TOWN OF BROOKLINE
MASSACHUSETTS

REPORTS OF SELECT BOARD AND ADVISORY COMMITTEE

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held in the High School Auditorium and via Zoom

Tuesday, November 15, 2022

at

7:00 P.M.

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

Town of Brookline

SELECT BOARD

Heather Hamilton, Chair

John VanScoyoc, Vice Chair **Bernard W. Greene**

Miriam Aschkenasy **Michael Sandman**

Charles Carey, 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, Chair, 57 Perry Street……. 739-7266
Benjamin Birnbaum, 15 Feneno Terrace, ... 276-5944
Harry Bohrs, 27 Toxeth Street 566-3556
Clifford M. Brown, 9 Hyslop Road 232-5626
Patricia Correa, 32 Davis Ave 347-9790
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
Amy Hummel, 226 Clark Road 731-0549
Anita Johnson, 41 Osborne Road..... 734-0711
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
Joslin Murphy, 62 Baker Circle 869-7260
Linda Olson Pehlke, 48 Browne St. #2..... 232-1965
Donelle S. O'Neal, Sr., 68 Village Way..... (857)-243-3602
Markus L. Penzel, 182 Pleasant Street..... 549-1747
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
Carolyn Thall, 66 Beverly Road 669-8050
Christine M. Westphal, 31 Hurd Road..... 738-7981

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

TOWN of BROOKLINE
Massachusetts

MELVIN A. KLECKNER
TOWN ADMINISTRATOR

In Select Board
August 9, 2022

333 WASHINGTON STREET
BROOKLINE, MASSACHUSETTS 02445
TEL. (617) 730-2211
FAX: (617) 730-2054
www.brooklinema.gov

WARRANT ARTICLES AND REMOTE SPECIAL TOWN MEETING REQUEST

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

On motion it was,

Voted to approve the Moderator's remote meeting request for the Special Town Meeting, November 15, 2022.

To the Brookline Select Board:

On July 16, 2022, Acting Massachusetts Governor Karen Polito signed legislation granting permission for Representative Town Meetings to be held remotely through March 31, 2023 (Chapter 107 of the Acts of 2022). The Legislation originally permitting remote Representative Town Meetings was 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 Town Meeting scheduled to be held on November 15, 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. 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 given the impossibility of predicting the status of the Covid pandemic in November 2022. Forecasts and variants keep changing. (Potential Rapid Increase of Omicron Variant Infections in the United States | CDC). COVID-19 Mutations: Why They Occur and What They Mean for the Future (carbonhealth.com). Such possibilities greatly imperil our Town Meeting Representatives' safety. I have consulted with the Town's Director of Health and Human Services and with the Chair of the Commission on Disability, both of whom concur with this request to hold the November 2022 Special Town Meeting remotely,

2. 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.

3. 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 the May 24, 2022 Annual Town Meeting, and that their use will satisfactorily enable the November 15, 2022 Special 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 Section 8(a) of Chapter 92 of the Acts of 2020 and Chapter 92, as amended.

4. 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 requesting voter's 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 August 6, 2022

Aye: Heather Hamilton, Bernard Greene, John VanScoyoc, Miriam Aschkenasy, Michael Sandman

ATTEST

Melvin Kleckner
Town Administrator

Cc: Town Clerk

NOVEMBER 15, 2022
SPECIAL TOWN MEETING
INDEX

ARTICLE NO.	TITLE
1.	Unpaid Bills (Select Board)
2.	Approval of Collective Bargaining Agreements. (Human Resources)
3.	Creation of an Opioid Settlement Stabilization Fund (Select Board)
4.	Appropriation for the Fire Station Renovation Project (Select Board)
5.	Amend Article 2.5 of the Town's General By-Laws to reduce the requirement for recommendations on all warrant articles (Select Board)
6.	Acceptance of an easement allowing access to 51 Bartlett Crescent (DPW Commissioner)
7.	Amend the Town's General By-Laws to reduce the need to publish and distribute hard copies of certain reports. (Wang, TMM8, and Lebovitz, TMM8)
8.	Amend the Town's General By-Laws to provide an alternative to publishing in a newspaper of general circulation. (Select Board)
9.	Amend Article 7.7 of the Town's General By-Laws to strengthen and increase enforcement of by-law providing for removal of snow and ice (Swaine, Vogt, TMM6, and Tester)
10.	Create a new Article 8.39 of the Town's General By-Laws to create a Tree Preservation By-Law. (J.Murphy, TMM16, Harris, et. al.)
11.	Amend Article 5.3.9 of the Town's General By-Law to extend demolition delay (Heller)
12.	Create a new Section 4.14 of the Town's Zoning By-Law to create a temporary demolition moratorium for residential structures (Heller, Lynn-Jones)
13.	Amend Section 5.09 of the Town's Zoning By-Law to require design review after the expiration of a stay of demolition (Roberts, TMM17, Elperin, DeWitt)
14.	Amend Article 4.2.7 of the Town's General By-Law to require annual reporting on the Town's Payment in Lieu of Tax (PILOT) program. (Lebovitz, TMM8, Toffel, TMM8)

15. Amend Article 8.37.4 of the Town's General By-Laws to limit the allowed number of Storefront Marijuana Retailers to four. (Park, TMM17, Levin, TMM17 et.al)

16. Amend Article 8.37.4 of the Town's General By-Laws to limit the allowed number of Delivery Marijuana Retailers to four. (Park, TMM17, Levin, TMM17 et.al)

17. Amend Article 8.37.4 of the Town's General By-Laws to limit the allowed number of Social Consumption Marijuana Retailers to one. (Park, TMM17, Levin, TMM17 et.al)

18. Amend Article 4.13 of the Town's Zoning By-Laws to limit the allowed number of Marijuana Retailers to four. (Park, TMM17, Levin, TMM17 et.al)

19. Amend Article 4.13 of the Town's Zoning By-Laws to limit the allowed number of Delivery Marijuana Retailers to four. (Park, TMM17, Levin, TMM17 et.al)

20. Amend Article 4.13 of the Town's Zoning By-Laws to limit the allowed number of Social Consumption Marijuana Retailers to one. (Park, TMM17, Levin, TMM17 et.al)

21. Petition for a special act regarding betterment loans for residential electrification. (Gray, TMM10)

22. Petition for a special act regarding Fossil Fuel Free demonstration. (Gray, TMM10)

23. Petition for a special act regarding Community Choice Aggregation. (Gray, TMM10)

24. Authorize participation in the Fossil Fuel Free Demonstration Project (Gray, TMM10)

25. Petition for a special act regarding Green Zoning. (Gray, TMM10)

26. Petition for a special act regarding a methane emissions surcharge. (Gray, TMM10)

27. Create a new Zoning By-Law to prohibit new on-site fossil fuel infrastructure. (Gray, TMM10)

28. Petition for a special act regarding an emissions reduction fund. (Gray, TMM10)

29. Petition for a special act regarding a gasoline vehicle excise surcharge. (Gray, TMM10)

30. Resolution regarding the creation of a Commission for Black N' Brown residents. (Conquest)

31. Amend Article 3.14 of the Town's General By-Laws to revise the discrimination complaint process. (Greene, Rosenthal, Daly Cavanaugh)

32. Create a new General By-Law Section 8.40 related to innholder requirements for the prevention of human trafficking. (Davis, TMM17, Levin, TMM17, Margolis, TMM7)

33. Amend Article 4.07 of the Town's Zoning By-Laws to allow for bee keeping (Shpritz)

34. Create a new Article 2.1.16 of the Town's General By-Laws to require abstentions from Town Meeting Members with a financial interest in a warrant article. (Vogt, TMM6, Toffel, TMM8)

35. Amend Article 2.1.11 of the Town's General By-Laws to require speakers at Town Meeting to disclose financial interests in a warrant article. (Vogt, TMM6, Toffel, TMM8)

36. Resolution regarding the Town's Payment in Lieu of Tax (PILOT) program (Lebovitz, TMM8, Toffel, TMM8)

37. Resolution regarding a budget review for the School Department (Selwyn)

38. Resolution regarding the celebration of Asian American & Pacific Islander Heritage Month (Wu, TMM7, Chanyasulkit, et. al)

39. Resolution regarding the study and use of the Golf Course. (Wholey, TMM11, Goldsmith, TMM11 et. al)

40. Resolution regarding a feasibility study for an outdoor pool. (Jonas, TMM16, Burns, TMM8, Cavallaro et. al)

41. Resolution regarding an affordable housing overlay district (AHOD) study committee (Mac Millan, Richardson, Brown)

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

2022 SPECIAL TOWN MEETING WARRANT REPORT

The Select Board and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2022 Special Town Meeting to be held on Tuesday, November 15, 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, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of previous fiscal years, which may be legally unenforceable due to the insufficiency of the appropriations therefor, and appropriate from available funds, a sum or sums of money therefor.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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

SELECT BOARD'S RECOMMENDATION

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

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends NO ACTION on Warrant Article 1 by a vote of 19-1 with no abstentions.

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.

Discussion: As of the writing of this Recommendation there are no unpaid bills requiring Town Meeting action. Therefore the Advisory Committee recommends NO ACTION.

Recommendation: By a vote of 19-1-0 the Advisory Committee recommends NO ACTION on Warrant Article 1.

ARTICLE 1 ADVISORY COMMITTEE VOTES

Article Description	**Unpaid Bills**
AC recommendation (Favorable Action unless indicated)	**19-1-0**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	
Carol Levin	
Pam Lodish	
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y

Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 2

SECOND ARTICLE
Submitted by: Human Resources

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

PETITIONER'S ARTICLE DESCRIPTION

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

SELECT BOARD'S RECOMMENDATION

A report and recommendation will be included in a supplement report.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation will be included in a supplement report.
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XXX

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE TOWN OF BROOKLINE

AND

THE STAFF ASSOCIATION OF THE PUBLIC LIBRARY OF BROOKLINE LOCAL 1358, AFSCME COUNCIL 93, AFL-CIO

November 2022

1. **Wages**

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

2. **Article V(b), Night Differential** – Modify **Section (b)** as follows:

   (b) Night Differential. Employees ~~who work full shifts ending at 9 P.M.~~ shall receive a night differential, in addition to their regular hourly rate, of five dollars and fifty cents ($5.50) per hour for all hours worked at straight time rates from 6pm and on. ~~nine dollars ($9.00) per night for all such time worked at straight time rates. Effective after May, 2011 Town Meeting, such night differential shall increase from $9 per night to $10 per night. Effective July 1, 2011, such night differential shall increase to $11 per night. Effective July 1, 2013, such night differential shall increase from $11 per night to $13 per night.~~

3. **Article VI(c), Hours of Work and Overtime**

   (c) Employees shall be granted a fifteen (15) minute rest period during each half of a full tour of duty at times consistent with the rendering of public service. Such rest periods shall begin no earlier than one half (1/2) hour after the scheduled start of the morning period and shall end not later than one half (1/2) hour before the scheduled end of the evening hours. ~~Rest periods shall be taken on the library premises unless, for unusual reasons, the supervisor permits the rest period to be taken off the premises. Such permission shall not affect the timing or duration of the rest period.~~

4. **Article VII, Work Schedules** – The parties' agree to make the following changes to Article VII, **Sections (d), (e), (g), (f), and (i)**:

   (d) Under usual circumstances, no employee shall be required, in the period from Labor Day to June 15th, to work more than one (1) Saturday in two without ~~her~~ their consent. The Library Director shall make an effort in the future, as in the past, not to require an employee to work more than one (1) Saturday in the period from June 15th

to Labor Day. This section is not applicable to employees hired after November 1, 1990.

Employees hired after November 1, 1990 shall be scheduled to work every 3rd Saturday, on a rotating basis.

(e) If the Library is to be closed due to weather emergency, the Employer shall notify ~~the~~ staff ~~by telephone~~ as early as possible.

(f) The restrictions regarding the Library Director's right to schedule employees for work on Saturdays and Sundays shall not apply to part-time employees ~~who are newly hired after April 1, 1973~~.

(g) Employees ~~hired after July 1, 1984~~ assigned to the Technical Services Division ~~may~~ shall be required to participate in the Sunday rotation. This participation may involve performance of duty in the Public Service Division or in the Technical Services Division.

(h) New Year's Eve. The Library will close not later than 5:00 pm on New Year's Eve. Employees will receive straight time pay ~~only~~ for ~~the~~ all hours ~~actually worked on New Year's Eve. Employees who are~~ regularly scheduled to work on New Year's Eve, including the hours past 5:00 PM. ~~and when such an employee is scheduled to work on New Year's Eve, such employee shall have the following options: 1. Adjust his/her hours for New Year's Eve to begin at 9:00 AM; or 2. Work his/her scheduled hours until closing time and use accrued vacation or personal leave to cover the balance of such employee's regular shift; or 3. Work his/her scheduled hours until closing time and receive pay for those hours actually worked in accordance with this section h).~~

(i) Sunday Substitute. Subject to the conditions herein, an employee who is scheduled to work on a Sunday, where the Sunday work is in excess of ~~his/her~~their regularly scheduled work week, may find a substitute employed by the Brookline Public Library to replace ~~him/her~~them on such Sunday shift provided that:

1. The substitute is in the same or lower grade than the employee, whenever possible.
2. The substitute is deemed to be a suitable replacement by the Library Director/designee in ~~his/her~~their sole discretion; such determination by the Library Director/designee shall not be subject to the grievance and arbitration.

~~Each employee shall be limited to no more than four substitutions per fiscal year.~~

5. Article VIII, Facilities

A staff room shall be provided at the Main Library and at each branch. Such staff room shall be equipped with kitchen facilities, a couch, a table, suitable chairs and adequate lighting.

~~In the interest of safety and security, the Employer shall schedule one non-bargaining unit employee in the Main Library and in each of the branches during operating hours.~~

6. **Article IX, Posting of Vacancies**

Notices of all job vacancies within the bargaining unit which are to be filled by the Town shall be posted in-house for 10 calendar days prior to outside posting. Copies will be sent to Local 1358 representatives.

Notices shall contain a summary job description, qualifications, location and salary.

All employees wishing to be applicants for the position shall ~~inform the Librarian in writing~~apply within 10 calendar days of the date of posting.

7. **Article XI(g), Sick Leave** - The parties' agree to make the following changes to Article XI, **Sections (g), (i), and (l)**:

(g) Notification. When an employee finds it necessary to be absent because of accident or illness, she shall report the fact to the Administrative Office as soon as possible either in person or by agent. Sick leave will not be granted unless such a report is made.

Such notice should be given, if possible, before the starting time of the employee's normal tour of duty or not later than one hour after starting time.

~~The Town may require employees to explain in writing each absence in a calendar year in excess of six days in the aggregate that an employee wishes charged to paid or unpaid sick leave. Any available sick leave shall not be granted until such written explanation, when required, has been received by the Library Director.~~

(i) Documentation. For the protection of the Town, the Department Head or ~~his/her~~their designee may require the presentation of a doctor's certificate or note, which shall state the employee's name, date(s) seen, a brief description of the illness or injury and the expected duration, in connection with a claim for sick leave, when the employee has been absent due to sickness, illness, or injury for ~~ten~~ twelve or more days in the previous calendar year and is absent at a rate of one day or more per month in the current calendar year. Any available sick leave shall not be granted until such written explanation, when required, has been received by the Department Head.

The Town retains the authority to request a doctor's certificate when the Department Head or ~~his/her~~their designee believes an employee may be abusing sick leave without regard to the number of absences. If it is deemed advisable, the Town, at its expense, may send an

employee to a doctor, selected by the Town, to investigate any absence alleged to be caused by an illness or injury.

(l) Personal Leave.

i. Based on ~~her~~ their attendance record the previous calendar year, an employee, who was hired on or before June 30, 2011, is eligible for Personal Leave. Such an employee who uses 0-2 days sick leave is eligible for three days Personal Leave; and such an employee who uses from 3-4 days sick leave is eligible for two days Personal Leave; and such an employee who uses from 5-6 days sick leave is eligible for one day of Personal Leave.

ii. Based on ~~her~~ their attendance record the previous calendar year, an employee, who was hired on July 1, 2011, is eligible for Personal Leave. Such an employee who uses 0-1 days sick leave is eligible for three (3) days of Personal Leave; and such an employee who uses 2-3 days sick leave is eligible for two (2) days of Personal Leave; and such an employee who uses 4-5 days sick leave is eligible for one (1) day of Personal Leave.

iii. Effective Sept. 1, 2004, part-time employees, employees who are regularly scheduled to work 20 or more hours per week shall be eligible for pro-rated earned personal leave benefits. Such benefits shall be pro-rated based on the relationship between the employee's regularly scheduled hours per week to that of a full-time employee.
Example: A regular part-time employee who works 21 hours per week would be eligible for 21/37ths of the earned personal leave as provided in this section.

iv. Sick leave scheduled two weeks in advance or more, and sick leave used solely to supplement Worker's Compensation payments under the provisions of M.G.L., Chapter 152 – Workmen's Compensation Act – shall be excluded in determining any Personal Leave due to an employee under this section.

v. Except as below, the Personal Leave must be taken during the calendar year and if it is not taken, it is not cumulative, but it may be added to sick leave. This Leave may be taken for any reason but the Librarian must have at least one day notice of such leave except in an emergency, and may request a change of time if operating efficiency requires it.

vi. Employees, at their option, may cash in at straight time pay part or all of the Personal Leave earned under this section.

8. Article XII(b), Vacations

b) Length of Vacation. Library staff who have acquired vacation status, as indicated below, shall be credited as of June 30th with earned vacation leave with pay not to exceed the following schedules:

~~Professional Staff and Trainees:~~All full-time employees shall be entitled to ~~Four~~ four (4) calendar weeks after one (1) year of service. For less than a year, two (2) calendar days exclusive of Sunday per month. Employees who were hired on or before June 30, 2013, with ten or more years of service, five (5) calendar weeks.

~~Para-professional Staff Hired on or before June 30, 2013: For less than seven (7) months' service, one (1) workday for each full calendar month employed; seven (7) full calendar months' service, but less than five (5) years' service as of June 30th of the fifth year, two (2) calendar weeks; for five (5) years' service but less than ten (10) years' service as of June 30th of the tenth year, three (3) calendar weeks; for at least ten (10) years' service as of June 30th of the tenth year, five (5) calendar weeks.~~

~~Para-professional Staff Hired on or After July 1, 2013~~

~~Service as of June 30th~~	~~Vacation~~
~~Less than 7 months~~	~~1 work day for each full calendar month of service~~
~~7 full calendar months but less than five years~~	~~2 calendar weeks~~
~~5 full calendar years but less than 10 years~~	~~3 calendar weeks~~
~~10 full calendar years or more~~	~~4 calendar weeks~~

Effective September 1, 2004, part-time employees regularly scheduled to work 20 or more hours per week shall be eligible for pro-rated vacation leave benefits. Such benefits shall be pro-rated based on the relationship between the employee's regularly scheduled hours per week to that of a full-time employee.

Example:
A regular part-time employee who works 21 hours per week would be eligible for 21/37ths of the annual vacation leave as provided in this section.

9. **Reasonable Suspicion and Post-Accident Drug & Alcohol Policy** – 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.

10. **Article XIV, Other Leave With Pay** – This will go into effect upon implementation of the Reasonable Suspicion and Post-Accident 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.

11. Article XIV(f), Other Leave With Pay

(f) Education Leave. Employees enrolled in an accredited graduate MLS program shall be granted ~~two~~ four (~~2~~4) hours per week with pay when needed for class attendance. At the discretion of the Library Director, this benefit may also be extended to other employees for studies to increase their knowledge and skills in order to improve job performance.

12. Article XXVI(10), Miscellaneous Working Conditions – Modify Sections (10) and (13), as follows:

10) Name Tags. Employees shall wear name tags with their title and a form of their first and/or last names visible. For example, employee Jane Doe's name tag could be any of the following:

Jane Doe, Ms. Doe, J. Doe, Jane D., Miss Doe, Mrs. Doe

13) If Town Hall closes due to adverse weather, all locations of the Library will also close. Employees will not be required to work from home when Library locations are closed due to adverse weather, unless the employee is approved to participate in, and is participating in, the Town's Work From Home Program.

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

Amanda Hirst, Director
Public Libraries of Brookline

Ann Hess Braga, Director
Human Resources Office

Danielle Savia, Assistant Director
Public Library of Brookline

Date: 11/17/22

For Local 1358, AFSCME, AFL-CIO

Mona Saltalamacchia, President
AFSCME Council 93

Garrett Mahoney, Staff Representative
AFSCME Council 93

Michael Fallon, Union Consultant
AFSCME Council 93

Date: 11/17/22

ARTICLE 2

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

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
Chas Carey, Town Administrator
From: Ann Hess Braga, Director, Human Resources
Date: November 17, 2022
Re: Approval for AFSCME Library MOA (FY22-FY24)

This is to notify you that we have entered into a Memorandum of Agreement (MOA) with the Brookline AFSCME Library 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 spring 2022, 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, Sara Slymon, Dinah O'Brien, and Amanda Hirst – Library Director (past, interim and present), Danielle Savin (Asst Director) and the Local 1358 AFSCME Library group. The teams formally met five times before coming to the attached agreement. The AFSCME has ratified the Memorandum of Agreement through a vote on November 17, 2022.

The provisions of the MOA are:

- **Wages: 1% effective July 1, 2021, 3% July 1, 2022; 3% July 2023**
- **Amend the night differential from $13 per evening when working until 9PM to be $5.50 per hour after 6PM.**

- **Amending Saturday scheduling in non-summer months (Labor Day to June 15)from one in every 4th week to one in every 3rd week.**
- **Adding Technical Services staff to the Sunday rotating schedule.**
- **With closing time for New Year's Eve set at 5PM, employees regularly scheduled to work that day will be paid for their entire shift even if it would have extended beyond 5PM. Previously, employees had to make up time or use accrued time in order to receive pay for hours scheduled, but not worked after 5pm.**
- **Increase the number of sick days requiring doctor's notes from 10 per year to 12.**
- **Sick Leave scheduled more than 2 weeks in advance will not count toward calculation of earned Personal Days.**
- **Increase vacation allotment for all paraprofessional employees from 2 to 4 weeks beginning in FY23 (professional librarians already had 4 weeks).**
- **Increase hours per week employees pursuing their Masters in Library Science may use for studying and class attendance from 2 to 4 hours.**
- **Clarification of naming conventions for employee nametags.**
- **Addition of the Juneteenth holiday.**
- **Employees will not be required to work from home when libraries are closed due to adverse weather, unless the employee is participating in the Town's Work From Home program. Currently, the Public Library of Brookline has not adopted the Town's WFH policy.**
- **Agreement to Post Accident and Reasonable Suspicion Drug testing and a Wellness Day (physical/cancer screening) when all other Town bargaining units agree.**

ITEM	FY22	FY23	FY24	**TOTAL**
7/1/21 - 1%	21,405	21,405	21,405	**64,216**
7/1/22 - 3%		64,858	64,858	**129,716**
7/1/23 - 3%			66,804	**66,804**
Shift Differential ($5.50 in FY23)		5,995	5,995	**11,990**
				0
TOTAL ROLL-OUT COSTS	**21,405**	**92,258**	**159,062**	**272,726**
Each 1% =	21,405	21,619	22,268	
New Wages - $ =	21,405	70,853	66,804	
New Wages - % =	1.0%	3.3%	3.0%	**7.3%**
Wages on Base - $ =	21,405	64,858	66,804	
Wages on Base - % =	1.0%	3.0%	3.0%	**7.0%**

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 a union contract with the AFSCME, Library Union. The report from the Human Resources Director above describes the provisions agreed to in each agreement. The Board expects to bring an agreement with the Engineers forward for approval next Tuesday.

This is a three-year agreement (FY22-FY24) calling for a base wage increase of 7% over the course of the contract. The other monetary change is amending the night differential from $13 per evening when working until 9PM to be $5.50 per hour after 6PM.

The MOAs are attached to this warrant article report.

Again, the Select Board thank the Town's negotiating team and the union for reaching a fair and equitable settlement. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 17, 2022, on the following:

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

AFSCME, Local 1358, Staff Association of the Public Libraries

all as set forth in the reports of Ann Hess Braga, Director of Human Resources, dated November 17, 2022, which reports are incorporated herein by reference.

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE TOWN OF BROOKLINE

AND

THE STAFF ASSOCIATION OF THE PUBLIC LIBRARY OF BROOKLINE LOCAL 1358, AFSCME COUNCIL 93, AFL-CIO

November 2022

1. **Wages**

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

2. **Article V(b), Night Differential** – Modify **Section (b)** as follows:

   (b) Night Differential. Employees ~~who work full shifts ending at 9 P.M.~~ shall receive a night differential, in addition to their regular hourly rate, of five dollars and fifty cents ($5.50) per hour for all hours worked at straight time rates from 6pm and on. ~~nine dollars ($9.00) per night for all such time worked at straight time rates. Effective after May, 2011 Town Meeting, such night differential shall increase from $9 per night to $10 per night. Effective July 1, 2011, such night differential shall increase to $11 per night. Effective July 1, 2013, such night differential shall increase from $11 per night to $13 per night.~~

3. **Article VI(c), Hours of Work and Overtime**

   (c) Employees shall be granted a fifteen (15) minute rest period during each half of a full tour of duty at times consistent with the rendering of public service. Such rest periods shall begin no earlier than one half (1/2) hour after the scheduled start of the morning period and shall end not later than one half (1/2) hour before the scheduled end of the evening hours. ~~Rest periods shall be taken on the library premises unless, for unusual reasons, the supervisor permits the rest period to be taken off the premises. Such permission shall not affect the timing or duration of the rest period.~~

4. **Article VII, Work Schedules** – The parties' agree to make the following changes to Article VII, **Sections (d), (e), (g), (f), and (i)**:

   (d) Under usual circumstances, no employee shall be required, in the period from Labor Day to June 15th, to work more than one (1) Saturday in two without ~~her~~ their consent. The Library Director shall make an effort in the future, as in the past, not to require an employee to work more than one (1) Saturday in the period from June 15th

to Labor Day. This section is not applicable to employees hired after November 1, 1990.

Employees hired after November 1, 1990 shall be scheduled to work every 3rd Saturday, on a rotating basis.

(e) If the Library is to be closed due to weather emergency, the Employer shall notify ~~the~~ staff ~~by telephone~~ as early as possible.

(f) The restrictions regarding the Library Director's right to schedule employees for work on Saturdays and Sundays shall not apply to part-time employees ~~who are newly hired after April 1, 1973~~.

(g) Employees ~~hired after July 1, 1984~~ assigned to the Technical Services Division ~~may~~ shall be required to participate in the Sunday rotation. This participation may involve performance of duty in the Public Service Division or in the Technical Services Division.

(h) New Year's Eve. The Library will close not later than 5:00 pm on New Year's Eve. Employees will receive straight time pay ~~only~~ for ~~the~~ all hours ~~actually worked on New Year's Eve. Employees who are~~ regularly scheduled to work on New Year's Eve, including the hours past 5:00 PM. ~~and when such an employee is scheduled to work on New Year's Eve, such employee shall have the following options: 1. Adjust his/her hours for New Year's Eve to begin at 9:00 AM; or 2. Work his/her scheduled hours until closing time and use accrued vacation or personal leave to cover the balance of such employee's regular shift; or 3. Work his/her scheduled hours until closing time and receive pay for those hours actually worked in accordance with this section h).~~

(i) Sunday Substitute. Subject to the conditions herein, an employee who is scheduled to work on a Sunday, where the Sunday work is in excess of ~~his/her~~their regularly scheduled work week, may find a substitute employed by the Brookline Public Library to replace ~~him/her~~them on such Sunday shift provided that:

1. The substitute is in the same or lower grade than the employee, whenever possible.
2. The substitute is deemed to be a suitable replacement by the Library Director/designee in ~~his/her~~their sole discretion; such determination by the Library Director/designee shall not be subject to the grievance and arbitration.

~~Each employee shall be limited to no more than four substitutions per fiscal year.~~

5. Article VIII, Facilities

A staff room shall be provided at the Main Library and at each branch. Such staff room shall be equipped with kitchen facilities, a couch, a table, suitable chairs and adequate lighting.

~~In the interest of safety and security, the Employer shall schedule one non-bargaining unit employee in the Main Library and in each of the branches during operating hours.~~

6. **Article IX, Posting of Vacancies**

Notices of all job vacancies within the bargaining unit which are to be filled by the Town shall be posted in-house for 10 calendar days prior to outside posting. Copies will be sent to Local 1358 representatives.

