest median household income in Brookline, MA was Census Tract 4011 with a value of $189,643, followed by Census Tract 4012 and Census Tract 4006, with respective values of $174,667 and $156,797. Males in Massachusetts have an average income that is 1.33 times higher than the average income of females, which is $67,290. The income inequality in Massachusetts (measured using the Gini index) is 0.483, which is higher than the national average. The economy of Brookline, MA employs 32.7k people. The median property value is $933,200 and the home ownership rate is 48.9%.

Brookline does have some alarming poverty statistics.

- Twelve percent (12%) of Brookline's residents live below the poverty level.
- Nine percent of female residents live in poverty.
- The race most likely to be in poverty in Brookline is Black, with 32.11% below the poverty level.
- The race least likely to be in poverty in Brookline is White, with 8.76% below the poverty level.
- Asians have a 19.05% poverty rate
- Latinx have a 18.75% poverty rate, groups identifying as multiple races have a 18.75% rate,

- "Others" have a 29.28% rate
- Native Americans have a 11.5% poverty rate.

The poverty rate among those that worked full-time for the past 12 months was 1.31%. Among those working part- time, it was 19.75%, and for those that did not work, the poverty rate was 27.51%.

Brookline Housing Authority Statistics

BHA has a total of 1,501 residents and 354 are of children 18 years and younger. WE also know that: # families with 1 child 18 years old and younger = 110

families with 2 children 18 years old and younger = 57 # families with 3 children 18 years old and younger = 21 # families with 4 children 18 years old and younger = 11 # families with 5 children 18 years old and younger = 4

The average BHA income ranges by property between $14,906 - $23,059. Overall the average income is $18,601

Some School Statistics: 14% or 1089 of 7777 Brookline students receive free lunch or reduced lunch

Real learning and problem solving happens in organized sports which may transfer to the classroom. Far too few children of color and children from financially stretched backgrounds participate. Success builds success.

Pricing Classes

If Every Student Participated In One Class per Quarter:

1089 students x 5 classes @ 1485 per student

$1485 x 1089 = $1,617,165 per year for all students on free and reduced lunch

Assume 75% of 1089 students attend camp

75% of 1089 = 816 Students on free or reduced lunch

816 students x $1485 = $1,211,760 per year for all students on free and reduced lunch

50% (544 Students) x $1485 = $823,690 per year for all students on free and reduced lunch

The Petitioners anticipate that no more than 50% of students would participate. We also know that camp programs cost approximately $285 per week. Parks will generally only pay 30% of the cost of a class or $85 leaving parents to pay $200 per week per class or $1,000 for one month.

A significant number of children are not given a chance to learn to swim.

Brookline Parks and Recreation Pricing and Scholarships

According to Brookline Parks and Recreation, they have over one thousand programs, all ranging at different costs. The Cost to serve an additional 500 kids in its 7-week version Summer Camp Program is approximately $1 million dollars ($285/wk * 7 weeks) * 500 kids. BHA has 354 who would benefit from the programming and the schools have 1089, yet there are not the funds. The statistics are based on the school percentage or 1089.

- A total of 34 children or 3.12% attended camp for free
- Approximately 93 or 8.54% received partial scholarships

Between FY21 – 22, the Rec Dept. applies for funding through the Brookline Community Foundation and with this grant they are able to:

- send 20 children or 1.83% to camp for free.
- 8 of those children or .734% came through Brookline Community Mental Health (BCMH) and
- the other 12 children or 1.1 came through Steps to Success (STS).
- In addition to this, BREC offered free camp to an additional 12 BCMH children or 1.1% who weren't covered by the grant.
- 3 or .275% children received free camp through the voucher program.
- 11 or 1.01% additional STS students were able to get free camp at the Park School Summer Program through a partnership between Park School and the Town of Brookline.
- BREC also gave an additional 12 or 1.1% children a partial scholarship to Rec Summer Camp

Also, during FY21-22, the "General Programs Funded through Rec Financial Aid" include:

- 80 students or 7.34% partial scholarships to programming *other than camp* so far for FY22.
- 8 families or .73% at the low income level,
- 5 families or .459% at the very low income level and the rest of the families fall under the extremely low income level.

Brookline officials likely do not have a racial breakdown of Parks and Recreation participation by race, though petitioners suspect that a disproportionate number of scholarship candidates would be Black and Latinx.

BOSTON's SUMMER CAMPS ARE FREE.

Actual funding does not bridge the gap between youth in need and the total number of children able to participate in the programming.

Ultimately, participation comes down to funding. Rec reserved funds total approximately $686,807 in retained earnings at the end of the last fiscal year. Its utilize Reserve for Rec Capital projects and they currently have $1.2 million in Capital Projects in future years.

A budget amendment with cost recommendations will be submitted.

Examples of Inclusion Programming in Brookline

The Parks and Rec Department commissioners do not have to reinvent the proverbial wheel to be more inclusive. Parks and Rec has a very strong disability inclusion program.

"MISSION - THE MISSION OF THE RECREATION THERAPY DIVISION OF THE BROOKLINE RECREATION DEPARTMENT IS TO PROVIDE EFFECTIVE, THERAPEUTIC-BASED PROGRAMS FOR YOUTH THROUGH ADULT POPULATIONS WHO HAVE DISABLING CONDITIONS AND/OR ILLNESSES IN AN EFFORT TO PROMOTE POSITIVE GROWTH, DEVELOPMENT, AND INDEPENDENCE. THIS IS ACCOMPLISHED THROUGH THE PROVISION OF RECREATION SERVICES IN A SAFE, STRUCTURED, AND PROSPEROUS ENVIRONMENT VIA THE BROOKLINE RECREATION DEPARTMENT."

"RECREATION THERAPY IN BROOKLINE - THE BROOKLINE RECREATION THERAPY DIVISION PROVIDES EVIDENCE BASED RECREATION OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES, INJURIES, OR ILLNESSES, AGED YOUTH TO ADULT. SERVING THE GREATER BOSTON AREA, SOME PROGRAMS PROVIDE SPECIALIZED INSTRUCTION, WHILE OTHERS ARE INCLUSIVE FOR PEOPLE OF ALL ABILITIES. THE BROOKLINE RECREATION THERAPY DIVISION IS ALSO HOME TO BROOKLINE SPECIAL OLYMPICS, ONE OF THE LARGEST SPECIAL OLYMPICS CHAPTERS IN MASSACHUSETTS. THE RECREATION THERAPY DIVISION IS MANAGED BY OUR CERTIFIED THERAPEUTIC RECREATION SPECIALIST, MICAH BARSHAY, AND IS SUPPORTED BY DEDICATED PART TIME STAFF AND VOLUNTEERS."

In addition to analyzing how Parks and Rec. achieves inclusion for the disabled, it could work with the Schools Superintendent to learn approaches that his office has developed to increase diversity among students. BEEP has actually in recent years, changed its admissions policies to include more economic diversity. On the private side, the Daily After School Enrichment Program is tuition and donation funded.

An example of success in the natural environment

BEEP Program Overview

In 2016, the School Committee authorized a centralized application process to provide families with financial assistance for certain school related fees. The program provides a prorated subsidy for households earning less than 350% of the US Department of Health and Human Services Poverty Guidelines. The United States Department of Agriculture uses these guidelines to determine the Free and Reduced Lunch eligible income levels. The tables of income levels provided in this document are based on the United States Health and Human Services Poverty Guidelines posted on their website, which can be accessed here: http://aspe.hhs.gov/poverty/index.shtml.

Financial Assistance will be offered to meet any PSB student fees or charges, including those for Athletics, Instrumental Music, and other program and field trip fees. Other fees include but are not limited to curriculum-based field trip expenses, Brookline Early Education Program (BEEP), School Department Summer Programs, and other fees the school department may charge as a result of curriculum requirements. In essence, the families that cannot afford the programming subsidize the families in need.

BEEP Income Eligibility and Application Fee

Determination Status	Income Level over Poverty Guideline for Household Income	Households will pay
Approved for Free	<200%	$0 program fee
McKinney-Vento Homeless Determination		$0 program fee
Foster Care (individual only)		$0 program fee
75% Reduction of Fee	201% - 300%	25% of the program fee
50% Reduction of Fee	301% - 350%	50% of the program fee

* % above HHS Poverty Guidelines

Brookline Public Schools have figured out a way to link access to their programs with one stop financial aid applications. BEEP is also working to ensure that families from economically diverse backgrounds participate in its programming. Private institutions have been slow to provide financial assistance to children in need. This is also true for families with vouchers.

Daily After School Enrichment Program

Daily After School Enrichment Program (DASEP) is an independent non-profit program that provides learning- based afternoon activities to the Florida Ruffin Ridley Elementary School students in grades K-8. The program is arranged into four 8-week sessions--Fall, Winter, Early Spring, and Late Spring--so that session breaks align with school breaks. Over the 30+ years since the program's inception, DASEP has become the district's largest after school program, serving over 300 students with 30-40 class and activity choices per session. Families may choose from a wide range of classes offered five days a week during the two hours following the regular school day and in the following broad categories: athletics, creative movement, and fitness; visual and performing arts; artisan, culinary and creative crafts; and science and technology.

The program receives no funding aid form the Schools or the Town. On the face of its website it describes how a family can apply for financial aid. Families attending the Florida Ruffin Ridley School have been made aware of the financial aid programming. Prior to COVID it did offer generous financial assistance to all qualifying families. That said, they are still trying to assist families in need.

As with BEEP, they figured out a price structure and told all of the families. Almost all of the families agreed with the programming and payment schedule. They also seek donations, families have agreed to pay more and families have been transparent about their means. Again, Parks and Rec. should research this model.

Girls on the Run

Girls On The Run and *Heart and Sole* (grades 3-5) and *Heart and Sole* (grades 6-8) aim to inspire girls to be joyful, healthy and confident using a fun, experience-based curriculum which creatively integrates running. Over the course of the program, girls will: develop and improve competence, feel confidence in who they are, develop strength of character, respond to others and oneself with care and compassion, create positive connections with peers and adults and make a meaningful contribution to community and society. Such life skills will prevent unhealthy and risky behaviors, such as physical inactivity and negative body image, and promote positive health outcomes (e.g., physical, mental, social and spiritual health).

The season will run from Monday, September 23 through December, with a program- and state-wide 5K on Sunday, December 8! The program will meet twice a week for 10 weeks, right after school at Pierce for 90 minutes, led by teacher and parent coaches. More information will be sent out in the coming weeks, including practice schedule, more information about the program, and registration information.

Other Ideas

- Switch financially able families to "nonresident status," and explain that the change is needed to cover the cost of low income families.
- Charge a registration fee for upfront money.

Potential Outcome Measures

Outcome statements The primary outcomes the project team identified from the objectives in the enabling legislation of the program:

- All socio-demographic groups have equal access to diverse and uncongested recreation opportunities
- Maintain high quality recreation experiences
- Rates of outdoor recreation participation are high and increasing among disadvantaged families
- Outdoor recreation contributes to health, wellness and environmental learning
- Habitat for native plants and animals is groomed and improved over the long term

Measures	Outcomes	Comments
Recreation Health and Quality of Life Benefits	Requires survey to represent indicators for monitoring human wellbeing associated with environmental restoration **MEASURING HUMAN WELLBEING: A PROTOCOL FOR SELECTING LOCAL INDICATORS** Author links open overlay panelRobinLoveridge[a]Susannah MSallu[b]Ignatus JPesha[c]AndrewR Marshall[ade] 2018 Happiness Comes Naturally: Engagement with Nature as a Route to Positive Subjective Well-Being Ethan A. McMahan Western Oregon University	
Recreation Supply, Inventory and Access	• # of recreation sites, by type (e.g., picnic areas, attraction sites) • # of miles (e.g., park space; playground areas) • Amount (e.g., acres) of recreation experience opportunities in each Recreation Opportunity Spectrum (ROS) class, e.g., semi-primitive, non-motorized (by ecosystem type, region or planning area) • Amount and kind of experience opportunities added by a particular land acquisition • % total green space and increases (in predefined region) held in public ownership and managed for public access • Number of people served per park acre	

Recreation Participation and Demand	• % of population participating in nature-based recreation. Common outcome measure, assessed via survey, usually broken out by subcategory • % of participation by population subgroups based on race, ethnicity, gender, socioeconomic status. (A measure for equity of recreation participation.)	

	• % of recreation sites at or above capacity more than X% of the time on high season days - total and by recreation activity type • Park need: Areas farther than 10-minute walk from a park. Prioritize among those areas based on: 1) population density - weighted at 50%; 2) density of children age 19 and younger - weighted at 25%; 3) density of individuals in households with income less than 75% of city median income - weighted at 25%. • # of access passes sold per year, per type • 50% of all children learn to swim by the 5th grade • Increases in participation among protected categories	
Economic Outcomes of Recreation	Assess the Parks and Rec's potential economic contribution to Brookline • How much are participants spending on programming • Total sales benefitted, including Tee shirts and contracts • # of jobs supported – full time, part-time, all year, seasonal Recreation economic value (benefits received by an individual or group directly engaged in an outdoor recreation activity) • Consumer surplus value per day, by recreation activity	
Recreation Health and Quality of Life Benefits	• Survey indicators for monitoring human wellbeing associated with being in the natural environment.	
Sustainable Development and Smart Growth	• Increase in recreational opportunities and open space areas that push residential and commercial development away from greenspace • % of lands permanently safe from development	
Other Factors		

Response to Parks and Rec Commissioner's Concerns

Generally, the role of the Commissioners should include performing statutory functions assigned to Parks and Recreation Commissions. They should promote the use of and advocate for parks and recreational services. Commissioners should suggest recreational programs to be implemented by the Park and Recreation Department. I would argue that they would advise the Select Board in the areas of public policy and long-range recreation planning of recreation and public enjoyment. This includes facilities.

Most importantly, Commissioners are to represent the community and typically most of them should have some expertise in the areas of parks (landscaping or athletic fields, recreation (activities, leagues, or cultural events), youth sports (organized and pick-up), natural resources, public health, and construction. They should have a sound understanding of how the department collaborates with the community to accomplish certain goals. There is and has always been the need for relationships neighbors, residents, organizations, and other departments. Finally, each of Commissioner has a duty to leverage their skills to support or fund various projects that would otherwise not be completed.

1. Commissioners believe that WA 26 should be a policy instead of a by-law for a variety of reasons.

A law is framed for bringing justice to the society, a policy is framed for achieving certain goals. Excluding families from Parks and Recreation services is nothing short of an injustice. Laws are for the people, and policies are made in the name of the people. Policies can be called a set of rules that guide any government or any organization. Laws are administered through the courts. Laws and policies are an essential part of how laws and for that matter how Brookline operates. Laws and policies help to maintain law and order in any civilization, as well as help shape political and social aspects of the society. The people must obey and follow laws, whereas, a policy is declared with the intention of betterment of society and its citizens. Laws are formal and focus on helping improve the welfare and society.

A policy, on the other hand, is informal. It is just a statement or a document of what is intended to be done in the future. At best, policies can help to identify new laws that are needed by government to achieve its goals. Laws set out standards, procedures and principles that must be followed. It is enforceable by law. Finally, laws are compulsory and there are provisions in these laws for compliance for those who break these laws.

Petitioners believe that a bylaw is necessary, because Brookline would benefit greatly from shaping its political and social considerations. There are currently not set standards, procedures and principles in place. Also, the community would benefit greatly from compulsory

requirements. Finally, a policy or guidance would not have the weight of law and as such could not be compelled to provide the services for families.

2. Whether the Parks and Recreation By-law Creates an Additional Burden on the Commission.

Generally, the Commissioners are Brookline's key parks and recreation policymakers, overseeing the operation and administration of the parks. Generally, most commissioners are responsible for overseeing the management and administration, representing parks and rec interests at the Select Board, Town Meeting, town administrator, at the state and federal level, and participating in long-range planning, and managing the Parks and Rec's budget and finances. The Commissioners have identified several concerns about the scope of new responsibilities. I would argue that it does not matter that the Commissioners are volunteers. This by-law simply clarifies the scope of the Commissioner's responsibility to extend to considerations for families and their recreational needs and opportunities. Right now, many parks and recreation issues are not really part of the Commissioner's statutory duties. This appears to be a significant program shortcoming and significant issue for the Town's low income residents.

Presently required to… SECTION 3.16.1 PARK AND RECREATION AREA PROGRAMS

The Park and Recreation Commission shall, "at least annually, (a) promulgate a proposed Program for such substantial construction, alteration or repair of the parks and recreation areas in the Town over the following six years as it may consider appropriate, including estimates of expected costs; (b) advertise such proposed program at

least twice in a newspaper of general circulation in the Town; (c) conduct a public hearing concerning such proposed program at a time and place specified in such advertisement; and (d) after such public hearing and such further revision as it may consider necessary, submit such proposed program for approval to the Select Board."

In fact the present bylaw is silent about parks and recreation services and especially serving specific groups. Annual data gathering is more operational instead of strategic. It says little about obtaining meaningful data or for that matter taking a strategic view of its services. The proposed bylaw would lead to their seeking such information to guide their programming.

Fundraising – This section should not be viewed as an unusual request.

"Commissioners will fundraise for the parks and recreation system, including researching and offering recommendations for grant applications. The Commission may not receive grant funds without consent of the Select Board." I am at a loss as to why this is beyond the scope of the Commissioners. From time to time, officers and commissioners should and do fundraise. They could propose increasing fees. For example, commissioners working with the town administrator might well solicit more funds for the department from the state and federal government, seek funding from the Brookline Community Foundation or other sources. The expectation is not for the Commissioners to actually draft funding requests. Commissioners are responsible for its Fund. It could raise increasing recreation fees. Also, Commissioners should be expected to attend fundraising events on behalf of the town.

Creating policies, consistent with the bylaw, should be well within the Commissioner's authority. As described above, the policies should then really enhance programming. A review of the Parks and Recreation mission language states that "The Park and Recreation Commission is a policy-making board responsible to the town for providing year-round, high quality, indoor and outdoor recreation activities for children and adults. The goals of the commission are to deliver programs that are cultural, social, mental, and physically based which are presented at well-maintained parks and facilities." It is the "providing year-round, high quality, indoor and outdoor recreation activities for children and adults" where the bylaw better describes some of their responsibilities. We are concerned with meeting appropriate community based needs that are cost efficient, within the reach of the overall community resource base, while providing the highest level of participant satisfaction. Safety and quality are paramount. All individuals with special conditions are entitled to full participation in any Brookline Recreation and Park program.

Clearly, the Town's own mission for Parks and Recreation speaks to developing policies. The fact that the Commission has not created a program to fund disadvantaged youth speaks to why the town should have a by-law that requires Commissioners to create such additional programming.

Petitioners do not believe that the Commissioners annually preparing, considering, and approving a parks and recreation master plan is outside the scope of your responsibilities. Much like the Commissioners have an "Open Space Design Review Panel," it should have a panel that examines the full scope of parks and recreation programming. Further, when the by-law states that "The Commissioners will design and produce a youth engagement assessment tool and recommendations in order to increase low income families and families suffering extenuating circumstances participation in recreation programming" is a reasonable expectation in keeping with the scope of your duties.

If the Commissioners are to look at construction issues, then I would hope that they would consider the people side of parks. In order to ensure that all plans for the substantial construction, alteration or repair of a park or recreation area under the jurisdiction of the Commission respect the historical, cultural, aesthetic, and open space values of the Town and serve the expressed needs of the primary community to be served by the improvement, the Commission shall appoint a Park and Open Space Design Review Panel, hereinafter called the review panel, for each such plan.

3. Are the Commissioners Expected to Perform Community Engagement?

Commissioners and Parks and Recreation Staff do not presently have the necessary resources to make disadvantaged residents aware of the programming. As I have stated, once the by-law is passed, various organizations would help perform outreach. At a minimum, Brookline Housing Authority (BHA), Brookline for Racial Justice and Equity (BRJE), Brookline Asian American Families Network (BAAFN) and Black and Brown groups of Brookline would

help. The Town also has a full-time community engagement staffer who could also help disseminate information. Finally, the Brookline Schools could also send notifications to families receiving free lunches. Of course, families with extenuating circumstances would also be protected by the by-law.

4. What Are Some Potential Funding Sources –

Petitioners will submit a budget amendment to fund the objectives outlined in the by-law. A by-law, unlike a policy creates a responsibility on the part of the town to fund the programming, which a policy would not. Consider raising fees. Add the increased Parks and Recreation needs to the General Fund. Funding could also come from ARPA, Select Board's fund (Boston Athletic Association, Professional Golf Association, or Cannabis) and other funding sources.

5. Will the Commissioners Be Overworked –

This is purely a volunteer appointment, so anyone may volunteer or decline it. Commissioners may need a different skills set and that may actually mean that the Select Board solicits people with a different skills set. Granted the work is hard, but that should not be a reason to limit WAs scope and authority.

ORIGINAL LANGUAGE

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.

SECTION 3.16.1 PARK AND RECREATION AREA PROGRAMS

The Park and Recreation Commission shall, at least annually, (a) promulgate a proposed Program for such substantial construction, alteration or repair of the parks and recreation areas in the Town over the following six years as it may consider appropriate, including estimates of expected costs; (b) advertise such proposed program at least twice in a newspaper of general circulation in the Town; (c) conduct a public hearing concerning such proposed program at a time and place specified in such advertisement; and (d) after such public hearing and such further revision as it may consider necessary, submit such

proposed program for approval to the Select Board.

SECTION 3.16.2 OPEN SPACE DESIGN REVIEW PANEL

In order to ensure that all plans for the substantial construction, alteration or repair of a park or recreation

area under the jurisdiction of the Commission respect the historical, cultural, aesthetic, and open space values of the Town and serve the expressed needs of the primary community to be served by the improvement, the Commission shall appoint a Park and Open Space Design Review Panel, hereinafter called the review panel, for each such plan. The review panel shall consist of four members to be appointed by the Commission from its membership, and three members to be appointed by the Commission who represent those people who are the likely passive and active users of the improvement including, when appropriate, people from the neighborhood where the improvement is located. One of the seven shall be trained in landscape architecture or in another relevant field. The review panel shall choose its chair. The review panel shall meet promptly after its appointment and shall carry out the following functions: recommendation of a consultant for the plan, if such a

consultant is to be hired; convening of at least two public hearings; and review of the plan before contracts for the work are to be let.

ARTICLE 27

TWENTY-SEVENTH ARTICLE
Submitted by: Don Warner, Virginia Smith, Clint Richmond and Maura Toomey

To see if the Town will amend Article 8.31 of the General Bylaws, as follows (~~struck through~~ text is to be deleted and **bold underlined** text is to be added:

SECTION 8.31.1: STATEMENT OF PURPOSE
The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels, and reducing carbon emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this warrant article shall limit and regulate the use of leaf blowers as defined and set forth herein.

ARTICLE 8.31.2 DEFINITIONS

(a.) "Leaf Blowers" governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces. **This includes Leaf Blowers on wheels, commonly known as "walk-behinds".**

b. "Property Owner" as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor's records.

c. "Property Manager" shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.

d. "User" means the person or entity using the Leaf Blower at the time of the violation.

(e.) "Commercial Operator" means any individual or entity providing landscaping, yard cleaning or maintenance services for a fee.

ARTICLE 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, 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, 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 **20,000**~~7,500~~ (**twenty**~~-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) gas-powered 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-**five**~~seven~~ (6**5**~~7~~) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By- law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any Leaf Blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non-refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

(e.) A Commercial Operator must be permitted by the Department of Public Works prior to operating, or allowing any other person to operate, Leaf Blowers in Brookline. The permit must be applied for annually, and is subject to conditions, revocation, and suspension.

(f.) The Department of Public Works shall make available to all Property Owners or Managers a list of the permitted Commercial Operators. Property Owners or Managers will be subject to the penalties listed in 8.31.8 if the Commercial Operator they employ are not permitted by the Department of Public Works.

(g.) Commercial Operator must train all emplo

PETITIONER'S ARTICLE DESCRIPTION

1. Background – At the 2019 Fall Town Meeting, two warrant articles were presented to limit the use of gas-powered leaf blowers. Those warrant articles were substantially withdrawn after consultation with the then Public Works Commissioner in exchange for a commitment of increased enforcement of the leaf blower Bylaw 8.31.4. DPW offered "…. steps to increase compliance prior to further restrictions or changes in the Town's By-law and regulations." Those steps included a tightening of the regulations and "….an annual permit that will require private landscape companies to provide current contact information and sign that they have read, understand and will adhere to the Town By-law and regulations". A further step to increase enforcement going forward was assigning additional DPW staff "…. the responsibility of issuing warnings and citations".

These actions have not been successful. Many Commercial Landscapers active in Brookline have not taken out annual permits. Additionally, not all Commercial Landscapers who have taken out permits follow the regulations. Furthermore, because of budget constraints, DPW has not assigned additional staff to enforce the By-laws and currently have no one specifically assigned to that responsibility. In summary the commitment of increased enforcement has failed and now it is time to take stronger action to address the gas-powered leaf blower problem.

2. Climate change – A gas-powered leaf blower emits the same level of hydrocarbons in less than 30 minutes than a mid-size truck driving over 500 miles. With changes in place for lowering auto and truck emissions and the use of fossil fuels, restricting gas powered lawn equipment is another step to address climate change.

3. Noise Pollution and Enjoyment of the outdoors – With more people working at home, as well as taking advantage of their backyards, this noise level can be disruptive and debilitating. The quality of the noise from gas machines is a lower and more penetrating frequency, and more irregular whining sound making it much more disruptive than electric machines, which produce more of a hum or whirr. The noise from battery powered Leaf Blowers dissipates after 100 feet away.

Gas-powered Leaf Blowers commonly used by landscapers emit more than our regulatory limit of 67 decibels which can penetrate house walls and windows from as far as 200 feet and easily be heard from a distance of 300 feet away. Landscapers themselves are most directly affected and can suffer hearing damage in the long term. RedMax machines regularly and illegally used by landscapers in Brookline can generate 100 decibels at the operator's ear.

4. Other environmental impacts - The combustion by-products of gas-powered Leaf Blowers goes beyond their climate impacts. Small engines are less efficient and emit more pollutants generally. These include carbon monoxide, volatile organic compounds (VOCs - such as the known carcinogens benzene and formaldehyde), and nitrogen oxides. Particulate matter (carbon soot) from the burning of gasoline is another harmful substance. All of these can irritate and lodge in the lungs of humans and other animals such as pets and cause respiratory issues. Many of these linger in the immediate

atmosphere after the engine is shut off. Carbon monoxide can cause heart disease. Landscaping personnel are closest and most directly exposed. However, the property residents and their neighbors can also be affected. People with conditions such as asthma are more vulnerable.

5. Enforcement – Current regulations have not been effective. Of the 114 complaints recorded by DPW last year only 30 citations were issued. (No citations were issued by the Police.) Most people have given up calling in violations since they do not appear to be enforced. As a comparison, 77 citations were issued for snow removal violations during the same period of time.

The current regulations are based on specific seasons, and types of equipment. The latter is too nuanced for most landscapers and property owners to understand, and difficult to enforce. Penalties are not strong enough and the enforcement response to violations is slow and at times non-existent. Many small landscapers are unaware of the regulations. Registered landscapers often just ignore the regulations since the penalties and chances of being caught are very low. The current regulations primarily rely on Brookline residents to report violations, which is unfair to residents and can put them in adversarial positions with their neighbors.

6. New technology – There have been major improvements in battery-powered lawn care technology over the past several years, especially in battery life, and that will continue. Those improvements make the operating cost of battery-powered equipment comparable to gas-powered equipment, and those costs will drop further as the availability of renewable power grows. Homeowners can also help landscapers by allowing battery chargers to be plugged into outdoor electrical outlets. The cost of purchasing battery-powered equipment and back-up batteries is still much higher than buying gas-powered Leaf Blowers, but the prices will be reduced as the lawn care industry begins to respond to environmental issues and produce more economical models. That said, the upfront cost of purchasing battery-powered equipment is a small price to pay to further diminish the harmful effects, including climate change, of burning of fossil fuels.

7. Nationwide movement – Localities across Massachusetts and the country have enacted strong leaf blower and lawn care equipment regulations. Lexington recently banned gas-powered equipment. California is banning the sale of new gas-powered equipment by 2024.

Note that the Climate Justice Committee of First Parish in Brookline, and the Massachusetts Sierra Club have already endorsed this warrant article with other organizations expected to follow.

MOTION OFFERED BY THE PETITIONERS

MOVED: That the Town will amend Article 8.31 of the General Bylaws, as follows (~~struck through~~ text is to be deleted and **bold underlined** text is to be added:

SECTION 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels, and reducing carbon emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this warrant article shall limit and regulate the use of leaf blowers as defined and set forth herein.

ARTICLE 8.31.2 DEFINITIONS

(a.) "Leaf Blowers" governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces. **This includes Leaf Blowers on wheels, commonly known as "walk-behinds".**

b. "Property Owner" as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor's records.

c. "Property Manager" shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.

d. "User" means the person or entity using the Leaf Blower at the time of the violation.

(e.) "Commercial Operator" means any individual or entity providing landscaping, yard cleaning or maintenance services for a fee.

ARTICLE 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, 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, 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) gas-powered Leaf Blowers on such property simultaneously. This limitation shall also apply to sidewalks and roadways contiguous to such parcel.

(d.) No Property Owner or Manager shall authorize the operation of any Leaf Blower and no person shall operate a Leaf Blower which does not bear an affixed manufacturer's

label or a label from the Town indicating the model number of the leaf blower and designating a noise level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any Leaf Blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non- refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

(e.) A Commercial Operator must be permitted by the Department of Public Works prior to operating, or allowing any other person to operate, Leaf Blowers in Brookline. The permit must be applied for annually, and is subject to conditions, revocation, and suspension.

(f.) The Department of Public Works shall make available to all Property Owners or Managers a list of the permitted Commercial Operators. Property Owners or Managers will be subject to the penalties listed in 8.31.8 if the Commercial Operator they employ are not permitted by the Department of Public Works.

(g.) Commercial Operator must train all employees on the provisions of this Article 8.31 and provide them with a copy of the By-law.

(h.) Commencing March 15, 2026 ~~2026~~, no gas-powered Leaf Blowers shall be used on any properties with less than one acre of open space (as defined in the Town's zoning by-law), except the Town may operate gas-powered Leaf Blowers at any time for life-safety uses, such as clearing sidewalks, streets and school grounds.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

SECTION 8.31.4: REGULATIONS

a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Select Board.

b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing

a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

SECTION 8.31.5: DUTIES AND RESPONSIBLITIES OF TOWN DEPARTMENTS

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

b. Departmental Compliance with Other Laws
All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

c. Town Exemption
The Department of Public Works shall be exempt for day and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law and transition from gas-powered to battery-powered leaf blowers to the extent that their operations and budget permit.

d. Town Leaf Blower Equipment
Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Select Board, or its designee, may grant a special permit to a Property Owner or Property Manager:

(i) for any activity otherwise prohibited under the provisions of this By-law,

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

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

(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 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 they are 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.

SECTION 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

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

ARTICLE 8.31.8 ENFORCEMENT AND PENALTIES

(a.) **The Town shall require permits from all Commercial Operators doing business in Brookline with penalties for those who do not have permits.**

(b.) Violations of this By-law shall be subject to the following penalties:

1) For the first violation ~~in each calendar year~~ a written warning will be issued.

2) For second and subsequent **violations** in each calendar year, both the Property Owner and the User shall be fined according to the table below:

	Property Owner or Property Manager	User Commercial Operator, if other than Property Owner or Property Manager
First Offense	Written Warning	Written Warning
Second Offense	~~$50.00~~ **$200.00**	~~$50.00~~ **$200.00**
Third Offense	~~$100.00~~ **$300.00**	~~$100.00~~ **$300.00**
Fourth Offense	Suspension of permit	Suspension of permit
Each Subsequent Offense	~~$150.00~~ **$300.00**	~~$150.00~~ **$300.00**

Penalties are accrued in total regardless of location. These penalties are also accrued and rolled-over from year to year.

3) Applicable court costs for any enforcement action taken.

ARTICLE 8.31.10 SEVERABILITY

If any provision(s) of this article is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

_____

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 27.

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

ARTICLE 27

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee by a vote of 11 in favor, 12 opposed and 3 abstentions recommends NO ACTION on Warrant Article 27 as amended.

Executive Summary	Warrant Article 27 seeks to amend Article 8.31 of the General By-Laws which regulates the operation of leaf blowers in the Town. Its short-term goal is to improve compliance with existing leaf blower regulations; its long-term goal is to phase out gas-powered leaf blowers (GLBs) in Brookline. The by-law seeks to ban the use of GLBs on properties with less than one acre of open space (as defined by the Town's zoning by-law) effective March 15, 2024. It maintains the current exemption of the Town from the provisions of Article 8.31. The proposed by-law adds definitions, requires annual registration with the Department of Public Works (DPW) for all commercial operators, raises the fines and shifts the responsibility of paying the fines from the property owner to the commercial landscaper until and unless the violation remains unpaid for 90 days. It also makes the fines cumulative, rolling over from year to year. The Advisory Committee was evenly divided on this Warrant Article. Many recognized the need for greater compliance with the current bylaw but were concerned about economic issues for both landscapers and residents of a 2-year time frame for compliance. A motion to extend the date to March 15, 2027 to allow time for more efficient, less expensive and longer-lasting battery-operated leaf blowers to become more available to the industry, was narrowly defeated. Other members were concerned about shifting the burden of fines from the co-responsibility of the homeowner/property manager and the landscaper when Article 8.31 was amended by Town Meeting in 2016, back to the landscape company, which was in the original Article 8.31. No motion was made to consider the original warrant article. The DPW also recognizes a need for a code enforcement position in their responsibility for the safety and maintenance of the Town's public ways and public spaces, to better respond to the many calls they receive from residents. A FY 2023 budgetary request for a code enforcement position was not funded in the current budget.
Voting Yes will...	a. Add Walk Behind equipment to the definition of leaf blowers; b. Add a definition for "Commercial Operator" that would include any individual or entity who does landscaping;

	c. Make explicit in the by-law that commercial operators must register annually with DPW prior to operating leaf blowers in Brookline, and that list must be made publicly available; d. Specify that contractors must train all employees on the provisions of the by-law; e. Ban the operation of gas-powered leaf blowers on properties with less than one acre of open space effective March 15, 2024; f. Amend the fines to apply only to the Commercial Landscaper; any fines unpaid for 90 days fall to the property owner for payment; g. Make all violations and penalties cumulative regardless of location and rolled over from year to year. h. Increase the fines for second and subsequent offenses. i. Maintain an exemption for Town departments.
Voting No will...	Keep the current by-law in place.
Financial impact	The current by-law is complaint-driven with the DPW largely responsible for responding to complaints, with help from the BPD on weekends and outside of working hours. The DPW cannot keep up and respond to potential violation calls as their staff are doing other full-time jobs. If the Town is required to improve violation response time, then we would need to add one full-time employee for code enforcement for this article, the recently passed warrant article on vegetative sidewalk obstructions, and the many calls the DPW receives each day. The cost of such a position would be $76K in salary, $15K in benefits for a total cost of $91K, which would come from the General Fund, primarily property taxes.
Legal implications	Unclear if there are legal implications

Introduction

The regulation of leaf blowers in the Town has been studied, debated and laws enacted since 2008, when it was incorporated into the Town's Noise Control By-Law 8.15. In November 2011 Town Meeting voted to amend the General By-Laws by adding in Part VIII Public Health and Safety a new article 8.31 (Leaf Blowers) to regulate the operation of leaf blowers in Brookline. In 2016 Town Meeting approved major changes in the leaf blower control by-law which among other changes, allowed for a violation to be assessed not only on the perpetrator, but the property owner as well. Also, Town Meeting passed a resolution to enable the DPW to investigate and enforce any leaf blower violation.

The petitioners have four objectives: (1) reduce the noise of leaf blowers, (2) reduce carbon production to improve the environment; (3) reduce toxic exhaust of gas-powered devices, and, (4) improve compliance with leaf blower by-laws.

Evaluation Methodology/Research

- https://www.brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws Article 8.31 Leaf Blower Control current bylaw.
- https://www.brooklinema.gov/DocumentCenter/View/10374/MCLB---Final-Report-Oct-2016?bidId= Final Report Moderator's Committee on Leaf Blowers
- https://www.brooklinema.gov/DocumentCenter/View/10375/Appendices-Final-Oct-2016?bidId= Appendices to the Moderator's Committee on Leaf Blowers
- https://www.brooklinema.gov/DocumentCenter/View/10376/Additional-Information---MCLB-Oct-2016?bidId= Additional Information: Moderator's Committee on Leaf Blowers
- https://www.brooklinema.gov/DocumentCenter/View/21301/Leaf-Blower-Regulations-Final-021520 Town of Brookline Leaf Blower Regulations
- GIS map prepared by the IT Department identifying properties that are 1 acre of open space, subtracting building footprints.
- April 9, 2022 Memo from Commissioner of Public Works, Erin Chute Gallentine, Kevin Johnson (Highway and Sanitation Director) and Alexandra Vecchio (Director of Parks & Open Space)
- https://www.latimes.com/california/story/2021-12-09/california-regulators-phaseout-new-gas-powered-lawnmowers-and-leaf-blowers Regulations by the California Air Resources Board will ban the sale of new gas-powered leaf blowers and lawn mowers starting in 2024 and portable generators by 2028. The ban, signed into law by Governor Newsome, is based on a belief that battery technology will improve and become more widely available before the effective date – but will do an annual review to determine whether that date is on target or needs to be delayed. It does not ban existing gas-powered equipment, which can continue to be used. The state has set aside $30M to help professional landscapers transition from gas-powered to zero-emission equipment.
- https://californialocal.com/localnews/santa-cruz/ca/article/show/1612/1612-leaf-blower-ban-explained/
- https://www.lexingtonma.gov/sites/g/files/vyhlif7101/f/uploads/motion_art_10_noise_landscape_revised_11.18.21_11.03pm_final.pdf Lexington TM in November 2021 approved a gas-powered leaf blower ban by a vote of 85%. A citizen petition put the ban on the March 2022 ballot and it passed by a vote of 55%. Its effective date is 2025 for landscapers; 2026 for residents.
- https://www.landscapeprofessionals.org/images/NALPFTP/NALP/advocacy/documents/leafblowers%20position%20paper.pdf National Association of Landscape Professionals position paper opposes "across-the-board" bans of gas-powered leaf blowers.

Discussion

The Petitioners explained the changes to Article 8.31 of the Town's By-laws that are being proposed under Warrant Article 27 and noted that the goals of the amendments are

two-fold: (1) to improve compliance by landscape companies with the current by-law, and (2) to respond to the urgency of climate change mitigation by requiring electric leaf blowers be used exclusively, starting on March 15, 2024. The proponents of the by-law note that electric leaf blowers have greatly improved since the current leaf blower by-law was amended in 2016 and that electric leaf blowers are somewhat quieter than gas-powered ones.

The Advisory Committee heard comments and testimony from the landscapers, residents and the Brookline DPW.

The Landscapers: The landscapers spoke in support of retaining the current by-law and opposed to the changes recommended in Warrant Article 27. They expressed concerns which included: (1) the technology is still 8 -10 years away from being able to completely substitute electric leaf blowers for GLBs; (2) the batteries don't last long enough on each charge, particularly at the highest levels and are expensive to replace; (3) a complete ban of gas-powered blowers would significantly reduce their income. They also urged education rather than fines to get higher compliance with the current by-law.

The Residents: Many of the residents we heard also opposed the GLB ban. Among the issues they raised were: (1) homeowners who purchased a GLB in recent years that complies with the current law and who use it only occasionally, should be allowed to continue to use that leaf blower while still operable; (2) that leaf blowers are tools like many other noise-producing equipment (such as AC units) that the Town does not regulate; (3) that homeowners might lose their landscaping service (who also do snowplowing in the winter) who would find work elsewhere. Residents in favor of Warrant Article 27 noted: (1) that there were many incidents in violation of the current by-law; (2) that there is a need for greater compliance; and (3) that technology is improving and would be available by the March 15, 2024 effective date.

The DPW: The Town is making progress with transitioning to electric leaf blowers. Alexandra Vecchio, Director of Parks & Open Space, reported that there are currently 47 pieces of equipment that are battery-operated, of which leaf blowers represent 23 pieces. There are 44 pieces of gas-powered equipment, including 1 ride-on blower, 5 push blowers and 38 backpack blowers (of which 34 are below 67 dBA). There are only 4 red max gas blowers, which can generate noise up to 103 dB still in use – down from an original 35. The DPW uses commercial electric handheld leaf blowers with a back-up battery and can do many functions not needing the higher power. The DPW does not use electric backpack leaf blowers which are much heavier for the operator to handle. The experience of the DPW is that the batteries last 1 to 2 years at most, and the largest batteries can operate on a single charge for at most 4 hours. Batteries that can no longer be used are disposed of as hazardous waste. The batteries the Town uses are Greenworks batteries for handheld leaf blowers which cost $299.99 each.

Compliance: Commissioner Gallentine agreed that there is a need for better compliance with the current by-law, which comes down to a need for better enforcement. Last year

about 51 landscapers registered. The DPW has a mailing list of about 150 landscapers (this includes gardeners, for instance, and not just companies that use leaf blowers) and continues to grow that database. There is a $25 fee for registering and landscapers can mail in the form which must be signed and states that they understand the regulations, they have trained their staff on the regulations and that their staff must use equipment with a manufacturer's sticker showing the equipment is compliant. There was a discussion about the need to do more outreach to residents as well as landscapers. Leaf blower bylaw and regulations: https://www.brooklinema.gov/954/Leaf-Blower-Information

- The new sections 8.31.3 (e), (f) and (g) proposed by the petitioners already exist in the Town's regulations for landscapers doing business in Brookline, and these additions codify them in Article 8.31.
- Adding clarifying language to the Definition of Leaf Blower by specifying "leaf blowers on wheels," was viewed as helpful to the DPW who field calls related to the uncertainty in the current language.
- DPW also felt that new language in which a warning followed by fines which would accrue and not reset at the end of the year would be helpful for enforcement.

Enforcement: Enforcement of the current partial ban is deemed "a failure" by the petitioners who believe a complete gas-powered blower ban is required to solve the violation of the partial ban. There was general agreement that there is a need for better compliance with the current by-law, which comes down to a need for better enforcement. DPW Commissioner Gallentine, noted that a full-time employee would be needed for this type of code enforcement because experience has shown that violations often happen after hours and on weekends and the person would need to flex their hours to try to have some coverage outside of normal work hours. The DPW also recognizes a need for a code enforcement position in their responsibility for the safety and maintenance of the Town's public ways and public spaces, to better respond to the many calls they receive from residents regarding enforcing sidewalk obstructions, trash and accessibility complaints in addition to leaf blower complaints. A full-time person would be tasked with educating, managing, and enforcing these types of Town by-laws. The fines generated by better enforcement could defray the cost of adding that position to DPW. A FY 2023 budgetary request for a code enforcement position was not funded in the current budget.

Recommendation: The Advisory Committee by a vote of 11 in favor, 12 opposed and 3 abstentions recommends NO ACTION on Warrant Article 27 as amended with the change in effective date to March 15, 2027. No motion was made to consider the original article.

Article Description	GLB phaseout
AC recommendation (Favorable Action unless indicated)	**NO ACTION as amended, 11-12-3**
Scott Ananian	A
Carla Benka	N
Ben Birnbaum	N
Harry Bohrs	Y
Cliff Brown	A
John Doggett	Y
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	N
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	N
Pam Lodish	N
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	N
David Pollak	A
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	N
Alok Somani	N
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 28

TWENTY-EIGHTH ARTICLE
Submitted by: Jay Sweitzer-Shalit

Lead petitioners: Giles Li, Chi Chi Wu, Rebecca Stone, C. Scott Ananian, Raul Fernandez, Hadassah Margolis, Zsuzsa Kaldy, Natalia Linos, Mariah Nobrega, Luciana Schachnik, Emy Takinami

To see if the Town will authorize and empower the Select Board to petition the General Court for special legislation, as set forth below, in substantially the following form, for the purpose of granting 16 and 17 year old residents local voting rights;

AN ACT AUTHORIZING LOCAL VOTING RIGHTS FOR THOSE SIXTEEN AND SEVENTEEN YEARS OF AGE RESIDING IN BROOKLINE

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

SECTION 1**.** Notwithstanding sections 1 and 47A of chapter 51 of the General Laws or any other general or special law to the contrary, any person eligible to vote in Brookline, except for age, who has reached the age of 16 years or older may register and vote in municipal elections within the Town.

SECTION 2**.** The Brookline Select Board, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

SECTION 3**.** This Act shall take effect upon its passage

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Warrant Article seeks to reauthorize the Select Board to advocate the state legislature to allow the Town to lower the voting age to 16 years old in municipal elections.

There are numerous reasons for the Town to advocate for this change in public policy.

The goal of any democracy should be to be as inclusive as possible. This means that we have a responsibility to encourage voter participation and help residents establish consistent voting habits.

A substantial majority of Brookline registered voters do not exercise their right to vote in municipal elections. Over the twelve years from 2010 through 2021, average turnout in Brookline's municipal elections was about 16%.[1]

In other words, about 5 out of 6 registered voters, on average, have chosen not to exercise their right to vote in Brookline's municipal elections.

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
10%	8%	8%	24%	11%	29%	6%	16%	22%	26%	18%	19%
Average:											**16%**

While municipal elections typically see the lowest turnout, they are more likely to directly affect the lives of minors in significant ways. Casting their first votes in local elections will allow students to see the direct impact and importance of their vote.

Over the past few years, many warrant articles have either been petition-driven by students at Brookline High School or directly affected them. Those include raising the age on the sale of tobacco products, climate change policies, a ban on fur sales, and access to menstrual products, just to name a few.

There are some who believe that since the mind does not fully develop until the mid-20s, that lowering the voting age does not make sense; that children are impressionable and will be influenced by their parents, that they do not typically pay property taxes. However, many voters are influenced by both logic and hyperbole. Owning land has not been a requirement to vote for a long time. And, if we start placing judgments on who has the mental capacity to vote, or who can vote based on property-rights, we slide backwards to times where many segments of the population were denied the right to vote.

This warrant article was first passed by town meeting in 2019, but the General Court has not acted upon it and it has expired. The refiling of Brookline's petition increases the likelihood that the State Legislature will finally respond in the affirmative to this expression of support towards our youth.

This is another move towards broadening democracy and that shouldn't be feared, but embraced.

[1] https://www.brooklinema.gov/1028/Election-Results

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS REPORT

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 April 20, 2022. By a unanimous vote of 7-0-0, the CDICR recommends FAVORABLE ACTION on Warrant Article 29.

DISCUSSION

Warrant Article 28 seeks to reauthorize the Select Board to petition the General Court for special legislation that would grant 16- and 17-year-old residents of the Town the right to vote in municipal elections and to participate more actively in other Town civic matters. A similar Article passed Town Meeting in 2019, but the Town's Home Rule Petition to the General Court expired without further action.

The CDICR welcomes the more active engagement and participation of our teenagers in the Town's civic life that is reflected and enabled by this Warrant. By their learning the importance of informing themselves regarding the issues and elections pending before the Town and then giving them a direct voice in the outcome of those decisions, we will be advancing their civic education. And by granting our teenagers voting rights while still in school, we believe it will help make their civic participation and voting a lifelong habit.

Therefore, the commission voted FAVORABLE ACTION on the Warrant Article 28, by a vote of 7-0-0 (voting in favor were the following Commissioners: Irving Allen, Sandy Batchelder, Jessica Chicco, Harvey Freishtat, Robert Lepson, Bishnu Tamang, Kea van der Ziel).

MOTION OFFERED BY C. SCOTT ANANIAN AND CHI CHI WU

MOVED that the Town authorize and empower the Select Board to petition the General Court for special legislation, as set forth below, in substantially the following form, for the purpose of granting 16 and 17 year old residents local voting rights:

> AN ACT AUTHORIZING LOCAL VOTING RIGHTS FOR THOSE SIXTEEN AND SEVENTEEN YEARS OF AGE RESIDING IN BROOKLINE
>
> Be it enacted by the senate and House of Representatives in General Court assembled, and by the authority of the same as follows:
>
> SECTION 1. Notwithstanding sections 1 and 47A of chapter 51 of the General Laws or any other general or special law to the contrary, any person eligible to

vote in Brookline, except for age, who has reached the age of 16 years or older may register and vote in municipal elections within the Town.

SECTION 2. The Brookline Select Board, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

SECTION 3. This Act shall take effect upon its passage.

SCHOOL COMMITTEE STATEMENT

On April 7, 2022, the School Committee voted UNANIMOUSLY 9-0-0 to recommend passage of WA28. Voting in favor were Ms. Federspiel, Mr. Pearlman, Ms. Charlupski, Ms. Ditkoff, Dr. Ehrenberg, Ms. Frias, Dr. Liu, Ms. Monopoli, and Ms. Nobrega.
The School Committee supports extending voting rights to our 16 and 17 year-olds as an early exercise in civics. Municipal elections, including for School Committee, affect our minors in a plethora of profound ways. As evinced by the incisive journalism of *The Sagamore* (the Brookline High School student newspaper), our 16 and 17 year-olds are among the most well-informed on the municipal issues that affect both them and the community at large. Casting their first votes in local elections would allow our youths to experience firsthand the direct impacts and influence that their votes can have on governance.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 28.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on a substitute motion for Warrant Article 28 by a vote of 8-7-4.

Executive Summary	Article 28 seeks Town Meeting's authorization to file a petition with the State Legislature to authorize Brookline to extend local voting rights to 16 and 17 year olds residing in Brookline. Articles similar to this have previously passed at Town Meeting in recent years, but were not acted on by the legislature.

Voting Yes will...	Authorize the Select Board to file a petition with the General Court to allow Brookline to authorize local voting rights for 16 and 17 year olds in local elections
Voting No will...	Retain existing voting eligibility for local elections
Financial impact	There are no direct costs associated with WA 28, however, should Brookline be granted permission to extend voting rights, there would be an operational and, therefore, financial impact to the Town Clerk's office. Currently, the system used for municipal, state and federal elections (Voter Registration Information System) is run and maintained by the Secretary of State in accordance with state voter eligibility requirements. Should Brookline be granted the right to expand voter eligibility in local elections through a home rule petition, a new system would be needed to securely register voters, generate eligible voter lists and produce election-related materials, including absentee ballots.
Legal implications	If the proposed home rule petition becomes law, it might go into effect before the Town Clerk can put the necessary systems in place to support 16- and 17-year old voting.

Introduction

Article 28, if passed as submitted by the petitioners, would reauthorize the Select Board to file a home rule petition with the General Court for special legislation that would authorize Brookline to extend local voting rights to 16 and 17 year olds residing in Brookline.

An article advocating for the expansion of voting rights to 16 and 17 year olds was approved at Town Meeting in 2019 and one similar to Warrant Article 29 (expanding voting rights to permanent legal residents) was approved by Town Meeting in 2010. Home Rule petitions expire with the end of a legislative session and need to be refiled for the legislature to take action.

Discussion

There was little stated opposition to extending local election voting rights to sixteen and seventeen year-olds or to legal permanent residents living in Brookline. Much of the discussion centered instead on whether home rule petitions or resolutions are the most effective tool for achieving the intended objectives of Articles 28 and 29.

The Advisory Committee heard testimony from State Representative Tommy Vitolo, vice-chair of the House Committee on Election Laws. Rep. Vitolo expressed his opinion that these Home Rule petitions had little chance of becoming law. Similar petitions have been received from other communities, including during this legislative session, and were

referred for further study, without advancing through the legislative process. Rep. Vitolo also explained that as a matter of policy, Home Rule petitions are appropriately used to address issues unique to a city or town, and not as a general exception to the law, otherwise. Vitolo also added that should the Home Rule petition become law, it would go into effect immediately regardless of whether the Town Clerk's office was prepared for the change. He suggested that resolutions urging our legislative delegation to introduce a bill addressing the statewide policy question would be more likely to successfully advance through the legislature.

Those in support of the Articles as proposed by the petitioner, argued that Home Rule petitions made a stronger statement of Town Meeting's desire for the extension of voting rights in local elections. It is their belief that Town Meeting resolutions are less effective than Home Rule petitions which would, as a matter of course, be filed with the legislature.