Notices shall contain a summary job description, qualifications, location and salary.

All employees wishing to be applicants for the position shall ~~inform the Librarian in writing~~apply within 10 calendar days of the date of posting.

7. **Article XI(g), Sick Leave** - The parties' agree to make the following changes to Article XI, **Sections (g), (i), and (l)**:

(g) Notification. When an employee finds it necessary to be absent because of accident or illness, she shall report the fact to the Administrative Office as soon as possible either in person or by agent. Sick leave will not be granted unless such a report is made.

Such notice should be given, if possible, before the starting time of the employee's normal tour of duty or not later than one hour after starting time.

~~The Town may require employees to explain in writing each absence in a calendar year in excess of six days in the aggregate that an employee wishes charged to paid or unpaid sick leave. Any available sick leave shall not be granted until such written explanation, when required, has been received by the Library Director.~~

(i) Documentation. For the protection of the Town, the Department Head or ~~his/her~~their designee may require the presentation of a doctor's certificate or note, which shall state the employee's name, date(s) seen, a brief description of the illness or injury and the expected duration, in connection with a claim for sick leave, when the employee has been absent due to sickness, illness, or injury for ~~ten~~ twelve or more days in the previous calendar year and is absent at a rate of one day or more per month in the current calendar year. Any available sick leave shall not be granted until such written explanation, when required, has been received by the Department Head.

The Town retains the authority to request a doctor's certificate when the Department Head or ~~his/her~~their designee believes an employee may be abusing sick leave without regard to the number of absences. If it is deemed advisable, the Town, at its expense, may send an

employee to a doctor, selected by the Town, to investigate any absence alleged to be caused by an illness or injury.

(l) Personal Leave.

i. Based on ~~her~~ their attendance record the previous calendar year, an employee, who was hired on or before June 30, 2011, is eligible for Personal Leave. Such an employee who uses 0-2 days sick leave is eligible for three days Personal Leave; and such an employee who uses from 3-4 days sick leave is eligible for two days Personal Leave; and such an employee who uses from 5-6 days sick leave is eligible for one day of Personal Leave.

ii. Based on ~~her~~ their attendance record the previous calendar year, an employee, who was hired on July 1, 2011, is eligible for Personal Leave. Such an employee who uses 0-1 days sick leave is eligible for three (3) days of Personal Leave; and such an employee who uses 2-3 days sick leave is eligible for two (2) days of Personal Leave; and such an employee who uses 4-5 days sick leave is eligible for one (1) day of Personal Leave.

iii. Effective Sept. 1, 2004, part-time employees, employees who are regularly scheduled to work 20 or more hours per week shall be eligible for pro-rated earned personal leave benefits. Such benefits shall be pro-rated based on the relationship between the employee's regularly scheduled hours per week to that of a full-time employee.
Example: A regular part-time employee who works 21 hours per week would be eligible for 21/37ths of the earned personal leave as provided in this section.

iv. Sick leave scheduled two weeks in advance or more, and sick leave used solely to supplement Worker's Compensation payments under the provisions of M.G.L., Chapter 152 – Workmen's Compensation Act – shall be excluded in determining any Personal Leave due to an employee under this section.

v. Except as below, the Personal Leave must be taken during the calendar year and if it is not taken, it is not cumulative, but it may be added to sick leave. This Leave may be taken for any reason but the Librarian must have at least one day notice of such leave except in an emergency, and may request a change of time if operating efficiency requires it.

vi. Employees, at their option, may cash in at straight time pay part or all of the Personal Leave earned under this section.

8. Article XII(b), Vacations

b) Length of Vacation. Library staff who have acquired vacation status, as indicated below, shall be credited as of June 30th with earned vacation leave with pay not to exceed the following schedules:

~~Professional Staff and Trainees:~~All full-time employees shall be entitled to ~~Four~~ four (4) calendar weeks after one (1) year of service. For less than a year, two (2) calendar days exclusive of Sunday per month. Employees who were hired on or before June 30, 2013, with ten or more years of service, five (5) calendar weeks.

~~Para-professional Staff Hired on or before June 30, 2013: For less than seven (7) months' service, one (1) workday for each full calendar month employed; seven (7) full calendar months' service, but less than five (5) years' service as of June 30th of the fifth year, two (2) calendar weeks; for five (5) years' service but less than ten (10) years' service as of June 30th of the tenth year, three (3) calendar weeks; for at least ten (10) years' service as of June 30th of the tenth year, five (5) calendar weeks.~~

~~Para-professional Staff Hired on or After July 1, 2013~~

~~Service as of June 30th~~	~~Vacation~~
~~Less than 7 months~~	~~1 work day for each full calendar month of service~~
~~7 full calendar months but less than five years~~	~~2 calendar weeks~~
~~5 full calendar years but less than 10 years~~	~~3 calendar weeks~~
~~10 full calendar years or more~~	~~4 calendar weeks~~

Effective September 1, 2004, part-time employees regularly scheduled to work 20 or more hours per week shall be eligible for pro-rated vacation leave benefits. Such benefits shall be pro-rated based on the relationship between the employee's regularly scheduled hours per week to that of a full-time employee.

Example:
A regular part-time employee who works 21 hours per week would be eligible for 21/37ths of the annual vacation leave as provided in this section.

9. **Reasonable Suspicion and Post-Accident Drug & Alcohol Policy** – 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.

10. **Article XIV, Other Leave With Pay** – This will go into effect upon implementation of the Reasonable Suspicion and Post-Accident 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.

11. Article XIV(f), Other Leave With Pay

(f) Education Leave. Employees enrolled in an accredited graduate MLS program shall be granted ~~two~~ four (~~2~~4) hours per week with pay when needed for class attendance. At the discretion of the Library Director, this benefit may also be extended to other employees for studies to increase their knowledge and skills in order to improve job performance.

12. Article XXVI(10), Miscellaneous Working Conditions – Modify Sections (10) and (13), as follows:

10) Name Tags. Employees shall wear name tags with their title and a form of their first and/or last names visible. For example, employee Jane Doe's name tag could be any of the following:

Jane Doe, Ms. Doe, J. Doe, Jane D., Miss Doe, Mrs. Doe

13) If Town Hall closes due to adverse weather, all locations of the Library will also close. Employees will not be required to work from home when Library locations are closed due to adverse weather, unless the employee is approved to participate in, and is participating in, the Town's Work From Home Program.

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

Amanda Hirst, Director
Public Libraries of Brookline

Ann Hess Braga, Director
Human Resources Office

Danielle Savia, Assistant Director
Public Library of Brookline

Date: 11/17/22

For Local 1358, AFSCME, AFL-CIO

Mona Saltalamacchia, President
AFSCME Council 93

Garrett Mahoney, Staff Representative
AFSCME Council 93

Michael Fallon, Union Consultant
AFSCME Council 93

Date: 11/17/22

ARTICLE 2

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

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
Chas Carey, Town Administrator
From: Ann Hess Braga, Director, Human Resources
Date: November 17, 2022
Re: Approval for BEDA MOA (FY22-FY24)

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

BEDA, when fully staffed, totals 12 professional engineers. Engineers are one of the most difficult positions for Brookline to recruit for. Per the existing provisions of the collective bargaining agreement, a compensation study was conducted on engineering positions. This study was conducted prior to the first formal negotiation sessions. At this point, I want to recognize and thank the BEDA staff for the additional substantial efforts to review and provide feedback on the results of the compensation study.

Significant changes favorable to the Town were made to the parties' CBA, unlike other collective bargaining agreements approved to date, including provisions for hiring temporary and part-time, non-bargaining unit workers to assist on timely task completion or work related to complex projects; full adoption of the reasonable suspicion and post-accident drug and alcohol policy; and eliminating the entitlement to Friday afternoon overtime.

Background: Beginning in spring 2021, 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 Gallentine – DPW Commissioner, Rob King – Engineering & Transportation Director) and senior and new members of BEDA. The teams formally met thirteen times before coming to the attached agreement. The BEDA has ratified the Memorandum of Agreement through a vote on November 17, 2022.

The provisions of the MOA are:

- **Wages: 1% effective July 1, 2021, 3% July 1, 2022; 3% July 2023**
- **Clarify job titles covered by the bargaining unit and the respective grades**
- **Agreement to allow the Town to hire part time temporary professional staff, excluded from the BEDA bargaining unit, to assist with specific tasks or projects**
- **Eliminates the entitlement to Friday afternoon overtime, giving management the discretion to determine if coverage is necessary based on operational needs.**
- **A new ninth step was added in FY23, and in FY24 the difference between the steps in each grade is increased from 1.78 percent to 2.0 percent**
- **Increased stipend for additional certifications from $125 to $175, with annotation of previously approved licenses into the agreement.**
- **Move from two to four weeks' vacation for new employees, with monthly accrual instead of a deposit on July 1 of each year for the previous year's service**
- **Creation of an Extended Sick Leave Bank for bargaining unit members, modelled after the AFSCME Sick Bank, to provide for donations of sick time to assist with those who have a serious, unforeseen illness/injury and do not have enough leave time to cover.**
- **Agreement to Post Accident and Reasonable Suspicion Drug testing and a Wellness Day (physical/cancer screening) in FY23**
- **Addition of the Juneteenth holiday**

ITEM	FY22	FY23	FY24	TOTAL
7/1/2021 - 1%	10,322	10,322	10,322	**30,966**
7/1/2022 - 3%		30,966	30,966	**61,932**
7/1/2023 - 3%			32,214	**32,214**
Step Gap increase 2% - from 1.78%			16,147	**16,147**
Addl step (Only for those @ S8)		8,751	8,751	**17,502**
TOTAL ROLL-OUT COSTS	**10,322**	**50,039**	**98,400**	**158,761**

Each 1% =	10,322	10,425	10,738	
New Wages - $ =	10,322	39,717	48,361	
New Wages - % =	1.0%	3.8%	4.5%	**9.3%**

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

Again, the Select Board thank the Town's negotiating team and the union for reaching a fair and equitable settlement. Therefore, the Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on November 29, 2022, on the following:

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

Brookline Engineering Division Association (BEDA)

all as set forth in the reports of Ann Hess Braga, Director of Human Resources, dated November 17, 2022, which reports are incorporated herein by reference.

[The vote for AFSCME Library is repeated below so both motions are in the same supplement.]

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

AFSCME, Local 1358, Staff Association of the Public Libraries

all as set forth in the reports of Ann Hess Braga, Director of Human Resources, dated November 17, 2022, which reports are incorporated herein by reference.

Negotiations for Successor Agreement to Collective Bargaining Agreement Between the Town of Brookline and Brookline Engineering Division Associates

Memorandum of Agreement

November 2022

1. **Article XXX, Term of Agreement: July 1, 2021 through June 30, 2024 (3 years)**

2. **Article XVI, Compensation – Modify as Follows:**

(a) Wages and Step Increases. Compensation for all classifications shall be in accordance with **Appendix A**.

Effective Date	Increase
~~July 1, 2017~~	~~2.0%~~
~~July 1, 2018~~	~~2.0%~~
~~July 1, 2019~~	~~2.0%~~
~~July 1, 2020~~	~~2.0%~~
~~January 1, 2021~~	~~0.5%~~
July 1, 2021	1%
July 1, 2022	3%
July 1, 2023	3%

3. **Article I, Recognition – Modify as Follows:**

The Employer recognizes the Association as the sole and exclusive bargaining agent with respect to wages, hours and working conditions for all employees with six or more months of continuous service in each of the following job classifications~~, as well as any permanent, full-time positions which may be added or otherwise modified in the course of this contract~~:

Grade	Title	Grade	Title
E-2	~~Permit Inspector~~	E-5	Civil Engineer V
E-3	Permit Inspector		Construction Project Coordinator
	Civil Engineer III		
E-4	Civil Engineer IV		Environmental Engineer
	Transportation Engineer		Sustainable Transportation Engineer

The Employer will not aid, promote or finance any outside labor group or organization which purports to engage in collective bargaining, or make any agreement with any such group or individual for the purpose of undermining the Association or changing any condition contained in this agreement.

The Association shall be responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Association membership.

4. **Article VI, Part-Time Employment** – Modify as Follows:

A. It is agreed that employees may accept part-time engineering employment with employers other than the Town of Brookline provided that:

1. The work is not to be performed within the Town of Brookline.

2. The work is not to be performed anywhere in the employ of a firm under contract to or bidding to perform work for the Town of Brookline.

3. The work does not constitute a conflict of interest or give the appearance thereof.

4. The work is not to be performed on Town of Brookline time (during employee's defined working hours) or using Town equipment/resources.

B. It is further agreed that the Town may hire part-time or temporary professional staff, or both, to assist full-time staff in performing their duties or otherwise assist in the successful execution of Department projects, programs or initiatives. The part-time/temporary employee positions would be excluded from the BEDA bargaining unit, as well as any rights or benefits as a member therein.

5. **Article XXIX, Miscellaneous Working Conditions – ADD Section (d), as follows:**

(d) Drug & Alcohol Policy – Reasonable Suspicion and Post-Accident (See Attached)

The Association agrees to implement the Town's Reasonable Suspicion and Post-Accident Drug & Alcohol Policy. Enforcement of the Policy will not begin until all employees undergo relevant and necessary training, of which the Town shall provide.

6. **Article XIII, Other Leave**

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 8-hour block and will not deduct from the employee's accrued leave. The paid leave granted under this section will be issued to employees annually on January 1st, beginning on January 1, 2023.

7. **Article XI, Vacation** – Modify Sections (b) and (e) as Follows, **effective July 1, 2022**:

(b) Length of Vacation. All ~~persons~~ employees, except emergency, part-time or temporary employees, who have acquired vacation status as indicated below shall

~~be credited as of June 30~~accrue on a monthly basis ~~with~~ earned vacation leave with pay not to exceed the following schedule:

~~For less than seven months' continuous service, one work day for each full calendar month employed.~~

~~For seven full calendar months' continuous service, but less than five years' continuous service as of June 30 of the 5th year, two calendar weeks.~~

~~For five years' continuous service, but less than ten years' continuous service as of June 30 of the 10th year, three calendar weeks.~~

All employees shall be entitled to four calendar weeks of vacation, accrued on a monthly basis. For employees hired before July 1, 2013, with at least ten year's continuous service as of June 30 of the 10th year, five calendar weeks. ~~For employees hired on or after July 1, 2013, with at least ten year's continuous service as of June 30 of the 10th year, four calendar weeks.~~

In computing earned vacation leave, credit shall be given for all the temporary and/or emergency service with the Town prior to the date of the initial permanent or provisional appointment provided that all such prior service was continuous and uninterrupted up to the date of permanent or provisional appointment.

(e) Vacation Credits. Vacation Leave earned by actual service during the vacation year shall accrue and be credited on ~~June 30th of the current year~~a monthly basis.

8. **Article XII, Sick Leave – ADD Section (q)**, creating an Extended Sick Leave Bank, as follows:

q) Extended Sick Leave Bank. Effective July 1, 2022, there shall be established for all members of BEDA an extended sick leave bank which shall be administered by the Human Resources Office, established and utilized according to the following procedures:

A. To be eligible for membership an employee must have completed their initial 12 month probationary period and must have voluntarily donated two (2) sick day per year to the extended sick leave bank ("Bank"). These donated days shall be deducted from accumulated sick leave but shall not be considered sick leave for the purposes of monitoring sick leave usage or personal leave as per Section (n) of this Article.

B. Enrollment in the Bank will be open from December 1 to December 31 of each year for participation in the Bank in the following calendar year. The Human Resources Office will have information and authorization forms available for employees at least thirty (30) days prior to the enrollment period.

C. The Sick Leave Bank Committee will be responsible for the review of requests for Bank days to be withdrawn from the Bank. The Committee will be

comprised of one (1) HR representative, one departmental management representative, and one (1) representative appointed by BEDA. Providing that the balance in the Bank is sufficient, the Committee shall have the authority to grant up to thirty (30) days to an employee per calendar year (Jan. 1 to Dec. 31), and shall endeavor to make a determination on each application for Bank days within ten (10) working days of receipt of all documentation required by the Committee. The Committee may grant up to an additional thirty (30) days to an employee but in no event shall the total of such grant(s) to an employee exceed sixty (60) days in total per calendar year. A majority vote of the full Committee is required to grant Bank days.

D. Applications for Bank days must be submitted in writing to the Human Resources Office along with a signed statement from the employee's doctor which fulfills the criteria in Part E(3) below. The Human Resources Office shall take steps to remove any reference to the employee's name from the medical records or documentation. The Committee, through the Human Resources Office, may request additional medical information from the employee's medical provider and may consider information from the employee's department, which may be relevant to the Committee's deliberations. The Human Resources Office and the Committee shall at all times safeguard and treat as confidential the medical information concerning employees who have applied for Bank days.

E. The following criteria shall be used by the Committee in awarding Bank days:

1. The employee is eligible by virtue of meeting the criteria in Paragraph A above;
2. The employee has exhausted or will soon exhaust all accumulated sick leave and other paid leave (such as vacation leave and personal leave); and
3. The application is accompanied by adequate medical evidence of a serious illness or serious injury, which prevents the employee's immediate return to work.

The Committee may require additional medical information or documentation prior to making a decision on any application. Bank days which are granted but unused shall revert to the Bank upon an employee's return to work, retirement, resignation or other separation from employment or death, whichever occurs first.

F. If the Committee has denied an application for Bank days, the employee, or by agent, may request in writing that the application be reconsidered at a meeting of the Committee at which the employee, or agent, is present.

G. Decisions of the Committee shall be final, and shall not be the subject of grievance or arbitration.

9. **Article XIV, Hours of Work and Overtime -- Modify as Follows:**

(a) Hours of Work. The regular weekly work schedule for permanent employees shall be Monday through Thursday, 8 ¼ hours per day (8:00am to 5:00pm) exclusive of a 45 minute lunch break, and 4 ½ hours on Friday (8:00am to 12:30pm), for a total of 37 ½ hours per week. ~~consist of five (5) consecutive seven and one-half (7 ½) hour das in accordance with current schedules exclusive of an unpaid one hour lunch period~~. Friday afternoon staffing in the Engineering office from 12:30pm to 5:00pm ~~shall~~ may consist of at least one unit employee, subject to the Department Head or Division Head's discretion based on the operational needs of the Department. The Department Head or Division Head shall provide as much advance notice as possible to the employee(s) approved to work Friday afternoon from 12:30pm to 5:00pm. Such employee(s)~~, if working the modified work schedule provided in Appendix B of this agreement,~~ who work Friday afternoon from 12:30pm to 5:00pm-shall receive ~~compensatory time off~~overtime pay at the rate of one and one-half times the employee's regular rate of pay.~~equal to the time worked, which may be taken off at a time agreed to by the department head and the employee~~. ~~Effective July 1, 2018, such employee(s), if working the modified work schedule provided in Appendix B of this agreement, shall receive compensatory time off in accordance with Appendix B.~~

- **DELETE last paragraph of ARTICLE XIV reading, "The provisions of Appendix B, herewith attached, shall remain in effect during this agreement."**
- **DELETE Appendix B** – With the "modified work schedule" incorporated in Article XIV as reflected above, Appendix B becomes redundant and may be removed.
- **All employee accumulated Friday Earned (FE), or Friday Compensatory (FRI COMP) Time shall be converted to Compensatory Time (COMP) Earned**

10. **Article XVI, Compensation – Include as Exhibit attached to Collective Bargaining Agreement**

During the term of the July 1, 2021 through June 30, 2024 successor agreement, the Town shall conduct and complete a comprehensive compensation and classification study to ensure competitive, fair and equitable compensation practices relative to existing job classifications in the BEDA bargaining unit. The study will serve the additional purpose of advising on the merits of a potential reorganization of the Engineering and Transportation Division, including, but not limited to, reviewing job titles, job qualifications/requirements, job classifications, job/position descriptions, and job/position responsibilities.

BEDA reserves the right to impact bargain any proposed changes to the Division's structure, job titles/descriptions, classification and compensation at a successor agreement.

In light of the Town's commitment to conduct a comprehensive compensation and classification study, Article XVI, Section (d), of the parties' collective bargaining agreement shall be DELETED, as reflected below:

~~(d) Data. The Town and BEDA agree that as part of the successor bargaining process the parties will gather salary and benefits data from comparable public sector agencies for the purpose of reviewing and evaluating existing classification and compensation.~~

11. Article XVI, Compensation – Modify Section (g) as follows:

(g) Certifications. Each employee who has a certification(s) from the list of certifications below will receive a ~~$125~~ 175 certification stipend per certification provided that the Director has authorized the employee to obtain or maintain such certifications(s) for the fiscal year in which the employee is to receive the stipend. No employee shall receive ~~certification stipend in excess of $375 per fiscal year~~more than four (4) certification stipends per fiscal year. Certificating stipends will be paid on for about the first pay period in July. The Director shall have the authority to amend the Certification List as the Director deems necessary.

~~**Effective July 1, 2018**, each employee who has a certification(s) from the list of certifications below will receive a **$150** certification stipend per certification provided that the Director has authorized the employee to obtain or maintain such certifications(s) for the fiscal year in which the employee is to receive the stipend. **No employee shall receive more than four (4) certification stipends per fiscal year.** Certificating stipends will be paid on for about the first pay period in July. The Director shall have the authority to amend the Certification List as the Director deems necessary.~~

~~**Effective July 1, 2019, each employee who has a certification(s) from the list of certifications below will receive a $175 certification stipend per certification provided that the Director has authorized the employee to obtain or maintain such certifications(s) for the fiscal year in which the employee is to receive the stipend. No employee shall receive more than four (4) certification stipends per fiscal year. Certificating stipends will be paid on for about the first pay period in July. The Director shall have the authority to amend the Certification List as the Director deems necessary.**~~

Certification List:

APWA Certified Public Infrastructure Inspector, CPII
APWA Certified Storm water Manager, CSM
CPSC Certified Playground Safety Inspector, CPSI
ECI Certified Municipal Separate Storm Sewer Specialist, CMS4S
IMSA Roadway Lighting Level I
IMSA Signs and Pavement Marking Level I, II, III
IMSA Traffic Signals Level I, II, III
NEIWPCC Soil Evaluator Certification
NETTCP Concrete Inspector Certification

NETTCP HMA Paving Inspector Certification
NETTCP Soils and Aggregate Inspector Certification
~~OSHA 10 Hour Training Certificate~~***
~~OSHA Public Sector Safety and Health Fundamentals Training Certificate~~
TPCB Professional Traffic Operations Engineer, PTOE
UMASS Bay State Road Program Road Scholar and Master Roads Scholar
LEED (Leadership in Energy and Environmental Design) via USGBC
MCPPO Massachusetts Certified Public Purchasing Official (via Office of the Inspector General OIG)
CFM Certified Floodplain Manager by Association of Floodplain Managers (ASFPM) via FEMA
NASSCO Pipeline Assessment Certification Program (PACP) via National Association of Sewer Service Companies
Commonwealth of Massachusetts Land Surveyor-In-Training (SIT) Certification
Commonwealth of Massachusetts Professional Land Surveyor (PLS) License
Envision Sustainability Professional. ENV SP via APWA
IMSA Work Zone Temporary Traffic Control Technician
ACI Concrete Field Testing Technician - Grade I
OSHA 40 Hour Hazardous Waste Operations and Emergency Response (HAZWOPER)
Massachusetts Construction Supervisors License (CSL)

***OSHA 10 Hour Training Certificate shall be removed from the Certification List effective July 1, 2023 to give all existing employees the opportunity complete such training and receive the applicable certification stipend, provided that the Director has authorized the employee to obtain or maintain such certifications(s) for the fiscal year in which the employee is to receive the stipend in accordance with this Article.

12. **Appendix A, Engineering Classifications – Salary Schedule** – Modifications to the salary schedule, as reflected in the attached spreadsheet, as follows:

A. Effective July 1, 2022, a new Step 9 will be added to the salary schedules of all classifications (EN02, EN03, EN04, EN05), created by adding 1.78% to the hourly rate of Step 8. All employees working in Step 8 in the fiscal year prior to July 1, 2022 shall move to Step 9 on July 1, 2022. The general wage increase of 3% in fiscal year 2023 will be applied after the new Step 9 is added.

B. Applicable to all classifications (EN02, EN03, EN04, EN05) effective July 1, 2023, all gaps in steps shall be increased to 2%, starting with the lower step 1 and working upwards through Step 9. The general wage increase of 3% in fiscal year 2024 will be applied after the increase in step gaps is applied.

13. **Article XV, Holidays** – Modify Section (a) as follows:

(a) Legal Holidays. There shall be ~~twelve~~ thirteen paid holidays.

Bunker Hill Day shall be deemed a "floating" holiday. The Engineering/Transportation Division shall operate as a regular day on Bunker Hill Day, and employees shall receive the holiday time off at a time mutually agreed upon by the employee and the Director of Engineering. This holiday to be used between June 17 and December 31.

The following ~~eleven~~ twelve legal holidays 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, Juneteenth, Independence Day, Labor Day, Columbus Day (Indigenous Peoples' Day), Veteran's Day, Thanksgiving Day and Christmas Day. All legal holidays falling on a Sunday shall be celebrated on Monday. 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 as listed above falls on a Saturday, such person shall, where possible, 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.

14. **Article XXII, Agency Service Fee** – The parties' agree to **DELETE** this Article in its entirety.

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 **November 17, 2022.**

For the Town of Brookline:

Erin Gallentine, Commissioner
Department of Public Works

Robert King, Director
Engineering & Transportation

For Brookline Engineering Division Associates:

Bill Smith
BEDA, Chair & Bargaining Representative

Sam Downes
BEDA, Bargaining Representative

Ann H Braga

Ann Hess Braga, Director
Human Resources Office

Daniel O'Donnell

Daniel O'Donnell
BEDA, Bargaining Representative

ARTICLE 3

THIRD ARTICLE
Submitted by: Select Board

To see if the town will dedicate all or a percentage, which may not be less than 25 percent, of the Statewide Opioid Settlements, pursuant to the Massachusetts State-Subdivision Agreement for Statewide Opioid Settlements, collected under Massachusetts General Laws c. 10, § 35OOO to the Opioid Settlement Stabilization Fund established under Massachusetts General Laws Chapter 40, Section 5B, effective for fiscal year 2024 beginning on July 1, 2023, or take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

On July 21, 2021, AG Healey announced a $26 billion resolution with opioid distributors and Johnson & Johnson, which will provide more than $500 million to the Commonwealth and its cities and towns for prevention, harm reduction, treatment, and recovery across Massachusetts. The settlement requires all funds to be used to supplement and strengthen resources for prevention, harm reduction, treatment, and recovery.

The Public Health & Human Services Department is proposing using the Opioid Settlement funds to prevent misuse of opioids and implement prevention programs and harm reduction strategies in accordance with the Massachusetts Abatement Terms. These funds will advance the work of the department's substance use prevention division, including developing a community substance use prevention coalition. Rebuilding Brookline's community coalition will engage a robust, multi-sector coalition of stakeholders in developing and implementing the strategic plan to prevent substance use. The funds will support the coalition implementation of the Substance Abuse and Mental Health Services Administration (SAMHSA) Strategic Prevention Framework. Examples of coalition work could include creating positive social norms campaigns around youth substance use, promoting healthy decisions among youth, parent skills training on talking to a child about substance use, and harm reductions strategies like Naloxone training and distribution. The programs and actions implemented will be driven by the SPF, an engaged coalition, evaluation of existing programs and services, identified risk factors and protective factors specifically in Brookline.

The Town can classify settlement funds received in FY23 as general fund Local Receipts and make an appropriation for the settlement purposes by amending the existing FY23 budget to reflect that new source of revenue before the tax rate is set. That is the plan with the funding that has been received to-date (see the FY23 budget amendment article). The Legislature is currently considering an amendment to G.L. c. 44, § 53 that would permit municipalities to deposit statewide opioid settlement funds in a separate fund, outside of the general fund, upon the approval of the Director of Accounts. Under the proposed amendment, municipalities would still be required to appropriate the funds for their intended purposes.

Absent this legislative action, Brookline can vote to dedicate to a special purpose stabilization fund for some or all of the opioid settlement funds it receives. This article proposes to do that in order to ensure that future payments are segregated and utilized for their intended purpose.

SELECT BOARD'S RECOMMENDATION

This article asks Town Meeting to dedicate opioid settlement payments to a special purpose stabilization fund. Distribution of settlement funds for municipalities is based on federal data on opioid use disorder, overdose deaths and 2006-2016 opioid shipments into Massachusetts, by region and community. The Town is currently estimated to receive approximately $1.7M over the next 16 years. The funds are required to be used to supplement and strengthen resources available for substance use disorder prevention, harm reduction, treatment, and recovery efforts. Opioid settlement payments currently go to the General Fund. Establishing this fund will allow the funds to accrue in the stabilization fund until there is a recommendation on an appropriation.

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

VOTED: that the Town of Brookline accept the fourth paragraph of Massachusetts General Laws Chapter 40, Section 5B, which provides for the dedication, without further appropriation, of all opioid settlement payments, to a stabilization fund established under Massachusetts General Laws Chapter 40, Section 5B.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee unanimously recommends FAVORABLE ACTION on Warrant Article 3.

Summary: Warrant Article 3 was submitted by the Select Board and would create a special use stabilization fund for monies received as part of a settlement between the Commonwealth of Massachusetts and Johnson & Johnson (J&J), due to J&J's role in the opioid crisis. The stabilization fund would ensure that the settlement money is used for its intended purpose.

Discussion: The terms of the J&J settlement require that municipalities use the funds for substance abuse prevention, harm reduction, treatment, and recovery work. A special use stabilization fund will ensure the money Brookline receives is segregated, and appropriated annually to the Health Department so we can comply with the mandate. The

Brookline Public Health & Human Services Department will implement the mandated programming through its substance abuse prevention division.

This year Brookline will receive $354,000. Thereafter the payments will vary, hovering around $75,000-$100,000 annually through FY38.

For FY23, a different procedure will need to be employed as the stabilization fund cannot become effective until the fiscal year following the one in which it was established.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/o9nXwJGaJgmTp8p2H_BvJ-4mS8yoJefHCdPDcRIXHFtQ8dw1LhcSBbjeqmImnAGldORcThqeWxxIHN5C.GEKOLV9c-UwJsK3O?continueMode=true

Recommendation: By a vote of 26-0-0 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

ARTICLE 3 ADVISORY COMMITTEE VOTES

Article Description	**Creation of an Opioid Settlement Stabilization Fund**
AC recommendation (Favorable Action unless indicated)	**26-0-0**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y

Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 4

FOURTH ARTICLE

Submitted by: Select Board

To see if the Town will appropriate a sum of money to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board, to renovate, remediate, and modernize all the Town fire stations, including site work and the reconstruction of Station 5, located at 49 Babcock Street. Any new fire station and the entirety of each renovated fire station will be designed and constructed be a highly energy efficient building that is consistent with the fossil-fuel-free-construction policy or practice established by the Select Board.

PETITIONER'S ARTICLE DESCRIPTION

A study was made of the conditions of the fire stations and what was needed to provide significant modernization and attention to several critical areas (1) addressing the systemic changes necessary to provide a safe and healthy work environment for our firefighter's through the reduction of exposure to carcinogenic contaminants in the living quarters, (2) addressing the long overlooked areas of privacy equity and increased capacity for female firefighters, and lastly (3) addressing all applicable health and safety requirements in the work space under the state's newly adopted federal Occupational Safety and Health Administration (OSHA) standards. (4) anticipating the feasibility of Electric Vehicles for emergency response; specifying the infrastructure necessary for Electric Vehicle Supply Equipment (EVSE).

The project would include interventions such as industrial cleaning of all non-porous surfaces and all duct work, painting of all walls and ceilings (hard surfaces), replacement of all acoustic/porous ceiling tiles, replacement of all window treatments, replacement of all (soft) furniture in living areas, and the replacement of any fabric partitions. These upgrades form the foundation for the next phase of essential renovations necessary to transform the department's working and living spaces to provide for the long-term wellbeing of our firefighters and to accommodate our diverse workforce.

The first analysis focused on the integration of environmental zoning within the existing structures; primarily using enhanced HVAC equipment to create "pressurized" controls between working and living spaces. These newly established "zones" work in conjunction with enhanced policy and procedural decontamination standards and habits. Negative and positive pressure differences between the zones limit the conventional flow of contaminants between the garage or contaminated (red) working areas of the stations; pass through a neutral or reduced contamination (grey) zone before entering into the contamination-free living quarters (green). There are a limited number of changes that would need to be made to the physical structure of some stations to create the needed flow from zone to zone.

A second analysis was conducted by the same groups to address the long-overdue complete integration of female firefighters into the outmoded fire stations that were built exclusively for male occupancy. Brookline's female firefighters have been subjected to disparate accommodations for over two-decades and are rightfully demanding that changes be implemented to increase capacity for bathroom and changing facilities providing more flexibility and privacy for our anticipated growing female workforce. The initial changes that were implemented, albeit well-intentioned, created even further disparity. The new analysis was designed to meet or exceed standards established by previous civil service ruling for integrated accommodations. These specific renovations were integrated to work in conjunction with the overall redesign plan to build resiliency for the next several decades of use by the department.

A third analysis was undertaken to review the newly instituted federal OSHA standards as they pertain to the fire stations. The committee finds that the majority of the identifiable potential violations that could be found within the scope of the standard has been, or will be, addressed within the larger renovation plans, and no additional specific recommendations are necessary at this time.

Finally this project provides the opportunity for specifying and practical integration of Electric Vehicle Supply Equipment (EVSE) within the scope of construction.

This large-scale endeavor would be completed over the course of 5-7 years at an estimated cost of $82 million dollars, necessitating a debt-exclusion from the Town residents. This project would necessitate that each fire station would be vacated in its entirety during the period of renovation. As such, the apparatus and personnel from the affected station are temporarily reassigned to another station(s). Some minor site work could be necessary to accommodate more personnel on a temporary basis. The renovations are estimated to take between 8-18 months for each station depending on the size and complexity of the project.

SELECT BOARD'S RECOMMENDATION

Article 4 is an appropriation article which seeks to fund the capital improvement project for Fire Station Renovations. The project seeks to remediate carcinogenic contaminants in the living quarters and provide better accommodations for female firefighters. The project also includes the reconstruction of Station 5, due to ineffective renovation options. The Board placed a debt exclusion question on the November 8th election ballot to provide funding for this project (should the debt exclusion question fail this article should not be moved).

The cost of this project has been refined over the years. The original estimates from Garcia, Galuska & DeSousa Inc. (GGD) were based on the economic situation in 2019; subsequently there were two revised cost estimates.

The first was updated in January 2022 and was commissioned to address inflationary factors known to have increased from 2019 through 2022. That cost stood at approximately $50 million to do 4 renovations and 1 rebuild and includes money to meet the Town's Fossil Fuel Free (FFF) requirements. GGD also provided an additional estimate vis-à-vis the Town's climate action goal for "Net Zero" readiness. The additional work that would be required for this was estimated at $10 million. Combined the cost was anticipated at $60 million.

In an effort to give the voters the best estimate for the debt-exclusion vote given the current volatile economic situation, we asked GGD to increase the "escalation cost" estimates from 5% to 8%, adding an additional $4.6 million to the cost analysis, further the cost for temporary housing of Engine 5 during the renovations was increased by $250,000.
To be clear – the total debt exclusion price before the voters stands at $65 million.

Based on this number the following is the estimated tax impact (assuming the project is fully borrowed and using FY2022 tax rates):

TAX IMPACT OF DEBT EXCLUSION (LEVEL DEBT SERVICE)		
Project(s) Cost	$65,000,000	
Town Share	$65,000,000	
Term	25	
Interest Rate	5.25%	
Annual Debt Service	$4,728,143	
Tax Impact on Median Single-Family Home	$283	1.74%
Tax Impact on Median Condo	$79	1.74%
Tax Impact on Median Commercial Prop	$567	1.74%

The Select Board enthusiastically support this project and hopes that the votes agree that the time is now to address the conditions for our firefighters.

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

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 4 by a unanimous vote of 26-0.

Executive Summary	On the November 8, 2022 Ballot, Town voters are asked by Question #5 to approve a Debt Exclusion in "the amounts required to pay for the bonds issued in in order to renovate, remediate, and modernize all the Town fire stations, including site work and reconstruction of Station 5, located at 49 Babcock Street." Warrant Article 4 will authorize the Town to borrow the funds necessary to do this work, and appropriate (spend) the borrowed funds on the fire station renovation project.
Voting Yes will...	Warrant Article 4 will authorize the Town to borrow and spend the funds on the fire station renovation, remediation, and modernization project.
Voting No will...	If Town Meeting fails to authorize the borrowing of the funds and their expenditure, after the voters' approval of Question #5, the fire station renovation projects will be unable to proceed.
Financial impact	The Town's outstanding debt will increase by up to $65 million dollars in total, with the borrowings to occur in 5 annual tranches of $18 to $9 million each. The actual impact on property taxes will depend on the interest rates obtained when each bond tranche is sold. The Town's financial advisor has suggested a rate of 5.25%, and a 25-year term. This schedule will result in the tax levy gradually increasing by 1.74% over the FY 2022 amount, or a total of $4,728,143 (the total projected annual debt service).
Legal implications	No legal implications identified if the WA is passed. Failure to perform the work for state and federal safety compliance may have potential liabilities.

Introduction
The Advisory Committee has been discussing the fire station renovation project with the Fire Department since the FY 20 budget cycle.

On March 29, 2022, the Advisory Committee voted unanimously to request the Select Board place the project on the November Ballot as a Debt Exclusion.

The recording of the Advisory Committee's September 29, 2022 meeting can be accessed here: https://brooklinema.zoomgov.com/rec/play/o9nXwJGaJgmTp8p2H_BvJ-4mS8yoJefHCdPDcRIXHFtQ8dw1LhcSBbjeqmImnAGldORcThqeWxxIHN5C.GEKOLV9c-UwJsK3O?continueMode=true

Chief Sullivan's September 29, 2022 memo to the Advisory Committee providing the history and rationale for the project can be found here: https://www.brooklinema.gov/DocumentCenter/View/35094/Advisory-Committee-Memo-WA-4---Sept-2022

The Capital Subcommittee's March 29, 2022 report on the FY 23 Fire Department CIP Requests, which includes an in-depth discussion of the Fire Station Renovation project is accessible here: https://www.brooklinema.gov/DocumentCenter/View/30296/Fire-Department-FY-23-CIP

Background

The Fire Station Renovations Project is currently estimated to cost $65,000,000, an amount that includes soft costs (architectural and engineering services, commissioning, and OPM services) totaling approximately 17.5% of the project costs; construction costs; contingency; and additional features to make the stations "Net Zero Ready." The three goals of the project are:

1. Minimizing the occupational health risks of all employees.
2. Providing work/living space conforming to all local, state, and federal safety standards.
3. Ensuring gender equitable facilities for all employees.

There are five fire stations in Brookline: Station 1 (Washington Street and Route 9); Station 4 (Route 9 and Reservoir Road); Station 5 (Babcock Street); Station 6 (Hammond Street); and Station 7 (Washington Square). Each station provides living, cooking, and sleeping quarters as well as administrative office space. The renovation of each station is currently estimated to take between 8-18 months, depending on the size and complexity of the project, with each station vacated during the renovation. The apparatus and personnel from the affected station would be temporarily reassigned. It is a project that involves considerable logistical planning, which is already underway. The entire project is expected to take place over five to seven years.

In 2013 a study was undertaken to determine the work necessary for the stations to accommodate newer, larger fire equipment as well as recommendations for the HVAC systems, generators, lighting, and life safety as well as mechanical, electrical, plumbing (MEP) systems. Heavy emphasis was placed on the installation of enhanced HVAC equipment to create pressurized controls between working and living spaces, along with

the implementation of enhanced policy and procedural decontamination standards and habits.

Subsequent discussions among members of the Fire and Building Departments and GGD, the engineering firm engaged by the Town, led to the conclusion that Station 5, although built in 1965 and therefore the "newest" of the five stations, did not lend itself to renovations, and that spending in excess of $5-7 million dollars for renovations would still not result in a building that would have parity with the other stations once they were upgraded.

Additionally, Station 4 will be renovated to accommodate a ladder truck, which it does not currently house. This will allow the repositioning of ladder trucks to Station 4 during the renovation of other stations, and ultimately the permanent addition of a ladder truck at this location at the completion of the project.

Discussion
Overall comments were supportive of this project. AC members felt it was important to achieve gender equity in the facilities and create safe working conditions in compliance with all pertinent codes and regulations.

There were questions about the decision to not include the work to make the stations "EV" (electric vehicle) ready. Chief Sullivan indicated that industry work in this area is still in its early stages; regulations and standards, including requirements for back-up power sources, have not yet been developed; engines currently available are hybrid designs containing their own diesel generators; and it would be more logical to make this transition as part of an overall town conversion plan and when opportunities for federal and state funding to help defray the costs will be available.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 4 by a unanimous vote of 26-0. The full text follows.

> VOTED: To appropriate $65,000,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board, to renovate, remediate, and modernize all the Town fire stations, including site work and the reconstruction of Station 5, located at 49 Babcock Street. Any new fire station and the entirety of each renovated fire station will be designed and constructed to be a highly energy efficient building that is consistent with the fossil-fuel-free-construction policy or practice established by the Select Board. And, to meet the appropriation, authorize the Treasurer with the approval of the Select Board, to borrow $65,000,000 under General Laws, Chapter 44, Section 7 (1), as amended, or pursuant to any other enabling authority.

ARTICLE 4 ADVISORY COMMITTEE VOTES

Article Description	**Appropriation for the Fire Station Renovation Project**
AC recommendation (Favorable Action unless indicated)	**26-0-0**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y

Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 5

FIFTH ARTICLE

Submitted by: Select Board

To see if the Town will vote to amend Article 2.5, Section 2.5.2 of the General By-laws, as follows (additions in **bold underline**; deletions in ~~strike-through~~):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant. The Select Board and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for ~~all~~ articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

The Select Board shall cause one copy of the combined reports to be delivered or mailed not later than the seventh day prior to each special Town Meeting and not later than the fifteenth day prior to the start of each Annual Town Meeting, to the residence of every elected officer, Town Meeting Member and member of the Advisory Committee, and to the residence of every appointed officer, resident, real estate owner and town employee who requested, in writing, a copy of that combined reports. The combined reports shall contain each article in the warrant for such Town Meeting followed by the report of the Select Board on such article and then the report of the Advisory Committee on such article and every report made, not later than the twenty-second day prior to such Town Meeting and after the twenty-second day prior to the previous Town Meeting, by a Special Committee created by a Town Meeting or the Moderator.

The Combined Reports shall include, with each recommendation of the Select Board, a roll-call showing the vote of each member; and shall include, with each recommendation of the Advisory Committee, a statement of the number of members voting for and against the recommendation and the date of the vote. When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.

The report of the Select Board on the article at an Annual Town Meeting providing for termination and close-out of prior special appropriations shall include a statement from the Comptroller listing each account for such an appropriation as falls within the scope of the article, the purpose of the appropriation, and the unexpended balance as of the last day of March in the year of said Annual Town Meeting.

Or act on anything relative hereto.

PETITIONER'S ARTICLE DESCRIPTION

The Select Board recently piloted a process where they chose to make recommendations on a limited number of articles on the warrant during the 2022 Annual Town Meeting. The Board deemed this experiment a success as it allowed them to focus on warrant articles that directly affected their work instead of holding hearings on articles that were not germane to their interests and authority. This article amends the general by-laws so that they can continue this practice.

MOTION TO BE OFFERED BY THE COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE

By a vote of 6-0-0 taken on November 2, 2022, the Committee on Town Organization and Structure recommends the following motion under Article 5:

VOTED: To refer the subject matter of Article 5 to the Committee on Town Organization and Structure with a request that the Committee consider amendments to the relevant bylaws and report on its recommendations no later than the May 2023 Annual Town Meeting.

SELECT BOARD'S RECOMMENDATION

Article 5 is a proposed by-law change that seeks to eliminate the requirement that the Select Board provide recommendations on all of the articles in the warrant. The Board continued this practice for the articles on this warrant, holding a public hearing to discuss what criteria they wanted to use and which articles fall within that criteria. For the past two cycles where this has been tested, the Board has taken a position on any article where a department or a Board or Commission is a petitioner, most zoning articles, and budget amendments. For future warrants, anything controversial would likely compel the Board to take a position (i.e. turf fields). The Chair also agreed to include any requests from Board Members even if the article does not necessarily meet the above criteria.

The Board feels that this change has allowed them to focus on articles where they see their recommendations providing information to Town Meeting that will help inform the debate. The Board also has the opportunity to express their opinion on matters on the warrant Town Meeting before Town Meeting even occurs. The Board's public comment period, which happens at the start of their weekly meetings, is another opportunity for the Board to hear from the public about matters that may also come up at Town Meeting.

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

VOTED: That the Town amend Article 2.5, Section 2.5.2 of the General By-laws, as follows (additions in **bold underline**; deletions in ~~strike through~~):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant. The Select Board and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for ~~all~~ articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

The Select Board shall cause one copy of the combined reports to be delivered or mailed not later than the seventh day prior to each special Town Meeting and not later than the fifteenth day prior to the start of each Annual Town Meeting, to the residence of every elected officer, Town Meeting Member and member of the Advisory Committee, and to the residence of every appointed officer, resident, real estate owner and town employee who requested, in writing, a copy of that combined reports. The combined reports shall contain each article in the warrant for such Town Meeting followed by the report of the Select Board on such article and then the report of the Advisory Committee on such article and every report made, not later than the twenty-second day prior to such Town Meeting and after the twenty-second day prior to the previous Town Meeting, by a Special Committee created by a Town Meeting or the Moderator.

The Combined Reports shall include, with each recommendation of the Select Board, a roll-call showing the vote of each member; and shall include, with each recommendation of the Advisory Committee, a statement of the number of members voting for and against the recommendation and the date of the vote. When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.

The report of the Select Board on the article at an Annual Town Meeting providing for termination and close-out of prior special appropriations shall include a statement from the Comptroller listing each account for such an appropriation as falls within the scope of the article, the purpose of the appropriation, and the unexpended balance as of the last day of March in the year of said Annual Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 5 by a vote of 20-5 with 1 abstention.

Executive Summary	Warrant Article 5 seeks to amend Section 2.5.2 of the general by-laws to remove the requirement that the Select Board review and report on all articles submitted to Town Meeting to allow the Select Board to review articles directly related to their authority.
Voting Yes will...	Amend Section 2.5.2 of the general by-laws to allow the Select Board to review and report on a subset of the articles in a warrant for a Town Meeting.
Voting No will...	Continue to require the Select Board to review and report on every article in a warrant for Town Meeting
Financial impact	None
Legal implications	None

Introduction
Warrant Article 5 is submitted by the Select Board and seeks to amend the section of the Town's general by-laws that deals with the Combined Reports. Currently, section 2.5.2 requires the Select Board and the Advisory Committee to write up a report for all articles in the warrant for a Town Meeting.

Warrant Article 5 would remove the word "all" in Section 2.5.2 and would thus permit the Select Board (and, by extension, the Advisory Committee) to review and report on a subset of articles within the warrant.

Discussion
Leading up to the 2022 Annual Town Meeting, the Select Board piloted a process where the Board made recommendations on a limited set of warrant articles. Based on the results of the pilot, the Board seeks to permanently have the option of not reviewing every warrant article for Town Meeting. The current Select Board has indicated they will review articles submitted by a Town Department, Board, or Commission; all budget amendments and matters that are topical or controversial. Additionally, the current Select Board chair has implemented a policy that allows any member of the Select Board to request that the Board review a specific warrant article. The Advisory Committee Chair has indicated that the Advisory Committee intends to continue its policy of issuing reports on all Warrant Articles and to decline to make a recommendation on an article only upon such motion at a duly noticed meeting.

The number of articles in the warrant has increased in recent years and the proposed change allows the Select Board to focus its attention on articles directly related to its

authority. Reducing the number of reports submitted to the Combined Reports will also reduce any redundancy between Select Board and Advisory Committee reports, and reduce staff time needed to produce the Combined Reports.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/_8WNk9bOaxi17vCM7NCoHKEYZJlGuZAKbdW5JA9PWQyEHZnbPdlFbougbW3TpQKwjTt5Lx3lySDSgFTS.WY5C-SDnFHBtntL9?continueMode=true

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board by a vote of 20-5-1.
ARTICLE 5 ADVISORY COMMITTEE VOTES

Article Description	**Reduce the requirement for recommendations on all warrant articles**
AC recommendation (Favorable Action unless indicated)	**20-5-1**
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	Y
Neil Gordon	N
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y

Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	N
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	N
Lee Selwyn	A
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 5

COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE REPORT AND RECOMMENDATION

SUMMARY

If Article 5 is approved, the Select Board and Advisory Committee would not be required to prepare reports on all warrant articles for Town Meeting. They would be able to decide which articles to review. The Select Board has submitted Article 5 because the number of articles on the warrant for each Town Meeting has increased in recent years. Select Board members feel that they and Town staff are overburdened and lack the time to consider every article adequately. If they did not have to review every article, they could focus on the most important ones.

The Committee on Town Organization and Structure (CTOS) recognizes that the number of warrant articles has increased, but CTOS has three concerns about Article 5.

- First, Article 5 does not specify the types of articles that the Select Board would review. Would the Select Board report on the articles on which its advice is essential for Town Meeting?
- Second, the bylaws now require the Select Board and Advisory Committee to hold public hearings on warrant articles before taking a vote. If reports are no longer required and the Select Board and Advisory Committee opt not to review some warrant articles, would Article 5 reduce the number or quality of public hearings on warrant articles?
- Third, Article 5 was submitted by the Select Board and reflects the Select Board's perspective, but the amendment also applies to the Advisory Committee. Should there be a list of types of articles that the Advisory Committee is required to report on? Should that list be the same as any list of types of articles that the Select Board is required to review?

Recommendation: CTOS recommends that the subject matter of Article 5 be referred to CTOS so that the Committee can consider ways of addressing these concerns. CTOS would deliver a report no later than the May 2023 Annual Town Meeting, and would attempt to complete its review of the issues related to Article 5 in time to submit a warrant article for that Town Meeting.

BACKGROUND

Starting with the May 2018 Town Meeting, there has been a significant increase in the number of warrant articles. The 10 Town Meetings since May 2018 have had an average of 37.8 articles on the warrant. The 34 Town Meetings from May 2001 until November

2017 had an average of 25.2 articles on the warrant. There has thus been a 50% increase in the average number of articles. Between May 2001 and May 2018, Town Meetings tended to consider 20–30 articles. Since May 2018, the range has been 30–40, exceeding 40 in several cases. Before the May 2018 Town Meeting, the number of articles for any Town Meeting rarely exceeded 30. Since the May 2018 Town Meeting, the number of articles has been more than 30 at every Town Meeting with only one exception (29 in November/December 2018). See the appendix to this report for more information on the number of warrant articles per Town Meeting and a discussion of how these averages were calculated.

Article 5 has been offered by the Select Board in response to the increasing number of warrant articles submitted for each Town Meeting. The article would amend Section 2.5.2 of the General Bylaws to remove the requirement that the Select Board and Advisory Committee prepare written reports with recommendations for "all articles in the Warrant for a Town Meeting." By deleting "all" Article 5 would amend the existing bylaw to enable the Select Board and Advisory Committee to choose the articles on which they would offer reports and recommendations to Town Meeting.

The Select Board already has initiated a pilot program under which that body decides not to consider every article on the warrant. According to Select Board Chair Heather Hamilton, the Select Board has an initial public hearing at which it decides which articles it will consider. The Select Board establishes criteria for the selection by discussion in its meetings. This year, the Select Board's criteria for inclusion were:

> (1) Is the petitioner part of the Town, such as the Select Board or a Town department?
> (2) Are there substantial budget implications for the Town?
> (3) Is the article likely to be controversial?

Using these three criteria, the Select Board chose to consider 22 of the 42 articles for the November 2022 Special Town Meeting.

The explanation that the Select Board filed for Article 5 states:

> The Select Board recently piloted a process where they chose to make recommendations on a limited number of articles on the warrant during the 2022 Annual Town Meeting. The Board deemed this experiment a success as it allowed them to focus on warrant articles that directly affected their work instead of holding hearings on articles that were not germane to their interests and authority. This article amends the general by-laws so that they can continue this practice.

CTOS discussed Article 5 at its meetings on October 12, October 24, November 2, and November 8. The October 24 meeting included a public hearing on Article 5.

DISCUSSION

The Increasing Number of Warrant Articles

CTOS understands the motivation behind Article 5. CTOS includes two former Select Board members, one of whom served as chair of that body, and four former chairs of the Advisory Committee. CTOS members thus have had much experience in attempting to review and report on warrant articles. CTOS members recognize that when the Select Board and Advisory Committee have to consider a large number of warrant articles, the members of those bodies have less time to fully discuss and analyze each article and the quality of the reports to Town Meeting may suffer. A large number of warrant articles also strains staff capacity.

Why Town Meeting Needs Warrant Article Review

Although CTOS recognizes that the increase in the number of warrant articles means that it is harder for the Select Board and Advisory Committee to find enough time to review every article fully, CTOS also recognizes that the process of reviewing warrant articles for Town Meeting is important for two key reasons.

First, the review process provides an opportunity for public input, especially at public hearings, but also in the form of written communications to any Town body that votes to make a recommendation on a warrant article.

Second, the review process includes analysis and evaluation of warrant articles so that Town Meeting has information to help it make its decisions. The Select Board and Advisory Committee spend much time vetting warrant articles with the goal of helping Town Meeting to vote in the best interest of the Town and to avoid approving bylaws, budgets, etc. that have negative or unintended consequences.

CTOS is concerned that Article 5 in its present form might weaken the warrant article review process for Town Meeting. CTOS has three primary concerns.

Concern #1: Article 5 May Deprive Town Meeting of the Select Board's Valuable Advice on Important Warrant Articles

The Select Board has a unique and important role in reviewing Town Meeting articles. As the executive branch of Town government, the Select Board is responsible for overseeing the operations of Town departments, approving upper-level hiring, and appointing members of boards, committees, and commissions. The Select Board has the experience, knowledge, staff support, and access to information that enable it to offer important insights into the likely effects of warrant articles. It has the ability to alert Town Meeting to potential problems in implementing, administering, enforcing, or funding warrant articles that change the Town's bylaws or require the appropriation of funds.

CTOS identified the following categories of warrant articles on which Town Meeting would potentially benefit from the Select Board's review, analysis, and recommendation:

- Articles that have been submitted by a Town department, board, committee, or commission

The Select Board is the appointing or supervising authority for Town departments, boards, committees, and commissions. Given this oversight responsibility and the knowledge that the Select Board has regarding the bodies it supervises or appoints, it could be argued that the Select Board should hold public hearings on all warrant articles submitted by departments, boards, committees, and commissions and report its recommendation to Town Meeting. Moreover, the Select Board may bear some responsibility for warrant articles that are proposed by the committees it appoints.

- Articles that request action by the Massachusetts state legislature

The Select Board is also responsible for filing or requesting a Home Rule Petition or any other action by the Massachusetts state legislature. Some CTOS members believe that before the Select Board votes on a warrant article that would request it to file or request legislation, Town Meeting should know the Select Board's position on the legislation and how the Select Board would feel about carrying out Town Meeting's instructions. (CTOS recognizes that on any Home Rule Petition or question of state legislation it would be useful for Town Meeting to receive the advice of some or all of the state representatives who represent Brookline, but any such requirement would be beyond the scope of Article 5.)

- Articles that propose to amend any Town bylaw

The Select Board, as the Town's executive branch, can bring a unique expertise and perspective to the evaluation of warrant articles that propose amendments to Town bylaws. The Select Board is ultimately responsible for implementing the bylaws. It can advise Town Meeting on the feasibility of administering or enforcing any new or amended bylaws. A case could be made that Town Meeting should have this information before it votes on any bylaw amendment.

- Articles that pertain to the Town budget or other fiscal matters (or, if this category is defined more narrowly, articles that include any appropriation of funds)

The Select Board is uniquely qualified to comment on any warrant article that includes an appropriation of funds or that pertains to the Town budget or fiscal policy. As the Town's executive branch, the Select Board is aware of the entire budget, including current and projected expenditures. The Select Board also benefits from the advice and staff support provided by the town administrator, deputy town administrator, and finance director. It seems plausible to argue that Town Meeting should not vote to appropriate funds without first receiving input from the Select Board.