Following discussion, the Advisory Committee voted to recommend Favorable Action on substitute motions, i.e., resolutions requesting our legislative delegation to introduce statewide legislation on the subject matter of Articles 28 and 29.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the following substitute motion on Article 28 by a vote of 8-7-4:

> WHEREAS, the goal of any democracy should be to be as inclusive as possible; and
>
> WHEREAS, participation by younger voters may help establish consistent voting habits, and
>
> WHEREAS, local elections directly affect the lives of minors in significant ways; and
>
> WHEREAS, current law prohibits voting by sixteen and seventeen year-olds, and
>
> WHEREAS, an act of the state legislature is necessary to enable sixteen and seventeen year-olds to vote, and
>
> WHEREAS, a home rule petition asking that the state legislature lower the voting age in Brookline for local elections to sixteen was passed by town meeting in 2019, but did not become law; and
>
> WHEREAS, a home rule petition asking the same of the state legislature is equally unlikely to become law; now
>
> THEREFORE, be it RESOLVED, that Brookline Town Meeting hereby requests that the state legislature enact legislation that will allow Brookline, and, presumably any other city or town in Massachusetts, to enact local legislation such that sixteen and seventeen year-olds otherwise eligible but for their age, may vote in local elections; and

Be it further RESOLVED, that the Town Clerk shall promptly forward a copy of this Resolution to each of Brookline's State Representatives and to Brookline's State Senator, with the request that they further distribute copies of this Resolution to their House and Senate colleagues.

ARTICLE 28 ADVISORY COMMITTEE VOTES

Article Description	16-17 y.o. voting substitute motion
AC recommendation (Favorable Action unless indicated)	**8-7-4**
Scott Ananian	Y
Carla Benka	A
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	N
John Doggett	A
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	N
Anita Johnson	
Georgia Johnson	
Alisa Jonas	
Janice Kahn	
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	N
Donelle O'Neal, Sr.	
David Pollak	A
Stephen Reeders	
Carlos Ridruejo	A
Lee Selwyn	N
Alok Somani	N
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 29

TWENTY-NINETH ARTICLE
Submitted by: Jay Sweitzer-Shalit

Lead petitioners: Giles Li, Chi Chi Wu, Rebecca Stone, C. Scott Ananian, Raul Fernandez, Hadassah Margolis, Zsuzsa Kaldy, Natalia Linos, Jessica Chicco, Mariah Nobrega, Luciana Schachnik, Emy Takinami

To see if the Town will authorize and empower the Select Board to petition the General Court for special legislation, as set forth below, in substantially the following form, for the purpose of granting noncitizens who are permanent legal residents local voting rights;

AN ACT AUTHORIZING LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENTS RESIDING IN BROOKLINE

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

SECTION 1. Notwithstanding section 1 of chapter 51 of the General Laws or any other general or special law, rule or regulation to the contrary, any noncitizen permanent legal resident ~~alien~~ who is of the age of eligibility for voting in local elections in Brookline and who is a resident of Brookline may register and vote in municipal elections within the Town of Brookline.

SECTION 2. The Brookline Select Board, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

SECTION 3**.** For the purposes of this act, a permanent legal resident is a non-U.S. citizen residing in the Town of Brookline who has duly qualified for and been granted, according to the immigration laws of the United States of America, the status of lawful permanent residence authorizing them to live permanently in the United States.

SECTION 4**.** This act shall take effect upon its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Legal permanent residents (LPRs, a.k.a. Green Card Holders, or Permanent Resident Aliens) have been and continue to be materially affected by the results of elections of Town officials, tax overrides, debt exclusions, and other vote outcomes pertaining only to life in Brookline. Because anti-immigrant sentiment has markedly increased in the past 20 years due to debates and fears concerning illegal immigration, the petitioners offer local voting rights as a way to celebrate and encourage the civic engagement of local immigrants in

Brookline life. These legal, permanent residents should have an equal voice in local decisions of import to them and their families.

Some will argue that voting is a privilege of U.S. citizenship. On the contrary, while federal and state elections (including state ballot questions) are restricted to U.S. citizens 18 years of age and older, the U.S. constitution is mute on state-level voting rights, leaving those decisions up to individual localities. Until the 1920s, most states in the U.S. allowed some non-citizen local voting.

Legal Permanent Residents are working members of our community, often homeowners or business owners, who are subject to local property and other municipal taxes without concomitant representation in government. Opposition to taxation without representation was a rallying cry for the founding of the United States. Local voting rights acknowledge LPRs' status as legal, tax-paying residents and encourage them to become more involved in civic life as they pursue full citizenship and the expansive rights and protections that come with it.

Some will say that granting local voting rights reduces the incentive to pursue U.S. citizenship. But there is no evidence of this. The great majority of green card holders intend to become US citizens and areas that allow local voting have not seen a reduced rate of application for naturalization. On the other hand, the cumbersome naturalization process has become a barrier to full citizenship. In recent years, the US Customs and Immigration Services has had an average of 9 months of backlog of naturalization applications nationally and 11-16 months of backlog in the Boston area.

Ten municipalities in Maryland have extended the rights to vote for local offices to non-citizens. Two cities in Vermont, Montpelier and Winooski, do the same. New York City recently voted to allow non-citizens to vote in local elections and will begin doing so in 2023.The city of San Francisco allows non-citizens to vote in school board elections.

In Massachusetts, the cities of Boston, Cambridge, Chelsea, Somerville, Newton and the Towns of Amherst and Brookline have debated and/or passed home-rule petitions to grant legal resident non-citizens the right to vote on various local questions. The General Court has not acted on any such petitions filed, but the refiling of Brookline's petition only increases the likelihood that the State Legislature will finally respond to this expression of local voice in support of our legal immigrants.

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

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 April 20, 2022. By a unanimous vote of 7-0-0, the CDICR recommends FAVORABLE ACTION on Warrant Article 29.

DISCUSSION

Warrant Article 29 would extend the right to vote in town elections to Brookline residents who are legal permanent residents (LPRs also known as green card holders). Brookline prides itself on its international diversity, and making sure that the town is welcoming and inclusive is at the core of CDICR's mission.

LPRs living in Brookline have a stake in town decisions. They pay taxes that support our local schools, programs, services and other community resources. They work, own property, pay rent, send their children to school in Brookline. Most importantly, they care about the quality of life in the Town, just like everyone else who lives here. Increasing civic engagement by allowing LPRs to participate in town elections benefits all of us.

Therefore, the commission voted FAVORABLE ACTION on the warrant article, by a vote of 7-0-0 (voting in favor were the following Commissioners: Irving Allen, Sandy Batchelder, Jessica Chicco, Harvey Freishtat, Robert Lepson, Bishnu Tamang, Kea van der Ziel).

MOTION OFFERED BY C. SCOTT ANANIAN AND CHI CHI WU

MOVED that the Town authorize and empower the Select Board to petition the General Court for special legislation, as set forth below, in substantially the following form, for the purpose of granting noncitizens who are permanent legal residents local voting rights:

> AN ACT AUTHORIZING LOCAL VOTING RIGHTS FOR PERMANENT LEGAL RESIDENTS RESIDING IN BROOKLINE
>
> Be it enacted by the senate and House of Representatives in General Court assembled, and by the authority of the same as follows:
>
> SECTION 1. Notwithstanding section 1 of chapter 51 of the General Laws or any other general or special law, rule or regulation to the contrary, any noncitizen permanent legal resident who is of the age of eligibility for voting in local elections in Brookline and who is a resident of Brookline may register and vote in municipal elections within the Town of Brookline.
>
> SECTION 2. The Brookline Select Board, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.
>
> SECTION 3. For the purposes of this act, a permanent legal resident is a non-U.S. citizen residing in the Town of Brookline who has duly qualified for and been granted, according to the immigration laws of the United States of America, the status of lawful permanent residence authorizing them to live permanently in the United States.

SECTION 4. This act shall take effect upon its passage.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 29.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on a substitute motion for Warrant Article 29 by a vote of 11-4-5.

Executive Summary	Article 29 seeks Town Meeting's authorization to file a petition with the State Legislature to authorize Brookline to extend local voting rights to permanent legal residents residing in Brookline. Articles similar to this have previously passed at Town Meeting in recent years, but were not acted on by the legislature.
Voting Yes will...	Authorize the Select Board to file a petition with the General Court to allow Brookline to authorize local voting rights for permanent legal residents in local elections
Voting No will...	Retain existing voting eligibility for local elections
Financial impact	There are no direct costs associated with Warrant Article 29, however, should Brookline be granted permission to extend voting rights, there would be an operational and, therefore, financial impact to the Town Clerk's office. Currently, the system used for municipal, state and federal elections (Voter Registration Information System) is run and maintained by the Secretary of State in accordance with state voter eligibility requirements. Should Brookline be granted the right to expand voter eligibility in local elections through a home rule petition, a new system would be needed to securely register voters, generate eligible voter lists and produce election-related materials, including absentee ballots.
Legal implications	If the proposed home rule petition becomes law, it might go into effect before the Town Clerk can put the necessary systems in place to support legal permanent resident voting.

Introduction

Article 29, if passed as submitted by the petitioners, would reauthorize the Select Board to file a home rule petition with the General Court for special legislation that would authorize Brookline to extend local voting rights to permanent legal residents residing in Brookline.

An article similar to Warrant Article 28 (advocating for the expansion of voting rights to 16 and 17 year olds) was approved at Town Meeting in 2019 and an article expanding voting rights to permanent legal residents was approved by Town Meeting in 2010. Home Rule petitions expire with the end of a legislative session and need to be refiled for the legislature to take action.

Discussion

There was little stated opposition to extending local election voting rights to sixteen and seventeen year-olds or to legal permanent residents living in Brookline. Much of the discussion centered instead on whether home rule petitions or resolutions are the most effective tool for achieving the intended objectives of Articles 28 and 29.

The Advisory Committee heard testimony from State Representative Tommy Vitolo, vice-chair of the House Committee on Election Laws. Rep. Vitolo expressed his opinion that these Home Rule petitions had little chance of becoming law. Similar petitions have been received from other communities, including during this legislative session, and were referred for further study, without advancing through the legislative process. Rep. Vitolo also explained that as a matter of policy, Home Rule petitions are appropriately used to address issues unique to a city or town, and not as a general exception to the law, otherwise. Vitolo also added that should the Home Rule petition become law, it would go into effect immediately regardless of whether the Town Clerk's office was prepared for the change. He suggested that resolutions urging our legislative delegation to introduce a bill addressing the statewide policy question would be more likely to successfully advance through the legislature.

Those in support of the Articles as proposed by the petitioner, argued that Home Rule petitions made a stronger statement of Town Meeting's desire for the extension of voting rights in local elections. It is their belief that Town Meeting resolutions are less effective than Home Rule petitions which would, as a matter of course, be filed with the legislature.

Following discussion, the Advisory Committee voted to recommend Favorable Action on substitute motions, i.e., resolutions requesting our legislative delegation to introduce statewide legislation on the subject matter of Articles 28 and 29.

Recommendation

The Advisory Committee recommends FAVORABLE ACTION on the substitute motion below on Article 29 by a vote of 11-4-5.

WHEREAS, the goal of any democracy should be to be as inclusive as possible; and

WHEREAS, full participation in our local government by all residents should be encouraged, and

WHEREAS, local elections directly affect the lives of non-citizen residents in significant ways; and

WHEREAS, current law prohibits voting by non-citizens, and

WHEREAS, an act of the state legislature is necessary to enable on-citizens to vote, and

WHEREAS, a home rule petition asking that the state legislature allow permanent non-citizen residents to vote in Brookline in local elections was passed by town meeting in 2010, but did not become law; and

WHEREAS, a home rule petition asking the same of the state legislature is equally unlikely to become law; now

THEREFORE, be it RESOLVED, that Brookline Town Meeting hereby requests that the state legislature enact legislation that will allow Brookline, and, presumably any other city or town in Massachusetts, to enact local legislation such that permanent non-citizen residents of the United States otherwise eligible but for their non-citizen status, may vote in local elections; and

Be it further RESOLVED, that the Town Clerk shall promptly forward a copy of this Resolution to each of Brookline's State Representatives and to Brookline's State Senator, with the request that they further distribute copies of this Resolution to their House and Senate colleagues.

ARTICLE 29 ADVISORY COMMITTEE VOTES

Article Description	permanent resident voting substitute motion
AC recommendation (Favorable Action unless indicated)	**11-4-5**
Scott Ananian	N
Carla Benka	A
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	N
Anita Johnson	
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	A
Stephen Reeders	
Carlos Ridruejo	A
Lee Selwyn	N
Alok Somani	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 30

THIRTIETH ARTICLE

Submitted by: Jeff Wachter; Carol Caro; Jennifer Raitt, TMM P4; Mariah Nobrega, TMM P4; Deborah Brown, TMM P1

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:
WHEREAS Town Meeting passed a resolution in 2016 to study the feasibility of building age-restricted affordable housing on the Kent/Station Street Town-owned lot (Parcel No. 140-05-00) while maintaining all of the parking spaces;

WHEREAS the Committee was formed and, following a request for proposals issued by the Town, a developer was selected;

WHEREAS the cost to maintain the 44 parking spaces is estimated to cost millions more than initially proposed and will require the Town of Brookline to subsidize that amount in full;

WHEREAS many construction projects that were impacting parking options in Brookline Village have ended and a new parking garage has been constructed;

WHEREAS there is now the Brookline Village Parking Benefits District to assist with maintaining and regulating parking, improving the public realm, and recommending transportation improvements which may address parking issues;

WHEREAS Brookline is a member of the World Health Organization's international network of Age-Friendly Cities and has committed to taking meaningful actions toward becoming a more age-friendly community;

WHEREAS Brookline has an aging population in need of a substantial expansion of Brookline's supply of housing suitable for seniors;

WHEREAS Brookline's need for more housing that is affordable to seniors who make a low-to-moderate income is as acute as it was in 2016;

THEREFORE, be it resolved, that this Town Meeting urges the Kent/ Station Street Senior Affordable Housing project on (Parcel No. 140-05-00) no longer maintain the requirement to keep the existing 44 parking spaces in order to bring the cost of the project to a reasonable level and to allow the Town to subsidize affordable housing, not public parking.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

In the fall of 2016, Town Meeting passed a resolution (with 80% of Town Meeting in favor) that urged the Select Board to study and pursue age-restricted affordable housing on top of the Kent Street Parking lot (Parcel No. 140-05-00). A committee was formed, numerous public meetings were held to formulate a Request for Proposals. The current estimates for the Town's subsidy have increased by many millions in order to keep the existing parking and build the project above the lot. The project proposes 59 subsidized units that are badly needed to address the growing demand for housing by seniors in our community. However, the numerous strains on the Town budget and the level of funding required for parking to be maintained on site will likely prevent this project from proceeding.

Parking has been an issue in Brookline Village for years, mostly, in part, due to construction of the intersection at Washington Street and Boylston Street, the large-scale redevelopment which is now Children's Hospital, and the development on River Road which is now the Hilton Garden Inn. These projects are complete. While future projects, such as the redevelopment of 10 Brookline Place, will come in time, it is unlikely that 3 major projects like these will be active simultaneously in the neighborhood.

The municipal lot on Kent Street has 44 spaces that are mostly used during the day for employees of business in the Village to use their Commercial Passes which are $500 for the year. The Select Board has discussed in numerous meetings their willingness to increase parking meter and commercial pass rates once COVID restrictions are lifted. By one estimate, this lot generates approximately $80,000 per year for the Town in revenue. The cost to maintain the lot (repaving/ repairs, meters, snow clearance, and landscaping is not known at this time. Even if the rates increase, it will not compete with the urgent need of affordable housing nor the tax guarantee of a project.

This resolution is requesting that the committee and the developer be able to determine the appropriate balance between publicly available parking on-site and a feasible, fiscally responsible development that prioritizes homes for low-income seniors.

By passing this resolution, the Town can put the project back out to bid and receive a more financially feasible proposal to address affordable housing.

HOUSING ADVISORY BOARD RECOMMENDATION

Warrant Article 30 is a resolution to modify and re-offer a 2016 Town Meeting-approved resolution to explore the feasibility of building age-restricted affordable housing on the Town-owned Kent-Station Street parking lot. Article 30 would eliminate the requirement that all 39 existing municipal parking spaces be retained, allowing a reduction or elimination of retained public spaces with the objective of reducing the project cost and the required Town subsidy for affordable housing while not continuing to subsidize off-street public parking at this location.

The Housing Advisory Board (HAB) voted unanimously to recommend FAVORABLE ACTION on Article 30 in order that critically needed affordable senior housing might be created at this highly walkable location. A key impediment to proceeding under the 2016 Town Meeting resolution, after five years of effort by four successive committees, is that the onsite construction of public parking triggers State mandated prevailing wage and public bidding requirements which increase the required Town subsidy to over $12,000,000, or over $220,000 per affordable unit, dramatically exceeding any other Town-assisted project.

HAB members recognize, however, the legitimate concerns of other stakeholders—most notably the important nexus between the need for accessible public parking and the continued viability of Brookline Village's retail and other commercial activities. We understand that the Article 30 Petitioners, who share the HAB's desire to provide new affordable housing at this location, also wish to maintain as much parking as is feasible. Accordingly, HAB recommends that the issuance of a new Request for Proposals (RFP) to develop affordable senior housing at the Kent-Station Street parking lot should recognize this ancillary objective.

MOTION OFFERED BY THE PETITIONERS

Voted that the Town adopt the following resolution,

WHEREAS Town Meeting passed a resolution in 2016 to study the feasibility of building age-restricted affordable housing on the Kent/Station Street Town-owned lot (Parcel No. 140-05-00);

WHEREAS the Committee was formed, including a stipulation in their mission to retain all of the public parking on site, and, following a request for proposals issued by the Town, a developer was selected;

WHEREAS the cost to maintain the 39 parking spaces is estimated to cost millions more than initially proposed and will require the Town of Brookline to subsidize that amount in full;

WHEREAS Brookline is a member of the World Health Organization's international network of Age-Friendly Cities and has committed to taking meaningful actions toward becoming a more age-friendly community;

WHEREAS Brookline has an aging population in need of a substantial expansion of Brookline's supply of housing suitable for seniors;

WHEREAS Brookline's need for more housing that is affordable to seniors who make a low-to-moderate income is as acute as it was in 2016;

THEREFORE, be it resolved, that this Town Meeting urges the Kent/ Station Street Senior Affordable Housing project on (Parcel No. 140-05-00) no longer maintain the requirement to keep all of the existing 39 parking spaces in order to bring the cost of the project to a

reasonable level, while keeping as many parking spaces on site as feasible, and to allow the Town to subsidize affordable housing, not public parking.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 30.

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

ARTICLE 30

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On May 17th the Select Board held a public hearing on Article 30 in order to consider new compromise language on the article. The intent was never to eliminate any substantial amount of parking for local business employees. The petitioners looked to create some certainty that as the process moves forward and ultimately results in housing, that the 37 merchant parking spaces be maintained and, if not on site then very close by. The new language makes it clear that this housing project only moves forward once the Transportation Board has identified and secured parking for these merchant spaces. At this stage, it is not possible to identify exactly where those spaces are going to be preserved. Currently there are parking permits for 60% of the spaces along the streets in commercial areas. The goal is to have staff work with all the stakeholders to identify potential parking spaces and then go through a very public process before the Transportation Board, in the most unconstrained manner.

The Select Board voted FAVORABLE ACTION on the following motion:

WHEREAS Town Meeting passed a resolution in 2016 to study the feasibility of building age-restricted affordable housing on the Kent/Station Street Town-owned lot (Parcel No. 140-05-00);

WHEREAS the Committee was formed, including a stipulation in their mission to retain all of the public parking on site, and, following a request for proposals issued by the Town, a developer was selected;

WHEREAS the cost to maintain the 39 parking spaces is estimated to cost millions more than initially proposed and will require the Town of Brookline to subsidize that amount in full;

WHEREAS Brookline is a member of the World Health Organization's international network of Age-Friendly Cities and has committed to taking meaningful actions toward becoming a more age-friendly community;

WHEREAS Brookline has an aging population in need of a substantial expansion of Brookline's supply of housing suitable for seniors;

WHEREAS Brookline's need for more housing that is affordable to seniors who make a low-to-moderate income is as acute as it was in 2016;

THEREFORE, be it resolved, that this Town Meeting urges the Town to pursue affordable senior rental housing on the Kent/Station Street site (Parcel No. 140-05-00) in a manner

that is cost-efficient for the Town. A revised RFP will be issued only after the Town's Department of Planning and Community Development and the Transportation Board after appropriate study have secured adequate sites during construction and upon completion for the 37 permitted merchant full-day public parking spaces and 2 Zipcar spaces currently located on the Kent/Station Street lot, whether or not located on the site, and with only potentially removing a limited number of metered public parking spaces currently available in Brookline Village. Adequacy shall be determined by the Transportation Board and EDAB after holding public hearings.

ROLL CALL VOTE:

Aye:	Abstain:
Hamilton	VanScoyoc
Greene	
Aschkenasy	
Sandman	

ARTICLE 30

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation:
On May 10th, the Advisory Committee voted 11-12-1 to recommend No Action on Warrant Article 30, as amended by the Ad Hoc Subcommittee.

Subsequent to its vote, the Committee learned that the Select Board voted Favorable Action on an amended resolution. Given that the Advisory Committee's initial vote on Article 30 was essentially tied, the Committee will consider and possibly vote on the amended resolution at its meeting on May 24th.

Executive Summary:	The November 2016 Town Meeting passed a resolution to have the Town pursue the development of affordable mixed-income housing for seniors using the air rights over the Town-owned 39-space parking lot on Kent and Station Streets. Air rights development was later found to be impracticable. Upon receiving proposals that incorporated the parking within the structure, the project was determined to be too costly for the Town, given that less expensive options for affordable senior housing likely could be available. The petitioners' original version of WA30 would eliminate the requirement to maintain parking, which would reduce the cost of construction, thereby making the housing development more affordable. The Kent/Station Street lot, however, is the only permitted all-day parking currently available in Brookline Village and is relied on heavily by employees of businesses in the neighborhood and by residents who need parking for support services. An amended resolution drafted by the Ad Hoc Subcommittee urges the Town to continue pursuing the development of senior housing at that site and eliminates the requirement to maintain parking onsite, but requires that alternative permitted all-day parking be located within Brookline Village without reducing short-term metered parking for customers and visitors. The Advisory Committee had a tie vote on whether to recommend the amended version, with the Chair breaking the tie to recommend No Action. The Petitioners now support the amended resolution, though further amended by allowing for a "limited" amount of short-term metered parking to be used for all-day parking. The Select Board, which originally was not going to take a position, recommends favorable action on the amended resolution. The Advisory Committee will consider this amended resolution at its meeting on May 24th, prior to the convening of Town Meeting.

Voting Yes will...	**From a Town operations perspective, passage of the amended WA30 will require the Transportation Department and the Department of Planning and Community Development to identify appropriate alternative parking options, and for the latter department to issue a revised RFP, review proposals for the possible selection of a developer for senior affordable housing, provide oversight of construction, and provide Town services to residents of the new development. Depending on the location of the alternative parking, staff time will also be needed to enforce compliance.**
Voting No will...	**Voting No will have no impact on Town operations.**
Financial impact	**The cost of staff time required to work on developing both alternate parking options and a new RFP for the housing, selecting a developer and providing oversight over construction and providing services to the residents of the development. If alternative permitted parking is to be located on residential streets, the cost of staff time needed to enforce parking restrictions.**
Legal implications	**Review of proposals from a legal perspective and drafting of contractual obligations between the Town and the developer, as well as potential issues that may arise from the presence of a privately developed affordable senior housing development on Town property.**

Introduction
The November 2016 Town Meeting passed WA34, a resolution to have the Town " pursue a suitable air rights development of age-restricted affordable mixed-income housing over the existing Town-owned parking lot…situated between Kent and Station Streets..." A committee was formed, which determined that air rights development was not practicable, and so issued an RFP for the structure to incorporate the public parking that would otherwise be lost upon the redevelopment of the site.

The selected developer presented a high-quality but costly proposal for 54 units, plus replacement of the 54 public parking spots and 9 additional parking spots for the sole use of the housing development. The developer would obtain a 99-year ground lease. The Town would be required to provide a $6.3 million subsidy for the residential component (54 units and 9 parking spots) and $5.8 million for the replacement of the 54 public parking spots that are currently provided by the parking lot, for a total subsidy of $12.1 million.

The estimate of the Town subsidy increased from $7.1 million in 2019 to the $12.1 million currently projected as a result of both increased construction costs generally and following a determination that the project would be subject to public bidding and prevailing wage requirements because the Town would be facilitating a "public project."

The Kent Street Negotiation Committee decided that the cost to the Town was too high to justify going forward with this project, stating that "it may be more prudent to invest

resources in multiple projects that could potentially yield many more affordable units rather than investing in one very expensive project."

The petitioners filed WA30 to eliminate the requirement that public parking be maintained on site as part of the project. Without that requirement, the total subsidy that would be required would be reduced, thereby making the redevelopment of the site as senior housing more affordable. It would, however, eliminate the only available all-day permitted parking lot for all of Brookline Village.

Evaluation Methodology/Research
November 2016 Town Meeting Warrant Article 34 and Explanation
Amended Warrant Article 30 - Kent-Station Street Senior Affordable Housing Resolution
AC Questionnaire for WA30, including supplemental answers
Todd Kirrane Memo re WA30 Analysis of Parking - Available and Needed in Brookline Village
Todd Kirrane May 4, 2022 Email in response to questions re WA30
Housing Advisory Board Statement
Brookline Village Businesses Association Letter
Kent Station Street Project Negotiating Team 4.12.22 Memo
Economic Development Advisory Board Article 30 Memo
Brookline Chamber of Commerce Letter on WAs 22, 25 and 30
Listing of businesses that oppose WA-30
Petition signed by 73 Brookline Village residents and businesses: PROTECT OUR COMMUNITY AND PREVENT SHORT SIGHTED DEVELOPMENT
Public Comment Letters from individual business owners and residents

Discussion
The location of the Kent/Station Street lot has many attributes that make it well-suited for senior housing. It is walkable, making it possible for residents to have access to stores, restaurants, and green space on the Emerald Necklace without needing a car. It also is adjacent to the MBTA station, which facilitates accessibility for support staff. And, as the Petitioners noted, adding 50-60 affordable senior rental units in Brookline Village would provide opportunities for more lower-income seniors to remain in Brookline, while also increasing the customer base for neighborhood businesses.

At the same time, the Kent/Station Street parking lot is the only permitted all-day parking lot currently available in Brookline Village and is relied on heavily by employees of businesses in the neighborhood and by residents who need parking for support services. With continued construction of new homes and offices, parking needs will increase over the years. Moreover, businesses and residents supported the 2016 resolution because it committed to retaining parking.

At the well-attended public hearing of the Ad Hoc Subcommittee, Brookline Village business owners explained that their ability to survive as businesses requires parking options for their employees. Hiring sufficient numbers of employees has been

challenging and without the availability of all-day parking, it will be that much more difficult to attract employees. Many employees live in communities that are far from Brookline, and that translates into long commutes. One business owner has employees traveling from Providence, Worcester, Harvard and Milton, among other communities, and public transportation options are simply not adequate to enable them to use it on a daily basis to get to work. The Kent/Station Street lot is the only all-day parking available for these employees. Contractors and other persons who support the functioning of businesses must also have places to park for more than 2-3 hours. And with the increasing density of Brookline Village, finding any kind of parking has become more and more difficult. One business owner noted that because the One Brookline Place Garage is expensive, many customers park elsewhere, further restricting any available public parking. They noted that Brookline Village is known for its vibrant commercial area, and the Town as a whole benefits from the higher tax rates charged to businesses. But without parking for customers, they will go elsewhere.