This list is similar, but not identical to, the criteria that the Select Board used to decide which articles to review for the November 2022 Town Meeting. The Select Board's list, for example, did not include all bylaw amendments or Home Rule Petitions. Select Board Chair Heather Hamilton told CTOS that the Select Board has not made recommendations on Home Rule Petitions or other requests for state legislation because Town Meeting has tended to ignore the Select Board's advice. Applying the criteria in the preceding list to the 42 articles on the warrant for the November 2022 Special Town Meeting (STM1), suggests that the Select Board would have been required to review 35 articles. This total reflects the fact that the warrant includes seven articles that call for state legislation, as well as the Select Board's decision not to review all warrant articles that include bylaw amendments.

During CTOS's consideration of Article 5, it was suggested that the bylaws should not specify categories of warrant articles that the Select Board must review: every warrant is different, and the Select Board should have the flexibility to decide which articles to review on a case-by-case basis. CTOS noted, however, that warrant articles tend to fall into predictable categories, the composition of the Select Board changes over time, and that stable written criteria might be better than decisions based on shifting rationales or subjective judgments such as whether a warrant article is likely to be controversial.

It also was suggested if there was dissatisfaction over the Select Board's decisions to review (or not review) some categories of warrant articles there was a political remedy: Brookline's voters could choose to elect different Select Board members. There is no doubt that Select Board members can be voted out of office, but a maximum of two members are on the ballot for each annual election, so changing the composition of the Select Board can take several years. (This political remedy also does not readily apply to the Advisory Committee, which is not elected but appointed by the Moderator, who only comes up for election every three years.)

Regardless of any criteria or list of categories that might be included in the relevant bylaws, the Select Board would, of course, have the option to consider any warrant article.

Concern #2: Article 5 May Reduce the Number and Quality of Public Hearings

CTOS is concerned about how Article 5 might affect the number and quality of public hearings held by the Select Board and Advisory Committee (or an Advisory Committee subcommittee). If there is no requirement to make a report or recommendation on a given warrant article, will there still be public hearings on that warrant article?

Public hearings on warrant articles serve many purposes. They: (1) give the public an opportunity to comment and influence the debate; (2) provide feedback to petitioners, who may then decide to reconsider or modify their proposals; (3) help the Select Board or Advisory Committee to decide what to recommend to Town Meeting; and (4) educate the public and Town Meeting members about the issues raised by petitioners, as well as the status and strengths and weaknesses of warrant articles. Select Board public hearings are

particularly important for (4), because those hearings are prominent and are made available to a wide audience by the Brookline Interactive Group.

Public hearings also could help the Select Board (or Advisory Committee) to decide whether to make a report or recommendation on a warrant article. In the absence of a public hearing, the implications of a warrant article may not be clear.

The Town's General Bylaws include two provisions that require public hearings on articles.

Section 2.5.2 (which would be amended by Article 5) requires that, "The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant."

Article 3.22 states that, "Any committee as defined in section 1.1.4 [the Advisory Committee and Select Board are included in the definition], before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed public hearing with respect to the Article…"

If, as Article 5 proposes, the requirement that the Select Board and Advisory Committee prepare written reports with recommendations for "*all* articles in the Warrant for a Town Meeting" (emphasis added) is deleted, it is possible that neither body would hold a "final vote" or "first or only vote" on some warrant articles. Such a change would eliminate the requirement that a public hearing be held.

This concern might be addressed by, for example, revising the bylaws to require that the Select Board and Advisory Committee hold a public hearing on each warrant article even if those bodies do not take a "final vote" or offer a recommendation to Town Meeting. (The burden on staff would still be reduced if there is a hearing but no report and recommendation.) Alternatively, the bylaws could require that a public hearing be held before the Select Board or Advisory Committee decides whether it will consider or make a recommendation on a warrant article. Revising the public hearing requirements most likely would be beyond the scope of Article 5.

Concern # 3: Article 5 Does Not Differentiate Between the Select Board and the Advisory Committee

Article 5 was placed on the warrant by the Select Board. The explanation is written entirely from the perspective of the Select Board.

In its discussions of Article 5, CTOS noted that the list of categories that CTOS members had suggested, as well as the list of categories that the Select Board says that it has used during its pilot program to reduce the number of warrant articles that it considers, may not be the categories of articles that the Advisory Committee considers or should consider. For

example, as the Town's Finance Committee, the Advisory Committee might be required to report on all warrant articles related to budgetary matters or fiscal issues, but possibly not on warrant articles related to Home Rule Petitions.

Article 5 would need significant revisions based on further analysis if it were to include a list of categories of articles that the Advisory Committee should be required to review. The Select Board and Advisory Committee have different areas of knowledge and expertise that might generate a different list of categories of articles on which each body should be required to report. It would take some time to draw up the different lists of categories on which the Select Board and Advisory Committee would be required to report.

In addition, there may be an inconsistency between the current Section 2.5.2 of the General Bylaws, which Article 5 would amend, and Section 2.2.6 of the General bylaws, which was amended by Article 29 of the November 2020 Town Meeting. (Note that as of November 8, 2022, the November 2020 Article 29 amendments regarding the Advisory Committee are not included in the General Bylaws as posted on the Town website, but are available from the Town Clerk.)

Section 2.5.2, as it stands, requires the Advisory Committee to prepare reports with recommendations on "all" warrant articles. Section 2.2.6, gives the Advisory Committee more flexibility, stating that "The Committee shall consider *any or all* municipal questions, including appropriation requests and proposed action under all articles in the warrant for a Town Meeting, for the purpose of making reports *or* recommendations to the Town." (Emphasis added.)

By deleting "all" Article 5 would remove this inconsistency, but CTOS believes that it would be better to consider all the concerns enumerated in this report before amending Section 2.5.2 or any other relevant bylaws.

Why Referral Is Necessary

CTOS considered offering an amendment to Article 5 to specify the categories of warrant articles on which the Select Board should be required to report, but the Committee concluded that addressing its concerns about the article might require amendments that were beyond the scope of Article 5, including amendments to other bylaws, and that it would be better to allow more time for careful consideration of all the issues raised by Article 5.

CTOS is the logical Committee to which Article 5 should be referred. The Town's bylaws charge CTOS with "reviewing and reporting its recommendations on all proposed changes in the organization and structure of municipal government in the Town." The Committee already has begun the process of analyzing Article 5 and considering alternative approaches. CTOS is willing to continue to work on possible bylaw amendments related to the subject matter of Article 5. CTOS is not attempting to refer the subject matter of

Article 5 to another committee or to ask the Moderator or Select Board to appoint a new committee.

What Would Happen if Article 5 is Referred to CTOS

If Town Meeting votes for referral, CTOS would hold meetings this winter to discuss the issues raised by Article 5 and to consider one or more bylaw amendments to address concerns about how the rising number of warrant articles is affecting the work of the Select Board and Advisory Committee, whether the bylaws should be amended to modify the requirement that those bodies consider and report on all warrant articles, how to ensure that public hearings are held on warrant articles, and any related issues. The Committee would hold at least two public hearings. The chairs and members of the Select Board and Advisory Committee would be invited to comment. Although the referral motion sets the May 2023 Town Meeting as the deadline for a report, CTOS might be able to prepare an article for the warrant for that Town Meeting—if CTOS decided that a warrant article was necessary.

RECOMMENDATION

By a vote of 6-0-0 taken on November 2, 2022, the Committee on Town Organization and Structure recommends the following motion under Article 5:

VOTED: To refer the subject matter of Article 5 to the Committee on Town Organization and Structure with a request that the Committee consider amendments to the relevant bylaws and report on its recommendations no later than the May 2023 Annual Town Meeting.

Appendix: Number of Articles on the Warrant for Town Meeting, 2001–2022

Date of Town Meeting	Number of Warrant Articles
November 2022	45
May 2022	36
November 2021	32
May 2021	43
November 2020	43
June 2020	43
November 2019	39
May 2019	31
November/December 2018	29
May 2018	37
November 2017	25
May 2017	25
November 2016	35
May 2016	23

November 2015	19
May 2015	20
November 2014	21
May 2014	33
November 2013	19
May 2013	24
November 2012	17
May 2012	30
November 2011	19
May 2011	24
November 2010	22
May 2010	23
November 2009	18
May 2009	31
November 2008	29
May 2008	33
November 2007	24
May 2007	23
November 2006	30
May 2006	32
November 2005	31
May 2005	26
November 2004	25
June 2004	19
November 2003	28
May 2003	29
November 2002	27
May 2002	29
November 2001	17
May 2001	26

Comments:

- The number of warrant articles is the combined total when there was a Special Town Meeting within the Town Meeting.
- The December 2018 Special Town Meeting was not held within the November 2018 Special Town Meeting. Because it was convened shortly after the November 2018 Town Meeting, the articles it considered are included with the total for the November 2018 Town Meeting.
- The number of warrant articles includes “Reports of Town Officers and Committees,” which is customarily listed as the final article on the warrant.
- The number of warrant articles may not reflect the complexity of the issues on a warrant.

- Some articles are not moved and therefore not debated at Town Meeting, although they may have been reviewed by the Select Board, Advisory Committee, and other bodies.
- There have been Special Town Meetings during months other than May and November: March 2004, August 2009, January 2010, April 2019, October 2021. These Special Town Meetings tend to have a limited number of warrant articles. They are not included on the above list.

Observations:

Starting with the May 2018 Town Meeting, there has been a significant increase in the number of articles on the warrant. The 10 Town Meetings since May 2018 have had an average of 37.8 articles on the warrant. The 34 Town Meetings from May 2001 until November 2017 had an average of 25.2 articles on the warrant. There has thus been a 50% increase in the number of articles on the warrant for Town Meeting. Between May 2001 and May 2018, Town Meetings tended to consider 20–30 articles. Since May 2018, the range has been 30–40, exceeding 40 in several cases. Before the May 2018 Town Meeting, the number of articles for any Town Meeting rarely exceeded 30. Since the May 2018 Town Meeting, the number of articles has been more than 30 with only one exception (29 in November/December 2018).

ARTICLE 6

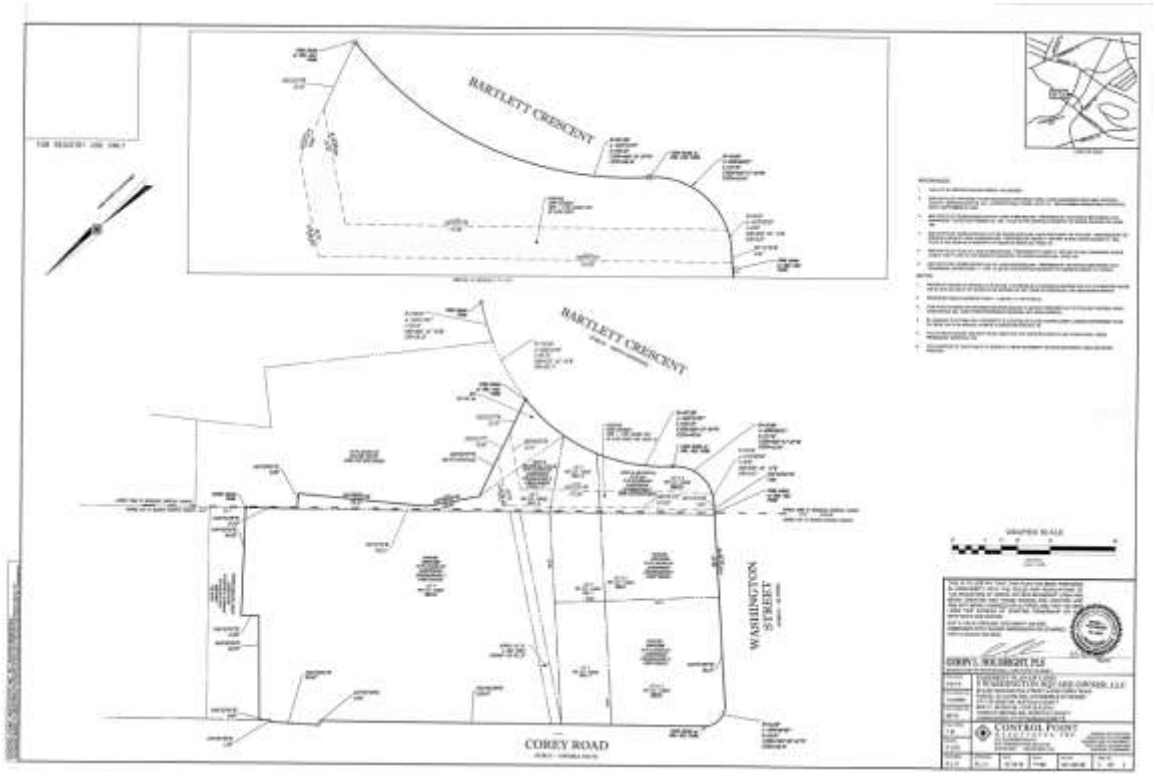
SIXTH ARTICLE

Submitted by: Department of Public Works

To see if the Town will vote to authorize and empower the Select Board to acquire and accept an easement from 5 Washington Square Fee Owner LLC, its successors or assigns, over property located at the corner of Bartlett Crescent and Washington Street in Brookline, with an address of 51 Bartlett Crescent, Town of Brookline (Assessor's Parcel ID No. 93-25-01), for the right to access the property to repair and maintain the drain. The easement area is as substantially shown on the plan submitted herewith entitled "Easement Plan of Land, 5 Washington Square Owner, LLC" prepared by Gerry L. Holdright, PLS, dated December 18, 2019, as may be amended, said plan on file with the Town Clerk. Further, to authorize the Select Board to enter into all agreements and take all related actions necessary or appropriate, to carry out this vote and other acts authorized herein, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The property in question is part of a mixed-use development that straddles the Brookline-Boston boundary line. In order to construct the project, which has underground parking, 5 Washington Square Fee Owner LLC (the "Property Owner"), sought and received permission from the Town to reroute a storm drain around the building and through the Brookline portion of its property. In exchange, the Property Owner, agreed to provide this easement. Per the terms of the agreed upon draft easement, included with this explanation, the Property Owner is required to maintain the drain. The Town, however, would receive the right but not the obligation to enter the property and repair the drain should that become necessary. Note that the proposed easement allows the Town, after notice and the Property Owner's failure to repair the drain, to perform this work and charge it back to the Property Owner. The Property Owner has an incentive to the maintain the drain because its failure would likely flood its underground parking area. A failure of the drain, however, could also cause flooding downstream in other parts of Brookline. Accordingly, the Department of Public Works believes it is prudent to obtain the rights provided by the proposed easement. Note that the Town is not paying for this easement. Rather, the consideration for the proposed easement was granting the Property Owner the right to reroute the drain line.



DRAFT DRAINAGE EASEMENT

5 Washington Square Fee Owner LLC, a Delaware limited liability company having a mailing address care of Krebs Investment Group, LLC, 257 Hillside Avenue, Needham, Massachusetts 02494 ("Grantor"), in consideration of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Town of Brookline, a municipal corporation located in Norfolk County, Massachusetts ("Grantee"), a non-exclusive drainage easement for the construction, operation, maintenance, repair and reconstruction of a storm drain, part of a storm drainage system, across and through the area shown as "Drainage Easement" on a plan entitled "_____" dated _____, 2020, prepared by Control Point Associates, Inc. and recorded herewith (the "Easement Area").

The Selectmen of the Town of Brookline were authorized and empowered pursuant to General Laws Chapter 40, Sec. 14 by vote under Article __ of the Warrant for the Town Meeting (see attested copy attached hereto) held on November __, 2022, to acquire said drainage easement.

Grantor, at its sole cost and expense, will construct the storm drainage system in the Easement Area (the "Storm Drainage System") in a good and workmanlike manner in accordance with plans prepared by Bohler Engineering for Project No. 218421037 stamped approved by Grantee on June 19, 2019 on file with the Town of Brookline Public Works Department, Engineering Division. Grantor will also, at its sole cost and

expense, operate, maintain, repair and reconstruct the Storm Drainage System so that it shall remain in good operating condition and repair, subject to causes beyond the reasonable control of Grantor. In the event that Grantor fails to construct, operate, maintain, repair or reconstruct the Storm Drainage System in accordance with the foregoing, Grantee may notify Grantor of such failure and if Grantor fails to commence to cure the condition complained of within thirty (30) days of such notice, and diligently pursue such cure to completion, Grantee may access the Easement Area and cure the condition itself at the sole cost of Grantor, provided that Grantee shall minimize damage to the Easement Area and the surrounding property, restore the Easement Area to its previous condition, any repair any other damage which it causes in connection therewith. After notice from Grantee to Grantor of the costs incurred by the Grantee in connection with the exercise of its rights hereunder, Grantor shall promptly reimburse Grantee for all such costs (including reasonable attorneys' fees and costs), together with interest at the then prime rate of the Bank of America, N.A., plus two percent (2%), from the date such costs were incurred until payment. Grantor reserves to itself, its successors and assigns the right to use the surface of the Easement Area for any purpose which will not interfere with the exercise or use of the right and easement granted herein.

Grantor, its successors and assigns, shall defend, indemnify and hold Grantee harmless against any and all claims, demands, liabilities, cause of action, lawsuits, judgments and expenses (including reasonable attorneys' fees and costs) (collectively, the "Claims"), arising from or related to any injury or death to any person, or damage to property on account of, or in any way growing out of or related to any failure of Grantor to comply with any of the provisions hereof, including the failure to properly construct, operate, maintain, repair or reconstruct the Storm Drainage System and costs incurred by Grantee in connection with the exercise of its rights under Section 1 above. Grantee shall give written notice of any Claims to Grantor promptly upon learning of the same

All notices hereunder shall be in writing and either delivered by hand or sent by registered or certified mail with return receipt requested or sent by overnight courier service, in the case of notice to Grantor to the then record owner of the premises subject to this drainage easement at 5 Washington Street, Brighton, MA 02135, or to such other address as may be provided by notice from Grantor to Grantee, and in the case of notice to Grantee, to Grantee, c/o Public Works Department, Engineering Division, Brookline Town Hall, 333 Washington Street, Brookline, MA 02445, or to such other address as may be provided by notice from Grantee to Grantor. Notices shall be deemed given when delivered in the case of delivery by hand on a business day, or three (3) business days after sent by registered or certified mail, or one (1) business day after sent by overnight courier service.

EXECUTED as a sealed instrument as of the __ day of _____, 2021.

Grantor:

5 WASHINGTON SQUARE FEE OWNER LLC

By: _____
Name:
Title: Manager

Grantee:

TOWN OF BROOKLINE
By its Select Board

_____

_____

_____

_____

_____

SELECT BOARD'S RECOMMENDATION

Article 6 asks Town Meeting to grant the Select Board the authority to acquire and accept an easement over property located at the corner of Bartlett Crescent and Washington Street in Brookline. The property is part of a part of a mixed-use development project where a storm drain was re-routed. The Property Owner is required to maintain the drain. The Town, however, would receive the right but not the obligation to enter the property and repair the drain should that become necessary. The Department of Public Works believes it is prudent to obtain the rights provided by the proposed easement.

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

VOTED: To authorize and empower the Select Board to acquire and accept an easement from 5 Washington Square Fee Owner LLC, its successors or assigns, over property located at the corner of Bartlett Crescent and Washington Street in Brookline, with an address of 51 Bartlett Crescent, Town of Brookline (Assessor's Parcel ID No. 93-

25-01), for the right to access the property to repair and maintain the drain. The easement area is as substantially shown on the plan submitted herewith entitled "Easement Plan of Land, 5 Washington Square Owner, LLC" prepared by Gerry L. Holdright, PLS, dated December 18, 2019, as may be amended, said plan on file with the Town Clerk. Further, to authorize the Select Board to enter into all agreements and take all related actions necessary or appropriate, to carry out this vote and other acts authorized herein.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 6 by a vote of 25-0 with 1 abstention.

Executive Summary	Advanced by the Department of Public Works (DPW), WA6 proposes to empower the Select Board to enter into an agreement that would provide the Town with easement rights at 51 Bartlett Crescent, a private property in Brookline on which a 130-foot municipal storm drain has recently been reconstructed and rerouted from a neighboring private property (5 Washington Square) in Brighton. The easement rights are sought by the Town so it can access the drain for repairs and maintenance in case of urgent need. The property owner (5 Washington Sq. Fee Owner LLC) is, according to the proposed easement agreement, responsible for repair or maintenance of the drain. If for some reason, however, as in the case of an emergency, the Town needs to maintain or repair the drain, the agreement states that the Town may access the property that its costs will be borne by the property owner. Should the property be sold, the easement agreement would remain in force under the new ownership.
Voting Yes will...	Voting yes will ultimately provide Brookline with legal and readily available access to the drain. No impact on Town operations is expected except in case of urgent need for Town work.
Voting No will...	Keep the Select Board from acquiring the permanent easement. The Town does have a temporary license agreement with the property owner and in the near term would continue to have access to the property in case of emergency/
Financial impact	None foreseen
Legal implications	None foreseen

Introduction
Storm water respects no border, and so Brookline and adjoining municipalities prudently share an underground network of drains that carries storm water away from where it could do damage. One of these storm drains runs from Brighton along Corey Road near Washington St. and into Brookline, through which it ultimately carries its multi-municipal cargo back into Boston and to the Charles River. That drain had for years done its quiet business underneath a gas station and garage at 5 Washington St. at the backside of Corey Hill, where the drain connects with Brookline's storm system. As anyone traveling along Washington St. in recent times knows, the gas station and garage have been replaced by "The Brookliner," a five-story multi-use property (in Boston) that includes 108 "curated" apartments as well as ground floor retail. Boston has required substantial below-grade parking for the building, which is why 5 Washington Sq. Fee Owner LLC has, at its own expense and in consultation with the Town, relocated 130 feet of drain onto its adjoining property at 5 Bartlett Crescent (Brookline) and has committed to the agreement described in the section above as regards responsibility for maintaining and repairing the storm drain and providing the Town with an easement on the property.

Discussion
The Schools Subcommittee held a public hearing on Warrant Article 6 at 4:30 p.m. on Tuesday, September 19, 2022. The full Advisory Committee held a public hearing at 7:00 p.m. on Thursday, September 29, 2022. A recording of the latter meeting can be accessed at the following URL, with the presentation of Warrant Article 6 beginning at 2:52:

https://brooklinema.zoomgov.com/rec/play/xkjl0e8vJJrNWIgDwc__5QD2Co9OnUN0QAJRhFw7I9N9suTi0fd8zh1bVKaamILiQ0w0gcKYu9WkSoVV.qrEK87w-_RDSetPX?continueMode=true.

The only question raised at the hearing was whether any questions/concerns/cautions had been raised at the subcommittee hearing, which was attended by DPW representatives. The answer was no.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board under Warrant Article 6 by a vote of 25-0 with 1 abstention.

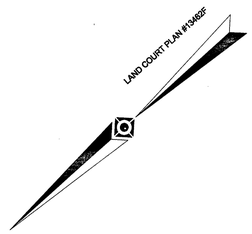
ARTICLE 6 ADVISORY COMMITTEE VOTES

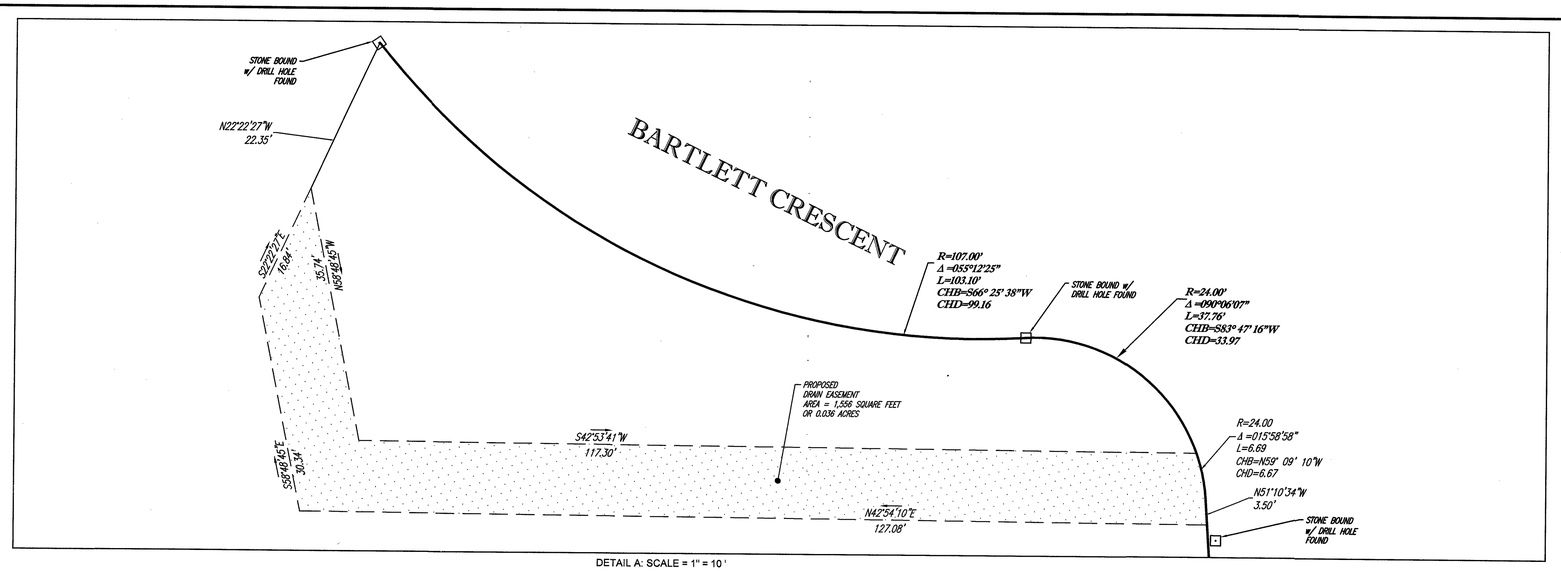
Article Description	**Easement rights at 51 Bartlett Crescent**
AC recommendation (Favorable Action unless indicated)	**25-0-1**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	A
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y

Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

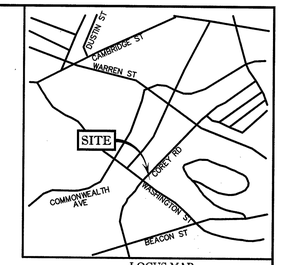
XXX

FOR REGISTRY USE ONLY





DETAIL A: SCALE = 1" = 10 '



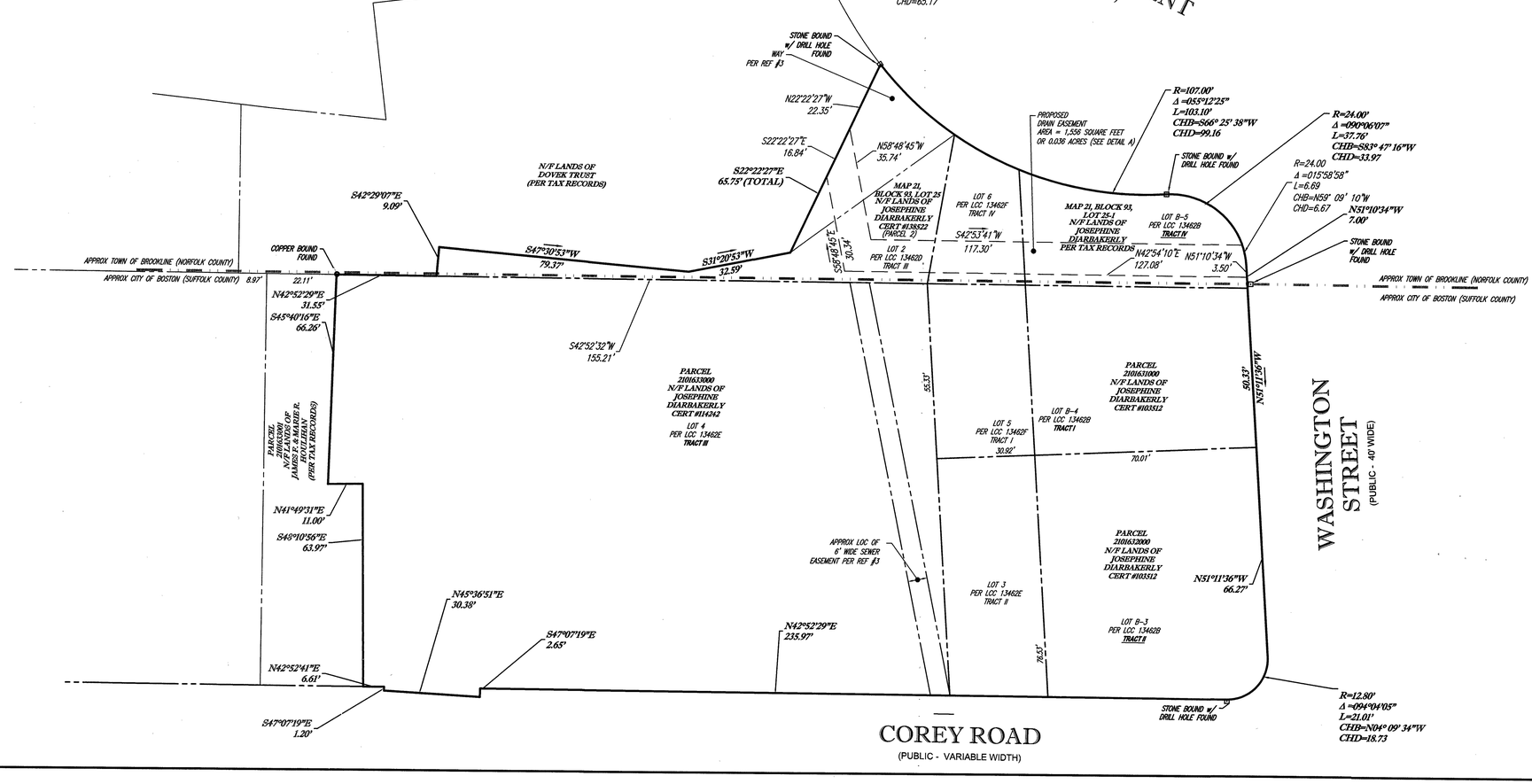
LOCUS MAP

REFERENCES:

1. THE CITY OF BOSTON ONLINE PARCEL TAX VIEWER.
2. MAP ENTITLED "NATIONAL FLOOD INSURANCE PROGRAM, FIRM, FLOOD INSURANCE RATE MAP, SUFFOLK COUNTY, MASSACHUSETTS, (ALL JURISDICTIONS), PANEL 59 OF 151," MAP NUMBER 25025C0059G, EFFECTIVE DATE: SEPTEMBER 25, 2009.
3. MAP ENTITLED "SUBDIVISION PLAN OF LAND IN BROOKLINE," PREPARED BY SCHOFIELD BROTHERS, CIVIL ENGINEERS , DATED SEPTEMBER 25, 1951, FILED IN THE NORFOLK REGISTRY OF DEEDS AS BOOK 223, PAGE 106.
4. MAP ENTITLED "SUBDIVISION OF LOT B2 SHOWN ON PLAN, FIELD WITH CENT. OF TITLE NO. 13508 REGISTRY OF NORFOLK COUNTY LAND IN BROOKLINE," PREPARED BY HENRY F. BRYANT & SON, DATED AUGUST 8, 1933, FILED IN THE NORFOLK REGISTRY OF DEEDS AS BOOK 320, PAGE 161.
5. MAP ENTITLED "PLAN OF LAND IN BROOKLINE," PREPARED BY HENRY F. BRYANT & SON, ENGINEERS, DATED JUNE 8, 1927, FILED IN THE NORFOLK REGISTRY OF DEEDS AS BOOK 681, PAGE 108.
6. MAP ENTITLED "SUBDIVISION PLAN OF LAND IN BROOKLINE," PREPARED BY SCHOFIELD BROTHERS, CIVIL ENGINEERS, DATED APRIL 17, 1957, FILED IN THE NORFOLK REGISTRY OF DEEDS AS BOOK 317, PAGE 2.

NOTES:

1. PROPERTY KNOWN AS PARCELS 2101631000, 2101632000 & 2101633000 AS SHOWN THE CITY OF BOSTON ONLINE GIS & LOTS 25 & 25-01 OF BLOCK 93 AS SHOWN ON THE TOWN OF BROOKLINE TAX ASSESSOR'S MAP# 21.
2. PROPOSED DRAIN EASEMENT AREA = 1,556 SQ. FT. OR 0.036 AC.
3. THIS PLAN IS BASED ON INFORMATION PROVIDED BY A SURVEY PREPARED IN THE FIELD BY CONTROL POINT ASSOCIATES, INC. AND OTHER REFERENCE MATERIAL AS LISTED HEREON.
4. BY GRAPHIC PLOTTING ONLY PROPERTY IS LOCATED IN FLOOD HAZARD ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) PER REF. #2
5. THE OFFSETS SHOWN ARE NOT TO BE USED FOR THE CONSTRUCTION OF ANY STRUCTURE, FENCE, PERMANENT ADDITION, ETC.
6. THE PURPOSE OF THIS PLAN IS TO CREATE A DRAIN EASEMENT. NO NEW BOUNDARY LINES ARE BEING CREATED.



GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

THIS IS TO CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS. NO NEW BOUNDARY LINES ARE BEING CREATED AND THOSE SHOWN ARE EXISTING AND ARE NOT BEING CHANGED OR ALTERED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

NOT A VALID ORIGINAL DOCUMENT UNLESS EMBOSSED WITH RAISED IMPRESSION OR STAMPED WITH A BLACK INK SEAL

COMMONWEALTH OF MASSACHUSETTS · GERRY L. HOLDRIGHT NO. 49211 · REGISTERED PROFESSIONAL LAND SURVEYOR

GERRY L. HOLDRIGHT, PLS — DATE 12-20-19

MASSACHUSETTS PROFESSIONAL LAND SURVEYOR #49211

FIELD DATE: 3-9-14	EASEMENT PLAN OF LAND 5 WASHINGTON SQUARE OWNER, LLC #3 & #5 WASHINGTON STREET & #165 COREY ROAD PARCEL ID 2101631000, 2101632000 & 2101633000 CITY OF BOSTON, SUFFOLK COUNTY MAP 21, BLOCK 93, LOTS 25 & 25-01 TOWN OF BROOKLINE, NORFOLK COUNTY COMMONWEALTH OF MASSACHUSETTS
FIELD BOOK NO.: 14-04MA	
FIELD BOOK PG.: 68-70	
FIELD CREW: T.M.	
DRAWN: E.LOC	CONTROL POINT ASSOCIATES, INC. 352 TURNPIKE ROAD SOUTHBOROUGH, MA 01772 508.948.3000 - 508.948.3003 FAX ALBANY, NY 5182175010 CHALFONT, PA 2157129000 MANHATTAN, NY 6467800411 MT LAUREL, NJ 6098572099 WARREN, NJ 9086680099

REVIEWED:	APPROVED:	DATE	SCALE	FILE NO.	DWG. NO.
G.L.H.	G.L.H.	12-18-19	1"=20'	03-140135	1 OF 1

CONTROL POINT ASSOCIATES, INC. ALL RIGHTS RESERVED
THIS PLAN AND DESIGN IS AND AT ALL TIMES REMAINS THE EXCLUSIVE PROPERTY OF CONTROL POINT ASSOCIATES, INC. AND ORIGINAL PROJECT OR THE COPYING OR REUSE OF THIS DOCUMENT IN WHOLE OR IN PART, FOR ANY PURPOSE OTHER THAN THE PURPOSE, ORIGINALLY INTENDED, WITHOUT THE WRITTEN PERMISSION OF CONTROL POINT ASSOCIATES, INC. IS PROHIBITED.

ARTICLE 7

SEVENTH ARTICLE

Submitted by: Aone Liyuan Wang,TMM8 and Alec Lebovitz TMM8

To see if the Town will amend the Town bylaws pertaining to Town Meetings by amending section 2.1.2 ("OPENING OF THE WARRANT"), 2.1.5 ("NOTICE OF MEETINGS", 2.5.1 ("SPECIAL COMMITTEE REPORTS"), 2.5.2 ("COMBINED REPORTS"), 2.5.3 ("PERMANENT RECORD OF REPORTS"), 3.4.5 ("TOWN REPORTS"), 4.2.4 ("DISTRIBUTION OF REPORTS") as follows (new language appearing in bold/underline, deleted language appearing in red/strikeout):

SECTION 2.1.2 OPENING OF THE WARRANT
At least fourteen days prior to the opening of the Warrant for the Annual or a Special Town Meeting, the Select Board shall post notices of their intention to do so in at least ten places in the Town and shall notify each Town Meeting Member in writing of the opening date and closing date for submission of Articles to said Warrant and shall publish notice thereof in a newspaper of general circulation throughout Brookline. Such written notification by the Select Board shall be made by **e-**mail to the Town Meeting Member's **email** address on file with the Town Clerk's office. No such notification shall be necessary where a Special Town Meeting has been called by a citizen's petition.
In lieu of the above **e-**mailing requirement, the Select Board may send the required notice ~~electronically~~ **physically** to any Town Meeting Member who so requests.

SECTION 2.1.5 NOTICE OF MEETINGS
(A) Notification. The Select Board shall cause copies of the Warrant for each Town Meeting to be filed with the Town Clerk, and shall direct the Town Clerk to publicly post such copies of the Warrant on the principal Town Bulletin Board at least fourteen(14)days before the Annual Town Meeting and at least fourteen (14) days before any Special Town Meeting is to convene. Such posting shall be deemed to be the legal notification of such meeting and the legal service of such warrant.
(B) Distribution. The Select Board shall cause a copy of the articles in the warrant for each Town Meeting to be published in a newspaper of general circulation within the Town, to be posted on the Town website, and to be **e-mailed** ~~delivered in hand, or mailed,~~ either separately or as a part of the Combined Reports, to the Moderator and to the representative Town Meeting members, and shall cause the posting of copies

of the same in ten public places in the Town, at least seven (7) days before a Special Town Meeting is to convene and at least fifteen (15) days before an Annual Town Meeting is to convene. **A postcard providing information on accessing the online materials shall be mailed to the Moderator and to the representative Town Meeting members.**
The requirements provided in this subsection (B) shall not be deemed to be a part of the legal notification of such meeting or the legal service of such warrant and the failure to comply with the provisions of this subsection (B) shall not serve to invalidate the proceedings of any Town Meeting. **In lieu of the above e-mailing requirement, the Select Board may send the required notice physically to any Town Meeting Member who so requests.**

SECTION 2.5.1 SPECIAL COMMITTEE REPORTS
All special committees created by a Town Meeting or the Moderator shall make a report of their findings and recommendations by filing a signed copy thereof with the Town Clerk. Forthwith upon the filing of any such report, the Town Clerk shall cause copies thereof to be **emailed** ~~delivered or mailed~~ to the Moderator, the Select Board, and the Advisory Committee, and to every other elected officer, Town Meeting Member and appointed officer who requests a copy of the report.
In the absence of a final report, each such committee shall annually, at least thirty (30) days before the start of the Annual Town Meeting, file with the Town Clerk an interim report of its doings, and the Town Clerk shall cause one copy of the same to be **emailed** ~~printed and mailed out~~ with the combined reports called for in Section 2.5.2 of this Article. In lieu of the **e-**mailing requirement in paragraph 1 above, the Town Clerk may, at the request of any person listed above send the report(s) **physically** ~~electronically~~.

SECTION 2.5.2 COMBINED REPORTS
The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant. The Select Board and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined

reports to be ~~delivered~~ **emailed** or mailed **upon request** as follows:
The Select Board shall cause one copy of the combined reports to be ~~delivered~~ **emailed** ~~or~~ **and a postcard providing information on accessing the online materials to be** mailed not later than the seventh day prior to each special Town Meeting and not later than the fifteenth day prior to the start of each Annual Town Meeting, to the residence of every elected officer, Town Meeting Member and member of the Advisory Committee, and to the residence of every appointed officer, resident, real estate owner and town employee who requested, in writing, a copy of that combined reports. The combined reports shall contain each article in the warrant for such Town Meeting followed by the report of the Select Board on such article and then the report of the Advisory Committee on such article and every report made, not later than the twenty-second day prior to such Town Meeting and after the twenty-second day prior to the previous Town Meeting, by a Special Committee created by a Town Meeting or the Moderator.
The Combined Reports shall include, with each recommendation of the Select Board, a roll-call showing the vote of each member; and shall include, with each recommendation of the Advisory Committee, a statement of the number of members voting for and against the recommendation and the date of the vote. When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.
The report of the Select Board on the article at an Annual Town Meeting providing for termination and close-out of prior special appropriations shall include a statement from the Comptroller listing each account for such an appropriation as falls within the scope of the article, the purpose of the appropriation, and the unexpended balance as of the last day of March in the year of said Annual Town Meeting.

SECTION 2.5.3 PERMANENT RECORD OF REPORTS
Either digital or physical copies of each report described in Section 2.5.1 and the combined reports described in Section 2.5.2 shall be kept permanently in the office of the Town Clerk and for at least five years, after its publication, in the Public Library and every Branch thereof, available for inspection by all interested persons.

SECTION 3.4.5 TOWN REPORTS
The Town Clerk shall cause one copy of the Annual Town Report for each year to be ~~delivered~~ **emailed** ~~or~~ **and a postcard**

providing information on accessing the online materials to be mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, and member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a**n electronic** copy in writing.
Either digital or physical copies of each Annual Town Report shall be kept permanently in the office of the Town Clerk and for at least five years in the Public Library and every Branch thereof, available for inspection by all interested persons. In lieu of the **e-**mailing requirement in paragraph 1 above, the **Town clerk** ~~Select Board~~ may, at the request of any person listed above send the report ~~electronically~~ **physically**.

SECTION 4.2.4 DISTRIBUTION OF REPORTS
The Select Board shall cause one copy of the Annual Town Report for each year to be **e-mailed** ~~delivered or~~ **and a postcard providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a copy in writing. In lieu of the preceding **e-**mailing requirement, the **Town clerk** ~~Select Board~~ may, at the request of any person listed above send the report(s) ~~electronically~~ **physically**.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

With increasing inflation and accelerated global warming, Brookline should consider following other municipalities' successful example (E.g. San Francisco, CA and Easton, MA) and distribute our annual report and warrant documents in a digital format by default. This change will potentially save the town up to $50,000 annually in the current budget item "Printing of Warrants (Town Administrator)". If this policy had been in effect for the last decade, the Town could have realized up to $500,000 in savings.

In consideration of different Town Meeting Members' needs, user habits, access to internet, and accessibility concerns, a paper copy will be made available by request. Without the bylaw amendment, the Town's default mode of operation incurs unnecessary costs and generates unnecessary waste. The proposed bylaw changes will reduce these costs and paper waste by changing the default method of report and warrant distribution to digital distribution, while still making paper copies available upon request. In short, the Town Meeting Members who prefer or require a paper copy will still be able to access one, but those who do not will not be wastefully sent a physical copy of the Combined Reports.

In order to ensure delivery of materials to all required recipients, the petitioners additionally propose sending out a postcard notice to inform all Town Meeting members and other Town officials that explains how digital copies of all documents may be accessed and that provides instructions for requesting a paper copy (by email, by survey, or by phone depending on Town Clerk's preferred method of operation.)

The notice and deadline for requesting paper copies will be determined by the Town Clerk's office based on their operational needs.

The Commonwealth's public reporting laws only specify that the Town Clerk shall notify all Town Meeting Members of the time and place of Annual and Special Town Meetings by mail. There is no clause requiring the Town print copies of warrant articles, the Combined Reports, or the annual Town report, rather the method of distribution is left to the Town.

Successful Examples:

1. City and County of San Francisco:[4]
   Based on their bylaws, e-mail is the default method of report distribution and notice. A physical report can be reported by written request. The bylaw in questions appears as follows:

   Section 3. Notice of Meetings
   The agendas of all regular meetings and notices and agendas of all special meetings shall be posted at the meeting site, the San Francisco Main Library, Government Information Center and the office of the Task Force. Agendas and notices shall be e-mailed to each Task Force member and mailed to any person who files a written request for such notice with the Task Force.

2. Town of Easton, MA[5]
   Town of Easton has a very well-planned document site to provide town meeting information. In their 2022 budget report[6], it states that their printing budget has decreased as more information has been made available online, as shown below:

   Town Reports
   This budget is for the printing and production costs associated with Town Meeting and for the printing and production of the Town's Annual Report. This line item has been decreased by $3,000 as more information is available online and less printing is required.

3. Town of Winchester, MA[7]
   Town of Winchester's bylaws allow the distribution of Town Meeting documents and reports in both physical and digital formats:

   Section 4.1.5, 4.2.5, 4.3.3, 4.3.3: Copies of such committee reports shall be mailed or electronically distributed to the town moderator, to each town meeting

member, to each member of the select board, to each member of the school committee and to the heads of all town departments. Written authorization must be provided to the town Clerk in order to receive electronic distribution of materials.

Proposed Operational Model:

1. Forty-five days before each Town Meeting, a postcard providing information on accessing all relevant materials online and a mechanism to request physical copies will be mailed to all Town Meeting Members, Select Boards members, and other relevant officials.
2. Thirty days before each Town Meeting, any such person can send a written notice by mail or electronically to the Town Clerk to request physical copies. A request for physical copies will be considered this member's default preference until the next request is issued.
3. If a physical copy of the Warrant and Combined reports is requested, these shall be mailed to the person who requested them.
4. It is expected that the postcard be designed by the Town Clerk's office.

References:
1. US federal agencies to go paperless by 2022
https://www.globalgovernmentforum.com/us-federal-agencies-to-go-paperless-by-2022/
2. Five Reasons to Use Electronic Records vs. Paper Records
https://www.powerdms.com/policy-learning-center/five-reasons-to-use-electronic-records-vs.-paper-records
3. Government Paperwork Elimination Act
https://www.cio.gov/handbook/it-laws/gpea
4. City and County of San Francisco by Laws
https://sfgov.org/ccsfgsa/laws-1
5. Town of Easton
https://www.easton.ma.us/departments/town_clerk1/town_meeting_information.php
6. Town of Easton Annual Budget
https://www.easton.ma.us/easton_residents/financial_information/fiscal_year_2023.php
7. Town of Winchester bylaws
https://winchester.town.codes/Code/2
8. Massachusetts State Laws
https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter43A/Section5

SELECT BOARD'S RECOMMENDATION

Article 7 is a proposed amendment to the General By-Laws that would change the method for delivering Town Meeting materials and the Annual Report from an opt out system to an opt in system for physical mailing. There has not been much success with an opt out system, and the proposal puts the onus on Town Meeting Members to notify the Town Clerk if they would like to receive their materials in the mail. The petitioners believe that there is cost savings and the potential to save unnecessary waste by converting to an electronic first system.

Since the Board has had a successful experience implementing a paperless system for their voluminous weekly agenda packets, they felt that it might be time for Town Meeting Members to make this shift. Those who still prefer paper can still get their materials mailed to them; they would just need to notify the Town Clerk of their preference.

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

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 7 by a vote of 10–8 with 7 abstentions.

Executive Summary	Petitioners propose that Town Meeting warrants, combined reports and certain other reports currently mailed to Town Meeting Members be made available online, and that the Town only mail material to those specifically requesting printed material.
Voting Yes will...	Cause the Town to mail specified material only upon written request.
Voting No will...	Maintain the status quo of mailing specified material to virtually every Town Meeting Member.
Financial impact	Petitioners estimate that if a substantial majority of Town Meeting Members received material electronically, the Town would save approximately $50,000 annually in printing, postage and staff costs.
Legal implications	The proposed bylaw amendment makes no changes to the posting or distribution of notices required by state law.

Introduction

The essence of the warrant article is, in the petitioners' view, the elimination of the mailing of printed material to Town Meeting Members, except to the extent that Members specifically request that hard copies be mailed to them. Town Meeting Members would receive both email and physical notice of the availability of reports, with a link to the online content. Town Meeting Members opting for hard copies would continue to receive them.

Discussion

The Land Use, Zoning and Sustainability Subcommittee hearing was held on Article 11 on Monday, September 19, 2022. The Full Advisory Committee held a public meeting on this Article on September 27, 2022. The recording of the Full Advisory hearing may be accessed here: https://brooklinema.zoomgov.com/rec/play/Bm8mNLlIh96bHBk5b2QeesMy8r3J3dAcs7ufcq_ZxG8gZmiQVVW2IfNTLe2wuEoqYIFs-TZ2BRRMOXxv.kKito1LKhcp5xlFr?continueMode=true

Conversations related to reducing the Town's printing and postage costs go back a decade or more, at least to when the Advisory Committee's Administration and Finance subcommittee identified substantial amounts being budgeted for such purpose. A Select Board committee charged with reviewing the subject never completed its work, due to COVID and a related shift in the priorities of the Select Board.

The petitioners intent was to craft a practical solution to substantially reducing hard copy costs, while respecting the wishes of those preferring traditional distribution.

Much of the Advisory Committee discussion focused on the advantages and disadvantages of printed vs. online content. While the motion offered respects the point of view of individuals to make their own, personal choice, a minority of the Advisory Committee expressed concerns related to the burdens of needing to request hard copies of reports, and the potential that the timing of notices, followed by a request for hard copies, might result in critical delays in the receipt of important, time-sensitive material.

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on an amended motion under Warrant Article 7 by a vote of 10-8 with 7 abstentions. The amended version of Warrant Article 11 appears directly below in clean form (i.e., compared against the existing By-Law). Following the voting summary we include an appendix with a version showing the differences between the petitioners' original motion and the Advisory Committee amendment.

VOTED: That the Town amend the Town bylaws pertaining to Town Meetings by amending section 2.1.2 ("OPENING OF THE WARRANT"), 2.1.5 ("NOTICE OF MEETINGS", 2.5.1 ("SPECIAL COMMITTEE REPORTS"), 2.5.2 ("COMBINED REPORTS"), 2.5.3 ("PERMANENT RECORD OF REPORTS"), 3.4.5 ("TOWN REPORTS"), 4.2.4 ("DISTRIBUTION OF REPORTS") as follows (new language appearing in **bold/underline**, deleted language appearing in ~~strikeout~~:

SECTION 2.1.2 OPENING OF THE WARRANT

At least fourteen days prior to the opening of the Warrant for the Annual or a Special Town Meeting, the Select Board shall post notices of their intention to do so in at least ten places in the Town and shall notify each Town Meeting Member in writing of the opening date and closing date for submission of Articles to said Warrant and shall publish notice thereof in a newspaper of general circulation throughout Brookline. Such written notification by the Select Board shall be made by **e-**mail to the Town Meeting Member's **email** address on file with the Town Clerk's

office. No such notification shall be necessary where a Special Town Meeting has been called by a citizen's petition.

~~In lieu of the above mailing requirement,~~ The Select Board ~~may~~ **shall** ~~send~~ **mail** the required notice ~~electronically~~ **physically** to any Town Meeting Member who so requests.

SECTION 2.1.5 NOTICE OF MEETINGS

(A) Notification. The Select Board shall cause copies of the Warrant for each Town Meeting to be filed with the Town Clerk, and shall direct the Town Clerk to publicly post such copies of the Warrant on the principal Town Bulletin Board at least fourteen (14) days before the Annual Town Meeting and at least fourteen (14) days before any Special Town Meeting is to convene. Such posting shall be deemed to be the legal notification of such meeting and the legal service of such warrant.

(B) Distribution. The Select Board shall cause a copy of the articles in the warrant for each Town Meeting to be published in a newspaper of general circulation within the Town, to be posted on the Town website, and **a link to such articles** to be **e-mailed** ~~delivered in hand, or mailed,~~ ~~either separately or as a part of the Combined Reports~~, to the Moderator and to the representative Town Meeting members, and shall cause the posting of copies of the ~~same~~

such articles in ten public places in the Town, at least seven (7) days before a Special Town Meeting is to convene and at least fifteen (15) days before an Annual Town Meeting is to convene. **A notice providing information on accessing the online materials shall be mailed to the Moderator and to the representative Town Meeting members.**

The requirements provided in this subsection (B) shall not be deemed to be a part of the legal notification of such meeting or the legal service of such warrant and the failure to comply with the provisions of this subsection (B) shall not serve to invalidate the proceedings of any Town Meeting.

The Select Board shall mail a link to the articles in the warrant for each Town Meeting to any Town Meeting Member who so requests.

SECTION 2.5.1 SPECIAL COMMITTEE REPORTS

All special committees created by a Town Meeting or the Moderator shall make a report of their findings and recommendations by filing a signed copy thereof with the Town Clerk. Forthwith upon the filing of any such report, the Town Clerk shall cause **a link to such report** ~~copies thereof~~ to be **emailed** ~~delivered~~ ~~or mailed~~ to the Moderator, the Select Board, and the Advisory Committee, and to every other elected officer, Town Meeting Member and appointed officer who requests a copy of the report.

In the absence of a final report, each such committee shall annually, at least thirty (30) days before the start of the Annual Town Meeting, file with the Town Clerk an interim report of its doings, and the Town Clerk shall cause ~~one copy of the same~~ **a link to such report** to be **emailed** ~~printed and mailed out~~ with the combined reports called for in Section 2.5.2 of this Article.

In lieu of the **e-**mailing requirement in paragraph 1 above, the Town Clerk ~~may~~ **shall**, at the request of any person listed above, ~~send~~ **mail** the report(s)~~electronically~~.

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant. The Select Board and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be ~~delivered~~ **emailed** or mailed **upon request** as follows:

The Select Board shall cause **a link to** ~~one copy of~~ the combined reports to be ~~delivered~~ **emailed**, ~~or~~ **and a notice providing information on accessing such online materials to be** mailed not later than the seventh day prior to each special Town Meeting and not later than the fifteenth day prior to the start of each Annual Town Meeting, to the residence of every elected officer, Town Meeting Member and member of the Advisory Committee, and to the residence of every appointed officer, resident, real estate owner and town employee who requested, in writing, a copy of that combined reports. The combined reports shall contain each article in the warrant for such Town Meeting followed by the report of the Select Board on such article and then the report of the Advisory Committee on such article and every report made, not later than the twenty-second day prior to such Town Meeting and after the twenty-second day prior to the previous Town Meeting, by a Special Committee created by a Town Meeting or the Moderator.

The Combined Reports shall include, with each recommendation of the Select Board, a roll-call showing the vote of each member; and shall include, with each recommendation of the Advisory Committee, a statement of the number of members voting for and against the recommendation and the date of the vote. When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.

The report of the Select Board on the article at an Annual Town Meeting providing for termination and close-out of prior special appropriations shall include a statement from the Comptroller listing each account for such an appropriation as falls within the scope of the article, the purpose of the appropriation, and the unexpended balance as of the last day of March in the year of said Annual Town Meeting.

SECTION 2.5.3 PERMANENT RECORD OF REPORTS

Copies of each report described in Section 2.5.1 and the combined reports described in Section 2.5.2 shall be kept permanently in the office of the Town Clerk and for at least five years, after its publication, in the Public Library and every Branch thereof, available for inspection by all interested persons.

SECTION 3.4.5 TOWN REPORTS

The Town Clerk shall cause **a link to** the Annual Town Report for each year to be ~~delivered~~ **emailed,** ~~or~~ **and a notice providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, and member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a copy in writing.

copies of each Annual Town Report shall be kept permanently in the office of the Town Clerk and for at least five years in the Public Library and every Branch thereof, available for inspection by all interested persons.

the **Town clerk** ~~Select Board~~ **shall**, at the request of any person listed above **mail such** report ~~electronically~~.

SECTION 4.2.4 DISTRIBUTION OF REPORTS

The Select Board shall cause **a link to** the Annual Town Report for each year to be **e-mailed,** ~~delivered or~~ **and a notice providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a copy in writing. the **Town clerk** ~~Select Board~~ **shall**, at the request of any person listed above **mail such** report(s) ~~electronically~~ .