Residents also made comments about their difficulties finding parking, and that, as the number of residential units and offices continue to grow in Brookline Village, the challenges have become increasingly difficult. One commenter noted that as an elderly resident who wants to age in place, the increasingly challenging parking situation might force her to move from Brookline, since she often has no place to park to unload her groceries, that her own car must be parked further and further from her home, and that persons providing support services have no place to park. Another resident noted that ever since COVID, she has been working from home. She has accepted paying parking tickets on a regular basis as a means to deal with parking constraints.

Several residents said that they had supported the 2016 warrant article because it did not replace parking but rather envisioned using the parking lot's air rights for the development. They urged the Town to find a workable solution prior to the loss of the lot.

Some residents spoke in opposition to the development, whether or not alternative parking were to be provided. They noted that the parking lot provides some open space in an increasingly crowded area, that it is used to provide access to the MBTA from Kent Street, that it is used for play by neighboring children during snow periods, that residents living adjacent to the parking lot would lose sunlight if the new structure were to be built on that small lot, and that the structure itself would have limited sunlight due to its configuration.

The amended version of WA30 arose as a way to balance the needs of the Brookline Village businesses and residents for parking with the Town's commitment to adding units of affordable senior housing to the overall housing stock. It supports the continued pursuit of building an affordable senior housing development on the site, but not before first identifying an alternative solution to replace the all-day public parking currently available at the site. In light of the need for customer and visitor parking, the amended warrant article also stipulated that the alternative all-day parking not replace other

metered parking used for short-term purposes. Half of the Advisory Committee members supported this amended warrant article as a good way to balance these varying needs.

An equal number of Advisory Committee members felt that even with the proposal to seek alternative parking, the decision to continuing the pursuit of the Kent/Station Street lot for an affordable housing development was not justified for the following reasons:

- The original proposal envisioned an air-rights development, and we have now learned that this is not feasible. As the businesses and residents have stated, the parking lot serves an important need and without the ability to make use of air rights, the reason to select this site in the first place is no longer applicable.
- Continuing to pursue this project without having any real plan for how to address the loss of parking could be a waste of staff time. The Town has already enquired about parking possibilities at the new garage at One Brookline Place and was told that it would not be available. On-street permitted parking, which is provided to teachers, is already at 40% usage, which, in general, is the maximum percent of on-street spaces taken for permitted all-day parking. Making use of an even higher percent of on-street parking for additional permitted parking will exacerbate further the already tight parking for customers and visitors to Brookline Village.
- Given the site's location by the MBTA, it could be more valuable to the Town if sold or leased for commercial use.
- An overarching concern is that the site was selected without an overall town planning process that includes analyses of parking needs and the most appropriate locations for additional housing developments. Even if lacking that, the Town is planning a Parking Management and Utilization study for Coolidge Corner, and the approach used there could be applied to Brookline Village before making any decisions about which site to identify for such a development.

With both Favorable Action and No Action receiving an equal number of votes by Advisory Committee members, the Chair voted in order to break the tie, resulting in a recommendation for No Action on WA30 as amended by the Ad Hoc subcommittee by a vote of 12-11-0. The amended article, with a modification to allow for the use of a limited number of metered parking to replace some of the parking lost on the Kent/Station Street lot, has since been supported by the Petitioners, and the Select Board has voted to recommend Favorable Action. In light of the close vote by the Advisory Committee for No Action, the Committee will take up and possibly vote on the petitioners' amended article on May 24th.

Article Description	Kent/Station Street Lot
AC recommendation (Favorable Action unless indicated)	**NO ACTION, 12-11-2**
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	A
Harry Bohrs	
Cliff Brown	N
John Doggett	Y
Katherine Florio	N
Harry Friedman	
David-Marc Goldstein	Y
Neil Gordon	A
Susan Granoff	N
Kelly Hardebeck	N
Anita Johnson	N
Georgia Johnson	Y
Alisa Jonas	N
Janice Kahn	N
Carol Levin	Y
Pam Lodish	N
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	N
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	N
Dennis Doughty	Y

UPDATE:

On May 10th, the Advisory Committee voted NO ACTION on an amended version of Warrant Article 30, but the vote was very close, with a tie broken only upon a vote by the Advisory Committee Chair. On May 24, the Advisory Committee reconsidered its May 10th vote, continuing its discussion on May 31, at which time it voted to recommend FAVORABLE ACTION on the May 17 Select Board motion, with 11 votes in favor, 3 opposed, and 8 abstentions. The Select Board motion was for largely the same amended Resolution that the Advisory Committee had voted not to recommend during its May 10th meeting. The only change allows some short-term metered parking to be used to replace the lost full-day spaces.

The Advisory Committee changed its position because Brookline Village business community representatives, when questioned by the Advisory Committee, stated that they were willing to support the amended compromise version since it guarantees replacement of the all-day parking spots if and when the senior housing development is built. Nonetheless, they continue to be concerned that there likely will be a net loss of public parking in the Village as all-day parking spots will likely replace those used for more short-term parking at the same time that both commercial and residential growth will put increasing pressure on parking needs. Partly for this same reason, as well as for the other reasons discussed in the original report of the Advisory Committee, many members of the Advisory Committee did not vote in support of FAVORABLE ACTION, with a few members voting in opposition and a substantial number of members voting to abstain.

Article Description	Amend recommendation to FAVORABLE ACTION on SB Motion on WA30
AC recommendation (Favorable Action unless indicated)	**11-3-8**
Scott Ananian	Y
Carla Benka	A
Ben Birnbaum	A
Harry Bohrs	
Cliff Brown	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman *	Y
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	A
Carol Levin	
Pam Lodish	A
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	N
David Pollak	Y
Stephen Reeders	A
Carlos Ridruejo	A
Lee Selwyn	N
Alok Somani	A
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 31

THITRY-FIRST ARTICLE
Submitted by: Ryan Black, TMM6

To see if the Town will adopt the following resolution:
Opposition to Big Tech ballot question

WHEREAS on the November 2022 ballot, there will be a ballot question which if approved would define rideshare company drivers as independent contractors.

WHEREAS independent contractors are entitled to far fewer benefits and workplace protections than employees.

WHEREAS corporations like Uber, Lyft, and DoorDash are the ones pushing for Massachusetts voters to make this change.

WHEREAS such a change in labor law would result in greater exploitation of drivers by legally defining a group of gig workers as a subclass who are to be paid less than minimum wage.

WHEREAS everyone should be entitled to a living wage and power in the workplace.

WHEREAS corporate interests shouldn't get to dictate public policy that suits their interests even if they have the resources to bankroll the campaign for a ballot measure.

NOW THEREFORE BE IT RESOLVED THAT Brookline Town Meeting expresses its strong disapproval of defining rideshare company drivers as independent contractors; and

BE IT FURTHER RESOLVED that Town Meeting encourages the people of Brookline (and the larger Commonwealth) to vote no on the November ballot question seeking to make this change.

PETITIONER'S ARTICLE DESCRIPTION

None provided.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 31.

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

ARTICLE 31

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 31, as amended by the Advisory Committee and petitioner, by a vote of 12-1 with 7 abstentions.

Executive Summary	Warrant Article 31 is a resolution asking that Town Meeting express its opposition to a likely November 2022 state ballot initiative question that would legally classify app-based drivers for companies such as Uber, Lyft, and DoorDash as "independent contractors" rather than as "employees" entitled to worker protections under federal and state law (such as an hourly minimum wage, overtime, the right to unionize, and many others). This ballot initiative would provide some benefits and wage guarantees to drivers but not to the extent that employees have by law and, as independent contractors, the drivers would be barred from ever unionizing.
Voting yes will . . .	Encourage the opposition to the November 2022 state ballot initiative that seeks to define app-based drivers as independent contractors rather than as employees.
Voting no will . . .	Offer support to companies' efforts to continue to classify their drivers as independent contractors rather than as employees.
Financial impact	None to the Town's budget.
Legal implications	None to the Town. However, passage of the state ballot initiative may possibly result in the ride-share companies being shielded from tort liability for accidents in claims brought by passengers and other third parties, which is currently a question before the Massachusetts Supreme Judicial Court.

Introduction

WA 31 is a resolution that calls for Town Meeting to express its opposition to a likely November 2022 state ballot initiative that would legally classify app-based drivers for ride-share and delivery companies such as Uber, Lyft, and DoorDash as "independent contractors" rather than as "employees" entitled to worker protections under federal and state law.

Background Information
Ride-share transportation companies such as Uber and Lyft provide transportation services to their customers, who utilize the companies' dispatch apps to receive pre-arranged rides

with drivers who have contracted with these companies and who provide their own cars. The companies classify their drivers as independent contractors and require drivers to enter into standardized service contracts that expressly state that the drivers are independent contractors, set non-negotiated terms and conditions, and contain arbitration provisions that prevent drivers from bringing litigation.

In July 2020 Massachusetts Attorney General Maura Healey filed a complaint for declaratory judgment against Uber and Lyft seeking (1) a court determination that Uber and Lyft drivers are employees and not independent contractors and (2) a court order requiring Uber and Lyft to reclassify their drivers as employees (and to stop misclassifying them as independent contractors), thereby making available to the drivers the protections of Massachusetts Wage and Hour Laws, such as the Wage Act, the Minimum Wage Law, Overtime Law, Earned Sick Time Law, and Anti-Retaliation Statutes. On March 25, 2021, the Suffolk Superior Court denied the companies' motion to dismiss this lawsuit, finding that the Attorney General had plausibly suggested that Uber and Lyft misclassify their drivers and are in violation of the Independent Contractor Misclassification Statute, G.L. c. 149, sec. 148B.

The Attorney General's complaint alleges that Uber and Lyft are unable to meet the three-part test required under state law that would allow them to classify drivers as independent contractors.

- First, the drivers are not "free from control and direction in connection with the performance of the service." Uber and Lyft unilaterally determine their drivers' pay structure according to the companies' formulas and closely monitor drivers' activities through their apps, and, although drivers can set their hours, they are penalized if they do not accept enough rides, cancel too many rides, or do not meet standards set by the companies.

- Second, rather than providing a service that is "outside the usual course of the business of the employer," the drivers provide a service that is essential to the companies' core business as transportation service providers and without which, these companies would go out of business.

- Third, most drivers are not customarily engaged in ride-share driving as "an independently established trade, occupation, profession or business" that they seek to promote and grow in the marketplace.

The Ballot Initiative

In response to this lawsuit and in an effort to do an end run around it, the ride-share companies have begun a heavily funded lobbying campaign to place a voter initiative on the November 2022 ballot that would enact a state law that declares app-based drivers to

be independent contractors. Alternatively, they are also lobbying the Massachusetts State Legislature to enact such legislation..

There are two versions of the ballot initiative, but they are virtually identical except for the absence of a section on safety training in Version B. Both seek to enact a state law that declares that app-based drivers and couriers are to be deemed independent contractors and not employees with respect to their relationship with the companies "notwithstanding any other law to the contrary."

The initiative also would require the companies to provide a number of watered down, minimalist versions of some of the benefits and wage guarantees that drivers would be entitled to if they were deemed to be employees:

- A net earnings floor of 120% of the minimum wage during each pay period – but only for a driver's "engaged time" (the time between accepting a service request and completing that request) – plus 26 cents per engaged mile, adjusted every 5 years for inflation. This would not provide payment for any wait time between rides or for time spent getting gas or maintaining their car or doing any other job-related work. Further, there is explicit language [Sec. 5(D)] that companies would not be required to provide compensation above the driver's net earnings floor during an earnings period.

- Modest healthcare stipends provided by each company for any driver who averages in one quarter at least 15 hours per week of engaged time with that company and more for those with 25 or more hours per week of engaged time, subject to the driver showing proof of enrollment in a qualifying health plan.

- One hour of earned paid sick leave for every 30 hours of engaged time.

- Coverage under Massachusetts Paid Family and Medical Leave, unless declined by the driver.

- Occupational accident insurance for up to 156 weeks following an injury if the injury occurs while the driver is online with the app of that particular company.

- Disability payment of 66 percent of a driver's average weekly "engaged time" earnings for up to 156 weeks following an injury occurring while the driver is online with the app, as well as accidental death insurance equal to 66 percent of a

driver's average weekly "engaged time" earnings for the benefit of driver's spouse, children, or other dependents.

Note that the earnings on which these above benefits are based include only the driver's engaged time and not all the other hours that they worked.

Unlike employees, the drivers under this law would not be entitled to overtime pay, personal and vacation days, or holidays. Unlike employees, they would be responsible for paying the 6.2 percent Social Security payroll tax that employers are required to pay, in addition to the 6.2 percent payroll tax that employees have to pay – a total of 12.4 percent of their income. And they would not be reimbursed for any job-related expenses, including the cost of gas and the upkeep of their car.

Additionally, as independent contractors, drivers would be barred by the National Labor Relations Act from forming a union.

The companies have donated millions of dollars to a coalition supporting the ballot initiative, including $14 million from Lyft alone. This effort in Massachusetts is similar to a $200 million campaign by ride-share companies in California in support of a similar ballot initiative (Proposition 22), which was passed in 2020, but has since been ruled unconstitutional by a California state trial court. The case is now pending before California's court of appeals.

Evaluation Methodology/Research

- Ballot Initiative: Version A (Version B is identical to A except that it does not contain a paid occupational safety training requirement.)
  https://www.mass.gov/doc/21-11-a-law-defining-and-regulating-the-contract-based-relationship-between-network-companies-and-app-based-drivers-version-a/download
- Attorney General's Complaint (July 14, 2020): Healey v. Uber Technologies, Inc., and Lyft, Inc.
  https://www.mass.gov/doc/ride-sharing-complaint
- News release and summary of complaint

  https://www.mass.gov/news/ag-healey-uber-and-lyft-drivers-are-employees-under-massachusetts-wage-and-hour-laws

Discussion

The Human Services Subcommittee of the Advisory Committee held a (virtual) public hearing on April 20, 2022 at 5:00 pm via Zoom. The full Advisory Committee held a public meeting on May 5, 2022.

The petitioner explained that he had brought this article because he is concerned about the precedent that passage of the state ballot question would have both in Massachusetts and nationally in encouraging ride-share companies to continue to avoid their full legal responsibilities as employers by designating app-based drivers as independent contractors with fewer rights and benefits and lower compensation than employees. He believes that a vote in opposition to the ballot question by Brookline's Town Meeting would influence the views of voters in Brookline and throughout the state and would be helpful to opponents of the initiative. He also is concerned about the millions of dollars the ride-share companies are spending in lobbying for this ballot question.

Ride-share drivers are a diverse group. A majority only work a very limited number of hours per week and do not see driving as a full-time job. On the other hand, there are a significant minority of drivers who depend almost entirely on their earnings from driving to support their family. This can lead to a divergence in goals. People working only 10-15 hours a week may not think they need health insurance and other worker protections as much as someone working 35 or more hours. For many drivers, having flexible hours make having very minimal or no employee benefits or wage guarantees seem to be an acceptable tradeoff.

Additionally, some of the provisions of the initiative might be appealing to current ride-share drivers since, having been designated by their companies as independent contractors, they currently have no traditional employee benefits, and may be grateful for any improvement of their situation. However, because most current drivers do not work a sufficient number of "engaged time" hours to qualify for the newly proposed benefits, these new benefits may be more illusory than real.

Many Advisory Committee members expressed support of the petitioner's goals for this article and shared his concern about the detrimental effect on American workers if more and more companies are allowed to by-pass established state and federal laws about how to determine whether workers are "employees" (and therefore entitled to the legal protections and benefits of that status) by (1) misclassifying their workers as independent contractors and (2) supporting special ballot initiatives that designate their employees to be independent contractors irrespective of the requirements of any other laws.

There was also some discussion about the potential implications of a case currently pending before the Massachusetts Supreme Judicial Court concerning whether ride-share companies are shielded from tort liability for accident claims brought by passengers and other third parties if their drivers are classified as independent contractors and not employees. *El Koussa v. Attorney General, Mass.*, No. SJC-13237.

A number of Advisory Committee members stated that they did not believe this was an issue about which the AC needed to make a recommendation. However, other members pointed out that the state ballot initiative, if successful, would directly impact Brookline residents who are drivers for these companies and the large number of Brookline residents

who use the services that these companies provide. Additionally, the Town receives 5 cents in revenue for every Uber and Lyft ride that originates in Brookline.

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on the amended motion under Warrant Article 31 by a vote of 12-1-7.

The amended version of Warrant Article 31, agreed on by both the petitioner and Advisory Committee, appears below in clean form. A marked up version follows the voting summary, showing differences from the petitioner's original motion, with deletions indicated with strike-out and additions appearing in boldface, underlined type.

VOTED: That the Town adopt the following resolution:

Resolution opposing state ballot question on defining and regulating app-based drivers

WHEREAS, on the November 2022 ballot, there will be a state ballot question which if approved would define rideshare company drivers as independent contractors; and

WHEREAS, independent contractors are entitled to far fewer benefits and workplace protections than employees; and

WHEREAS, corporations like Uber, Lyft, and DoorDash are pushing for Massachusetts voters to make this change; and

WHEREAS, such a change in employment status and labor law would prevent ride-share drivers from legally being able to unionize in the future; and

WHEREAS, everyone should be entitled to a living wage, decent working conditions, and bargaining power in the workplace;

NOW THEREFORE BE IT RESOLVED THAT Brookline Town Meeting expresses its strong disapproval of defining rideshare company drivers as independent contractors; and

BE IT FURTHER RESOLVED that Brookline Town Meeting asserts that corporate interests shouldn't be allowed to dictate public policy by bankrolling campaigns that diminish workers' rights; and.

BE IT FURTHER RESOLVED that Town Meeting encourages the people of Brookline (and the larger Commonwealth) to vote no on the November 2022 ballot question seeking to make this change.

Article Description	Opposition to state ballot question regarding app-based drivers
AC recommendation (Favorable Action unless indicated)	**12-1-7**
Scott Ananian	Y
Carla Benka	A
Ben Birnbaum	A
Harry Bohrs	
Cliff Brown	A
John Doggett	A
Katherine Florio	Y
Harry Friedman	
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	A
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	A
Lee Selwyn	A
Alok Somani	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX: Markup showing differences from petitioner's original motion.

VOTED: That the Town adopt the following resolution:
~~**Opposition to Big Tech ballot quest**~~
Resolution opposing state ballot question on defining and regulating app-based drivers

WHEREAS**,** on the November 2022 ballot, there will be a **state** ballot question which if approved would define rideshare company drivers as independent contractors; **and**

WHEREAS**,** independent contractors are entitled to far fewer benefits and workplace protections than employees; **and**

WHEREAS**,** corporations like Uber, Lyft, and DoorDash are ~~**the ones**~~ pushing for Massachusetts voters to make this change; **and**

WHEREAS**,** such a change in **employment status and** labor law would ~~result in~~ **prevent ride-share drivers from legally being able to unionize in the future; and**
~~greater exploitation of drivers by legally defining a group of gig workers as a subclass are to be paid less than minimum wage.~~

WHEREAS, everyone should be entitled to a living wage, **decent working conditions, and bargaining** ~~and~~ power in the workplace;

~~WHEREAS many argue corporate interests shouldn't be allowed to dictate public policy by bankrolling campaigns that diminish workers' rights~~.

NOW THEREFORE BE IT RESOLVED THAT Brookline Town Meeting expresses its strong disapproval of defining rideshare company drivers as independent contractors; **and**

BE IT FURTHER RESOLVED that Brookline Town Meeting asserts that corporate interests shouldn't be allowed to dictate public policy by bankrolling campaigns that diminish workers' rights; and.

BE IT FURTHER RESOLVED that Town Meeting encourages the people of Brookline (and the larger Commonwealth) to vote no on the November **2022** ballot question seeking to make this change.

ARTICLE 32

THIRTY-SECOND ARTICLE
Submitted by: Ryan Black, TMM6

To see if the Town will adopt the following resolution:
Calling for an end to the US's embargo of Cuba

WHEREAS, since March 14, 1958, the United States has maintained against Cuba the most long-lasting trade embargo in our nation's history; and

WHEREAS, on December 17, 2014, US President Barack Obama and former Cuban President Raul Castro agreed to reestablish diplomatic relations and cooperation between the two nations on various matters of mutual interest; and

WHEREAS, despite executive decisions by President Obama to relax some prohibitive regulations, large portions of the embargo pertaining to trade and travel persist; and

WHEREAS, full restoration of trade and travel between the two countries would be of great benefit to both Cuba and the US, including with regards to education, healthcare, economic opportunities, the arts, tourism, and sports – as well as for biotechnological and medical research, which holds heightened relevance during this age of COVID-19; and

WHEREAS, a number of Boston-area institutions have had many collaborations and exchanges with Cuba – including Tufts Medical Center, Massachusetts General Hospital, Boston University, Boston Medical Center, the Massachusetts College of Pharmacy and Health Sciences, Harvard Medical School, and the Harvard School of Public Health; and

WHEREAS, the Boston-area is home to some of the leading public health, medical, and academic institutions in the United States. Entities that could greatly benefit from the restoration of trade with Cuba because of the importation of Cuban products like life-saving medicines Herberprot-p and CIMAvax, and – more generally – scientific, biopharmaceutical, medical, and public collaboration; and

WHEREAS there is growing national awareness and work towards similar Cuban cooperative efforts in over 30 other cities, states, and unions – including neighboring Cambridge – calling for the lifting of the embargo on Cuba and collaboration on medical and scientific research and exchange; and

WHEREAS Brookline's Federal level representation in the US House of Representatives has changed since Town Meeting in Spring 2016 passed a resolution calling for an end to the US's embargo of Cuba.

NOW THEREFORE BE IT RESOLVED THAT that Brookline Town Meeting finds that travel restrictions and the embargo are detrimental to the interests of the citizens of Brookline, the United States, and Cuba.

BE IT FURTHER RESOLVED that Brookline Town Meeting urges the immediate restoration of engagement with Cuba which President Barack Obama initiated through the repeal of restrictive regulations.

BE IT FURTHER RESOLVED that Brookline Town Meeting encourages local medical, health care, scientific, academic, and pharmaceutical institutions to actively explore collaboration with their Cuban counterparts in knowledge transfer and joint collaboration in public health prevention methods, innovation treatments, and the development of new treatments, vaccines, and protocols; and

BE IT FURTHER RESOLVED that the Brookline Town Meeting appeals to the Massachusetts State Legislature and the Governor to actively pursue such exchanges, knowledge transfers, and collaboration – including, but not limited to, efforts to further joint development of drugs and treatment protocols in pursuit of the COVID-19 virus and other communicable diseases; and

BE IT FURTHER RESOLVED that Brookline Town Meeting strongly urges Representative Jake Auchincloss, and Senators Elizabeth Warren and Ed Markey, to propose and pass legislation that will finally end the unsuccessful and harmful 60-year-old economic, financial, and commercial embargo – and lift the travel restrictions on US citizens and residents to Cuba, and Cuban citizens to the United States.

PETITIONER'S ARTICLE DESCRIPTION

None provided.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 32.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: No Recommendation, by a vote of 26-0-0.

Executive Summary:	This Warrant Article 32 resolves to urge immediate restoration of engagement with Cuba, active pursuit of collaboration and to strongly urge the MA senators and our Representative to the US House to introduce and pass legislation lifting travel restrictions.

Voting Yes will...	Resolve to urge immediate restoration of engagement with Cuba, encourage collaboration between Brookline institutions and their Cuban counterparts, and strongly urge our Senators and representative to the U.S. House to propose and pass legislation to lift travel restrictions on US citizens to Cuba and Cuban citizens to the U.S..
Voting No will...	Town Meeting would not encourage restoration of engagement with Cuba and urge Federal legislation.

Introduction and Discussion
Warrant Article 32 asks Town Meeting to reaffirm Warrant Article 20 that was passed (voting result unknown) at the Spring 2016 Town Meeting. The Spring 2016 WA20 resolved to support ending the United States' economic, commercial and financial embargo against Cuba and urged respect for Cuba's sovereignty. The petitioner believes the prior resolution should be reaffirmed because Jake Auchincloss was not our Representative in the U.S. House at the time WA20 was passed.

Recommendation
Because this warrant article is a resolution and has neither financial nor operating implications for the Town, the Advisory Committee voted 26-0-0 to make no recommendation.

ARTICLE 32 ADVISORY COMMITTEE VOTES

Article Description	**Lift Cuba embargo**
AC recommendation (Favorable Action unless indicated)	**NO RECOMMENDATION 26-0-0**
Scott Ananian	Y
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 32

MOTION OFFERED BY C. SCOTT ANANIAN, TMM10
ON BEHALF OF THE PETITIONER RYAN BLACK

MOVED: That the Town adopt the following resolution calling for an end to the US's embargo of Cuba:

WHEREAS, since March 14, 1958, the United States has maintained against Cuba the most long-lasting trade embargo in our nation's history; and

WHEREAS, on December 17, 2014, US President Barack Obama and former Cuban President Raul Castro agreed to reestablish diplomatic relations and cooperation between the two nations on various matters of mutual interest; and

WHEREAS, despite executive decisions by President Obama to relax some prohibitive regulations, large portions of the embargo pertaining to trade and travel persist; and

WHEREAS, full restoration of trade and travel between the two countries would be of great benefit to both Cuba and the US, including with regards to education, healthcare, economic opportunities, the arts, tourism, and sports – as well as for biotechnological and medical research, which holds heightened relevance during this age of COVID-19; and

WHEREAS, a number of Boston-area institutions have had many collaborations and exchanges with Cuba – including Tufts Medical Center, Massachusetts General Hospital, Boston University, Boston Medical Center, the Massachusetts College of Pharmacy and Health Sciences, Harvard Medical School, and the Harvard School of Public Health; and

WHEREAS, the Boston-area is home to some of the leading public health, medical, and academic institutions in the United States. Entities that could greatly benefit from the restoration of trade with Cuba because of the importation of Cuban products like life-saving medicines Herberprot-p and CIMAvax, and – more generally – scientific, biopharmaceutical, medical, and public collaboration; and

WHEREAS there is growing national awareness and work towards similar Cuban cooperative efforts in over 30 other cities, states, and unions – including neighboring Cambridge – calling for the lifting of the embargo on Cuba and collaboration on medical and scientific research and exchange; and

WHEREAS Brookline's Federal level representation in the US House of Representatives has changed since Town Meeting in Spring 2016 passed a resolution calling for an end to the US's embargo of Cuba.

NOW THEREFORE BE IT RESOLVED THAT that Brookline Town Meeting finds that travel restrictions and the embargo are detrimental to the interests of the citizens of Brookline, the United States, and Cuba.

BE IT FURTHER RESOLVED that Brookline Town Meeting urges the immediate restoration of engagement with Cuba which President Barack Obama initiated through the repeal of restrictive regulations.

BE IT FURTHER RESOLVED that Brookline Town Meeting encourages local medical, health care, scientific, academic, and pharmaceutical institutions to actively explore collaboration with their Cuban counterparts in knowledge transfer and joint collaboration in public health prevention methods, innovation treatments, and the development of new treatments, vaccines, and protocols; and

BE IT FURTHER RESOLVED that the Brookline Town Meeting appeals to the Massachusetts State Legislature and the Governor to actively pursue such exchanges, knowledge transfers, and collaboration – including, but not limited to, efforts to further joint development of drugs and treatment protocols in pursuit of the COVID-19 virus and other communicable diseases; and

BE IT FURTHER RESOLVED that Brookline Town Meeting strongly urges Representative Jake Auchincloss, and Senators Elizabeth Warren and Ed Markey, to propose and pass legislation that will finally end the unsuccessful and harmful 60-year-old economic, financial, and commercial embargo – and lift the travel restrictions on US citizens and residents to Cuba, and Cuban citizens to the United States.

ARTICLE 33

THIRTY-THIRD ARTICLE
Submitted by: C. Scott Ananian, TMM10, Dave Gacioch, TMM13

To see if the Town will amend Article 2.1 of the Town bylaws (pertaining to Town Meetings) by amending section 2.1.9 ("Conduct of the Meetings") as follows (new language appearing in bold/underline, deleted language appearing in italic/strikeout):

SECTION 2.1.9 CONDUCT OF THE MEETINGS
The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, "Town Meeting Time" published by the Massachusetts Moderators Association, the traditions in Brookline **as codified in the Town Meeting Handbook** and these by-laws. **Changes to the procedures codified in the Town Meeting Handbook shall not be effective until they are ratified by a majority vote of Town Meeting and shall apply to the conduct of the Meeting at which they are ratified and subsequent meetings. The Select Board shall insert a routine article for this purpose in the warrant for the Annual Town Meeting.**

And simultaneously to approve the published 2021 version of the Town Meeting handbook, or any other version, for the purposes of this bylaw;

Or otherwise amend section 2.1.9 of the Town bylaws to more precisely articulate the procedures under which Town Meetings will be conducted;

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The vague phrase "the traditions in Brookline" does a lot of heavy lifting in our bylaws. In order to facilitate orderly conduct of our Town Meetings, this amendment codifies our current practice, giving legal weight to the rules and procedures outlined in the Town Meeting Handbook maintained by the Moderator and avoiding any argument about what, exactly, constitutes a "tradition". Further, it sets out a process for amending the handbook with the consent of Town Meeting, so that changes to our procedures are debated (if necessary) and settled at Town Meeting in the same way our other Town business is.

I expect that approval of the latest revision of the Town Meeting Handbook will become a routine matter at Town Meeting, in the same way we handle the measures of Wood and Bark – but in the unusual case that some proposed change did elicit grumbling from Town Meeting Members, this would be a process to settle the matter with a vote and rebuild consensus.

The intent is that editorial changes, copy-editing, reformatting, and other changes to the contents which do not materially affect the proceedings of Town Meeting will not require ratification.

In discussion with the Moderator and Town Counsel, the issue of precedence was raised. State law provides that the Moderator has authority to "preside and regulate the proceedings, [and] decide all questions of order" (MGL ch 39 sec 15), but Town Meeting is also empowered by state statute to regulate its own procedures via by-law. Similarly, other provisions of state law (for example, the requirements for including a petitioned article in the Warrant) would have precedence over any Town bylaw, or handbook change, or Moderator ruling which sought to modify them, as we've seen in previous debates at Town Meeting on these issues. This particular article would apply to those cases that are not already controlled by state law. In those cases "a town may pass by-laws [...] for the regulation of proceedings at Town Meeting" (MGL ch 39 sec 15), and that is what is being done here, just as was done in past Town Meetings that created/refined Section 2.1.9.

This bylaw has been written to reduce the friction of the ratification process as much as possible: an article to ratify the latest handbook is always on the warrant, and the ratification takes place immediately, applying to the current session of Town Meeting. The goal was to avoid any unnecessary burden on the Moderator, while ensuring that Town Meeting continues to have a means of codifying its own procedures when it wishes to do so and state law allows. However, it may be desirable to amend the language in two ways. First, MGL ch 39 sec 15 states that bylaws passed to regulate the proceedings at Town Meeting "shall be approved and published in the manner prescribed by section thirty-two of chapter forty." That process involves review by the Attorney General (MGL ch 40 sec 32). As such, it may be necessary to have handbook changes apply only to future sessions of Town Meeting to allow time for this review. Second, it may be disruptive to allow last minute motions on a standing warrant article providing for ratification of the handbook, especially if TMMs did not expect any procedural changes to occur. This could probably be addressed by appropriate deadlines for the submission of motions on the standing article, in the same way we presently handle motions on the budget. However, it may also be worthwhile to reconsider the routine inclusion of the article in order to ensure meaningful notice to TMM when motions under the article are expected to be brought. Both of these changes narrow the scope of the article and can be considered during debate.

MOTION OFFERED BY THE PETITIONERS

MOVED that the Town amend Article 2.1 of the Town bylaws (pertaining to Town Meetings) by amending section 2.1.9 ("Conduct of the Meetings") as follows (new language appearing in bold/underline, deleted language appearing in italic/strikeout):

SECTION 2.1.9 CONDUCT OF THE MEETINGS
The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, "Town Meeting Time" published by the Massachusetts Moderators Association, the traditions in Brookline **as codified in the Town Meeting Handbook** and these by-laws. **Changes to the procedures codified in the Town Meeting Handbook**

shall not be effective until they are ratified by a majority vote of Town Meeting and shall apply to the conduct of the Meeting at which they are ratified and subsequent meetings. The Select Board shall insert a routine article for this purpose in the warrant for the Annual Town Meeting.

And simultaneously to approve the published 2021 version of the Town Meeting handbook for the purposes of this bylaw.

REPORT OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE (CTO&S) ON WARRANT ARTICLE 33

Section 2.1.9 of the Town By-Laws currently states that "[t]he proceedings at Town Meeting shall be conducted in accordance with the handbook of parliamentary law, 'Town Meeting Time' published by the Massachusetts Moderators Association, the traditions in Brookline and these by-laws." Article 33 would amend Section 2.1.9 to replace the phrase "the traditions in Brookline" with the phrase "the traditions in Brookline as codified in the Town Meeting Handbook." It would also require that changes to the "procedures" that were "codified" in the Town Meeting Handbook would not become effective until ratified by Town Meeting and to provide that such ratified changes would apply to the Meeting at which they were ratified as well as later meetings. Article 33 would also approve the "published" 2021 version of the Town Meeting Handbook "or any other version."

The petitioners' explanation for Article 33 states that "codifying" the "rules and procedures outlined in the Town Meeting Handbook" will "avoid argument" about "what, exactly, constitutes a 'tradition'" and would have changes "debated" and "settled" at Town Meeting.

Three sentences of Massachusetts General Laws, chapter 39, section 15 are implicated by Warrant Article 33. The first sentence of Section 15 says:

"The moderator shall preside and regulate the proceedings, decide all questions of order, and make public declaration of all votes, and may administer in open meeting the oath of office to any town officer chosen thereat."

Two other sentences of Section 15 state:

"A town may pass by-laws, subject to this section, for the regulation of the proceedings at town meetings. Such by-laws shall be approved and published in the manner prescribed by section thirty-two of chapter forty."

Petitioners themselves recognized a problem with Article 33. They noted that Section 15 requires that by-laws for the regulation of the proceedings at Town Meeting must be approved by the Attorney General under G.L. ch. 40, sec. 32, the State statute requiring approval of Town by-law changes. Thus, petitioners acknowledge that it "may be necessary

to have handbook changes apply only to future sessions of Town Meeting to allow time for review."

But such a delay in the effective date addresses only part of the problem. Article 33 does not create a by-law specifying any particular procedure to regulate Town Meeting proceedings.

Section 15 reflects the long-standing Massachusetts tradition that the Moderator, who is elected by Townwide vote, has plenary authority to preside over and regulate Town Meeting proceedings. Such authority is critical to the smooth functioning of Town Meeting, especially when debate is impassioned. As commented in Town Meeting Time, the Moderator has power "to give liberty to speech, and silence unreasonable and disorderly speakings." Article 33 would seem to handcuff the Moderator by limiting her tools for regulating Town Meeting proceedings to procedures that already appear in the Town Meeting Handbook.

The Town Meeting Handbook is not a comprehensive compendium of all procedures available to the Moderator to regulate Brookline Town Meeting proceedings. Rather, it was originally created as an educational tool and informational guide. And it contains general information about a wide range of procedures, such as how a Town Meeting member can become more informed about Town issues, steps in the Warrant development process, the annual budget process, the time and location of Town Meeting and how to sign in, and even the positioning of the screen on the high school auditorium stage. If adopted, Article 33 would require a vote of Town Meeting before a change in any procedure of Town Meeting, no matter how small.

Without Article 33, Town Meeting is not powerless to determine its own procedures. Section 15 already expressly grants the power to amend town by-laws for the regulation of Town Meeting, subject to Attorney General review. Historically, this power has been used to enact specific procedures.

For example, Town By-Law Section 2.1.11 states that "[b]efore the opening session of any …. Town Meeting, the Town Meeting members who so desire shall be given the opportunity to recite the pledge of allegiance … [and] to sing the National Anthem."
By-Law Section 2.1.11 further provides with specificity that "[a]ny Town Meeting Member may … request information from the Town Administrator or any Department Head" and that "the Town Administrator …, the Department Head or their designee shall be allowed to address the Meeting and respond to the request."

Section 2.1.11 further explicitly articulates the procedure for certifying the vote when a two-thirds majority is required (e.g., in the case of bonding): "On matters requiring a two thirds vote by statute, the vote need not be counted unless the reported result of the vote is immediately questioned by seven or more town meeting members as provided in Chapter 39, section 15 of the General Laws."

Article 33, however, does not propose a by-law that contains a particular procedure. It simply says that Town Meeting must "ratify" procedures included in the previously

assembled handbook. It does not even mention the explicit statutory language requiring town by-law changes to be approved by the Attorney General. Indeed, "ratification" of a change to the Handbook would not change any By-Law. Article 33 implicitly acknowledges this by distinguishing the Handbook from "these by-laws."

Beyond that, as a policy matter, Article 33 throws a number of different ingredients into a procedural stew, including "Town Meeting Time," the Town By-Laws and the Town Meeting Handbook, in no particular order and with only the Handbook subject to ratification. This is hardly a recipe to "avoid argument" or to "settle" procedures.

CTO&S Recommendation
The Committee on Town Organization & Structure recommends "NO ACTION" on Article 33.
Unanimous vote. No members were absent.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 33.

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

ARTICLE 33

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: By a vote of 21-1 with no abstentions, the Advisory Committee Recommends No Action on Article 33.

Executive Summary:	WA 33 seeks to amend section 2.1.9 ("Conduct of the Meetings") of the Town bylaws as follows: SECTION 2.1.9 CONDUCT OF THE MEETINGS The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, "Town Meeting Time" published by the Massachusetts Moderators Association, the traditions in Brookline as codified in the Town Meeting Handbook and these by-laws. Thus the "traditions in Brookline' are replaced by the Town Meeting Handbook. Changes to the procedures codified in the Town Meeting Handbook would need ratification by a majority vote of Town Meeting and would then apply immediately to the conduct of the Meeting at which they are ratified. The subcommittee valued the objective of WA33, which is to reduce the ambiguity that is inherent in relying on three sets of principles and rules for the conduct of Town Meeting, but had multiple concerns: There was concern that the Moderator's effectiveness could be significantly reduced. Town Counsel advised that there is a potential interpretation of the amendment of WA33 that would limit the Moderator's ability to regulate procedures per Massachusetts General Laws, chapter 39, section 15. The Attorney General would be unlikely to be willing to review each new edition of Town Meeting Handbook. There was concern that amendments to the Handbook, which would take effect immediately, could be used to influence deliberations on specific items that were coming up imminently for discussion.
Voting Yes will…	**Amend the bylaw to create a set of procedural rules in the Town Meeting Handbook that, once ratified by Town Meeting, will have immediate effect and will add to the rules on the procedures adopted at Town**

	Meeting alongside Town Meeting Time and Town bylaws, subject to Massachusetts General Law.
Voting No will…	**Maintain the status quo for the regulation of the conduct of Town Meeting proceedings**
Financial impact	**Likely to be de minimis**
Legal implications	**See discussion below**

Introduction

Section 2.1.9 of the Town By-Laws currently states that proceedings at Town Meeting shall be conducted in accordance with the handbook of parliamentary law, 'Town Meeting Time' published by the Massachusetts Moderators Association, the traditions in Brookline and these by-laws."

WA 33 seeks to amend section 2.1.9 ("Conduct of the Meetings") of the Town bylaws as follows:

SECTION 2.1.9 CONDUCT OF THE MEETINGS The proceedings of Town Meetings shall be conducted in accordance with the handbook of parliamentary law, "Town Meeting Time" published by the Massachusetts Moderators Association, the traditions in Brookline as codified in the Town Meeting Handbook and these by-laws.

Thus the "traditions in Brookline' are replaced by the Town Meeting Handbook.

The proposed amendment requires that changes to the procedures codified in the Town Meeting Handbook shall not be effective until they are ratified by a majority vote of Town Meeting and shall apply to the conduct of the Meeting at which they are ratified and subsequent meetings.

Further, it is proposed that the Town shall simultaneously approve the 2021 version of the Town Meeting handbook, when it is published.

Discussion

In presenting the Warrant Article the Petitioner drew attention to the fact that the "traditions in Brookline" language of current Section 2.1.9 is vague and subject to interpretation. Traditions evolve over time and, moreover, Town Meeting Time does not always resolve potential alternative interpretations. A Town Meeting Handbook, as ratified by Town Meeting, would provide a single source of procedural rules, for Town Meeting members, especially newer ones, to find clarification. The Handbook would of course need to conform to Commonwealth law.

The Petitioners further noted that, as drafted, the amendment still does not clearly state which of three sources of rules takes precedence. Brookline is an outlier in having relatively little guidance in Section 2.1.9 and could be contrasted with other communities, such as Arlington, where more clarity is provided. The Petitioners believe that less ambiguity in procedural rules would provide for better conduct of Town Meeting business.

The Petitioners reviewed the question of whether changes to the Handbook would require review of and approval by the Massachusetts Attorney General ("AG") and noted precedents in zoning bylaws that allow changes to be made without AG review. The intent was to try to minimize the need for review while noting that it may be necessary in some instances.

The Office of Town Counsel was consulted with reference to state law, on the powers of the Town Moderator and Town Meeting to establish procedures. Attention was drawn to Massachusetts General Laws, Chapter 39, Section 15. This law sets out the various powers of the Town Moderator and Town Meeting (by bylaw amendment) to regulate procedures of Town Meeting. The law states that "The moderator shall preside and regulate the proceedings, decide all questions of order, and make public declaration of all votes, and may administer in open meeting the oath of office to any town officer chosen thereat." A concern of Town Counsel was a potential interpretation of the amendment of Article 33 that would limit the Moderator's ability to regulate procedures per Section 15. Further, while noting the laudable goal of the Article to clear up some ambiguities, changes to the Town Meeting Handbook could not be treated as having the effect of bylaw amendments and would have the potential to be legally problematic. It is unlikely that the AG will be prepared to look through the Town Meeting Handbook and check that, for example, it does not run afoul of substantive law.

The Petitioners envisaged that an amendment to the Handbook would be submitted as a routine Warrant Article before Town Meeting, that Town Meeting would consider it early in the course of its proceedings and if ratified, the new procedural rules in Town Meeting Handbook would become effective instantly.

The Advisory Committee had concern about the process by which amendments to the Town Meeting Handbook would be generated. It was noted that the Town Meeting Handbook is in effect an informational booklet, originally put together by the Town Meeting Members Association, to help Town Meeting Members understand the procedures of Town Meeting. It was not intended to set the rules of procedure. There was concern that the proposed Bylaw amendment could interfere with the Moderator's role in providing neutral rulings on procedure and that procedure could therefore become increasingly politicized to the detriment of Town Meeting's deliberations. The question was raised as to whether the ambiguities referenced by the Petitioners had actually created any problems in Town Meeting.

In the event, as was considered likely, that the state AG would need to approve amendments to the Town Meeting Handbook, the new procedures would not become effective until the meeting after the Town Meeting at which the amendment(s) to Town Meeting Handbook were ratified. That would contravene the rule by which one Town Meeting cannot bind subsequent meetings.
In any event, changes to procedure, if effective immediately, would be confusing for Town Meeting Members and would lead to a further increase in points of order, disrupting the flow of discourse. Rather than amend the Bylaw, a better first step would be to improve the Handbook to better set out the established procedures.

Recommendation

The Advisory Committee, by a vote of 21-1 with no abstentions, recommends No Action on Article 33.

# Votes Yes	**21**
# Votes No	**1**
# Votes Abstain	**0**
MAIN MOTION:NO ACTION ON WA 33	
	Enter Y, N or A
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	
John Doggett	Y
Katherine Florio	Y
Harry Friedman	
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	
Dennis Doughty	

ARTICLE 34

THIRTY-FOURTH ARTICLE

Submitted by: Kate Silbaugh (TMM Pl), Bettina Neuefeind (TMM Pl), Amy Hummel (TMM Pl2), Gina Hahn (TMM P3), Cathleen Cavell (TMM Pl), Petra Bignami (TMM Pl2), Ana Albuquerque (TMM Pl)

WHEREAS electronic communications are an innocent social practice, but it is our job to give fresh reflection to the role of electronic channels in a transparent public governance;

WHEREAS sunlight, and our own accountability, can sometimes mean exercising an unnatural-feeling self-restraint within the comfortable familiarity of our electronic communications;

WHEREAS Town Meeting is a deliberative body elected to evaluate matters of Town governance;

WHEREAS Town Meeting is a democratic body with the authority to vote on bylaws and resolutions that impact residents of the Town and others;

WHEREAS deliberative bodies engage in public reasoning to improve the quality of their work and to ensure that democratic processes can perform their accountability function;

WHEREAS deliberation among decision-makers during proceedings of such bodies should be transparent to the public and to other members of the deliberative body in support of accountability and the creation of a public record;

WHEREAS many Town Meeting members and Town residents aspire to achieve transparency in government decision-making processes;

WHEREAS Town Meeting members may be trusted to discern the distinction between appropriate de minim is consultation with a friend or a handful of colleagues to clarify a vote and conducting a large- scale private conversation that can function intentionally or unintentionally as a separate deliberation invisible to the public;

WHEREAS all Town Meeting members have a right of speech and association that includes private conversations in large or small groups;

WHEREAS the Massachusetts Open Meeting Law, which does not apply to Town Meeting, is an established example of the legality of creating speech and association constraining transparency rules that apply during a deliberation of individuals with authority to make official decisions;

WHEREAS a resolution of Town Meeting reflects the values of the Town, it does not have the legal force of the Open Meeting Law and is therefore less entangled with the First Amendment than the Open Meeting Law;

WHEREAS deliberative bodies routinely make rules of proceeding to improve deliberation; WHEREAS the Moderator enforces those rules of deliberation;

WHEREAS the Town Meeting Handbook has long restricted the use of electronic devices solely to accessing the Combined Reports and the Warrant;

WHEREAS hybrid or online meetings prevent the Moderator, Town Meeting members, or the public from seeing groups of Town Meeting members physically convening for side discussions;

WHEREAS the ability to see each other, and for the public to see Town Meeting members, in an in- person Town Meeting places some constraint on large-scale private deliberations, and this is not possible in a remote meeting;

WHEREAS culture shifts in communication modes enabled by new technologies require mindfulness to unintended impacts on the core need for transparency in deliberations in a democracy;

WHEREAS the lack of transparency in electronic conversation is emerging as an issue in other deliberative bodies similarly grappling with the democratic consequences of the culture shift to electronic communications;

WHEREAS under Massachusetts law the rational basis of a warrant article includes the written explanation and the public deliberations that occur during the Town Meeting session itself, and therefore the public deliberations of Town Meeting have legal significance;

NOW THEREFORE BE IT RESOLVED THAT: All large-scale communications occurring during Town Meeting deliberations be made transparent to the public and to other town meeting members in real time, and that Town Meeting members will refrain from more than de minimis communications with each other during Town Meeting sessions if those communications do not create a concurrent transparent public record.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Summary	This warrant article is a non-binding resolution to limit large group communications that are not publicly readable in real time during Town Meeting sessions. De minimis communications do not come within the scope of the resolution, and the resolution relies on the honest judgment of Town Meeting members aspiring to be held accountable for deliberations that occur during the Town Meeting proceedings. The resolution calls for this change to be made immediately upon passage.
Voting YES will ...	Re-affirm our aspirations for transparency in deliberations by those with decision-making authority in public proceedings and discourage private channels of communication during Town Meeting sessions that are not transparent to the public.
Voting NO will ...	Maintain the status quo, which includes a Town Meeting handbook provision limiting the use of electronic devices, but no expression of a commitment by Town Meeting membership to transparency and a record during Town Meeting proceedings.
Estimated financial impact on the Town of Brookline	None
Conflicts of Interest	None

The City Council in Washington, D.C. recently restricted the use of WhatsApp communications by elected officials. In the Washington Post, the Chair of the D.C. City Council describes the reasoning:

> "After learning of the use of encrypted messaging apps, by members of the Executive Branch, it is an urgent matter that we boost transparency in District Government," Mendelson said in a statement introducing the legislation. "I get it that many in government would like to conduct their business in private. Butthat is

> contrary to long-standing policy. We value open government. We don't value auto-delete."[1]

Other deliberative bodies will struggle in the coming years with questions of transparency and the maintenance of a public record occasioned by technological shift. Brookline can lead by resolving to value transparency in government, without going as far as Washington D.C. which passed a law, not a resolution.

When we formally convene town meeting, let's have the courage to aspire to a single transparent conversation, where Town Meeting members listen, and the public can see the record that informed the votes with which they've entrusted us. Online meetings increase the overall accessibility of meetings.
They also introduce and accelerate culture shifts in modes of communication and attention. This resolution is intended to encourage reflection on the unintended consequences of the evolution of communication practices and to establish expectations for large scale communications. Highly engaging side conversations may be disrespectful to colleagues who in the auditorium setting would be able to read the body language of a text conversation. More important, the public has no account of decision- making when big groups of voting Town Meeting members conduct a separate meeting concurrent with the public one, but with no real-time tracking and no public record. This is an opportunity to reflect on evolving practice, not to criticize Town Meeting members for the unintended consequences of an innocent drift into an electronic attentional and communication practice.

The standard this resolution sets will be enforced through good faith and social norms. Brookline has focused on the technology side of online meetings, but still needs to assess our meeting culture online. Most of the time in Town Meeting, we are given a listening role. Private online channels allow for active discussion that overrides that listening role. Moreover, those private online channels can generate common thinking through conversation that may influence votes and is occurring during the parallel public deliberation. The public and fellow Town Meeting members are entitled to see in real time the parallel deliberation that serves as the basis for a decision, because the accountability process, induding public confidence in Town Meeting, requires sunlight.

Along with the written explanations, the public record of Town Meeting proceedings is used in courts as the source of rationale behind bylaws when they are being challenged or interpreted. The development of large-scale private deliberations undermines the reliability of that record.

Coordinating privately with like-minded people is essential to politics; we all learn during private meetings before formal proceedings, and the privacy of those conversations enjoys substantial legal protection. This resolution, by contrast, only addresses the continuation of these private deliberations during the formal town meeting itself. It would apply to the

[1] 11D.C. Council Approves Measure Targeting Bowser Administration1s Use of WhatsApp/' Washington Post (March1, 2022), https://www.wasl1ingtonpost.com/dc-md-va/2022/03/01/dc-council-bowser-whatsapp/

TMMA listserv only during Town Meeting sessions and only if the TMMA listserv remains closed to public view.

While a large-scale private discussion is possible in-person, it is much less likely, because social space has an impact on social dynamics. What is technologically possible in-person is very different in scale and in kind from the concurrent talk that flourishes in the online communication environment. Body language is difficult to hide. Many people can tell when other people are on their phone or typing on a screen in person. This provides the opportunity to respond by asking for attention to the speaker, or by remaining silent until the phones are set down. The in-person ar hitecture imposes a variety of social restraints that are lifted online.

If, during an in-person Advisory Committee meeting, a third of AC had their phones out and were texting in a large group thread during deliberations, some in the audience and at the meeting would notice, reading body language and understanding that the text conversation had a lot of their attention. This would not be a violation of the Open Meeting Law because one third is not a quorum. But the public proceeding would feel like a sham, with rump deliberations happening behind the closed doors of a text thread, concurrent with the show of a public meeting. This resolution will keep public Town Meetings from coming to seem like a sham.

This resolution does not constrain private deliberations before or after a meeting. But during a proceeding, as a voting member of the body, it constrains discussions about how to vote with dozens of other voting members but without visibility to the public we serve.

When we text privately, it feels like coalition-building, and when others do it, it feels more like back- room dealings of insiders and power brokers. But we are each voting members of a body given the authority to decide what happens to people's lives, livelihoods, property, and health. When we convene to debate the use of the power we've been given, the public should be able to see that debate. There are no outsiders in town meeting, the outsiders are the public who are not in town meeting.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a motion under Article 34.

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

ARTICLE 34

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends Favorable Action, by a vote of 17-3-0.

Executive Summary	Warrant article 34 is a non□binding resolution to limit large group communications that are not publicly readable in real time during Town Meeting sessions. De minimis communications are not within the scope of the resolution, and enforcement relies on the judgment of Town Meeting members. The resolution calls for this change to be made immediately upon passage. Under Massachusetts law, the rational basis of a warrant article includes the written explanation of the article **and the public deliberations that occur during the Town Meeting session.** The public record of Town Meeting proceedings are likely to be used should a bylaw be legally challenged. The existence of large-scale private deliberations undermines the reliability of that otherwise public record.
Voting Yes will	Adopt this resolution as the will of Town Meeting
Voting No will	Suggest that the will of Town Meeting is to allow private, group messaging during Town Meeting
Financial	There is no direct financial impact to the Town. The potential impact of a less than complete record of Town Meeting deliberations cannot be measured.
Legal	The potential impact of a less than complete record of Town Meeting deliberations cannot be measured.