ARTICLE 7 ADVISORY COMMITTEE VOTES

Article Description	**Reduce the need to publish and distribute hard copies of certain reports.**
AC recommendation (Favorable Action unless indicated)	**10-8-7**
Ben Birnbaum	Y
Harry Bohrs	A
Cliff Brown	A
Patty Correa	A
John Doggett	Y
Katherine Florio	N
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	N
Kelly Hardebeck	Y
Amy Hummel	N
Anita Johnson	N
Alisa Jonas	
Janice Kahn	A
Carol Levin	A
Pam Lodish	N
Joslin Murphy	Y
Donelle O'Neal, Sr.	A
Linda Olson Pehlke	A
Markus Penzel	Y
David Pollak	Y

Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	N
Alok Somani	
Carolyn Thall	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Marked Up version of Article 7 as amended by the Advisory Committee

Moved that the Town amend the Town bylaws pertaining to Town Meetings by amending section 2.1.2 ("OPENING OF THE WARRANT"), 2.1.5 ("NOTICE OF MEETINGS", 2.5.1 ("SPECIAL COMMITTEE REPORTS"), 2.5.2 ("COMBINED REPORTS"), 2.5.3 ("PERMANENT RECORD OF REPORTS"), 3.4.5 ("TOWN REPORTS"), 4.2.4 ("DISTRIBUTION OF REPORTS") as follows (new language appearing in bold/underline, deleted language appearing in strikeout, and changes from the Article as printed in the Warrant in red):

SECTION 2.1.2 OPENING OF THE WARRANT

At least fourteen days prior to the opening of the Warrant for the Annual or a Special Town Meeting, the Select Board shall post notices of their intention to do so in at least ten places in the Town and shall notify each Town Meeting Member in writing of the opening date and closing date for submission of Articles to said Warrant and shall publish notice thereof in a newspaper of general circulation throughout Brookline. Such written notification by the Select Board shall be made by **e-**mail to the Town Meeting Member's **email** address on file with the Town Clerk's office. No such notification shall be necessary where a Special Town Meeting has been called by a citizen's petition.

the Select Board shall **mail** the required notice ~~electronically~~ to any Town Meeting Member who so requests.

SECTION 2.1.5 NOTICE OF MEETINGS

(A) Notification. The Select Board shall cause copies of the Warrant for each Town Meeting to be filed with the Town Clerk, and shall direct the Town Clerk to publicly post such copies of the Warrant on the principal Town Bulletin Board at least fourteen (14) days before the Annual Town Meeting and at least fourteen (14) days before any Special Town Meeting is to convene. Such posting shall be deemed to be the legal notification of such meeting and the legal service of such warrant.

(B) Distribution. The Select Board shall cause a copy of the articles in the warrant for each Town Meeting to be published in a newspaper of general circulation within the Town, to be posted on the Town website, and **a link to such articles** to be **e-mailed** ~~delivered in hand, or mailed,~~ , to the Moderator and to the representative Town Meeting members, and shall cause the posting of copies of **such articles** in ten public places in the Town, at least seven (7) days before a Special Town Meeting is to convene and at least fifteen (15) days before an Annual Town Meeting is to convene. **A notice providing information on accessing the online materials shall be mailed to the Moderator and to the representative Town Meeting members.**

The requirements provided in this subsection (B) shall not be deemed to be a part of the legal notification of such meeting or the legal service of such warrant and the failure to comply with the provisions of this subsection (B) shall not serve to invalidate the proceedings of any Town Meeting.

The Select Board shall mail a link to the articles in the warrant for each Town Meeting to any Town Meeting Member who so requests.

SECTION 2.5.1 SPECIAL COMMITTEE REPORTS

All special committees created by a Town Meeting or the Moderator shall make a report of their findings and recommendations by filing a signed copy thereof with the Town Clerk. Forthwith upon the filing of any such report, the Town Clerk shall cause **a link to such report**to be **emailed** ~~delivered or mailed~~ to the Moderator, the Select Board, and the Advisory Committee, and to every other elected officer, Town Meeting Member and appointed officer who requests a copy of the report.

In the absence of a final report, each such committee shall annually, at least thirty (30) days before the start of the Annual Town Meeting, file with the Town Clerk an interim report of its doings, and the Town Clerk shall cause **a link to such report** to be **emailed** ~~printed and mailed out~~ with the combined reports called for in Section 2.5.2 of this Article.

In lieu of the **e-**mailing requirement in paragraph 1 above, the Town Clerk **shall**, at the request of any person listed above, **mail** the report(s)~~electronically~~.

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant. The Select Board and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be ~~delivered~~ **emailed** or mailed **upon request** as follows:

The Select Board shall cause **a link to** the combined reports to be ~~delivered~~ **emailed, ~~or~~ and a notice providing information on accessing such online materials to be** mailed not later than the seventh day prior to each special Town Meeting and not later than the fifteenth day prior to the start of each Annual Town Meeting, to the residence of every elected officer, Town Meeting Member and member of the Advisory Committee, and to the residence of every appointed officer, resident, real estate owner and town employee who requested, in writing, a copy of that combined reports. The combined reports shall contain each article in the warrant for such Town Meeting followed by the report of the Select Board on such article and then the report of the Advisory Committee on such article and every report made, not later than the twenty-second day prior to such Town Meeting and after the twenty-second day prior to the previous Town Meeting, by a Special Committee created by a Town Meeting or the Moderator.

The Combined Reports shall include, with each recommendation of the Select Board, a roll-call showing the vote of each member; and shall include, with each recommendation of the Advisory Committee, a statement of the number of members voting for and against the

recommendation and the date of the vote. When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.

The report of the Select Board on the article at an Annual Town Meeting providing for termination and close-out of prior special appropriations shall include a statement from the Comptroller listing each account for such an appropriation as falls within the scope of the article, the purpose of the appropriation, and the unexpended balance as of the last day of March in the year of said Annual Town Meeting.

SECTION 2.5.3 PERMANENT RECORD OF REPORTS

Copies of each report described in Section 2.5.1 and the combined reports described in Section 2.5.2 shall be kept permanently in the office of the Town Clerk and for at least five years, after its publication, in the Public Library and every Branch thereof, available for inspection by all interested persons.

SECTION 3.4.5 TOWN REPORTS

The Town Clerk shall cause **a link to** the Annual Town Report for each year to be ~~delivered~~ **emailed,** ~~or~~ **and a notice providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, and member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a copy in writing.

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the **Town clerk** ~~Select Board~~ **shall,** at the request of any person listed above **mail such** report ~~electronically~~.

SECTION 4.2.4 DISTRIBUTION OF REPORTS

The Select Board shall cause **a link to** the Annual Town Report for each year to be **e-mailed,** ~~delivered or~~ **and a notice providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, member of the Advisory Committee, and to the residence of every resident, real estate owner and

town employee who requests a copy in writing. the **Town clerk** ~~Select Board~~ **shall,** at the request of any person listed above **mail such** report(s) ~~electronically~~ .

XXX

ARTICLE 8

EIGHTH ARTICLE

Submitted by: Select Board

To see if the Town will vote to amend its General By-laws, by removing references to publishing materials in "a newspaper of general circulation throughout Brookline" and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 2.1.2 OPENING OF THE WARRANT:

At least fourteen days prior to the opening of the Warrant for the Annual or a Special Town Meeting, the Select Board shall post notices of their intention to do so in at least ten places in the Town and shall notify each Town Meeting Member in writing of the opening date and closing date for submission of Articles to said Warrant and shall publish notice **in compliance with the Select Board's policy on public communication.** ~~thereof in a newspaper of general circulation throughout Brookline~~. Such written notification by the Select Board shall be made by mail to the Town Meeting Member's address on file with the Town Clerk's office. No such notification shall be necessary where a Special Town Meeting has been called by a citizen's petition. In lieu of the above mailing requirement, the Select Board may send the required notice electronically to any Town Meeting Member who so requests.

SECTION 2.1.5 NOTICE OF MEETINGS

(B) Distribution. The Select Board shall cause a copy of the articles in the warrant for each Town Meeting ~~to be published~~ **in compliance with the Select Board's policy on public communication.** ~~a newspaper of general circulation within the Town,~~ to be posted on the Town website, and to be delivered in hand, or mailed, either separately or as a part of the Combined Reports, to the Moderator and to the representative Town Meeting members, and shall cause the posting of copies of the same in ten public places in the Town, at least seven (7) days before a Special Town Meeting is to convene and at least fifteen (15) days before an Annual Town Meeting is to convene. The requirements provided in this subsection (B) shall not be deemed to be a part of the legal notification of such meeting or the legal service of such warrant and the failure to comply with the provisions of this subsection (B) shall not serve to invalidate the proceedings of any Town Meeting.

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)~~ **(c)** after

such public hearing and such further revision as it may consider necessary, submit such proposed program for approval to the Select Board.

SECTION 7.8.1 REMOVING VEHICLES

The Commissioner of Public Works or their designee, for the purpose of removing or plowing snow, or, removing ice from any street or way may remove or cause to be removed to some convenient place, including a public garage, any vehicle interfering with such work. They shall keep or cause to be kept records of the registration number of each vehicle so removed and the place to which it is removed, and shall within forty-eight hours after the removal of any such vehicle send notice by mail to the owner of such vehicle, at their address as recorded at the Registry of Motor Vehicles, of the place to which such vehicle has been removed. If the owner of the vehicle be unknown or be not on record at the Registry of Motor Vehicles for this Commonwealth, the Commissioner of Public Works or their designee shall on the business day following the day of removal publish, **in compliance with the Select Board's policy on public communication** ~~at least once in a newspaper published and having a general circulation in Brookline or Boston~~, notice of the removal, the registration number, if any, the type of vehicle and the place to which the same was removed.

Article 8.16 Collection and Recycling of Waste Materials

SECTION 8.16.3 RULES AND REGULATIONS

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

Article 8.24 Water Supply Emergencies

SECTION 8.24.5 APPLICABILITY The following shall apply to all water users supplied by the Town. (A) Following notification by the Town, of the existence of a state of water supply emergency, no person shall violate any provision, condition, requirement or restriction included in the Drought Contingency Plan for the Town which has as its purpose the abatement of a water supply emergency. (B) Notification of any provision, restriction, requirement or condition with which users of water supplied by the Town are required to

comply to abate a water supply emergency shall be sufficient for purposes of this By-Law, ~~if it is published in a newspaper of general circulation with the Town, or by such other~~ **so long as said** notice as is reasonably calculated to reach and inform all users of the Town water supply.

Or act on anything relative hereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article seeks to relieve the town of the requirement in the General By-Laws to "publish in a newspaper of general circulation" now that the Brookline Tab has transitioned to an online only format for Brookline news. The Boston Globe is the default newspaper of general circulation, and the advertising cost and Brookline residents is prohibitive.

SELECT BOARD'S RECOMMENDATION

Article 8 is a by-law amendment that seeks to remove the requirement for printing in a newspaper of general circulation. The Board felt it wasn't practical to print our legal notices in the Globe and expect residents to be able to find them, not to mention the increased advertising costs. The Select Board has developed a policy on public communications as an alternative to publishing in newspaper for general by-law for these types of communications. That policy can be found here:

https://meetings.brooklinema.gov/OnBaseAgendaOnline/Documents/ViewDocument/PUBLIC%20NOTICE%20POLICY%20V.2.pdf?meetingId=1502&documentType=Agenda&itemId=37138&publishId=24562&isSection=false

The Board feels that converting from a by-law to a policy will allow the Town to be flexible as the situation changes and other options for outreach become available. Having these requirements hard coded into the by-laws and making the town reliant on a third-party for compliance is not a suitable option.

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

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 8 by a vote of 17–4 with 3 abstentions.

Executive Summary	Warrant Article 8 seeks to amend the Town's general by-laws to remove references to "a newspaper of general circulation throughout Brookline" and replace with "in compliance with the Select Board's policy on public communication." Brookline's general by-laws call for the Town to make public notifications of the following: • Opening dates for the Town Meeting warrant • All warrant articles being considered at Town Meeting • Substantial alteration or repair of Town parks • Changes to the Town's waste removal or recycling program • Notice of a water supply emergency and water usage restrictions The Brookline Tab ceased publication on May 5, 2022 leaving the Town without a local newspaper where such notices can be published. The Select Board's policy on public communication calls for these notices to be posted on the Town's website and public calendar as well as at Town Hall and 3 branches of the Public Library.
Voting Yes will...	Substitute "in compliance with the Select Board's policy on public communication" in the Town's general by-laws and require notices be posted on the Town website, public calendar, at Town Hall and in the 3 branches of the Public Library.
Voting No will...	Maintain the requirement of the Town to post notices in a newspaper of general circulation in Brookline.
Financial impact	By way of example, publishing the Warrant in the Boston Globe would cost $8,000 or more, not including staff time, compared with $3,300 the last time it was published in the Tab.
Legal implications	None

Introduction

Warrant Article 8 is submitted by the Select Board and seeks to amend the sections of the Town's general by-laws that deal with publishing notice of pressing events, public hearings, projects, and Town related business in a newspaper of general circulation. The Brookline Tab ceased publication on May 5, 2022 leaving the Town without a newspaper of general circulation. The Select Board developed its Public Notice Policy to ensure adequate public notice for key events including those that require publication in a newspaper. State statute requires the publishing of certain notices (e.g., Planning Board notices). The Planning Department has raised certain fees to cover this cost. This article affects notices that are not covered by state statute.

Discussion
It was widely accepted that the general by-laws needed to be amended after the shutdown of the Brookline Tab to ensure the public is informed of Town business and key events. It was discussed whether the Boston Globe could be considered a newspaper of general circulation within Brookline and relevant notices and the warrant could be published there. The Advisory Committee quickly determined it would not be financially feasible to publish the warrant in the Globe. There was recognition that notices on the Town website and in Town buildings may not reach all interested parties, but, without a local newspaper, it is the best alternative.

The primary concern raised during discussions was that the proposed Select Board policy on public communication was not available at the time of debate. Melissa Goff outlined the principles of the policy, presented below.

"Projects and events outlined in the general by-laws as needing to be noticed in a newspaper will now need to be posted or displayed in the following places according to the advance notice requirements:

1. On the Town's website and public meeting calendar
2. Town Hall and the three branches of the Brookline Public Library
    - Brookline Village
    - Coolidge Corner
    - Putterham"

The full policy is included in these Combined Reports.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/i8jLVHr7dc4vZqt3Trtks1s1IyYG4AnkxnJEKW6oNvGnP5YxggSZB__AdCfAAJvrUT9wEf_qmTHlyCnz.BKWEd1RX0uW-Uwwk?continueMode=true

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 8 by a vote of 17-4-3.

ARTICLE 8 ADVISORY COMMITTEE VOTES

Article Description	**Provide an alternative to publishing in a newspaper of general circulation**
AC recommendation (Favorable Action unless indicated)	**17-4-3**
Ben Birnbaum	N
Harry Bohrs	Y

Cliff Brown	Y
Patty Correa	Y
John Doggett	N
Katherine Florio	A
Harry Friedman	N
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	A
Kelly Hardebeck	N
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Carolyn Thall	Y
Christine Westphal	

Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Marked Up version of Article 7 as amended by the Advisory Committee

Moved that the Town amend the Town bylaws pertaining to Town Meetings by amending section 2.1.2 ("OPENING OF THE WARRANT"), 2.1.5 ("NOTICE OF MEETINGS", 2.5.1 ("SPECIAL COMMITTEE REPORTS"), 2.5.2 ("COMBINED REPORTS"), 2.5.3 ("PERMANENT RECORD OF REPORTS"), 3.4.5 ("TOWN REPORTS"), 4.2.4 ("DISTRIBUTION OF REPORTS") as follows (new language appearing in bold/underline, deleted language appearing in strikeout, and changes from the Article as printed in the Warrant in red):

SECTION 2.1.2 OPENING OF THE WARRANT

At least fourteen days prior to the opening of the Warrant for the Annual or a Special Town Meeting, the Select Board shall post notices of their intention to do so in at least ten places in the Town and shall notify each Town Meeting Member in writing of the opening date and closing date for submission of Articles to said Warrant and shall publish notice thereof in a newspaper of general circulation throughout Brookline. Such written notification by the Select Board shall be made by **e-**mail to the Town Meeting Member's **email** address on file with the Town Clerk's office. No such notification shall be necessary where a Special Town Meeting has been called by a citizen's petition.

the Select Board shall **mail** the required notice ~~electronically~~ to any Town Meeting Member who so requests.

SECTION 2.1.5 NOTICE OF MEETINGS

(A) Notification. The Select Board shall cause copies of the Warrant for each Town Meeting to be filed with the Town Clerk, and shall direct the Town Clerk to publicly post such copies of the Warrant on the principal Town Bulletin Board at least fourteen (14) days before the Annual Town

Meeting and at least fourteen (14) days before any Special Town Meeting is to convene. Such posting shall be deemed to be the legal notification of such meeting and the legal service of such warrant.

(B) Distribution. The Select Board shall cause a copy of the articles in the warrant for each Town Meeting to be published in a newspaper of general circulation within the Town, to be posted on the Town website, and **a link to such articles** to be **e-mailed** ~~delivered in hand, or mailed,~~ , to the Moderator and to the representative Town Meeting members, and shall cause the posting of copies of **such articles** in ten public places in the Town, at least seven (7) days before a Special Town Meeting is to convene and at least fifteen (15) days before an Annual Town Meeting is to convene. **A notice providing information on accessing the online materials shall be mailed to the Moderator and to the representative Town Meeting members.**

The requirements provided in this subsection (B) shall not be deemed to be a part of the legal notification of such meeting or the legal service of such warrant and the failure to comply with the provisions of this subsection (B) shall not serve to invalidate the proceedings of any Town Meeting.

The Select Board shall mail a link to the articles in the warrant for each Town Meeting to any Town Meeting Member who so requests.

SECTION 2.5.1 SPECIAL COMMITTEE REPORTS

All special committees created by a Town Meeting or the Moderator shall make a report of their findings and recommendations by filing a signed copy thereof with the Town Clerk. Forthwith upon the filing of any such report, the Town Clerk shall cause **a link to such report**to be **emailed** ~~delivered or mailed~~ to the Moderator, the Select Board, and the Advisory Committee, and to every other elected officer, Town Meeting Member and appointed officer who requests a copy of the report.

In the absence of a final report, each such committee shall annually, at least thirty (30) days before the start of the Annual Town Meeting, file with the Town Clerk an interim report of its doings, and the Town Clerk shall cause **a link to such report** to be **emailed** ~~printed and mailed out~~ with the combined reports called for in Section 2.5.2 of this Article.

In lieu of the **e-**mailing requirement in paragraph 1 above, the Town Clerk **shall**, at the request of any person listed above, **mail** the report(s)~~electronically~~.

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant. The Select Board and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be ~~delivered~~ **emailed** or mailed **upon request** as follows:

The Select Board shall cause **a link to** the combined reports to be ~~delivered~~ **emailed,** ~~or~~ **and a notice providing information on accessing such online materials to be** mailed not later than the seventh day prior to each special Town Meeting and not later than the fifteenth day prior to the start of each Annual Town Meeting, to the residence of every elected officer, Town Meeting Member and member of the Advisory Committee, and to the residence of every appointed officer, resident, real estate owner and town employee who requested, in writing, a copy of that combined reports. The combined reports shall contain each article in the warrant for such Town Meeting followed by the report of the Select Board on such article and then the report of the Advisory Committee on such article and every report made, not later than the twenty-second day prior to such Town Meeting and after the twenty-second day prior to the previous Town Meeting, by a Special Committee created by a Town Meeting or the Moderator.

The Combined Reports shall include, with each recommendation of the Select Board, a roll-call showing the vote of each member; and shall include, with each recommendation of the Advisory Committee, a statement of the number of members voting for and against the recommendation and the date of the vote. When a minority report is presented, the Combined Reports shall identify the members supporting the minority report.

The report of the Select Board on the article at an Annual Town Meeting providing for termination and close-out of prior special appropriations shall include a statement from the Comptroller listing each account for such an appropriation as falls within the scope of the article, the purpose of the appropriation, and the unexpended balance as of the last day of March in the year of said Annual Town Meeting.

SECTION 2.5.3 PERMANENT RECORD OF REPORTS

Copies of each report described in Section 2.5.1 and the combined reports described in Section 2.5.2 shall be kept permanently in the office of the Town Clerk and for at least five years, after its publication, in the Public Library and every Branch thereof, available for inspection by all interested persons.

SECTION 3.4.5 TOWN REPORTS

The Town Clerk shall cause **a link to** the Annual Town Report for each year to be ~~delivered~~ **emailed,** ~~or~~ **and a notice providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, and member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a copy in writing.

copies of each Annual Town Report shall be kept permanently in the office of the Town Clerk and for at least five years in the Public Library and every Branch thereof, available for inspection by all interested persons.

the **Town clerk** ~~Select Board~~ **shall**, at the request of any person listed above **mail such** report ~~electronically~~.

SECTION 4.2.4 DISTRIBUTION OF REPORTS

The Select Board shall cause **a link to** the Annual Town Report for each year to be **e-mailed,** ~~delivered or~~ **and a notice providing information on accessing the online materials to be** mailed not later than the fifteenth day prior to the commencement of the Annual Town Meeting, to the residence of every elected and appointed Town Meeting Member, member of the Advisory Committee, and to the residence of every resident, real estate owner and town employee who requests a copy in writing. the **Town clerk** ~~Select Board~~ **shall**, at the request of any person listed above **mail such** report(s) ~~electronically~~ .

XXX

ARTICLE 8

MOTION OFFERED BY MIKE SANDMAN ON BEHALF OF FRED PERRY

MOVED: That the Town will vote to amend its General By-laws, by removing references to publishing materials in "a newspaper of general circulation throughout Brookline" and making other such changes as will clarify the intent of the By-laws, as follows (deletions in ~~strike through~~; additions in **bold underline**):

SECTION 2.1.2 OPENING OF THE WARRANT:

At least fourteen days prior to the opening of the Warrant for the Annual or a Special Town Meeting, the Select Board shall post notices of their intention to do so in at least ten places in the Town and shall notify each Town Meeting Member in writing of the opening date and closing date for submission of Articles to said Warrant and shall publish thereof ~~in a newspaper of general circulation throughout Brookline~~ **in a newspaper specializing in news of Brookline with circulation not less than 3000 copies weekly throughout Brookline. Should there be no such newspaper, notice shall be published in compliance with the Select Board's policy on public communication.** Such written notification by the Select Board shall be made by mail to the Town Meeting Member's address on file with the Town Clerk's office. No such notification shall be necessary where a Special Town Meeting has been called by a citizen's petition. In lieu of the above mailing requirement, the Select Board may send the required notice electronically to any Town Meeting Member who so requests.

SECTION 2.1.5 NOTICE OF MEETINGS

(B) Distribution. The Select Board shall cause a copy of the articles in the warrant for each Town Meeting thereof ~~in a newspaper of general circulation throughout Brookline~~ **in a newspaper specializing in news of Brookline with circulation not less than 3000 copies weekly throughout Brookline. Should there be no such newspaper, notice shall be published in compliance with the Select Board's policy on public communication,** to be posted on the Town website, and to be delivered in hand, or mailed, either separately or as a part of the Combined Reports, to the Moderator and to the representative Town Meeting members, and shall cause the posting of copies of the same in ten public places in the Town, at least seven (7) days before a Special Town Meeting is to convene and at least fifteen (15) days before an Annual Town Meeting is to convene. The requirements provided in this subsection (B) shall not be deemed to be a part of the legal notification of such meeting or the legal service of such warrant and the failure to comply with the provisions of this subsection (B) shall not serve to invalidate the proceedings of any Town Meeting.

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 thereof ~~in a newspaper of general circulation throughout Brookline~~ **in a newspaper specializing in news of Brookline with circulation not less than 3000 copies weekly throughout Brookline. Should there be no such newspaper, notice shall be published in compliance with the Select Board's policy on public communication.** (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 7.8.1 REMOVING VEHICLES

The Commissioner of Public Works or their designee, for the purpose of removing or plowing snow, or, removing ice from any street or way may remove or cause to be removed to some convenient place, including a public garage, any vehicle interfering with such work. They shall keep or cause to be kept records of the registration number of each vehicle so removed and the place to which it is removed, and shall within forty-eight hours after the removal of any such vehicle send notice by mail to the owner of such vehicle, at their address as recorded at the Registry of Motor Vehicles, of the place to which such vehicle has been removed. If the owner of the vehicle be unknown or be not on record at the Registry of Motor Vehicles for this Commonwealth, the Commissioner of Public Works or their designee shall on the business day following the day of removal publish, thereof ~~in a newspaper of general circulation throughout Brookline~~ **in a newspaper specializing in news of Brookline with circulation not less than 3000 copies weekly throughout Brookline. Should there be no such newspaper, notice shall be published in compliance with the Select Board's policy on public communication**, notice of the removal, the registration number, if any, the type of vehicle and the place to which the same was removed.

Article 8.16 Collection and Recycling of Waste Materials

SECTION 8.16.3 RULES AND REGULATIONS

The Select Board may adopt regulations governing the collection, storage, transportation and removal of solid waste and shall adopt regulations to implement a recycling program in the Town. The regulations adopted by the Board may be amended, from time to time, and may add other categories of waste materials to be separated and recycled, as the Town develops programs and the capacity to collect and recycle new categories of waste materials. Regulations may also include temporary

waiver provisions for cause.* Prior to the adoption or amendment of any such regulations the Select Board shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing such notice thereof ~~in a newspaper of general circulation throughout Brookline~~ **in a newspaper specializing in news of Brookline with circulation not less than 3000 copies weekly throughout Brookline. Should there be no such newspaper, notice shall be published in compliance with the Select Board's policy on public communication** once in each of two successive weeks the first publication to be not less than fourteen days prior to the date set for such hearing or by the posting of such notice on the town's bulletin board in the Town Hall not less than fourteen days prior to the date set for such hearing.

Article 8.24 Water Supply Emergencies

SECTION 8.24.5 APPLICABILITY The following shall apply to all water users supplied by the Town. (A) Following notification by the Town, of the existence of a state of water supply emergency, no person shall violate any provision, condition, requirement or restriction included in the Drought Contingency Plan for the Town which has as its purpose the abatement of a water supply emergency. (B) Notification of any provision, restriction, requirement or condition with which users of water supplied by the Town are required to comply to abate a water supply emergency shall be sufficient for purposes of this By-Law, thereof ~~in a newspaper of general circulation throughout Brookline~~ **in a newspaper specializing in news of Brookline with circulation not less than 3000 copies weekly throughout Brookline. Should there be no such newspaper, notice shall be published in compliance with the Select Board's policy on public communication so long as said** notice as is reasonably calculated to reach and inform all users of the Town water supply.

ARTICLE 9

NINETH ARTICLE

Submitted by: Abby Swaine, Marissa Vogt TMMP6, Kerri Ann Tester

To see if the Town will amend the Town's General By-Laws, Article 7.7 "Removal of Snow and Ice From Sidewalks", as follows:

ARTICLE 7.7
REMOVAL OF SNOW AND ICE FROM SIDEWALKS

SECTION 7.7.1 BUSINESS AND INDUSTRIAL DISTRICTS

In all Business and Industrial Districts, as defined and delineated in the Zoning By-law, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within the first three **(3)** hours between sunrise and sunset after such snow and ice has come upon such sidewalk, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.1 for good cause.**

SECTION 7.7.2 MULTI-FAMILY DWELLINGS

The owner, or their agent, of any building designed or occupied as a residence by ~~more than four~~ **three or more** families or which contains ~~more than four~~ **three or more** dwelling units, as defined in the Zoning By-law, shall cause all sidewalks of a street which are contiguous to the land upon which the building is situated to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within the first three (3) hours between sunrise and sunset after such snow and ice has come upon such sidewalk, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.2 for good cause.**

SECTION 7.7.3 GENERAL REQUIREMENT

Except as set forth in Subsections (a) and (b) above, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk ~~within thirty (30) hours of the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk~~ **within the first six (6) total hours between sunrise and sunset after such snow and ice has come upon such sidewalk**, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition.** The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.3 for good cause.

SECTION 7.7.4 NO ICE AND SNOW TO BE PLACED ON STREET

No person, unless authorized by the Commissioner of Public Works, shall place, or cause to be placed, ice or snow upon any street of the Town. Without limiting the generality of the foregoing, no person, unless authorized by the Commissioner of Public Works, shall place, or cause to be placed, ice or snow upon any sidewalk of the Town.

SECTION 7.7.5 PENALTIES

The violation of any provision of Section~~s~~ 7.7.1 and 7.7.2 of this Article 7.7 shall be subject to a fine of ~~$100.00~~ **$200.00** for the first violation, ~~$150.00~~ **$250.00** for the second violation, and ~~$200.00~~ **$300.00** for the third and subsequent violations in any fiscal year. The violation of any provision of Section 7.7.3 of this Article 7.7 shall be subject to a fine of ~~$50.00~~ **$100** for the first violation**,** ~~and $100.00~~ **$150** for the second **violation, and $200 for the third** and subsequent violations in any fiscal year. **The Commissioner of Public Works, or other authorized agent of the Town, shall have the discretion to impose fines for second, third, and subsequent violations on successive periods of at least 24 hours' duration within the same snow event, and/or for subsequent snow events within the same season. Each thirty (30) meter section of sidewalk, or portion thereof, that is found to violate any provision of Sections 7.7.1, 7.7.2, or 7.7.3 of this Article 7.7 shall be considered a separate violation of this Article. One or more violations** of any provision of Section 7.7.4 of this Article 7.7 shall be subject to a fine of $250.00 **for each violation**.