Discussion

Warrant Article 34 is a Resolution of Town Meeting that seeks to limit electronic communications among large groups of Town Meeting Members during the proceedings of Town Meeting. It seeks to discourage such groups from communicating via private electronic channels, and thus create greater transparency during deliberations.

This article would only apply to exchanges that take place during Town Meeting and that are not visible to the public. They would not apply to de minimis communications. The resolution would be enforced only by the judgment of each individual Town Meeting Member.

During an in-person Town Meeting, each Member's behavior and their level of engagement is clearly visible to the group and, because of social norms, Members generally refrain from, *inter alia,* engaging in back-channel conversations. During remote meetings, such norms are less often adhered to, as it is easier for attendees to engage in side conversations without others noticing. The Town Meeting Handbook, which provides guidance on general Town Meeting conduct and conventions, presumed that the proceedings of Town Meeting would be conducted in-person, and, accordingly, guidance on the use of electronic devices is limited to a reminder to silence cell phones, and limits the use of cell phones only to access documents relevant to the proceedings.

Under Massachusetts law, the rational basis of a warrant article includes the written explanation of the article **and the public deliberations that occur during the Town Meeting session.** The public record of Town Meeting proceedings are likely to be used should a bylaw be legally challenged. The existence of large-scale private deliberations undermines the reliability of that otherwise public record. Additionally some tools that support group conversations offer encryption and/or automatic message deletion, which frustrates document production, whether it be a public records request or by subpoena.

Further, the business of Town Meeting affects the Town's residents, businesses and the Town's future overall. These matters deserve the full attention of Town Meeting Members during the proceedings, as key information and pro and con arguments are shared, by speakers, with Members.

The Advisory Committee recognizes the First Amendment implications of limiting private conversations, but as noted by this Article's petitioners, free speech is not an unlimited right. **The Advisory Committee found the petitioners 'arguments regarding both public deliberations and a complete public record thereof to be compelling.**

Recommendation

The Advisory Committee, by a vote of 17-3-0, recommends Favorable Action on Article 34.

Article Description	Transparency during TM deliberations
AC recommendation (Favorable Action unless indicated)	**17-3-0**
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 35

THIRTY-FIFTH ARTICLE

Submitted by: Marissa Vogt (TMM 6), Mike Toffel (TMM 8), and Jonathan Klein (TMM 17)

To see if the Town will adopt the following Resolution:

WHEREAS transparency is vital to a functioning democracy; and

WHEREAS the Town Meeting Members Association (TMMA) maintains an e-mail list for communications among members of Town Meeting that is not currently readable by the general public; and

WHEREAS messages sent to the TMMA e-mail list include substantive discussion about warrant articles and other Town business, updates about Town Meeting schedules and procedures, announcements from the Moderator, and other information of relevance to the general public; and

WHEREAS technology exists that makes group e-mail messaging easy, free, secure, and readable by the general public; and

WHEREAS allowing the general public to read messages sent to the TMMA e-mail list would better inform the public about issues facing the Town, Town Meeting procedures, and the viewpoints of elected Town Meeting representatives.

NOW THEREFORE BE IT RESOLVED THAT:

The Town Meeting Members Association (TMMA) Board should take necessary action to ensure that, by no later than September 1, 2022, all future messages sent to the TMMA e-mail list shall be publicly readable.

PETITIONER'S ARTICLE DESCRIPTION

Summary	This warrant article is a non-binding resolution in favor of making future e-mail communications sent to a Town Meeting Members Association (TMMA) e-mail list publicly readable. The resolution calls for this change to be made no later than September 1,

	2022. Other details, such as what type of e-mail list should be used, are left to the discretion of the TMMA Board.
Voting YES will …	Encourage the TMMA Executive Board to ensure that any messages sent to a TMMA-sponsored email list will be publicly readable no later than September 1, 2022.
Voting NO will …	Maintain the status quo.
Estimated financial impact on the Town of Brookline	None
Conflicts of interest	None

1. Introduction

The Town Meeting Members Association (TMMA) is an organization whose bylaws[1] permit membership to "only Town Meeting Members in the Town of Brookline." A main objective of TMMA is "to gather, develop, and disseminate relevant information about town issues to Town Meeting Members and their constituents for the purpose of providing an informed discussion of issues at Town Meeting" (emphasis added).

The TMMA maintains an e-mail list, referred to as "the listserv", that enables easy communication among all 240 Town Meeting Members[2] (TMMs). The TMMA listserv "is intended for open discussion of issues pertaining to Town Meeting, the Warrant, and any related Town, precinct, or neighborhood issue," according to its guidelines.[3] Messages that are sent to the listserv are readable by all members of Town Meeting – which includes elected Town Meeting Members, the Town Moderator, Town Clerk, and Select Board members – as well as the Advisory Committee's "at large" (non-TMM) members, but are not readable by the general public. Information about the current TMMA listserv is available at https://groups.io/g/brooklinetmma/. The list archive contains more than 34,000 messages, back to November 2000, that are readable by current list members.

The nature of messages that are sent to the TMMA listserv varies. Some messages contain substantive discussion from individual TMMs explaining their position for or against an upcoming warrant article, while other messages contain questions. Some messages are from the Moderator providing important updates about Town Meeting procedures and schedules. The listserv is also sometimes used to share other community news. Message content is not moderated, but members are instructed to sign all messages with their name and precinct, to "Focus on issues, be polite, and refrain from personal attacks," and that

[1] https://www.brooklinema.gov/DocumentCenter/View/17511/TMMA-Bylaws-as-of-June-2018
[2] After the May 2022 election there will be 255 TMMs due to the addition of a 17th precinct
[3] https://groups.io/g/brooklinetmma/

messages "should not be used to support candidates, per vote of the Brookline TMMA Board."[4]

2. Goals and expected significance of this article

The goal of this article is to improve transparency of e-mail communications among members of Town Meeting. While the TMMA Board formally governs the decision of whether or not the TMMA listserv should be readable by the public, our intent in bringing this resolution to Town Meeting is to foster a discussion and seek input from the full Town Meeting membership. Adopting this resolution will demonstrate to the TMMA Board that there is broad support for making e-mail communications among members of Town Meeting on the TMMA listserv easily readable by the public. We hope that adoption of this non-binding resolution will be the impetus needed for the TMMA Board to take action to bring transparency to the TMMA listserv.

If this article passes and the TMMA Board agrees to make the TMMA listserv public, the Board will need to determine the specific technological approach to implement this by September 1, 2022. For example, the Board could choose to a) change the current listserv settings to make it readable by the public; b) convert to a new publicly readable list; or c) maintain the current listserv but arrange to have all new messages be automatically forwarded to a new, publicly readable list.

Given that authors of messages sent in the past (and until this change would be implemented) have written with the understanding that their messages would not be readily available to the public, our resolution is focused only on future messages.

This article has no financial implications on the Town of Brookline. As discussed below, there are various group email services that could support the TMMA email list. Even if the TMMA Board opted for a service that required fees, those costs would be incurred by the TMMA and not by the Town.

3. Why the TMMA email list should be publicly readable

Transparency and openness are critical to a functioning Town government. E-mails sent to all members of Town Meeting via the TMMA list should be publicly readable to inform the public about issues facing the Town and to highlight the opinions and actions of elected representative Town Meeting Members. Messages sent to the TMMA listserv often contain answers to clarifying questions about warrant articles or about Town Meeting procedure; this information would benefit the general public. Additionally, prior to Town Meeting, many TMMs choose to share their thoughts for or against individual articles by email since the number of speakers during debate is often limited. Therefore, making these messages public would help voters better understand the opinions of their elected Town Meeting representatives.

[4] https://groups.io/g/brooklinetmma/

Messages sent to the TMMA listserv are already distributed quite widely – there are 279 members of the current listserv.[5] Additionally, some of the messages sent to the TMMA list are subject to the Massachusetts Public Records Law[6] because they are sent or received by townwide elected officials or staff. However, fulfilling these requests can take days or weeks and uses Town staff time. Making the list publicly readable would obviate the need for individuals to make formal public records requests and would allow the public to read messages while they are timely (such as in the days before and during Town Meeting).

4. Available e-mail list options

The current listserv uses groups.io, which enables list administrators to select message visibility and therefore could be a suitable choice for providing a publicly-readable TMMA email list. We are aware of at least one additional possible service, and there may be others, that demonstrates that making the TMMA email list visible to the public is technically feasible. Google Groups[7] (https://support.google.com/groups) is a free service that is used by many Brookline neighborhood groups. E-mails sent to group members may be made readable by anyone on the web and there is no limit to the number of subscribers. We have set up an example Google group, https://groups.google.com/g/vogt-warrant-article-example, to demonstrate some of the capabilities. Finally, the TMMA could set up its own web server and create its own email list using free software like Mailman.[8]

5. Precedence for non-binding resolutions on matters outside of Town Meeting's authority

Town Meeting has passed several resolutions over the past two decades to express its opinion on matters that are outside the authority of Town Meeting.

In some cases, Town Meeting has passed resolutions expressing its opinion on issues that fall under state or federal jurisdiction. For example:

- Resolution to prevent nuclear war: "BE IT RESOLVED THAT the Town of Brookline, Massachusetts, calls upon our federal leaders and our nation to embrace and sign the Treaty on the Prohibition of Nuclear Weapons and make nuclear disarmament a centerpiece of U.S. national security policy. …" (May 2018 Annual Town Meeting, Article 35, passed 167-2-0)[9]

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[5] As of March 2022

[6] See https://www.sec.state.ma.us/pre/prepdf/guide.pdf

[7] Disclosure: Petitioner Vogt's spouse is a Google employee.

[8] https://www.gnu.org/software/mailman/

[9] See full text at https://www.brooklinema.gov/DocumentCenter/View/14385/-May-22-2018-Annual-Town-Meeting-Combined-Reports-with-Supplements-PDF

- Resolution on Sentencing Reform and Diversion: Urged the state to enact sentencing reform. (November 2017 Special Town Meeting, Article 22, passed 116-81-11)[10]
- Resolution Calling for an End to the United States' Economic, Commercial and Financial Embargo against Cuba and Respect for Cuba's Sovereignty: Called for an end to the United States' economic, commercial and financial embargo against Cuba and urged action by then-U.S. Representative Joe Kennedy III. (May 2016 Annual Town Meeting, Article 20, passed)[11]
- Resolution in support of changing the Massachusetts flag and seal: Adopted a resolution in support of state legislation regarding the state seal and motto. (May 2019 Annual Town Meeting, Article 28, passed 158-4-15)[12]

Town Meeting has also passed resolutions expressing its opinion on matters related to private individuals, businesses, or organizations. For example:

- Resolution on Veal : "Now, therefore, be it hereby Resolved that all food purveyors be requested to immediately suspend the sale and/or serving of crated veal products to the public within the Town of Brookline." (November 2010 Special Town Meeting, Article 21, passed)[13]
- Resolution on Birds : "NOW, THEREFORE, be it resolved that the Town of Brookline supports the protection of birds by encouraging contractors, designers, architects, home and building owners to use bird-safe building design techniques that create visual signals, minimize glare and reflections and other hazards …" (May 2010 Annual Town Meeting, Article 19, passed)[14]

From this record, it is clear that the majority of Town Meeting members have supported various resolutions encouraging action by groups outside the authority of Town Meeting. While TMMA is a private organization, all TMMA members are members of Town Meeting, and the TMMA listserv is used to conduct public business.

6. Questions and other community feedback

[10] See combined reports at https://www.brooklinema.gov/DocumentCenter/View/12692/November-14-2017-Special-Town-Meeting-Warrant-PDF

[11] See full text at: https://www.brooklinema.gov/DocumentCenter/View/20233/Certified-Mark-Up-of-Combined-Reports---May-24-2016

[12] See full text at https://www.brooklinema.gov/DocumentCenter/View/19221/Combined-Reports-May-2019-Annual-Town-Meeting-with-Supplements

[13] See full text at https://www.brooklinema.gov/DocumentCenter/View/4573/November-16-2010-Special-Town-Meeting-Final-Results-PDF

[14] See https://www.brooklinema.gov/DocumentCenter/View/4536/May-25-2010-Annual-Town-Meeting-Combined-Reports-with-Supplements-PDF for full text

Would the proposed changes apply to future e-mails sent to the listserv via reply-all or just original posts?
All future messages to the TMMA list, including replies, would be made publicly readable.

I'm a new TMM and I have a really basic question, and I'm embarrassed to ask it publicly.
New TMMs could always ask a question privately to a smaller group (such as a precinct email list or a TMM mentor). However, basic questions asked on the TMMA listserv tend to get answered quickly and from several perspectives, which can be helpful not only to the questioner but also to the public.

7. Conclusion

In summary, this article is a resolution calling for all future messages sent to the TMMA-sponsored email list to be publicly readable no later than September 1, 2022. Adoption of this resolution would send a strong message to the TMMA Board that members of Town Meeting favor transparency and openness in TMMA listserv communications. The specifics of setting up a new email list or changing settings on the existing TMMA listserv would be left up to the TMMA Board. These changes would benefit the general public by making it easier for them to learn about issues facing the Town, Town Meeting procedures, and the viewpoints of their elected Town Meeting representatives.

MOTION OFFERED BY THE PETITIONERS

Voted that the Town adopts the following Resolution:

WHEREAS transparency is vital to a functioning democracy; and

WHEREAS the Town Meeting Members Association (TMMA) maintains an e-mail list for communications among members of Town Meeting that is not currently readable by the general public; and

WHEREAS messages sent to the TMMA e-mail list include substantive discussion about warrant articles and other Town business, updates about Town Meeting schedules and procedures, announcements from the Moderator, and other information of relevance to the general public; and

WHEREAS technology exists that makes group e-mail messaging easy, free, secure, and readable by the general public; and

WHEREAS allowing the general public to read messages sent to the TMMA e-mail list would better inform the public about issues facing the Town, Town Meeting procedures,

and the viewpoints of elected Town Meeting representatives.

NOW THEREFORE BE IT RESOLVED THAT:

The Town Meeting Members Association (TMMA) Board should take necessary action to ensure that, by no later than September 1, 2022, all future messages sent to the TMMA e-mail list shall be publicly readable.

SELECT BOARD'S RECOMMENDATION

The Select Board is not making a motion under Article 35.

ADVISORY COMMITTEE'S RECOMMENDATION

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

XXX

ARTICLE 35

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee did not make a recommendation on Warrant Article 35.

Executive Summary	Warrant article 35 is a non-binding resolution that seeks to make future email communications sent to the Town Meeting Members Association (TMMA) email list publicly readable. The resolution calls for this change to be made no later than September 1, 2022.
Voting Yes will...	Encourage the TMMA Board to make future email communications sent to the TMMA email list publicly readable. by September 1, 2022
Voting No will...	May send a message to the TMMA Board to not make the TMMA list publicly readable

Introduction
The goal of warrant article 35 is to improve the transparency of the discussions Town Meeting members have via email on the TMMA list by encouraging the TMMA board to make the list publicly readable by September 1, 2022. The resolution would apply only to communication made after the change to the list was implemented.

Discussion

The Advisory Committee discussion centered around three topics:

- whether a resolution of Town Meeting was an effective way to request this change
- the technological changes necessary to change access to the list
- the impact that making the TMMA list publicly readable might have on the openness of discussions

The Town Meeting Members Association (TMMA) is an independent organization that operates the TMMA email list, which all members of Town Meeting are invited to join. TMMA volunteers maintain and moderate the list. People who are not members of Town Meeting, i.e., at-large members of the Advisory Committee, are part of the list to better facilitate communication about upcoming meetings and hearings; and to provide additional detail on issues coming before Town Meeting. The petitioners feel this information should be more widely available as it will help members of the public better

understand the matters coming before Town Meeting and the positions taken by their TMMs. They also feel that bringing this warrant article will allow Town Meeting to discuss the change and provide input to the TMMA.

Members of the TMMA Board expressed concern about the warrant article itself and about the level of effort needed to implement this change. They noted this warrant article targets an independent organization and asks them to make a specific change. While the petitioners cited other warrant articles, such as the ban on crated veal and fur products, they felt were similar, none asked a single organization to make a change to the services they provide or operational processes. Requests have been made to the TMMA leadership in the past to make the list more widely readable and, historically, the Board has not taken action on those requests. Warrant article 35 is a nonbinding resolution and its passage at Town Meeting does not guarantee the requested change will be implemented.

There was recognition and appreciation that the TMMA list is maintained by volunteers and this change would require additional work to configure a separate read-only audience. Maintaining two lists would likely require additional ongoing work as well as it was unclear if each new member of the public wishing to read the list would need to be added manually via a request process.

Finally, there was some discussion about the potential effect that opening the list might have. The TMMA list is viewed as a safe space to ask questions and members might not feel as comfortable asking questions if the list was more widely readable. It was also pointed out that relatively few TMMs post in the list which could be viewed by voters as a lack of engagement and Select Board and Advisory Committee members are governed by the OML and cannot participate in discussions on the TMMA list.

The Advisory Committee (by a vote of 16-2-2) chose to not make a recommendation on this warrant article because it felt it had no better understanding of the subject matter of this Warrant Article and the decision should be left to individual Town Meeting Members.

Article Description	TMMA email list
AC recommendation (Favorable Action unless indicated)	**No recommendation, 16-2-2**
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	A
Kelly Hardebeck	
Anita Johnson	Y
Georgia Johnson	Y
Alisa Jonas	N
Janice Kahn	
Carol Levin	
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O'Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	

ARTICLE 36

THIRTY-SIXTH ARTICLE

Reports of Town Officers and Committees

Moderator's Committee
Update on the Recommendations of the Brookline Fiscal Advisory Committee (BFAC)
Second of Three Semi-annual Reports to Town Meeting
March 23, 2022

Committee Members:
David Pollak (Chair), Petra Bignami, Ben Franco, Janet Gelbart, David Kirschner, Mike Toffel

OVERVIEW

Pursuant to the passage of Article 36 at the 2021 Annual Town Meeting, this Moderator's Committee (MC) is reporting to Town Meeting (TM) on what has and has not occurred in relation to the recommendations of the Brookline Fiscal Advisory Committee (BFAC) since it presented its report in February 2020. This is the ***second*** of three semi-annual reports, and is presented as a supplement to our first report dated August 5, 2021.[1]

Brookline's annual expenses are projected to grow faster than its annual revenues, resulting in a steadily deepening "structural deficit" that the Town administration has projected to be $33 million by FY 2027.[2] Given Brookline is legally prohibited from incurring budget deficits, the Town *must* implement measures to increase annual revenues and/or reduce annual expenses to close the portion of the projected gap that occurs each fiscal year. The BFAC report dissects the many underlying challenges that contribute to the town's structural deficit, and offers a range of recommendations on how the town might increase (net) revenues, slow the pace of its rising expenses, and increase the Town's sophistication in its use of data, analysis, collaboration, and strategic thinking to improve its fiscal and operations management.

In its 2020 report, BFAC made 18 recommendations (and additional "sub-recommendations", totaling 35), to seven Boards and Committees. Our initial report was similarly organized, broken down into 18 sections with updates based on our meetings with, and written input from, those seven Boards and Committees (listed in Table 1 below). This second report is organized more simply using the following six overarching themes:

1. Increasing Revenues
2. Managing Costs and Optimizing Outcomes
3. Fiscal Management Best Practices
4. Financial Risk Management
5. Long-Term Planning
6. Warrant Article Review

[1] All BFAC Moderator Committee reports are available at https://www.brooklinema.gov/1978/Moderators-Committee---Brookline-Fiscal-

[2] This reference is taken from the Long-Range Financial Projection section of the FY 2023 Interactive Budget found here: https://stories.opengov.com/T011Iiy2w/published/undefined . The full text of the reference is as follows: "These assumptions create an escalating deficit position for FY 2024 primarily for the Schools, starting at $6.9 million in FY 2024 and reaching $33 million by FY 2027. It should be noted that the deficits in the out years are inflated because they are built upon a deficit in the prior fiscal year. In fact, the Town must balance its budget each year, and that balanced budget will become the base for the following year's projection. Nonetheless, the cumulative deficits in the Long Range Projection are a reminder that the Town must find ways to support a sustainable budget in the long term."

EXECUTIVE SUMMARY

On the plus side, we see an enormous level of commitment and hard work on the part of our staff and citizen government, and incremental changes that align with BFAC's recommendations:

- There is a commitment to improving budgeting discipline, process, and reporting at both the Town and Public Schools of Brookline (PSB). Budget books are notably improved. There is expressed interest in new approaches including zero-based and outcome-based budgeting. Individual Select Board members have been assigned to every Department, have met with Department Heads, and are attending Advisory Committee (AC) budget hearings when they can (along with Deputy Town Administrator Melissa Goff).
- The Advisory Committee has revised its budget review procedures to allow for earlier input into the process, and analysis of the budget's consistency with priorities stated at the start of the budget cycle.
- The FY23 Budget continues to make progress in funding the town's reserves, pensions, and Other Post-Employment Benefits (OPEBs).
- Large project permitting and the progress of the Boylston Street Corridor Study are examples of focused work on economic development to support new growth/revenue.

However, the challenges at the heart of BFAC's work remain largely unmitigated:

- Enormous budget pressures persist:
  - On the Town side, virtually all department budgets represent significant compromises. Several of these directly limit staff's ability to implement BFAC recommendations.
  - The use of welcome one-time COVID related funds to bolster recent budgets may exacerbate budget gaps when those funds go away.
  - A recurring theme at Advisory Committee Budget Hearings has been the concern that Brookline's pay scales are not competitive in many critical areas, limiting ability to hire, eroding staff morale, and in some cases accelerating attrition.
  - The schools also face budget challenges, as indicated by PSB's initial Budget Request which is well above the Town School Partnership's initial budget allocation.
- Both Town and School leadership and finance departments have expressed interest and willingness toward adopting financial management best practices but simply cannot progress in this work because of staffing constraints.
- There is broad agreement that economic development is critical to the town's financial health, and that long-term planning is essential to successful economic development. However, there is an enormous bottleneck constraining planning, with vital work being pushed off years into the future because funding has not been allocated to hire additional staff and consultants to engage the public and carry out the work.
- Many of BFAC's recommendations, taken as a whole, urge our leaders to work more strategically, with more integrated planning across Town and Schools, and with a greater emphasis on multi-year horizons and long-range planning. We have seen interest and uptake from the schools and Advisory Committee in several of the themes in BFAC's report, but because the Select Board has not discussed or considered many of the BFAC recommendations, progress has been stymied.

TABLE 1. Summary of the BFAC Moderator Committee's Findings

This table summarizes the MC's understanding of the deliberations and actions that have occurred relating the BFAC's recommendations since BFAC issued its report in February 2020.

BFAC MC Progress Report #2

This table summarizes the progress each public body has made deliberating each BFAC recommendation

Legend:
- **Not discussed**: no substantive discussion of the recommendation at a public meeting
- **No decision**: had a substantive discussion of the recommendation at a public meeting but reached no decisions
- **Accepted part**: as a result of discussions at a public meeting, decided to accept part of the recommendation; progress is detailed in meeting minutes
- **Accepted**: as a result of discussions at a public meeting, decided to accept recommendation; progress is detailed in meeting minutes
- **Rejected:** as a result of discussions at a public meeting, decided to reject recommendation; explanation of why is detailed in meeting minutes

BFAC Recommendation		Select Board[1]	School Committee	Advisory Committee	Audit Committee	CTO&S	EDAB	Planning Board
INCREASING REVENUES								
10	Financial Improvement Plans (FIP)	Not discussed	Accepted					
11	FIP assessments - PILOT, bldg rental	Not discussed	No decision					
12	New economic development	Not discussed					Accepted	Accepted
15	Strategic override plan	Not discussed						
15.1	Broadest range of uses	Not discussed						
15.2	More information to voters	Not discussed						
15.3	End piecemeal approach	Not discussed						
15.4	Include reserve maintenance	Not discussed						
MANAGING COSTS WHILE OPTIMIZING OUTCOMES								
1	Performance management	Accepted	Not discussed					
6	Key program evaluation	Accepted	Accepted					
6.1	Investment analysis	Not discussed	Accepted	Accepted				
6.2	Metrics for prioritization	Not discussed	Accepted	Accepted				
6.3	Zero based budgeting	Not discussed	No decision	Not discussed				
10	Financial Improvement Plans (FIP)	Not discussed	Accepted					
11	FIP assessment - costs	Not discussed	No decision					
FISCAL MANAGEMENT BEST PRACTICES								
2	Financial review & budget	Not discussed	No decision	Accepted				
4	AC structure/skills re budget review	Not discussed		Accepted		No decision		
7	SB Responsibilities	Not discussed						
7.1	Lead by example	Not discussed						
7.2	Clarify financial authority	Not discussed						
7.3	Increase transparency	Accepted	Accepted					
16	Single Town-School financial model	Not discussed	Not discussed	No decision				
18	Require TMM financial training	Accepted		Accepted				
FINANCIAL RISK MANAGEMENT								
5	Change: audit firms; audit partners	Accepted part			Accepted part			
13	Minimum reserves	Accepted		No decision[2]				
13.1	Unassigned fund balance	Accepted		Accepted				
13.2	Annual Stabilization Fund budget	Accepted		Accepted				
13.3	Stabilization fund level	Accepted		No decision[2]				
13.4	Total reserves	Accepted		Accepted				
14	Maximum debt policy	Not discussed		No decision				
14.1	Minimum at Moodys A level	Not discussed		No decision				
14.2	Moody's AA level by FY36	Not discussed		No decision				
14.3	Full disclosure of borrowings	Not discussed		Not discussed				
17	Annual Moody's scorecard review	Accepted	Rejected[3]	Not discussed				
LONG-TERM PLANNING (also see Recommendations 15-15.4 above)								
8	Revisit Town-School Partnership	No decision	No decision					
9	Capital planning	No decision	Accepted	Accepted				
WARRANT ARTICLE REVIEW								
3	Warrant article development	No decision		Accepted part				
4	AC structure/skills re article review	Not discussed		Accepted part		No decision		

Footnotes:
[1] While the Select Board has not discussed many BFAC recommendations or delegated their consideration to others, the Town Adminstrator and staff are working on issues underlying some of those recommendations.

[2] Recommendation 13 was discussed by the Advisory Committee, and left to the Select Board and Administration to develop and propose policy

[3] School Committee's response on Recommendation 17 is that it would be appropriate to receive and consider an annual review comparing the Town's financial position to Moody's Scorecard criteria, but that conducting this comparison is not a School Committee function.

INCREASING REVENUES

(BFAC Recommendations 10, 11 12, and 15 Recommendation 15 is also discussed under the Long-Term Planning section of this report.)

Revenue enhancement is one side of the structural deficit challenge, broken down by BFAC into four categories or "levers" that the town can control:

1. Economic development,
2. Local fees and taxes (local receipts),
3. Payments in lieu of taxes (PILOTs), and
4. Operating overrides.

Economic Development

New economic development has several desirable features, including:

- Generating (net) revenues above-and-beyond the Town's annual 2 ½% property tax increase, and can enable the Town's total annual revenue growth to more closely match the Town's total annual expenditures growth;
- Providing property tax revenues from new users rather than existing taxpayers; and
- Sometimes also creating new sources of local fees (e.g., local receipts from the retail and hospitality sectors).

The Town's work on economic development continues, with details provided in the Economic Development Advisory Board's (EDAB's) update memo (see weblink in Appendix 3). Most recently, there has been significant progress along a number of fronts around allowing and encouraging R&D/laboratory commercial development in Brookline. These include EDAB's October 2021 vote to accept the Lab Report, plans to propose new enabling zoning language for Town Meeting's approval, and creation of the 10 Brookline Place Study Committee that will convene and begin work in April 2022.

Of continuing concern is the slow pace of progress in planning for economic development, which continues to be severely constrained by the lack of resources allocated to the Department of Planning and Community Development's staffing and consulting budget. While only a small part of that Department's work, these planning activities are critical to economic development and occur at three levels:

- Large project study and entitlement (e.g., hotels, Waldo-Durgin). Large projects require an immense amount of attention, and generally get that attention because "a bird in the hand" needs to be dealt with in a timely way.
- Commercial development corridor studies. While the work on the Boylston Street Corridor is advancing, that is only the first of several corridor studies that were called for in the 2005 Master Plan. There seems to be a sense that the current approach to economic development only allows one of these efforts at a time, although that significantly prolongs (by decades) the time by which they will be completed.
- Town wide comprehensive planning and zoning reform. In Fall 2021, Town Meeting passed Article 26, a resolution calling for the commencement of comprehensive town wide planning and zoning reform. However, there is far more long-term planning work than can be done in the near term, and a lack of consensus amongst all of the stakeholders as to which work

should take priority. Commencement of this work has not been included in the Town Administrator's FY23 budget proposal.

Local Fees and Taxes (Local Receipts)

- The Planning Department has recently developed a proposal to increase fees for demolition permits to cover more of the cost of administering that permitting process – an example of exactly the kind of study and implementation envisioned in BFAC's Recommendation 10 (Fiscal Improvement Plans to increase revenues and control costs).
- BFAC's recommendation that all town departments utilize Financial Improvement Plans (FIPs), while primarily focused on controlling costs and optimizing outcomes, was also directed at all income generating program areas (parking meters, marriage licenses, after-hours school gym rental fees, and many more). While both the Town and PSB pay close attention to these revenue generators, neither has instituted a formal framework for evaluating and optimizing them along the lines of BFAC's recommendation.

Payments in Lieu of Taxes (PILOTs)

The Town Administrator has suggested that there is little that the Town can do to increase revenue from PILOTs except when a major institution needs something from the town.[3] No action has been taken to undertake a PILOT Financial Improvement Plan[4]:

- No action has been taken to more comprehensively investigate whether more revenue could be generated from this source;
- No effort has been undertaken to do a strategic or comprehensive review of Brookline's relationships with tax-exempt institutions in terms of the services and community benefits Brookline residents receive.
- The BFAC recommendation that called for annual disclosures of each PILOT payment has not been adopted.

Operating Overrides

The Town Administrator and SB have rejected the idea of developing a long-range plan of future operating overrides, preferring to wait as long as possible and to convene a situational Override Study Committee when needed to deal with the specific issues and financial realities of that moment.

MANAGING COSTS WHILE OPTIMIZING OUTCOMES

(BFAC Recommendations 1, 6, 10 and 11)

Cost management – including program review – is the other side of the structural deficit challenge. Numerous factors are putting increasing pressure on our budgets, and budget discipline is essential to avoiding (or at least mitigating) the impact of budget cuts.

Several of BFAC's recommendations urge strengthening, standardizing, and formalizing budgeting and program evaluation through systematic performance management, program evaluation, and Financial Improvement Plans (FIPs). These approaches to improving both

[3] See MC's August 5, 2021 Report

[4] See page 46 of the BFAC Report

forward-looking and retrospective planning are of interest to both the School Committee/School Department and the Town Administrator. This is showing up in some new practices, though some aspects of this evolution are more informal and incremental than BFAC envisioned.

A notable area of improvement is in the Budget Books of both the School Department[5] and the Town,[6] which show significant enhancements in organization, clarity, and content.

On the school side, program evaluation is a long-standing commitment. This is conducted for each major curriculum area in a process that typically takes several years for each study. Special education programs get a lot of attention, including areas such as transportation, approaches to staffing, in-district programs versus out-of-district placements. Periodic evaluations are also conducted for smaller programs like school lunch (nutrition, sustainability, cost, participation). The School Committee reports that both zero-based budgeting (ZBB) and outcome-based budgeting (OBB) are being explored and have played a role in the development of the School's FY23 budget.

The Town Administrator is supportive of more robust and structured budgeting and analysis, and sees this as limited only by the lack of staffing resources. The Town has used ARPA funds to hire a grant manager who also serves as a budget analyst – one of two budget analysts that the Town Administrator says are needed to move forward with enhanced performance management, program evaluation, and financial improvement plans. Unfortunately, the recent departure of the town's Finance Director has meant that finance is still short staffed, and these efforts await additional new hires. Additionally, no plan has been presented for how the cost of the budget analyst position will be funded after ARPA funds are exhausted.[7]

In summary, there appears to be buy-in regarding BFAC's recommended best practices for cost management and program evaluation, with some of those practices already being established. However, the commitment to ***implementation*** may be limited by the very budget pressures that must be addressed, and the necessary staffing (and in some cases consulting) resources have not yet been allocated to do much of the desired work.

FISCAL MANAGEMENT BEST PRACTICES

(BFAC Recommendations 2, 4, 7, 16, 18)

The BFAC report included several recommendations designed to make the Town's budgeting process more coherent, comprehensive, and transparent. Key among these was the establishment of quarterly summits to align key stakeholders on town-wide priorities and financial targets. To strengthen accountability and oversight, BFAC proposed restructuring the Advisory Committee so it could provide more robust financial input, and assigning responsibility to individual Select Board members for financial affairs, capital planning, and economic development. In addition, BFAC recommended creating a single budget book for Town and Schools. Finally, BFAC proposed requiring all TMMs to participate in financial training at least once every three years. The Town-School Partnership (had been identified by the Select Board, School Committee, and Advisory Committee as a good forum for the quarterly summits, but though the group meets as

[5] https://www.brookline.k12.ma.us/budgetcentral

[6] https://stories.opengov.com/MnF2THSdk/published/undefined

[7] ARPA funds are one-time dollars that must spent by 12/31/2026

needed, it has not expanded its focus beyond the annual budget. The Town Administrator reported that the structure and goals of the Town-School Partnership are now under review, including discussions of more formal budget summits. He indicated that he and the School Superintendent have drafted a new Memorandum of Agreement that proposes incorporating the Town-School Partnership into the budgeting process. Former Advisory Committee Chair Mike Sandman cited "a lack of leadership on the part of the Select Board on this recommendation."[8]

To incorporate BFAC's recommendations into its procedures, the Advisory Committee has reorganized its subcommittee structure and budget review process by:

- Creating a Budget Oversight subcommittee to review budget priorities and revenue projections with the Town staff early in the budget cycle to allow for timelier input from the Advisory Committee;
- Standardizing the template for subject-focused subcommittees to review budgets with Department Heads in depth, looking deeper at departmental objectives, historical trends, and identifying longer-term concerns;
- Standardizing the template for reporting on departmental budgets including, over time, a standard presentation of each Department's headcount, budget, and its relationship to the whole;
- Reviewing the consolidated budget as presented to the full Advisory Committee by the Budget Oversight subcommittee with its recommendation for action based on the subcommittee's analysis of consistency with the Town's stated priorities

These changes are designed to make the process more efficient and to provide a coherent view of the budget in its entirety instead of a compilation of the individual pieces.[9]
There is also a plan for mid-year budget check-ins with selected departments. The Advisory Committee plans to review its new process after the May 2022 Town Meeting and refine it as needed.

The Advisory Committee is currently considering revising its budget reconciliation process to formalize the way budget modifications to departmental budgets are documented, prioritized, debated, and consolidated into the balanced budget ultimately presented to Town Meeting.[10]
While the Select Board does not agree that its individual members should cover a focused portfolio of issues, it has assigned its members to various departments to engage in budget discussions and to support communication with the Advisory Committee, allowing Select Board members to begin exerting budgetary and financial leadership.

Though neither the Select Board nor the School Committee support combining their financial plans into a single document, both expressed interest in achieving better financial integration and information sharing. The OpenGov platform has facilitated this process but nothing more substantive has been done in part because senior School Department administrators have only been on board since September 2021.

[8] Mike Sandman email re: Moderator's Committee on BFAC dated 2/13/2022.
[9] AC Process Revisions – 9-9-2021 https://www.brooklinema.gov/DocumentCenter/Index/1812
[10] Proposed AC Budget Reconciliation Process presented at AC Meeting of 3/10/2022

At the November 2020 Special Town Meeting, Town Meeting did not approve a proposed bylaw change that would have *required* financial training for all TMMs, but instead approved a bylaw change that stated that any elected or appointed town official that "has or could reasonably be expected to have" input into the Town's financial condition must be *offered* financial training.[11] The Town Administrator initiated a (virtual) training session on the Town's budgeting process in January 2021, and continued the practice in 2022.

FINANCIAL RISK MANAGEMENT

(BFAC Recommendations 5,13,14,17)

The BFAC report included several recommendations designed to strengthen the Town's financial risk management practices and processes: audit firm/partner rotation and scope, maintenance of reserves, debt policy, and bond-rating maintenance with respect to Moody's Scorecard. BFAC made these recommendations to the following Boards and Committees: Select Board, Audit Committee, Advisory Committee, and School Committee.

The Town's review and consideration of BFAC's risk management recommendations has been variable. Some discussion has occurred with regard to audit firm/partner rotation, maintenance of minimum reserves, and debt policy. However, many particulars of Recommendations 13 and 14 have not been formally discussed or deliberated.[12] Our discussions and correspondence with members of the Select Board, Audit Committee, and Advisory Committee highlighted broader questions regarding the specific roles and responsibilities of these bodies with regards to risk management. It is clear that members of each body consider elements of risk management as within their purview, but there are opportunities for additional specificity as to which metrics each body is reviewing. For example, the Advisory Committee does review budget reserves and transfer requests (both elements of risk management cited in BFAC's recommendations), but does so primarily within the context of balancing the budget. It is unclear whether anyone other than the Town Administrator is formally considering the reserve values and monitoring the financial ratios embedded in the BFAC recommendations.

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[11] Combined Reports of the November 17, 2020 Special Town Meeting, page 28-3 (PDF page 280), https://www.brooklinema.gov/DocumentCenter/View/22965/Combined-Reports-November-17-2020-Special-Town-Meeting-with-supplements

[12] From this MC's August, 2021 Report:

"Select Board has begun to implement Recommendation 13 but cautions that, given the scale of the called for increases in reserves, plans to fully implement this recommendation in phases over several years. Starting in February 2021, the Board began to make investments in reserves as part of the annual budget process – an additional $3.8M was directed to the Stabilization Fund in FY21 and FY22 – and plans to continue to use the Stabilization fund as the mechanism through which Brookline's unassigned fund balance will be restored. This aligns with an Unassigned Fund Balance policy the Town Administrator proposed to the Select Board in February 2020. The Select Board has also made a conscious effort to increase total fund balance and it grew from 12.23% in 2020 to 12.44% in 2021. The Town Administrator was uncertain whether Recommendations 13.2 and 13.4 had been formally adopted, but will insure all necessary votes are taken before the end of 2021.

Advisory Committee believes the Select Board is primarily responsible for implementing Recommendation 13, and that the Audit Committee is in the best position to retrospectively monitor compliance with the Town's reserve policies.

AC pointed to the investment in reserves included in the FY22 budget, despite the revenue decline due to Covid-19, as an example of the steps that have been taken to date. This brought the Total Fund Balance into line with the minimum recommended by the rating agencies."

As to the Audit related risk management recommendations, the Audit Committee considered but did not adopt the requirement to change the audit firm on a regular basis. The Select Board recently renewed the current agreement for three years, and the Audit Committee said it will reconsider changing audit firms when the current auditor contract expires. In its December 2021 meeting, the Audit Committee decided to ask the current auditor to assign a new partner beginning June 30, 2022. However, it did not create a policy requiring audit partner rotation in the future. We anticipate that policies might be implemented with regard to audit firm and partner rotation by this Moderator Committee's 3rd report in Fall 2022. The Audit Committee chair reported that there are no plans for the Audit Committee to further discuss expanding audit scope to also monitor "internal adherence to financial controls and policies."[13]

Progress was made regarding maintaining reserves (BFAC Recommendation 13). In response to a request for information for this report, the Town Administrator highlighted the following statement from the FY 2023 Budget Message: "I am pleased to report that the Town is on track to increase its ratio of reserves to 10% of revenue, which is the accepted minimum rate for Aaa-rated communities."[14] Town senior staff also provided the data in Appendix 2 that enabled us to calculate the following financial metrics related to BFAC recommendations 13 and 14.

[13] The Town's Fiscal Policies are included in the annual budgets and are available at https://www.brooklinema.gov/851/Budget-Central

[14] The Town Administrator's full comments can be found in the Appendix of this report.

Table 2. Financial metrics related to BFAC Recommendations

BFAC Recommendations		2019 Actual	2020 Actual	2021 Actual	2022 Projected	2023 Projected
13.1	Ratio of Unassigned Funds to Revenues > 10% *(Town policy)* or even 12.5% *(BFAC target)*	10.8%	10.2%	11.1%	12.2%	13.5%
	The 2019-21 Actuals conform to Town Fiscal Policy and the 2023 Projection exceeds BFAC's 12.5% target.					
13.2	Ratio of Stabilization Fund to Revenues > 0.67% *(BFAC target)*	2.2%	2.2%	2.5%	3.2%	4.0%
	These funding levels fulfill BFAC's recommendation. BFAC also recommended establishing a policy, which has not been done.					
13.3	Ratio of Stabilization Fund to Unassigned Fund Balance > 50% *(BFAC target)*	25.0%	27.0%	30.0%	36.0%	43.0%
	This ratio is trending well, and is nearing the level recommended by BFAC.					
13.4	Ratio of Total Fund Balance to Revenues *(BFAC target: increase from 12.3% to 15%)*	12.3%	12.2%	12.4%	12.5%	12.5%
	The modest headway in raising this ratio indicates the challenge of increasing the Total Fund Balance at a higher rate than increasing revenues. BFAC also recommended establishing a policy, which has not been done. The 15% target "is consistent with the recommendation of the Town's financial advisor and would bring reserves to the bottom level of the AA rating range."[15]					
14.1-14.2	Ratio of Net Direct Debt to Operating Revenues to at least the A level (0.67x<n<3x) *(BFAC short-term target)* and by AA level (0.33x<n<0.67x) *(BFAC target by FY 2036)*	0.57	0.98	1.39	1.30	1.20
	BFAC's recommendation to "Establish a maximum debt policy based on the ratio of Direct Debt to Operating Revenue" has not been acted on. Because recent debt exclusion votes (Ridley, BHS, Fisher Hill, Driscoll) are all "excluded debt" and are funded outside the limits of Proposition 2 ½, a policy would need to address both non-excluded and excluded debt with appropriate ratios for each/both.					

Source: Calculations based on data provided by Deputy Town Administrator Melissa Goff and Acting Finance Director Justin Casanova-Davis, March 2022, which are reported in Appendix 2, which also contains definitions.

Broadly, Recommendation 14 calls on the Select Board to consider the impact new debt would have on the ratios outlined in the "Moody's Scorecard" and to disclose additional information to taxpayers about existing and potential forthcoming debt. No formal discussion or deliberation has occurred on this matter. The Town Administrator's comments with regards to debt policy can be found in the Appendix.

Recommendation 17 regarding review of the Town's financial metrics in comparison to the Moody's Scorecard was adopted and implemented by the Select Board. This review will be completed by the Finance Director.[16]

[15] BFAC Report page 48

[16] From this MC's August 2021 Report: "Finally, the Town has adopted BFAC's recommendation that we annually compare the Town's financial condition with the Moody's Aaa scorecard (Recommendation 17)."

LONG-TERM PLANNING

(BFAC Recommendations 8, 9 &15. Recommendation 15 is also discussed under the Increasing Revenues section of this report.)

BFAC observed that current discussions about the Brookline's financial situation are dominated by a focus on the year-over-year changes necessary to balance the upcoming fiscal year's budget. Projected deficits in the "out years" are acknowledged but largely attributed to a conservative approach to budgeting with the expectation that actual deficits will not be as significant as are forecast and can be addressed with small (but not necessarily painless) year-over-year adjustments.

BFAC's recommendations emerged from a belief that Brookline's current approach to financial decision making must be improved in order to address the Town's current and anticipated future financial challenges. Specifically, the BFAC committee believed:

- The Town-School Partnership must be rewritten to clarify its terms and to force a reexamination of how revenues and costs are allocated.
- An improved capital planning process must be implemented for both the Town and Schools.
- Brookline must develop a plan of periodic capital and operating overrides in order to create predictability about when taxes will increase and by how much.

Has the Town-School Partnership been rewritten to clarify its terms and reexamine the allocation of revenues and costs?

The Town-School Partnership has yet to be fully revised or rewritten. Some activity has occurred – some terms have been clarified and how shared Town and School costs are allocated has been revised – but discussion and/or action has not occurred on the other aspects of BFAC's Town-School Partnership recommendation.[17]

Recent turnover in key administrative positions include the Town's Finance Director's departure in August 2021,[18] and the arrival of our new Deputy School Superintendent for Administration & Finance in July 2021,[19] and new School Superintendent in August 2021.[20] These changes, and the resultant loss of institutional knowledge, has played a role in the limited action to date.

Has a new capital planning process been implemented for the Town and Schools?

The overall capital planning process has not changed since BFAC delivered its recommendations in February 2020.[21] Both the School Committee and Advisory Committee have discussed

[17] See page 13 of the Moderator's Committee Report dated August 4, 2021, for more detailed information.

[18] Justin Casanova-Davis was appointed the Acting Finance Director effective August 16, 2021. Previously he worked as the Assistant Town Administrator. A permanent hire is expected to be announced early in FY2023.

[19] PSB Deputy School Superintendent for Administration & Finance Sam Rippin attended a Moderator's Committee meeting in July 2021 several days after he joined the district.

[20] PSB Superintendent Dr. Linus Guilory joined the Brookline Public Schools from the Lowell Public Schools where he served as the Chief Schools Officer.

[21] Chapter 270 of the [Massachusetts] Acts of 1985 (the Brookline "Town Administrator Act" requires the Brookline Town Administrator to prepare an annual financial plan that includes a Capital Improvement Program (CIP). The

reforms to the roles they play, and each has voted to accept BFAC's Recommendation 9 and considered steps toward implementation.[22] However, the Select Board has not discussed, voted on, or implemented any changes to the Town's capital planning process (known in Brookline as the CIP process) since BFAC delivered its report. Because the Select Board controls the CIP process, no changes can occur without its involvement.

At the department level upcoming capital needs are developed and presented, forming the basis for capital funding requests. We are aware of this ongoing work in several departments (DPW, parks, buildings, fire department) with some good examples of individual plans such as the just completed Brookline Transportation and Mobility Plan[23], the Parks, Open Space and Recreation Department's September 2020 Strategic Master Plan Update and the November 2020 Athletic Fields Needs Assessment and Master Plan[24]. The need for a strategic overall approach remains.

Due to the lack of process change, BFAC's recommendation that a common capital investment evaluation framework be developed and implemented, and that a position be created with primary responsibility for overseeing capital improvements across Town and Schools have been left unaddressed.

Has a plan been developed to periodically schedule operating and capital overrides?

As discussed in the Revenues section of this report, no schedule of periodic operating and capital overrides has been developed.[25] The Town Administrator indicated that the Board is inclined to continue the current practice of establishing ad hoc override study committees to study and evaluate proposed operating overrides.[26] While the Select Board does not appear poised to change the override process, the Town Administrator did suggest that the Select Board might alter its approach to future override study committees to incorporate BFAC's recommendations 15.1-15.4.

CIP is six-year forward looking capital plan specifying in what fiscal year approved projects will be completed and what funding sourced will be used to pay for the work. The CIP is developed by a staff working group comprised of all the department heads that have requested a project be included in the CIP. The working group is led by the Deputy Town Administer and the Director of Planning & Community Development. Both working group "co-chairs" report to the Town Administrator and, ultimately, to the Select Board. The working group recommends a preliminary CIP to the Town Administrator, who then presents it to the Select Board. The Preliminary CIP is also presented and reviewed by the Planning Board and the Capital Sub-Committee of the Advisory Committee.

[22] See School Committee minutes from 9/23/21, minutes of the School Committee Finance Sub-Committee from 12/15/21, and the School Committee Capital Sub-Committee from 12/14/21.

[23] The Transportation and Mobility Plan can be found here: https://brooklinema.gov/1773/Transportation-Mobility-Improvement-Prog

[24] These Parks Department documents can be found here: https://www.brooklinema.gov/1597/Parks-Recreation-Master-Plan

[25] Chapter 59 Section 21C of the Massachusetts General Law limits the size of year-over-year property tax increases in every Massachusetts city and town to 2.5 percent (excluding new tax growth). To increase taxes by more than 2.5 percent or to fund the cost of a large capital improvement, a majority vote must be obtained from the voters through a ballot question. The power to place an override (a permanent tax increase beyond 2.5 percent to fund the operating budget) or debt exclusion (a temporary tax increase to fund the cost of a capital expense) question on the ballot rests entirely with the Select Board.

[26] See Town Administrator's memo to the Moderator's Committee dated March 1, 2022.

In summary, small changes have occurred to the Town-School Partnership, and the School Committee and Advisory Committee have sought to implement BFAC's recommended changes to the capital planning process. However, staff arrivals and departures and lack of action by the Select Board have prevented additional action from occurring. Additionally, there is some indication that the Select Board may informally adopt some BFAC recommendations by changing the direction it gives staff and appointed committees, but no firm commitment has been made.

WARRANT ARTICLE REVIEW

(BFAC Recommendations 3 and 4. Recommendation 4 is also discussed under the Fiscal Management Best Practice section of this report.)

The warrant articles review process consists of the Advisory Committee and Select Board—and any other public body that wishes to offer a recommendation to Town Meeting—holding meetings and public hearings to discuss the articles in the weeks leading up to Town Meeting. These bodies sometimes propose amendments and substitute motions, and typically issue reports describing their analysis and their recommendation that Town Meeting vote for or against each article.[27] These reports are compiled in (a) the Combined Reports (often 500-700 pages) that is provided to TMMs a few weeks before Town Meeting, and (b) Supplements distributed subsequently, including during the days when Town Meeting is in session. The BFAC report expressed concern that inadequacies in the Town's processes have serious consequences, concluding that "warrant articles often have budgetary impacts that are not well understood when they are voted on by various committees and by Town Meeting and often trigger an opaque process (rather than transparent discussions) about which other priorities will see reduced funding to compensate."
Two BFAC recommendations sought to address these concerns: one focused on structure, the other on process. We describe each of these approaches and the progress that has (and has not) been made to engage with these recommendations.

Structural reform to improve the warrant review process

BFAC called for Committee on Town Organization and Structure (CTO&S) or a new committee to determine whether modifying the Advisory Committee's scope, structure, and composition would better provide it with the skills and time to improve its analysis of warrant articles—as well as its financial monitoring, analysis, and evaluation of existing policies.[28] BFAC proposed that such a reformulation could enable the Advisory Committee to "provide apolitical expertise," which could result in more robust analysis of an article's technical, legal, financial, and

[27] Each article is reviewed by an AC subcommittee, which invites the principal petitioner to answer questions, receives comments from the public, and votes on whether to recommend the petitioner's article or an AC-subcommittee-authored amended article. The matter is then discussed again at the full AC, where the AC Subcommittee presents its report and recommendation, the petitioner is invited to present their position, and a discussion among the full AC ensues, often resulting in a vote that becomes AC's recommendation. Meanwhile, the Select Board holds its own set of meetings to consider each Warrant Article, and typically votes at a subsequent meeting. Other public bodies may also choose to discuss any Warrant Article and vote their recommendation.

[28] BFAC Recommendation 4: "Advisory Committee Structure and Skills: Change the structure, composition, and scope of the Town's Advisory Committee so it has the required skills and time to focus its attention on financial monitoring, analysis, and policy evaluation of both existing policies and proposed warrant articles."

operational aspects, unconfounded by Advisory Committee members' political preferences to support or oppose the article.

To what extent has the Advisory Committee's scope, structure, and composition been analyzed and altered in an attempt to improve the robustness of its warrant article analyses and reports to Town Meeting, pursuant to BFAC Recommendation 4?

- No independent assessment has been conducted pursuant to BFAC Recommendation 4 to analyze whether Advisory Committee's scope, structure, and composition should be reformed to improve its warrant article analyses and reports. Specifically, CTO&S has reviewed some of these issues (in particular the Article described below) but has not launched such a study, nor has a new committee been appointed by the Moderator or Select Board.
- That said, activities focusing on some of these matters have been led by Town Meeting and the Advisory Committee itself:
  - Town Meeting voted to change the Town bylaws in November 2020 to no longer require the Advisory Committee to "consider any and all…articles in the warrant… for the purpose of making reports and recommendations to the Town" to "consider any or all…articles in the warrant… for the purpose of making reports or recommendations to the Town", providing the Advisory Committee with more flexibility to (a) focus its attention on just a subset of warrant articles it prioritizes, and (b) to issue reports some *without* recommendations to Town Meeting.[29]
  - Town Meeting also voted to change the Town bylaws in November 2020 to allow the Moderator to appoint ten, rather than eight, non-TMMs to the Advisory Committee while reaffirming its preference that all precincts continue to be represented on Advisory Committee by at least one Town Meeting Member (TMM). This was designed to provide the Moderator with more flexibility to recruit the expertise needed on Advisory Committee. (The Advisory Committee membership total of 20-30 members remained unchanged).[30]
  - The Advisory Committee adjusted is subcommittee structure in Fall 2021 by combining some and creating at least one new one.