SECTION 7.7.6 COMPLIANCE DELAY

Depending upon the severity of a storm and other factors, the Commissioner of Public Works may delay the period for compliance with Sections 7.7.1, 7.7.2, or 7.7.3 of this by-law. In the event of initiating a compliance delay, 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 outlets, the cable access television station, e-mail list serves, and the emergency telephone notification system.

SECTION 7.7.7 ANNUAL REPORT

The Select Board shall include in the Annual Report of the Town a summary of the Town's efforts and results during the past year in implementing Sections 7.7.1, 7.7.2, or 7.7.3, including, but not limited to, public education, enforcement and assistance to owners.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Brookline Sidewalk Snow Removal By-Law Update

Explanation of Warrant Article for November 2022 Special Town Meeting

Submitted by: Abby Swaine, Marissa Vogt (TMM-P6), Kerri Ann Tester

Summary	This article would update the Town's snow removal by-law, which requires that property owners maintain abutting sidewalks "in a non-slippery condition suitable for pedestrian travel." Notwithstanding this requirement, the Town receives several hundred complaints per year of impassable or dangerous conditions. The proposed changes would assist pedestrians by requiring that both residential and commercial sidewalks are more promptly cleared following a storm, and encourage compliance with the by-law by increasing fine amounts.
Voting YES will …	Update the Town's by-law on "Removal of Snow and Ice From Sidewalks" (Article 7.7) to: 1. Double the fines for the first violation assessed; 2. apply larger fines for property owners responsible for clearing exceptionally long lengths of sidewalk; 3. reduce the time period from 30 hours to 6 daylight hours following a storm's end for owners of single- and two-family residential properties to clear their sidewalks; and 4. clarify that curb ramps and portions of driveways crossing sidewalks must also be maintained in a clear and non-slippery condition.
Voting NO will …	Make no change to the Town's snow removal by-law.
Estimated financial impact	The financial impact is expected to be minimal. Currently the

on the Town of Brookline	Town collects roughly $1,000 per year in snow removal fines. Increasing fine levels could increase the Town's income by a few thousand dollars per year, especially if new categories of staff (e.g., parking enforcement officers) were authorized to issue warnings and tickets. However, since the goal is to improve compliance with the snow removal by-law, the amount of fines collected by the Town and the cost of enforcing the by-law ideally will decline over time.
Conflicts of interest	None.

1. Introduction

Brookline's public way includes over 149 miles of sidewalk and over 2,000 curb ramps[1]. According to the National Weather Service[2], in a typical year, the Boston area receives over 40 inches of snowfall and experiences several months of daily temperatures at or near freezing. Inadequate snow removal makes sidewalks hazardous or completely impassable, particularly for users of wheelchairs, walkers, and strollers, so the Town must implement a robust and effective snow and ice removal policy. An unshoveled or icy stretch of sidewalk bordering a single property or driveway can deny use of the entire sidewalk to those with mobility challenges and other vulnerable pedestrians, forcing them to move onto the roadway along with motor vehicles, or double back to look for an accessible but much longer route. In fact, all pedestrians — and in particular, older adults and children — can find our Town's sidewalks treacherous or impassable in winter, causing falls or conflicts with vehicles, potentially resulting in serious injury.

[1] 2022 Brookline Transportation and Mobility Plan https://www.brooklinema.gov/DocumentCenter/View/29829/Brookline-Transportation--Mobility-Plan-FINAL-02252022

[2] See for example https://www.weather.gov/wrh/climate?wfo=box

Incompletely shoveled sidewalks are a hazard for all pedestrians, but particularly for seniors, children, and individuals who rely on wheelchairs, walkers, or strollers.

Brookline's current snow removal by-law (Article 7.7) places the responsibility for clearing sidewalks of snow and ice on abutting property owners. The current by-law states that sidewalks must be maintained in "a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk" and describes the fines that can be incurred for non-compliance with the by-law. However, despite these current requirements, the Town receives several hundred complaints per year of impassable or dangerous sidewalk conditions. **This warrant article proposes several updates to the current by-law that will assist pedestrians by ensuring sidewalks are more promptly cleared following a storm and encouraging compliance with the Town's snow removal policies.**

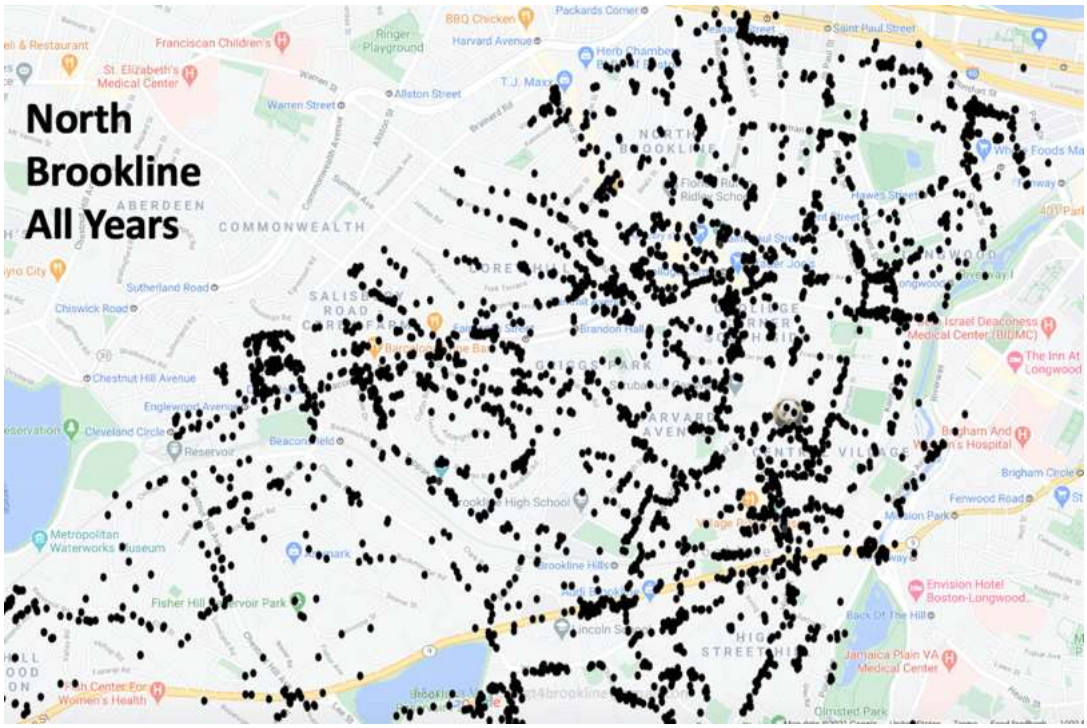
2. Analysis of sidewalk snow removal complaints and recommendations from the Pedestrian Advisory Committee

Brookline's Pedestrian Advisory Committee (PedAC) submitted to the Transportation Board on July 2, 2021 a memo entitled "Brookline sidewalk snow removal policies."[3] This memo details the committee's analysis of BrookONline complaints about snow and ice obstructing sidewalks, describes their public discussions with Department of Public Works leadership on these issues, and recommends ten changes to policies and practices for improving pedestrian safety and access for everyone to our public ways during the winter. Along with changes to DPW practices and resources, as well as public assistance & education, PedAC recommended several updates to the existing By-Law:

[3] A Google doc containing the memo is readable at tinyurl.com/pedac2021snowmemo, or http://docs.google.com/document/d/1AHvzodvhdYxxEN04olGFJ-0xZiSUiK0u/ Note that the Transportation Board has not yet formally accepted the report nor endorsed its recommendations at a public meeting.

- Decrease the time period following a storm's end during which a property owner must clear their sidewalks. The current by-law allows for up to 30 hours for single-family residences and multi-family residences with up to 4 units. This means that sidewalks can be impassible for potentially an entire day. Additionally, such a lengthy compliance period can lead to even more prolonged and persistent impassibility and dangerous conditions: over time, the snow is compacted by commuters and children walking to/from school, then partly melts during higher daytime temperatures (or due to the application of snow melt), then re-freezes when temperatures drop overnight. Such compacted snow soon turns into thick slabs of hard-packed ice, which is significantly harder for property owners to remove--so encouraging prompt and early action to clear sidewalks will likely benefit property owners as well, in the long run.
- Increase the fines for noncompliance. Incentivize compliance by ensuring that the cost of fines is higher than the market rate for hiring a snow removal service.
- Clarify that DPW or other Town enforcement agents have the authority to levy fines for multiple or ongoing violations, both on subsequent days following the same storm event, and for repeated violations after later storms in the same season. This clarification gives the Town discretion to escalate fines for chronic noncompliance, while protecting a property owner who can show unforeseen incapacity or adversity from being fined hundreds of dollars for a single episode of unintentional noncompliance.
- Assess larger fines for residences or businesses with exceptionally long stretches of sidewalk frontage.

The PedAC made these recommendations after analyzing 9 years (2011 - Jan. 2021) of "unshoveled/icy" sidewalk complaints submitted to the Town through the BrookONline app. BrookONline lists 4,090 "unshoveled/icy sidewalk" complaints (an average of 450 complaints per year) during that period. While BrookONline does not include complaints submitted to the Town by phone, email, in-person, etc., it does constitute a representative sample of such complaints, ranging from failure to clear snow and ice at all to areas where a property owner's efforts have been insufficient to create and maintain safe passage in compliance with the by-law.



Locations of more than 4,000 sidewalk snow complaints filed with BrookONline from 2011 through Jan. 2021 (black dots) overlaid on a map of Brookline (Google maps).

Despite their short-lived and seasonal nature, complaints about unshoveled/icy sidewalks were the single most common type submitted through BrookONline over these nine years, representing 18 percent of all complaints on the app; 750 addresses have been the subject of more than one BrookONline complaint; 120 addresses have had more than 5 complaints; 460 addresses have had complaints in more than one year; and 120 addresses have had complaints in more than two years.

Snow and ice clearance complaints have generally been increasing over time, underlining the timeliness and necessity for revisiting the relevant by-law at this point, to reinforce and ensure its success in addressing the well-documented needs and priorities of Brookline residents. Following the record snowfall in 2015, when the by-law was updated[4] to allow immediate imposition of fines, the Town enjoyed relatively few complaints the following year in 2016. However, since 2017, the number of complaints has increased gradually each year and now consistently exceed those numbers prior to 2015. Complaints tend to be clustered in commercial areas, and near schools and other popular destinations with high pedestrian traffic. The Town does clear 40 miles of sidewalks near schools and parks, but even after those areas are shoveled, curb cuts get

[4] By-Law changes were approved via Warrant Article #12 of the May 2015 Town Meeting. See pages 199-218 in the certified markup files here: https://www.brooklinema.gov/DocumentCenter/View/20231/Certified-Mark-Up-of-Combined-Reports--May-26-2015

buried by ongoing roadway plowing, and sidewalks crossed by driveways become obstructed by spillover from driveway clearing.

3. Proposed updates: decrease compliance time and increase fines

This warrant article is intended to improve compliance with the current by-law and make it more effective in preventing and remediating sidewalk hazards due to snow and ice by increasing the fine amounts for all property types, shortening the compliance window for one- and two-family properties, clarifying that "sidewalks" include curb ramps and areas where sidewalks and driveways intersect. The proposed changes to the snow removal requirements will benefit pedestrians, business owners, commuters, vulnerable users of the public ways, public transportation passengers, and property owners by ensuring that both residential and commercial sidewalks are cleared promptly following each storm.

Summary of current (top, in gray) and proposed (bottom, in bold) snow removal requirements for different property types/locations

Property details	Deadline: # daylight hours after storm end	First offense	Second offense	Third and subsequent offenses
Located in "Business and Industrial Districts"	*3 hours*	*$100*	*$150*	*$200*
	3 hours	**$200**	**$250**	**$300**
Multi-family dwellings (5+ units)	*3 hours*	*$100*	*$150*	*$200*
Multi-family dwellings **(3+ units)**	**3 hours**	**$200**	**$250**	**$300**
General requirement *(including single family and 2-4 family units)*	*30 hours*[5]	*$50*	*$100*	*$100*

[5] The current by-law just states "30 hours," not daylight hours, for these properties.

*General requirement, including s*ingle family **and 2-family** homes	**6 hours**	**$100**	**$150**	**$200**

CURB RAMPS AND DRIVEWAY EDGES:

This update to the by-law makes it clear that a sidewalk cannot be considered "passable" if a pedestrian encounters a barrier to accessing a crosswalk or intersection, or if piles of snow from a driveway obstruct the sidewalk, and that the abutting property owner is responsible for ensuring that snow and ice do not "maroon" any pedestrians in these or any other ways, nor force pedestrians into the roadway to mix with motor vehicle traffic outside of crosswalks and intersections.

COMPLIANCE PERIOD

The current 30-hour time allowance for clearing sidewalks abutting all properties other than those in business/industrial districts or those classified as multi-family is excessive; it not only is unfair to those who need to use our sidewalks soon after a storm, but also often leads to whole blocks' becoming hazardous or even impassable for weeks afterwards, thanks to uncleared and trampled snow melting and then re-freezing into hard-packed ice. Responsible property owners must enter each winter season equipped with a plan and the means to remove snow soon after it accumulates, regardless of whether they are present or away during a storm. For some, this will mean doing the job on their own, and for others, it will mean making advance arrangements with service providers or neighbors. Much like the proper storage and disposal of solid waste, timely and appropriate sidewalk clearance is a codified and necessary responsibility of property owners in the Town of Brookline, and it must be prioritized and enforced as such.

The proposed changes will also include three- and four-unit residences within the category of multi-family dwellings, in terms of fine amounts and compliance periods. Triple-deckers and four-unit blocks are the most common type of housing in Brookline, especially in our many pedestrian-heavy neighborhoods. Including 3- and 4-unit properties in the multi-family category should significantly increase pedestrian safety in the winter, without adding an undue burden. Owners in such buildings have the means to work collectively to facilitate prompt and effective sidewalk clearance, either on their own or through a homeowner association-hired contractor. The goal of this proposed change is to encourage owners of Brookline's many "smaller" multi-family properties (especially those with a poor record of compliance with the by-law in the past, and who until now may have had lackadaisical or otherwise ineffective communication and/or decision-making procedures) to redouble their efforts to work together, to ensure pedestrian safety on the sidewalks for which they are jointly responsible.

FINE AMOUNTS

In order to provide the necessary motivation for property owners, the cost of noncompliance must compare unfavorably with what they would otherwise pay for snow removal services. The PedAC's analysis of complaint trends in the BrookOnline database suggests that fines were set too low in 2015 and have not kept up with inflation. Contracting costs for sidewalk snow removal in Brookline can vary greatly based on distance, depth, equipment, urgency, availability, and other factors.

Fines for first offenses are increased in the by-law update more than fines for subsequent offenses, to motivate property owners to quickly learn from experience. Fines for all offenses must be set high enough minimize the likelihood of chronic noncompliance, to safeguard pedestrians' right to safe travel, and to reduce the likelihood that Town staff would need to be called upon to revisit the property multiple times.

Finally, the proposed changes would also apply fines separately to each 30 meter (100 foot) section of uncleared sidewalk. Most single-family and smaller multi-family residential lots are less than 30 meters in width so this change would only impact businesses or residences with exceptionally large frontages.

SELECT BOARD'S RECOMMENDATION

Article 9 is a petition to amend the Town's by-laws regarding snow removal along the Town's sidewalk system. It clarifies that corner and mid-block curve ramps, as well as portions of driveways that cross sidewalks, are a part of that system and should be maintained accordingly.

Initially, petitioners sought to reduce the amount of time generally required for non-multi-family buildings outside of business and industrial districts from 30 hours to within 6 total hours between sunrise and sunset after snow or ice came upon a section of sidewalk. Their original language also increased the monetary penalties for failing to remove snow within the timeframe set by the by-laws, and clarified that penalties would be levied per 100-foot stretch of sidewalk or portion thereof.

The Advisory Committee, in reviewing the article, offered a proposed amendment that (1) increased the time for clearance to within 24 hours of the cessation of the storm, (2) added a proviso that allowed property owners an additional 6 hours to clear "previously cleared corners" if subsequent street plowing by the Department of Public Works deposited snow or ice on them, (3) restored the existing fine structure for violations, and (4) removed the 100-foot stretch clarification, restoring the by-law to a per-property fine structure. Petitioners countered with revised language that required clearance 12 hours after the cessation of the storm or before noon on the day following the cessation of a storm that ends after 12:00 noon, and did not incorporate the other changes in the Advisory Committee's proposed motion.

The Select Board expressed support for petitioners' efforts to ensure greater accessibility across the Town after a storm event, and to lower the disparity between multi- and single-family housing with regard to the grace period for snow and ice clearance. It also expressed concern regarding staff resources for enforcement of a shorter clearance deadline. A majority of members on the Select Board viewed the Advisory Committee's proposed 24-hour window as an adequate compromise, noting that petitioners could return to seek a shorter window if they deemed snow clearance efforts unsatisfactory during the coming winter storm season. A minority felt that petitioners' revised 12-hour language struck a more equitable balance between the needs of individuals who struggle to navigate post-storm sidewalks, the community's clearance obligations, and staff resources.

With the above discussion, at their meeting on November 1, 2022, and following a prior public hearing on the matter, a motion for favorable action on petitioners' revised 12-hour proposal was defeated, 2-3 (Heather Hamilton, Bernard Greene, and John VanScoyoc opposed). The Select Board then voted 3-2 to recommend FAVORABLE ACTION be taken on the Advisory Committee's proposed amended language for Article 9.

ROLL CALL VOTE:

Aye:	No:
Hamilton	Aschkenasy
VanScoyoc	Sandman
Greene	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 9 by a vote of 25-1 with 2 abstentions.

Executive Summary	Petitioners filed Warrant Article 9 (described below) to address a continuing problem facing the Town, namely a lack of adequately shoveled sidewalks, timely enforcement of the existing By-law, and a desire to address the lack of clearing street corners. There is general agreement that there needs to be increased compliance by property owners in removing snow/ice from sidewalks, as well as greater enforcement of the By-law. The Advisory Committee is concerned that WA9 as currently proposed will not achieve those goals, and recommends amendments to the petitioners' motion, including a 24-hour time period for **single and two-four family residences** to clear snow; restoring the existing penalties in Article 7.7.5; adding **"shall, at the discretion of the DPW Commissioner,"** in the first line of Article 7.5 (discretion already exists for the 2nd, 3rd and 4th violations); and giving property owners an additional 6 hours to clear snow from corner and mid-block curb ramps that have been plowed in by DPW plows. The Advisory Committee discussed whether other approaches might be more effective. Among the suggested alternatives were: better outreach and education about the current By-law; adding reminders to the robocalls that are made prior and during the storm event; better outreach connecting seniors with existing programs such as the Recreation Department's "Shovel Our Snow" program.
Voting Yes on the Advisory Committee's amended motion will...	Amend the Town's By-law Article 7.7 to (1) reduce 30 hours to 24 for **single- and two-four family residences** to clear their sidewalks and portions of driveways crossing the sidewalk; (2) keep fines for violations unchanged; (3) add discretion for the DPW Commission for a first violation; (4) add a 6-hour extension for re-clearing corner and mid-block curb ramps that have been blocked by snow from DPW plows; (5) remove harsher penalties for longer uncleared sidewalks.
Voting No on the Advisory Committee's amended motion will...	Amend the Town's By-law Article 7.7 on "Removal of Snow and Ice From Sidewalks" to: (1) raise fines for a first violation and subsequent violations; (2) assess larger fines on property owners who fail to clear longer lengths of sidewalk; (3) reduce the time from 30 hours to 12 hours or until noon the next day following the cessation of a snow storm for single- and 2-family residential properties; (4) reduce the time from 30 hours to 6 daylight hours following the cessation of a snow storm for 3- and 4-unit residential properties; and (5) add new language to clarify that curb ramps and portions of driveways that cross the sidewalk must also be cleared and maintained free of snow and ice.

Voting No on WA9 will...	Will make no changes to Article 7.7
Financial impact	The cost of increased staffing or staff time to adequately enforce this By-law is unknown. The Petitioners estimate minimal additional costs. Last year the Town collected a little over $1,000 in snow removal fines. Increasing enforcement of the current By-law – or the additional fines recommended by the petitioners' article – might bring in additional revenue, which could offset the cost of additional staff or staff time needed for enforcement. However, the Town has hiring problems and all the Town departments tasked with enforcement have serious staffing issues. The cost of hiring enough people to adequately enforce this By-law is unknown.
Legal implications	None

Background
There have been many attempts in Town Meeting over the years to try and solve the perennial problem of snow removal. In 1987, after a number of failed attempts by Town Meeting Members, Marty Rosenthal and Stanley Spiegel coauthored the town's first sidewalk snow shoveling By-law. At the time, it was one of the first and possibly the only such By-Law in Massachusetts. It has been amended numerous times, most recently in 2015.

Some examples from the past —

A Massachusetts Supreme Judicial Court case in 1832 (*Loker v. Brookline*) states "…that clause in *St.* 1786, c. 81, [sec] 1, that when the highways are blocked up, or incumbered (sic) with snow, the surveyors shall *forthwith* cause so much thereof to be removed or trod down, as will render the roads passable,". Subsequently, on March 4, 1833, Brookline's Town Meeting *"[v]oted that the several surveyors of Highways cause the snow which may block up or incumber the roads to be removed or trodden down by assigning to the several persons within their limits their ratable proportion of days work and assigning certain days for disincumbering the Roads of snow or give notice thereof according to Law, to the end that the members of each surveyors district may keep open the roads within the same without charge to the Town."*

A comment from the Brookline Chronicle from Saturday March 1st, 1879 that still resonates today:

"The icy conditions in front of the Colonnade Block this week has been much of the time absolutely dangerous. If there is a town ordinance against this sort of thing, it is high time it was enforced. If the laws of Brookline allow ice and snow to remain on the sidewalk until the benignant sun clears them off, it is quite time it was amended. Our citizens have had enough of this trifling with human life and limb."

Introduction

There are over 149 miles of sidewalk and over 2,000 curb cuts in Brookline. The DPW clears over 40 miles of sidewalks and the curb cuts near schools, other public buildings and parks, in addition to plowing the streets during and after snowfalls. The Town has 6 sidewalk tractors. 1-2 are used in business areas, and 1 is used on each of the 3 routes.

The DPW's priority is to plow the streets and sidewalks; enforcement and assessing fines is a secondary responsibility when those same employees become available. In recent years, the DPW (and other Town departments as well) has had trouble hiring people to fill existing job openings. The Town's snow plows (when they plow "curb to curb", sometimes many hours after the storm) also have a habit of throwing snow back onto cleared sidewalks making residents have to repeatedly shovel their sidewalks and driveways.

The Town is divided into four sectors and three other Town departments (Building, Health and Police) are also responsible for enforcement. All four departments are currently dealing with significant staff shortages.

The revised motion from the petitioners seeks to amend the current Article 7.7 "Removal of Snow and Ice From Sidewalks" of the Town's General By-Laws with the goal of increasing compliance by (1) greatly reducing the hours after a snowstorm in which sidewalks and curb cuts by commercial and residential properties must be cleared of snow and ice, and by (2) increasing fines for the failure to do so.

The changes being proposed by the petitioners in their revised version are:

- Reduce the time period from 30 hours after the end of a storm to 12 hours for **single 2-4 family residential properties;**

- Increase by 25% the fines for a first violation from $100 to $125, and increase subsequent fines;

- Specify that multiple fines may be issued for each 24 hour period following the grace period that snow and ice remain on the sidewalk;

- Assess higher fines for each 100 feet of sidewalk that front larger properties;

- Add language that specifies the clearing of corner, mid-block curb ramps that abut properties and portions of driveways that cross the sidewalk need to be cleared of snow and ice; and,

- Add clarifying "housekeeping" language to Sections 7.7.1 (Commercial Areas) and 7.7.2 (Multi-family) that specifies that the clock starts after a snowstorm event ends.

Evaluation Methodology/Research

- Snow removal By-laws in Boston, Cambridge, Newton and Needham
- M.G.L. Chapter 40 Section 21 – enabling State legislation for town By-Laws, particularly 21(3) on the removal of snow and ice from sidewalks
- Article 7.7, "Removal of Snow and Ice From Sidewalks," of the Town's General By-Laws
- WA9 (Swaine, Vogt, Tester) as amended by the petitioners on October 14, 2022
- Discussion with DPW Commissioner Erin Chute Gallentine and Kevin Johnson, Director of Highway and Sanitation
- https://brookline.advantage-preservation.com/
- https://books.google.com/books?id=s403AQAAMAAJ&pg=PA343

Discussion

There is broad consensus that there needs to be better compliance with sidewalk clearance on the part of residential and commercial property owners and better enforcement on the part of the Town. The discussion focused on whether the amendments to Article 7.7 ("Removal of Snow and Ice From Sidewalks") proposed by the petitioners would achieve those twin goals.

While the Advisory Committee agreed with the intent of the proposed amendments to the current By-law, members were concerned that some of the measures under WA9 – even those that were modified to reflect input during the vetting process – would not necessarily achieve the goals of the petitioners.

A general By-law needs to work for the Town as a whole, and there were concerns expressed that given Brookline's complex geography, residents in different parts of Town could be disproportionately adversely impacted. The petitioners compare Brookline's current By-law to Boston, which requires snow to be cleared within 3 hours; however, South Brookline is more similar to its suburban neighbors, such as Newton and Needham. Newton allows homeowners 24 hours (12 hours in commercial and business districts); in Needham only commercial property owners are required to clear sidewalks of snow and ice within 5 daylight hours, and the town assesses fines of no more than $50 per violation.

The petitioners' amended warrant article reduced the time period during which snow must be cleared from the streets from 30 hours to 12 both because the 30 hour timeframe often resulted in compacted snow and ice to accumulate before shoveling is initiated and because pedestrians often have to wait 30 hours before being able to walk on the sidewalks under the current permissible time frame for shoveling. The reduced timeframe for clearing seemed impractical to a majority of members, who reviewed the Article with an eye to the fundamental issue of how to increase compliance. There is also a concern that the By-law would be unenforceable, and would create more frustration for residents, place an undue burden on a shorthanded DPW staff and the other Town departments tasked with enforcing the By-law and put an unrealistic burden on contractors as well.

The Advisory Committee believes that better communication from the Town regarding the requirements of the By-law, including through the Town's website, robocalls, inserts in Town mailings, etc. would help educate residents and improve conditions.
Other points were raised during the hearing, including:

- The map provided by the petitioners showing all the complaints over the last ten years was somewhat deceptive, as one location could have had a single violation in 2011, but a clean record since, so the cumulative map made it look like the problem is worse than it is.

- For people who work and don't come home until well after the petitioners' grace period, and others who may be away from their home during the storm, the new rule would be impossible to comply with, as many residents cannot afford to hire someone to shovel for them, including many seniors. The petitioners belief that neighbors will jump in to help is aspirational, but not something that residents can rely on. And while many people rely on contractors to do shoveling/plowing, the contractor may not be able to shovel all their customers' sidewalks within the 12 hour period when there is much demand for their services.
- The Town's policy of first doing basic street clearing and later pushing the snow back (curb to curb) makes residents shovel their sidewalks and driveways each storm more than once. Often crews work into the next day trying to clear roads and sidewalks, requiring multiple passes. The higher fines in such a tight time frame would be unfair to all the residents who are trying to comply with the By-law.

- A committee member noted in regard to increased fines for buildings with longer adjacent sidewalks that the cutoff for determining at what point higher fines are warranted seemed to be arbitrary (e.g., adding an extra foot of sidewalk may double the fine).

- For those who can afford to hire someone to shovel for them (whether a private company or students looking for some income), these providers are likely going

to have a long list of clients, and inevitably they may not be able to get to all their clients within the petitioners' limited window. With such a short time frame to have shoveling completed, people who are paying for a shoveling service that may not arrive within the 12 hour time frame will nonetheless be subject to a fine. Naturally it takes a longer time to shovel out each customer after a heavy storm than after a dusting.