Process improvements to strengthen the analysis of warrant articles

BFAC Recommendation 3 called for the Select Board to convene a committee of TMMs—the direct beneficiary of improvements—to propose reforms to the warrant article review process, in order to foster more robust analyses and reporting of articles' short- and long-term costs and benefits.[31]

[29] November 2020 Special Town Meeting, Article 29, originally proposed by TMMs Mariah Nobrega, David Lescohier, and Deborah Brown, subsequently amended by AC and TMM John Bassett. This article is still pending review from the Attorney General.

[30] November 2020 Special Town Meeting, Article 29. This article is still pending review from the Attorney General. See details in prior footnote.

[31] BFAC Recommendation 3: "Warrant Article Development: To the extent permissible, reform the warrant article development, review, and implementation process to enable consistent, transparent, robust analysis and reporting of each article's short-term and long-term costs and benefits; to discourage financial appropriations made outside the annual budget cycle; and to take into consideration the limitations of staff time and volunteer resources."

Has the warrant article review process been improved, pursuant to this recommendation?

- The Select Board has not pursued BFAC's recommendation to create a committee to analyze and improve the warrant article review process.
- The Moderator has not independently appointed such a committee.
- No independent analysis has been conducted.
- Town Meeting rejected an article that attempted to make *petitioners* more responsible for the financial analysis of their own warrant articles. Specifically, a warrant article proposed by two TMM/ Advisory Committee members that was endorsed by the Advisory Committee sought to require petitioners "to include the financial impact" in their warrant article explanations. This was rejected by Town Meeting based on concerns that petitioners lack access to financial information, that this requirement risked deterring petitioners from submitting articles, and that the Advisory Committee was better positioned to analyze the financial impact of articles.[32]
- The warrant article review process has nonetheless been modestly improved, owing entirely to the Advisory Committee's internal reform efforts led by Advisory Committee leadership. In September 2021, the Advisory Committee leadership proposed a series of reforms—which they described as being partially motivated by BFAC recommendations—to improve the quality, brevity, and clarity of its warrant article analyses and reports that it contributes to the Combined Report.[33]
    - Several of the Advisory Committee leadership's reform ideas proved controversial within the Advisory Committee, with many proposals remaining unsettled.
        - The Advisory Committee repeatedly debated whether it should analyze and issue recommendations for *all* articles, or whether it should instead focus its efforts to more deeply analyze those articles with operational and/or financial implications. So far, the Advisory Committee has continued its established practice where all Warrant Articles get the same "full" treatment.
        - The Advisory Committee has also repeatedly debated whether it should depoliticize its reports by placing a greater emphasis on presenting the pros and cons for both sides of each Warrant Article. This debate is also unresolved, and while the Advisory Committee has implemented a standard summary at the top of each of its reports that includes "pros" and "cons", the Fall 2021 Special Town Meeting reports carried on the established practice of emphasizing the Advisory Committee's majority opinion.
- The Advisory Committee successfully enacted some reforms to its warrant review process. For example, to foster a more informed discussion at Advisory Committee subcommittee meetings, the Advisory Committee has begun asking petitioners to complete a standard form before their article is discussed at the subcommittee meeting. Also, the Advisory Committee began using a more standardized and succinct report format for its submissions to the Fall 2021 Special Town Meeting Combined Reports. However, the Advisory Committee has not

[32] Fall 2021 Special Town Meeting Article 27, submitted by TMMs & AC members John Doggett and Neil Gordon, proposed amending the Town's bylaws to require warrant article petitioners include fiscal impact in their warrant article submission. See page 323 of "Combined Reports November 16, 2021 STM with Supplements 112921" https://www.brooklinema.gov/1020/Town-Meeting-Files

[33] "Many of the changes we are proposing reflect recommendations by BFAC, set into the context of AC process." *AC Process Revisions: 9/9/2021.* See pages 14-16 of *Advisory Committee Minutes: September 9, 2021.*

evaluated whether TMMs found its new reports to be more accessible and informative; CTO&S briefly discussed the possibility of doing so, but chose not to.

- The Advisory Committee elected a new Chair in early 2022, and is discussing enacting several additional reform ideas in preparation for the May 2022 Annual Town Meeting, some of which may affect its review of warrant articles. For example, the Advisory Committee announced plans to more clearly and centrally communicate to the public and TMMs its schedule for when each article will be discussed.
- The Select Board recently announced that it will designate Select Board members to attend Advisory Committee warrant article reviews, which might enable the Select Board to avoid engaging in duplicative conversations at its meetings and to decide which articles to prioritize for its discussion / analysis / recommendations.

In summary, while the Advisory Committee has shown real interest in BFAC recommendations 3 and 4, it is slow to change itself, and is doing so on its own without any meaningful input or action from the Select Board, CTO&S, the Moderator or TMMs themselves.

APPENDIX 1 – BFAC Recommendations (abbreviated)

Recommendation 1. Performance Management

The Select Board and School Committee should have their administrations adopt common financial policies, to the extent possible, and create and institute performance management metrics to allow for better evaluation of budgetary decisions and lessen the influence of anecdotal statements and special interests in financial decisions.

Recommendation 2. Financial Review and Budget Summits

The Select Board, School Committee, and Advisory Committee should adopt a financial review and budget process requiring periodic summits among the Select Board, the School Committee, and the Advisory Committee.

Recommendation 3. Warrant Article Development

To the extent permissible, reform the warrant article development, review, and implementation process to enable consistent, transparent, robust analysis and reporting of each article's short-term and long-term costs and benefits; to discourage financial appropriations made outside the annual budget cycle; and to take into consideration the limitations of staff time and volunteer resources.

Recommendation 4. Advisory Committee Structure and Skills

Change the structure, composition, and scope of the Town's Advisory Committee so it has the required skills and time to focus its attention on financial monitoring, analysis, and policy evaluation of both existing policies and proposed warrant articles.

Recommendation 5. Auditor Rotation and Scope

Change the Town's independent audit and accounting firm at least every ten years. Rotate the lead partner assigned to the Town every five years. The next audit firm Brookline appoints should complete the annual audit of the fiscal year-end financial statements and conduct a sufficiently inquisitive review of the Town and School's internal controls.

Recommendation 6: Program Evaluation

Evaluate key programs and services on a periodic basis to assess their effectiveness and completion of objectives and to identify potential cost savings and opportunities for the redeployment of resources.

- **Recommendation 6.1:** Require an investment analysis for new initiatives as well as look-back assessments.
- **Recommendation 6.2:** Create rubrics and metrics for establishing spending and investment priorities, including the identification of funding sources.
- **Recommendation 6.3:** Pilot test zero-based budgeting (ZBB) and outcome-based budgeting (OBB).

Recommendation 7. Select Board Fiscal Leadership Responsibilities

Establish the practice of designating three individual Select Board members as having primary responsibility for a) financial affairs of the Town, b) capital investment plans and activities, and c) economic development activities inclusive of long range planning and zoning reform, with each Select Board member to monitor, evaluate, and supervise the work of staff with regard to the relevant affairs of the Town. In addition, establish policies and review responsibilities and authorities to have Select Board members lead by example in the area of financial discipline and to clarify and consider strengthening the role of the Town Administrator. Finally, implement a staff-based financial and capital management structure mirroring the Town's organization with appropriate oversight assigned to School Committee members and subcommittees.

- **Recommendation 7.1:** Encourage Select Board Members to lead by example in establishing improved financial decision making.
- **Recommendation 7.2:** Clarify positions of financial responsibility and authority
- **Recommendation 7.3:** Increase transparency and comprehension through the professional revision of 1) documentation for budget policies and procedures; and 2) format and content of financial reports.

Recommendation 8: Town-School Partnership

Revisit the structure, including the revenue allocation formula, of the Town-School Partnership to ensure that it is better understood and that it best meets the needs of the Town and Schools in a dynamic manner.

Recommendation 9: Capital Planning

Create an enhanced capital planning process covering the Town and Schools, including regular periodic evaluation of town-owned assets.

Recommendation 10: Annual Financial Improvement Plans (FIPs)

Develop annual Financial Improvement Plans (FIPs) to pursue high impact opportunities to increase revenues (e.g., PILOT program, AirBnB fees, building utilization) and better manage costs (e.g., special education medical expenses, building maintenance, new school construction standards, playgrounds and fields).

Recommendation 11: Annual FIP Assessment and Reporting

Annually assess and publicly report the extent to which any projected cost reductions or revenue increases in the Financial Improvement Plans actually materialize and why any shortfalls arise. Seek outside independent expertise to a) assist, as needed, in the evaluation and refinement of Financial Improvement Plans, and b) to provide independent monitoring of the Town's and Schools' compliance with Financial Improvement Plans and the BFAC Implementation Plan. The Urban Institute and the Bloomberg Harvard City Leadership Initiative are two widely respected organizations that may provide such services for modest (or no) cost. It is not required that a single entity provide both services described above.

Recommendation 12: Aggressively Pursue New Economic Development

Aggressively pursue new economic development to increase the vibrancy of the town's economy, generate new property tax revenues, minimize the burden on residential taxpayers, and expand payment in lieu of taxes (PILOT) revenues. To this end, enact zoning changes to incentivize new development and encourage increased density in designated areas. A significant commitment to strategic planning and public education will be necessary to achieve this goal.

Recommendation 13: Maintain Minimum Reserves

Recommit to maintaining or exceeding, except for periods of extraordinary circumstances, minimum reserve levels established in the 2011 Fiscal Policy Review Committee Final Report; to restore funding as soon as possible to meet those thresholds; to add to present Stabilization Fund policies a minimum requirement; and to implement a new policy to increase overall fund balances to a target of 15 percent of Revenues within four years. (AA: $30\% \geq n > 15\%$)

- **Recommendation 13.1:** Restore unassigned fund balance minimum 10 percent of Revenues, with a target of 12.5% of Revenues.
- **Recommendation 13.2:** Establish a Stabilization Fund Policy of minimum annual funding equal to 0.67%of Revenue
- **Recommendation 13.3:** Replenish and maintain the Stabilization Fund at 50% of the new Unassigned Fund Balance target.
- **Recommendation 13.4:** Establish a Total Fund Balance (total reserves) policy with floor of 12.3% of Revenues, with a goal of 15%

Recommendation 14: Establish a Maximum Debt Policy

Establish a maximum debt policy based on the ratio of Direct Debt to Operating Revenue to not exceed the requirement for the A level credit rating and a formal goal of achieving a Net Direct Debt to Revenue ratio at the AA level credit rating. In addition, commit to full disclosure of existing, proposed, and planned borrowings when asking voters to approve new debt exclusions.

Finally, commit to the continual evaluation of alternative debt structures so as to balance cost, fairness, and the maximization of borrowing flexibility.

- **Recommendation 14.1:** Set policy to have Net Direct Debt (total debt level) divided by Revenue to at least the A level (0.67x<n<3x)
- **Recommendation 14.2:** Set a goal to achieve Net Direct Debt divided by Revenue to at least the AA level (0.33x<n<0.67x) by FY36.
- **Recommendation 14.3:** Commit to full disclosure and transparency of existing, proposed and planned borrowings when asking taxpayers to approve new debt exclusions.

Recommendation 15: Strategic Override Plan

Develop a strategy to plan for periodic operating overrides to supplement the resources provided by recommendations 11 through 13 in order to meet the community's expectations of more and better services from the Town and Schools while addressing concerns that would accompany growing the tax base exclusively via accelerated economic development. To mitigate the dilutive impact of operating overrides' impact on reserve ratios, require operating override requests to be "grossed up" to provide sufficient additional funds to maintain reserves at targeted ratios and to recognize the additional financial risk associated with the newly approved greater financial obligations. Override resource allocations should be regularly evaluated for effectiveness in keeping with Recommendation 6 above.

- **Recommendation 15.1:** Any tax should be designed to allow for the broadest range of uses possible
- **Recommendation 15.2:** Voters must be provided more information when presented with future override and debt exclusion ballot questions
- **Recommendation 15.3:** As the Town develops plans, it must provide its taxpayers with the information that allows them to evaluate those plans and their costs on a basis entirely different from the current piecemeal approach
- **Recommendation 15.4:** Enact a policy to include in operating override requests the additional amounts necessary to maintain reserves

Recommendation 16. Single Town-School Financial Model

Consolidate Town and School financial planning into a single integrated financial model that reflects fully allocated costs between the Town and PSB for use in all Town and School budgeting, investment, and forecasting decisions.

Recommendation 17: Annual Review of Moody's Scorecard

Annually compare the Town's financial position to the Moody's Scorecard criteria in order to assess and address any vulnerabilities to preserving Brookline's AAA credit rating.

Recommendation 18: Require Town Meeting Member Financial Training

Amend Section 2.1.14 of the Town By-Laws to include the requirement that all Town Meeting Members attend at least one informational/training meeting that covers the Town budgeting process and financial matters every three years.

APPENDIX 2 –Values used to calculate financial metrics reported in Table 2

in $ millions	2019 Actual	2020 Actual	2021 Actual	2022 Projected	2023 Projected
Revenues for calculating reserves ratio	$308.3	$330.6	$346.3	$364.2	$383.2
Unassigned Fund Balance	$26.6	$26.6	$29.5	$32.6	$36.1
Stabilization Fund	$6.8	$7.2	$8.7	$11.8	$15.5
Unassigned Funds (Unassigned Fund Balance + Stabilization Fund)	$33.4	$33.7	$38.3	$44.4	$51.6
Total Fund Balance	$37.9	$40.4	$43.1	$45.5	$47.8
Net Direct Debt	$176.1	$325.5	$482.8	$474.9	$461.5
Operating Revenues	$308.4	$331.1	$347.1	$365.0	$384.0

Source:

Data provided by Deputy Town Administrator Melissa Goff and Acting Finance Director Justin Casanova-Davis, March 2022.
2019-2021 from Audited Financial Statement; 2022-2023 are budget projections.
Revenues for Calculating Reserves Ratio" for 2021 is from the FY2021 Audited Financial Statement, page 34.
Net Direct Debt for 2021 is from the FY2021 Audited Financial Statement, and is the sum of $482.8 m Total Principal (pg. 62); $10.5 m Enterprise (pg. 63), $6.7 m Bans (pg. 60), and $3.9 m Capital (pg. 33).
Operating Revenues for 2021 is from the FY2021 Audited Financial Statement, and is the sum of Total Revenues and Capital Lease Financing (both on pg. 35).

Notes: *Unassigned Fund Balance* represents fund balance that has not been restricted, committed, or assigned to specific purposes and is therefore available for expenditure once certified as part of Free Cash.
Stabilization Fund is "a fund designed to accumulate amounts for future spending purposes, although it may be appropriated for any lawful purpose. A two-thirds vote of Town Meeting is required to appropriate money from the Stabilization Fund.", according to the BFAC Report page 72.
Unassigned Funds is the sum of the Unassigned Fund Balance and the Stabilization Fund. This is also known as the "Unassigned General Fund Balance," the "Unreserved General Fund Balance and Stabilization Fund" (in audited financial statements), and the "Unreserved Fund Balance/Stabilization Fund" (as seen in Annual Budget Book), according to the BFAC Report (footnote 9).
Total Fund Balance consists of Reserved and Unreserved Funds and consists of the following funds: Appropriated Budget Reserve, Unreserved Fund Balance/Stabilization Fund, Liability/Catastrophe Fund, Overlay Reserve.
Net Direct Debt is debt paid for by general municipal funds, and does not include enterprise bonds.
Operating Revenues is used by credit agencies to calculate the "Net Direct Debt/Operating Revenues" ratio.

APPENDIX 3 – Meetings, Abbreviations, Reference Materials

Meetings of the Moderator's Committee
February 2, 2022: Organizational Meeting
February 9: Planning and Development of Information Requests from Boards and Committees
March 2: Review of Submitted Materials and Work Planning
March 10: Working Session
March 15: Working Session
March 23: Public Hearing

Abbreviations used in this report:
AC – Advisory Committee
BFAC – Brookline Fiscal Advisory Committee
CTO&S – Committee on Town Organization and Structure
EDAB – Economic Development Advisory Board
MC – the Moderator's Committee issuing this report
PSB – Public Schools of Brookline
TMM – Town Meeting Members

Materials submitted to the MC by Boards, Committees, and Administrators
These may all be viewed on this Moderator Committee's webpage:
https://www.brooklinema.gov/DocumentCenter/Index/1771
In a compiled document titled: BFAC_MC_Report2_Appendix3_Submissions

1. Town Administrator Memo and Progress Report/Chart dated March 1, 2022
2. Advisory Committee Progress Report/Chart
3. Audit Committee Chair Bernard Greene Memo and Progress Report/Chart
4. School Committee Progress Report/Chart
5. EDAB Memo dated February, 2022
6. Planning Board Progress Report/Chart
7. CTO&S Liaison Sean Lynn-Jones memo dated February 25, 2022

TOWN of BROOKLINE

Solid Waste Advisory Committee

Deane Coady
John Dempsey, Chair
Mary Litterst
Kathleen O'Connell
Clint Richmond
Susan Rittling
Kaitlyn Robbins

April 5, 2022

Re: Interim Report of the Task Force to Expand Food Waste Diversion

The Solid Waste Advisory Committee formed the "Task Force to Expand Food Waste Diversion" as required by the November 2021 Town Meeting Warrant Article 17.

Solid Waste Advisory Committee members and members of the public were invited to join the task force. The DPW created a one-page announcement soliciting paragraphs of interest from the public. The announcement was distributed to appropriate list serves, SWAC members' individual networks, the DPW website, and the We Recycle Brookline App. An attempt was made to include residents of multi-unit buildings and those with no preconceived ideas about composting.

Task force members:

Kathleen O'Connell, SWAC, Co-chair
Susan Rittling, SWAC, Co-chair
Deane Coady, SWAC
Mary Sabolsi
Karen Kraut
Cheryl DeSanctis
Pamela Allara
Chaimaa Medhat, Assistant Recycling Coordinator
Katie Weatherseed, Zero Waste Program Coordinator

The Task Force met remotely on February 28, March 15, and April 19, 2022. It will continue its work and submit a report for the November 2022 Town Meeting.

Respectfully,

John Dempsey

John Dempsey

333 Washington Street ◆ Brookline, Massachusetts 02445-6863
Telephone: (617) 730-2156 Facsimile: (617) 730-2258
http://www.townofbrooklinemass.com

To: The Select Board, Town of Brookline
From: Hon. Bonnie H. MacLeod (Ret.), JAMS
Re: Report of The Third Party in the Matter of the Indemnification of Stanley Spiegel

Introduction

This claim for indemnification arises under G.L., Chapter 258, section 13 which provides that the Town of Brookline ("the Town") "shall indemnify and save harmless municipal officers, elected or appointed officials from personal financial loss and expense including reasonable legal fees and costs, . . . arising out of any claim, demand, suit or judgment by reason of any act or omission . . . if the official at the time of such act or omission was acting within the scope of his official duties or employment." Stanley Spiegel has sought indemnification under the statute for legal fees and costs related to his defense of claims brought against him under 42 U.S.C. Section 1983 in the matter of Alston v. Town of Brookline, et al, C.A. no. 15-13987-GAO (D. Mass.).

On November 18, 2021, the Town voted to set aside an appropriation in the amount of $198,050, representing the total of the claimed fees of $169,050 and a contingent fee of $29,000 (17 %), based upon obtaining the indemnification. In setting aside this appropriation, the Town further voted that any indemnification payments were premised on two conditions: (1) execution of a settlement agreement and a release satisfactory to the parties and (2) a determination by a neutral third party as to the reasonableness of the amount of the claimed indemnification payment in addition to a determination by the neutral of the fairness of the proposed contingent fee payment and its consistency with normal contingent fee practice.

The Review Process

My approach to this review was the one I follow in every neutral analysis or investigation I have conducted. I began by requesting that the parties provide all documents that they considered both relevant and critical to my evaluation. The robust submissions I received included both documents that are publicly available and documents that are private and confidential. Those documents in the public record that I reviewed include: the entire federal court docket in the underlying matter; the Report and Recommendation of United States Magistrate Judge Kelley dated March 22, 2018; the Opinion and Order of United States District

Judge O'Toole dated January 7, 2019; and the Order of Judge O'Toole on November 29, 2021, ordering disbursement of the sanctions-fees award to Mr. Spiegel. Confidential documents and records that I reviewed include: detailed position statements submitted by Attorney Jonathan Simpson and Attorney Martin Rosenthal in addition to the entire billing records, invoices and payment information related to Mr. Spiegel's representation by Attorney Rosenthal and his colleagues Attorney David Duncan and Attorney Naomi Shatz. All of these documents were submitted confidentially by the parties in keeping with JAMS procedure and, although they represent a significant foundation of my analysis and ultimate opinion, they must retain their confidentiality and I thus will not recite their contents in this public report. In addition to reviewing the comprehensive documentation, I had the opportunity to speak with counsel for the Town and for Mr. Spiegel individually several times and the three of us spoke together for over an hour by teleconference. (I would be remiss if I failed to note the high level of civility and professionalism that has characterized their interactions throughout this process.)

Discussion

Since I am aware that the public documents referenced above may have likely been widely disseminated, I believe it is appropriate that those who read this Report have a sense of the professional background and experience that have informed my evaluation of the fees at issue in this claim for indemnification. My relevant legal experience includes the following;

(1) I have been a lawyer in the Commonwealth of Massachusetts for 50 years (as of 12/15/22).

(2) For over a decade (1976-1989), I served as First Assistant Bar Counsel where I had countless opportunities to evaluate the reasonableness of fees and fee structures as well as billing practices in light of the applicable ethics rules.

(3) As a judge in the Massachusetts trial court for 27 years (1989-2002, District Court and 2002-2016, Superior Court), I addressed no fewer than 100 applications for assessment of attorneys' fees and costs, with awards ranging from the low 5-figures to high 6-figures.

(4) For over 40 years, as a member of the adjunct faculty at four Boston law schools, I taught full semester courses in professional ethics, each of which addressed the subject of setting, charging and collecting legal fees.

(5) In my arbitration practice at JAMS over the past five years, I have addressed applications for legal fees and costs in virtually every case.

I am hopeful that this admittedly self-serving recitation of my background will serve to provide context for the broad "lens" through which I have examined the subject fees and demonstrate why my analysis may thus be perceived to differ from that in the federal fee/sanctions' decision.

"Lodestar" and Other Factors

The Magistrate Judge in determining the amount of the fee/sanction to be imposed applied the "lodestar method", the same analysis that I have applied in all cases involving the assessment of fees and costs against a non-prevailing party. The lodestar application requires consideration of:

> the nature of the case and the issues presented, the time and labor required, the amount of damages involved, the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.

Linthicum v. Archambault, 379 Mass. 381, 388-89 (1979).

The determination of a lodestar, however, is not done in a vacuum, which is the reason that courts have consistently held that the amount assessed by a judge as the lodestar is "discretionary." (Indeed, the lodestar method does not require that each factor be given equal weight. For example, one or two of the factors in and of themselves may warrant more consideration, such as the nature of the case, or the unique reputation of counsel.) Further, it must be emphasized that a determination by a judge or other factfinder that a particular amount constitutes "reasonable fees and costs" for the purpose of assessing that amount against an adverse party is **not** equivalent to a finding that the claimed fees that a judge failed to assess were either unreasonable or excessive. This is especially relevant here where the "lens" through which the legal fees were being scrutinized by the District Court was the extent to which the plaintiff should be subject to monetary sanctions for litigation misconduct. As Senior District Judge O'Toole noted: "The purpose of the sanction is to deter similar misconduct in the future. It

is not to make Spiegel whole for litigation expenses incurred … [and therefore] not a reason to disagree with the Magistrate Judge's analysis." (Emphasis added.)

Because this neutral third party has been tasked with determining the reasonableness of the legal fees and because of the broad discretion permitted judges (as well as arbitrators and other factfinders) in assessing fees, my examination of all the submissions has led me to conclude that, based on the extensive record I reviewed, there are several areas where I disagree with the analysis of the Magistrate Judge. My disagreement is based entirely upon my own experience in the arena of examining, assessing, teaching on, and awarding legal fees and not intended as a determination that *her* assessment was unwarranted based on *her* view of the evidence she considered in the full exercise of *her* discretion.

The disparity in our assessments is most likely due in part to the differences in the focus of our respective assessments of the fees, namely: the court's Rule 11 task was to evaluate the global reasonableness of the fee request for the purposes of assessing an appropriate sanction against the adverse party; in *this* setting, my charge has been to evaluate and determine the reasonableness of the legal fees in the context of the "save harmless" requirement of Chapter 258, section 13. (It is not my intention here to enumerate the areas in which my evaluation may differ from that of the Magistrate Judge as there is no doubt that any number of judges/reviewers might differ in the conclusions to be drawn from the evidence in the exercise of their discretion.)

Based upon my review of all of the evidence, which includes my careful examination of all the time records, invoices, and payments, I have concluded that the totality of the evidence establishes that the reasonable fee in this matter for the purpose of indemnification is $165,173. I further find that a contingent fee in the amount of 17%, or $28,080, is well within and consistent with governing contingent fee practices and is fair and reasonable. I also find that a deduction in the amount of the disbursed sanction, $20,589, which was intended to mitigate Mr. Spiegel's legal fees should be made. (While counsel for the indemnitee may object to this deduction, the legal precedent under Rule 11 amply establishes that a monetary sanction awarded directly to an aggrieved party, rather than paid into the court coffers, is intended to defray the legal expenses incurred by that party.)

Recommendation

Based upon the foregoing discussion, in accordance with my review of the totality of the evidence presented, I have determined that the total amount of the indemnification payment, including the contingent fee award, should be in the amount of $172,664.

Date: May 2, 2022

Hon. Bonnie H. MacLeod (Ret.)
Arbitrator

Update on:

Olmsted-Richardson LHD Signage Subcommittee

19 May 2022

Before approval of the Olmsted-Richardson LHD at last fall's Town Meeting, the Preservation Commission pledged to initiate an open subcommittee that would write and design site signage to explain the significance of John Charles Olmsted, Henry Hobson Richardson, and the history of the houses they lived in, now part of the Local Historic District. We started meeting in early February, and have produced a draft of the proposed signage. Realizing that public viewing of the houses is difficult, due to narrow, non-pedestrian road conditions, we now seek to install a small sign, with a QR code that would link to our text and images. The developer continues to commit to installing such a sign, adjacent to their property, and we will be working with the town authorities to design a space where the sign can be safely accessed and read.