- Winter storms in New England are often messy. They also rarely end suddenly. Often additional bands of snow and ice will follow hours later, sometimes the next day. The winter of 2015 was an excellent example not only of the number of complaints issued, but an inability to find places to put the snow and keep sidewalks free of snow to the required width of 36". Most residents do the best they can, but are sometimes unable to always keep up with Mother Nature.

In the many attempts to craft a better By-law, the repeated message is that there isn't sufficient enforcement of the current law. The Advisory Committee believes that it all comes down to better enforcement of existing rules, along with better communication of the requirements of the By-law, as mentioned above. An effort to concentrate on repeat offenders would also make the streets safer. The Town currently doesn't have enough staff to enforce the By-law as it is.

Adding the changes the petitioners want would place additional burdens on residents, some of them elderly, with Town staff already stretched thin.

The petitioners of WA9 emphasized that the goal wasn't to collect more fines, but rather to incentivize clearing Town sidewalks better and more quickly.

The AC voted on five (5) amendments to the petitioners' motion, all of which passed.

1. An AMENDMENT on Section 7.5 regarding penalties and their practicality – add **"shall, at the discretion of the DPW Commissioner,"** in the first line. The discretion already exists for the 2nd, 3rd and 4th violations.

2. An AMENDMENT to **change the time limit in Section 7.7.3 from 12 hours to 24 hours and remove the noon provision**, which was no longer necessary, since there would be 12 daylight hours. (The petitioners' language of 12 hours without specifying "daylight" could mean zero daylight hours if a storm ended at 4 pm.)

3. An AMENDMENT to **maintain original Section 7.7.5 penalties (amounts). (**Restoring the existing fines).

4. An AMENDMENT to remove in Section 7.7.5 the sentence "Each 100 foot section of sidewalk, or portion thereof, this is found to violate any….." The language could disproportionately affect condos and properties in South Brookline.

5. An AMENDMENT to **add, in Section 7.7.2 at end of paragraph, "When subsequent street plowing by the DPW that fills in previously cleared corners, property owners will have an additional 6 hours to re-clear corners."** This would allow time for contractors or residents to return to clear plowed-in corners.

As so amended the **MAIN MOTION** passed.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/RfKRUgaxp39LrzjoIMGEsY3a9wb0EBLl7pKLHJ_trd4UTSeKCD9zLrf7S5LpuiT2Y91lRBuUumuRokH0.BzrM4ARkE5D1KqZL?continueMode=true

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on the following amended Motion under Warrant Article 9 by a vote of 25-1-2.

VOTED: That the Town amend the Towns General By-Laws, Article 7.7 "Removal of Snow and Ice From Sidewalks", as follows:
(Words in **bold** are the petitioners' additions that are part of the Advisory Committee motion; those in **bold and underlined** are the Advisory Committee additional language.)

ARTICLE 7.7

REMOVAL OF SNOW AND ICE FROM SIDEWALKS

SECTION 7.7.1 BUSINESS AND INDUSTRIAL DISTRICTS
In all Business and Industrial Districts, as defined and delineated in the Zoning By-Law, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within the first three **(3)** hours between sunrise and sunset after **the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk** and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks,**

are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.1 for good cause.

SECTION 7.7.2 MULTI-FAMILY DWELLINGS
The owner, or their agent, of any building designed or occupied as a residence by more than four families or which contains more than four dwelling units, as defined in the Zoning By-Law, shall cause all sidewalks of a street which are contiguous to the land upon which the building is situated to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within the first three (3) hours between sunrise and sunset **the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk**, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose.

Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.2 for good cause. When subsequent street plowing by the DPW that fills in previously cleared corners, property owners will have an additional 6 hours to re-clear corners.

SECTION 7.7.3 GENERAL REQUIREMENT
Except as set forth in Subsections (a) and (b) above, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within **twenty-four (24)** hours of the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and or melting agents as may be necessary for this purpose. **Corner and mid- block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition.** The

Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.3 for good cause.

SECTION 7.7.4 NO ICE AND SNOW TO BE PLACED ON STREET
No person, unless authorized by the Commissioner of Public Works, shall place, or cause to be placed, ice or snow upon any street of the Town. Without limiting the generality of the foregoing, no person, unless authorized by the Commissioner of Public Works, shall place, or cause to be placed, ice or snow upon any sidewalk of the Town.

SECTION 7.7.5 PENALTIES
The violation of any provision of Sections 7.7.1 and 7.7.2 of this Article 7.7 shall **at the discretion of the DPW Commissioner** be subject to a fine of $100.00 for the first violation, $150.00 for the second violation, and $200.00 for the third and subsequent violations in any fiscal year. The violation of any provision of Section 7.7.3 of this Article 7.7 shall be subject to a fine of $50.00 for the first violation, and $100.00 for the second violation and subsequent violations in any fiscal year. **The Commissioner of Public Works, or other authorized agent of the Town, shall have the discretion to impose fines for second, third, and subsequent violations on successive periods of at least 24 hours' duration within the same snow event, and/or for subsequent snow events within the same season. One or more violations** of any provision of Section 7.7.4 of this Article 7.7 shall be subject to a fine of $250.00 **for each violation.**

SECTION 7.7.6 COMPLIANCE DELAY
Depending upon the severity of a storm and other factors, the Commissioner of Public Works may delay the period for compliance with Sections 7.7.1, 7.7.2, or 7.7.3 of this by-law. In the event of initiating a compliance delay, 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 outlets, the cable access television station, email list serves, and the emergency telephone notification system.

SECTION 7.7.7 ANNUAL REPORT
The Select Board shall include in the Annual Report of the Town a summary of the Town's efforts and results during the past year in implementing Sections 7.7.1, 7.7.2, or 7.7.3,

including, but not limited to, public education, enforcement and assistance to owners.

ARTICLE 7 ADVISORY COMMITTEE VOTES

Article Description	**Amend snow enforcement By-law**
AC recommendation (Favorable Action unless indicated)	**25-1-2**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	

Stephen Reeders	Y
Carlos Ridruejo	
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	N
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 9

MOTION OFFERED BY THE PETITIONERS

VOTED: that the Town amend the General By-Laws, Part VII "Streets and Ways", Article 7.7 "Removal of Snow and Ice From Sidewalks", as follows. (Additions are **underlined**, deletions are denoted by ~~strikethrough~~).

ARTICLE 7.7
REMOVAL OF SNOW AND ICE FROM SIDEWALKS

SECTION 7.7.1 BUSINESS AND INDUSTRIAL DISTRICTS

In all Business and Industrial Districts, as defined and delineated in the Zoning By-law, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within the first three (3) hours between sunrise and sunset after ~~such snow and ice has come upon such sidewalk~~ **the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk**, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. When subsequent street plowing fills in any previously cleared part of the sidewalk system, a property owner or their agent shall restore the sidewalk to a clear, non-slippery condition within 6 daylight hours after such snow or ice has come upon such sidewalk. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.1 for good cause.**

SECTION 7.7.2 MULTI-FAMILY DWELLINGS

The owner, or their agent, of any building designed or occupied as a residence by more than four families or which contains more than four dwelling units, as defined in the Zoning By-law, shall cause all sidewalks of a street which are contiguous to the land upon which the building is situated to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within the first three (3) hours between sunrise and sunset after ~~such snow and ice has come upon such sidewalk~~ **the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk**, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk**

system, and shall likewise be maintained in a clear and non-slippery condition. When subsequent street plowing fills in any previously cleared part of the sidewalk system, a property owner or their agent shall restore the sidewalk to a clear, non-slippery condition within 6 daylight hours after such snow or ice has come upon such sidewalk. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.2 for good cause.

SECTION 7.7.3 GENERAL REQUIREMENT

Except as set forth in Subsections (a) and (b) above, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within ~~thirty (30)~~ **twelve (12)** hours of the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk **or before noon on the day following the cessation of a storm that ends after 12 noon**, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. When subsequent street plowing fills in any previously cleared part of the sidewalk system, a property owner or their agent shall restore the sidewalk to a clear, non-slippery condition within 6 daylight hours after such snow or ice has come upon such sidewalk.** The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.3 for good cause.

SECTION 7.7.4 NO ICE AND SNOW TO BE PLACED ON STREET

No person, unless authorized by the Commissioner of Public Works, shall place, or cause to be placed, ice or snow upon any street of the Town. Without limiting the generality of the foregoing, no person, unless authorized by the Commissioner of Public Works, shall place, or cause to be placed, ice or snow upon any sidewalk of the Town.

SECTION 7.7.5 PENALTIES

The violation of any provision of Section~~s~~ 7.7.1 and 7.7.2 of this Article 7.7 shall**, at the discretion of the DPW Commissioner, be** subject to a fine of ~~$100.00~~ **$125.00** for the first violation, ~~$150.00~~ **$250.00** for the second violation, and ~~$200.00~~ **$300.00** for the third and subsequent violations in any fiscal year. The violation of any provision of Section 7.7.3 of this Article 7.7 shall be subject to a fine of ~~$50.00~~ **$75** for the first violation**,** ~~and $100.00~~ **$150** for the second **violation, and $200 for the third** and subsequent violations in any fiscal year. **The Commissioner of Public Works, or other authorized agent of the Town, shall have the discretion to impose fines for second, third, and subsequent violations on successive periods of at least 24 hours' duration within the same snow event, and/or for subsequent snow events within the same**

season. Each 200-foot section of sidewalk, or portion thereof, that is found to violate any provision of Sections 7.7.1, 7.7.2, or 7.7.3 of this Article 7.7 shall be considered a separate violation of this Article. One or more violations of any provision of Section 7.7.4 of this Article 7.7 shall be subject to a fine of $250.00 **for each violation**.

SECTION 7.7.6 COMPLIANCE DELAY

Depending upon the severity of a storm and other factors, the Commissioner of Public Works may delay the period for compliance with Sections 7.7.1, 7.7.2, or 7.7.3 of this by-law. In the event of initiating a compliance delay, 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 outlets, the cable access television station, e-mail list serves, and the emergency telephone notification system.

SECTION 7.7.7 ANNUAL REPORT

The Select Board shall include in the Annual Report of the Town a summary of the Town's efforts and results during the past year in implementing Sections 7.7.1, 7.7.2, or 7.7.3, including, but not limited to, public education, enforcement and assistance to owners.

Supplemental Explanation:

Based on feedback we've received over the last several months and additional data analysis, we've introduced several changes to our original warrant article, as follows:

- Relaxing our proposed sidewalk clearing compliance timeline for **single-family and 2-4 unit residential properties.** We now propose that those properties should be required to clear their sidewalks within **12 hours, or by noon for storms ending after noon the previous day** (i.e., withdrawing our original proposals of 3 hours (for 3 & 4-unit buildings) and 6 hours (for 1 & 2-families). **Our proposal is now nearly identical to Cambridge's requirements.** [§7.7.3]
- Reverting to the existing bylaw's **definition of a "multi-family residential property"** (i.e., withdrawing our proposal to incorporate 3- and 4-unit buildings in this category) [§7.7.2]
- Relaxing our original proposal of defining a "separate violation" for each section of any one property's sidewalk **from ~100 feet (30 meters) to 200 feet**, based on additional analysis of property lot dimensions. [§7.7.5]
- **Scaling back "First Violation" fine increases** to reflect only the overall inflation seen since the last bylaw amendment was approved in 2015. [§7.7.5]
- Clarification for property owners of confusing/archaic language in the existing bylaw related to when the "countdown clock" begins for bylaw enforcement. [§7.7.1 & §7.7.2]

- Providing a 6 daylight hour grace period for property owners to clear any snow pushed by roadway plows onto previously-cleared sidewalks. [§7.7.1, §7.7.2, & §7.7.3]

Our final version differs from the Advisory Committee's motion in **three important ways**:

1. **Compliance window for 1-4 unit properties**: We propose a 12-hour window for storms that end before noon to avoid the **freeze-thaw cycle** that occurs as snow melts during warmer daytime temperatures then freezes overnight, producing treacherous sheets and impassible berms of ice that is very difficult to clear for days or weeks afterward. It is critical to keep the compliance timeline as short as possible to maintain accessibility of the public way. The Advisory Committee's 24-hour window would leave the public way inaccessible for too long.
2. **Fine increases**: We believe it is reasonable to increase initial fines in step with inflation, and that subsequent fines should be increased to discourage repeat offenders and align the cost of non-compliance more closely with the cost of hiring help. The Advisory Committee motion removes all proposed fine increases.
3. **Additional fines for non-compliant properties with large frontages**: For the ~10% of properties with exceptionally long frontages (> 200 feet), we believe additional fines are warranted because this represents an exceptionally large amount of the public way. The Advisory Committee's motion does not acknowledge the outsized negative impact that sometimes block-long violations have on pedestrians because it does not allow for proportional fines.

We urge Town Meeting Members to **reject the Advisory Committee's amendments** and **vote yes on the petitioner's final amended version of WA9**.

WA9, Fall 2022 Brookline Town Meeting - AC & Petitioner Differences

	Existing Bylaw	Adv Committee version	Current WA Proposal
Snow pushed by plows onto cleared portions of the sidewalk system	*Not mentioned in the existing bylaw*	When subsequent street plowing by the DPW fills in previously cleared corners, property owners will have an **additional 6 hours** to re-clear corners. [added ***only*** **to §7.7.2**, i.e., multi-family residential properties]	When subsequent street plowing fills in any previously cleared part of the sidewalk system, a property owner or their agent shall restore the sidewalk to a clear, non-slippery condition within 6 **daylight hours** after such snow or ice has come upon such sidewalk. [added to §7.7.1, §7.7.2, and §7.7.3 (i.e., ***all*** **properties**)]
Compliance window for small (1-4 unit) residential properties	within thirty (30) hours of the cessation of each storm	within twenty-four **(24) hours** of the cessation of each storm	within twelve **(12) hours** of the cessation of each storm, or before noon on the day following the cessation of a storm that ends after 12 noon
Fine for 1st offense	Business/industrial: $100 Multifam residential: $100 Small residential: $50	*No change to existing by-law*	**Business/industrial: $125** **Multifam residential: $125** **Small residential: $75**
Fine for 2nd offense	Business/industrial: $150 Multifam residential: $150 Small residential: $100	*No change to existing by-law*	*Original WA version maintained*
Fines for 3rd+ offenses	Business/industrial: $200 Multifam residential: $200 Small residential: $100	*No change to existing by-law*	*Original WA version maintained*
Circumstances warranting levying "separate violations"	*Not mentioned in the existing bylaw*	*No change to existing by-law*	Each **200-foot** section of sidewalk, or portion thereof… shall be considered a separate violation

ARTICLE 9

AMENDMENT OFFERED BY JESSE HEFTER, TMM14, AND LISA SHATZ. TMM11

MOVED: To amend SECTION 7.7.3 GENERAL REQUIREMENT as follows (changes are in bold underlined red text):

SECTION 7.7.3 GENERAL REQUIREMENT

Except as set forth in Subsections (a) and (b) above, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within ~~thirty (30)~~ **twelve (12)** hours of the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk, **with the following exceptions: if the storm ends between 12 noon on Friday and 12 noon Sunday said pathway must be cleared within twenty-four (24) hours, or if the storm ends after 12 noon on any day other than Friday or Saturday said pathway must be cleared before noon on the day following the cessation of the storm.** ~~, and~~ **The owner, or their agent,** shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and or melting agents as may be necessary for this purpose. **Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition.** The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.3 for good cause.

ARTICLE 9

AMENDMENT TO PETITIONER MOTION OFFERED BY JESSE HEFTER, TMM14, AND LISA SHATZ, TMM11

MOVED: To amend SECTION 7.7.3 GENERAL REQUIREMENT as follows (changes are in bold red text):

SECTION 7.7.3 GENERAL REQUIREMENT

Except as set forth in Subsections (a) and (b) above, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within twelve (12) hours of the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk, or before noon on the day following the cessation of a storm that ends after 12 noon, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and or melting agents as may be necessary for this purpose. Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. When subsequent street plowing fills in any previously cleared part of the sidewalk system, a property owner or their agent shall restore the sidewalk to a clear, non- slippery condition within 6 daylight hours after such snow or ice has come upon such sidewalk. **Notwithstanding any other provisions in Section 7.7.3, for any storm that ends between the hours of 4 PM on Friday and 12 noon on Saturday, any owner to whom Section 7.7.3 applies, or their agent, shall have thirty (30) hours after the cessation of the storm in which to comply with the requirements of Section 7.7.3.** The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.3 for good cause.

ARTICLE 9

AMENDMENT TO ADVISORY COMMITTEE'S MOTION
OFFERED BY SUSAN GRANOFF, TMM7, AND BENJAMIN BIRNBAUM

MOVED, To amend SECTION 7.7.3 GENERAL REQUIREMENT as follows (changes are in bold underlined text and highlighted in yellow).

SECTION 7.7.3 GENERAL REQUIREMENT

Except as set forth in Subsections (a) and (b) above, the owner, or their agent, of any land abutting upon or contiguous to a sidewalk of a street shall cause said sidewalk to be maintained in a non-slippery condition suitable for pedestrian travel by clearing all snow and ice from a pathway at least thirty-six (36) inches in width along the length of said sidewalk within twenty-four (24) hours of the cessation of each storm that results in the accumulation of snow and/or ice on such sidewalk, and shall maintain said portion of sidewalk in a non-slippery condition by application(s) of sand and/or melting agents as may be necessary for this purpose. Corner and mid-block curb ramps, and portions of driveways crossing sidewalks, are part of the sidewalk system, and shall likewise be maintained in a clear and non-slippery condition. **Notwithstanding any other provisions in Section 7.7.3, for any storm that ends between the hours of 4 pm on Friday and 12 noon on Saturday, any owner to whom Section 7.7.3 applies, or their agent, shall have thirty (30) hours after the cessation of the storm within which to comply with the requirements of Section 7.7.3**. The Commissioner of Public Works, or their designee, may grant a waiver from the terms of this Section 7.7.3 for good cause.

ARTICLE 10

TENTH ARTICLE

Submitted by: Joslin Murphy TMM16, John Harris,(TMM8); Co-Petitioners: Olivia Fischer Fox, Richard Murphy TMM P16, Hugh Mattison(TMM5.

To see whether the Town will vote to amend the Town's General Bylaws by adding a new Tree Preservation Bylaw, as follows:

ARTICLE 8.39: TREE PRESERVATION BYLAW
8.39.1. PURPOSE: The intent of this Tree Preservation Bylaw is to encourage the preservation and protection of certain trees in connection with significant demolition and/or construction activity by designating areas of a lot where trees must be protected, and by requiring mitigation for trees that are removed by either the replanting of trees or the collection of fees to support the Town's tree planting and maintenance efforts.

8.39.2. DEFINITIONS: For the purposes of this Tree Bylaw, the following definitions shall apply:

2.1 Caliper: Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.
2.2 Certified Arborist: A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).
2.3 Diameter at Breast Height (DBH): The diameter of a tree trunk at four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.
2.4 Invasive Species: Any plant or tree listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture, or currently listed as "likely invasive" or potentially invasive" by the Massachusetts Invasive Plant Advisory Group (MIPAG).
2.5 Protected Tree: Any existing tree with a DBH of six (6) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species (as defined herein) shall not be considered Protected Trees.
2.6 Reviewing Agent: Any agent delegated in writing by the Commissioner of Public Works to administer and implement this Tree Protection Bylaw.
2.7 Tree Preservation Fund: An account established under this Bylaw pursuant to M.G.L. 44 § 53E½ for the deposit of permit application fees and contributions in lieu of tree replanting as required by this Tree Preservation Bylaw.

2.8 Tree Protection & Mitigation Plan: A plan submitted to the Reviewing Agent for approval prior to the commencement of demolition and/or construction on any property on which a Protected Tree is located.
2.9 Protected Tree Impact and Removal Permit: A permit issued by the Reviewing Agent prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located.
2.10 Tree Removal: The mechanical destruction or demolition of a living tree, or any act (a) that has caused a tree to die within the previous 12 months or (b) is likely to cause significant decline or death as determined by the Reviewing Agent.
2.11 Tree Save Area: The minimum area beneath the canopy of the tree which must be left undisturbed in order to preserve a sufficient root mass to give the tree a reasonable chance at survival.
2.12 Tree Yard: The area of a lot as defined in Section 2.12 of the Zoning Bylaw that is located within 20 feet of any property line.

8.39.3. TOWN OF BROOKLINE TREE FUND: There is hereby established a Town of Brookline Tree Preservation Fund ("Tree Fund") pursuant to M.G.L. 44 § 53E½. Any permit application fees or contributions collected per Section 5.2(b) of this Bylaw shall be deposited in the Tree Fund, and shall be expended by the Commissioner of Public Works solely for the purpose of purchasing, planting and maintaining trees within the Town and for the implementation of this Tree Protection Bylaw.

8.39.4. SCOPE AND APPLICABILITY

4.1 Within all residential districts of the Town, it is prohibited to remove a protected tree during construction or within the 12 months prior to submitting an application for a demolition or building permit for: (a) demolition of an existing structure of 250 gross square feet or greater; (b) construction of any building or structure on a vacant lot; or (c) construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area (GFA) by 50% or greater, as defined by Zoning Bylaw Section 2.07.1.

4.2 The requirements of this Bylaw shall not apply to: (a) those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR); (b) Public Shade Trees pursuant to M.G.L. Chapter 87; (c) emergency projects necessary for public safety, health and welfare, as determined by the Reviewing Agent or the Town's Tree Warden; (d) trees severely damaged as the direct result of a natural disaster; (e) trees that are hazardous as determined and confirmed in writing by a Certified Arborist; or (f) trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist.

8.39.5. TREE PROTECTION & MITIGATION

5.1 Protection: Each Protected Tree without a Protected Tree Impact and Removal Permit to be retained on property that is planned for demolition and/or construction activity shall be protected by the establishment of a fenced-off Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to any demolition or site work, and shall

remain in place until work is completed on the property, excluding final landscaping. The applicant shall submit written documentation, prepared, dated and signed by a certified arborist, registered land surveyor, or licensed architect, to the Reviewing Agent confirming that the required Tree Save Area has been installed as identified in the Tree Protection & Mitigation Plan before work on the property begins.

5.2 Mitigation: The removal of a Protected Tree(s) from a lot in connection with one or more of the circumstances set forth in Section 4.1 shall require mitigation based upon the aggregate DBH of Protected Trees removed. Mitigation shall be achieved by satisfying one or a combination of the following provisions:

(a) Replanting of Trees: For each inch of DBH of Protected Tree(s) removed, no less than one-half inch of caliper of new tree(s) shall be replanted subject to and in accordance with the following: (1) Each new tree must have a minimum caliper of at least three (3) inches; (2) Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to the issuance of a Final Certificate of Occupancy, or be otherwise assured at such time to the satisfaction of the Reviewing Agent in a manner consistent with the Rules and Regulations established under this By-law; or

(b) Contribution to the Town of Brookline Tree Preservation Fund: The Commissioner of Public Works shall establish a Tree Fund contribution schedule, subject to approval by the Board of Selectmen, assigning a value not less than $500.00 per inch of DBH of Protected Tree(s) to be removed and not otherwise mitigated. Such Tree Fund contributions shall be received by the Town prior to the issuance of all applicable permits. Mitigation measures shall be detailed in the submitted Tree Protection and Mitigation Plan. The removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require any additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured to the satisfaction of the Reviewing Agent.

5.3 Unauthorized Removals: The removal of any Protected Tree without a Protected Tree Impact and Removal Permit that is not identified on the Tree Protection & Mitigation Plan shall require mitigation at the rate specified in Section 5.2. In addition, any person removing or causing to be removed any Protected Tree without a Protected Tree Impact and Removal Permit or not identified on the Tree Protection & Mitigation Plan in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Article 10.3 of the Town's General Bylaws of $300 per Protected Tree, per day, until the mitigation required under Section 5.2 of this By-law is complete.

5.4 Plan Review and Permit Issuance:
(a) Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a Protected Tree Impact and Removal Permit in connection with one or more of the

circumstances set forth in Section 4.1 on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the property shall submit a Tree Protection & Mitigation Plan to the Reviewing Agent along with the required permit application and application fee.
(b) Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan that indicates the applicable Tree Yard, existing improvements, proposed construction, Protected Trees, Tree Save Area and preservation and maintenance procedures in accordance with the Rules and Regulations in effect at the time. It must also specify any tree removals and proposed mitigation measures per Section 5.2.

(c) Re-Submittal: If demolition or construction has not commenced within twelve (12) months of the date that a Tree Protection & Mitigation Plan was submitted for a property, or if removal of a previously unidentified Protected Tree is necessary during the course of construction, an amended Tree Protection & Mitigation Plan shall be submitted along with the applicable fee identifying any changes from the previous plan and associated mitigation measures. If demolition and/or construction is not completed within 12 months of the date of the Reviewing Agent's initial inspection, an application for a permit extension and re-inspection fee shall be submitted. Additional permit extension applications and re-inspection fees shall be submitted every 12 months thereafter until demolition and construction is completed.

(d) Reviewing Agent Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established Rules and Regulations, and applicable Tree Fund contributions have been submitted, the Reviewing Agent shall issue a Protected Tree Impact and Removal Permit and/or notify the appropriate Town Department. If the proposal does not meet or satisfy these requirements, the Reviewing Agent shall notify the applicant and withhold the Protected Tree Impact and Removal Permit until the requirements of this Bylaw are met. If the Reviewing Agent fails to act on an application within thirty (30) days after the application has been made, it shall be deemed to be approved.

5.5 Maintenance of Protected and Replanted Trees:
(a) Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such a tree die or significantly decline in the opinion of the Reviewing Agent within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from said determination.

(b) Replanted Trees: All new trees planted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such tree die or be removed within this twenty-four (24) month period, the owner of the property shall be responsible

for replacing the tree with a tree equal to or greater than the size of the original Replanted Tree at installation; such replacement tree shall be planted within nine (9) months of the death or serious decline of the original Replanted Tree. Tree planting and transplanting shall adhere to the most current American National Standards Institute (ANSI) A300 (Part 6) Tree, Shrub and other Woody Plant Management – Standard Practices (Planting and Transplanting).

8.39.6. ADMINISTRATION

6.1 Enforcement: The Commissioner of Public Works or their designee is hereby authorized to enforce the provisions of this Tree Preservation Bylaw.

6.2 Appeals: Any person who is aggrieved by refusal, order, or decision of the Reviewing Agent or Commissioner of Public Works under this Bylaw may appeal to the Select Board or its designee within 20 days from the date of such refusal, order, or decision.

8.39.7 RULES AND REGULATIONS

The Commissioner of Public Works in consultation with Town Counsel may promulgate or amend Rules and Regulations which pertain to the administration of this Tree Bylaw, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, and the procedure for determining final compliance with these regulations. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

And also, to amend Article 10.3 of the Town's Non-Criminal Disposition Bylaw by adding the following: Table of Specific Penalties under Article 10.3:
Article 8.39 Tree Preservation By-law:
For each violation: $300.00 per Protected Tree, per day, until mitigation required under Article 8.39 is complete.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Trees are the fairest ornaments of nature. Wilson Flagg

The Town's tree canopy is being lost at an alarming rate. In addition to reducing ambient carbon in the atmosphere, preventing and mitigating heat islands, and providing harborage for wildlife, "Trees not only purify the air and reduce storm water runoff, but also beautify streets, increase property values, make neighborhoods more resilient, enhance community

livability, and improve health and general well-being". *Town of Brookline Urban Forest Climate Resiliency Master Plan* (June 2021).

In 2001 – more than twenty years ago, Town Meeting established a Moderator's Committee to evaluate the feasibility, effectiveness, and possible benefits of a tree protection by-law in Brookline. Although a draft by-law was apparently produced, it never materialized. Fifteen years later, in response to great concern over the loss of large heirloom trees and other significant tree cover on properties that were being clear-cut by property developers, a petitioned warrant article proposing a Tree Protection By-law was submitted to the May 2016 Annual Town Meeting in the form of Article 11. On this occasion, Town Meeting referred the Article to a Select [Board] Committee in order to "evaluate the best way to provide tree protection in the Town" and report back to the 2017 Annual Town Meeting. The Tree Protection Committee provided Town Meeting with an update in 2017, but did not make a recommendation that materialized into a tree protection by-law. Instead, minor changes were proposed to Section 8.26.2 of the Town's General Bylaws, the Town's "Erosion and Sediment Control" Bylaw. Under certain circumstances, these changes require the identification of *all* trees of 8 inch DBH or greater on an Erosion and Sediment Control Plan, but do not otherwise protect or mitigate the loss of trees on the property.

This Article is intended to complement the work of the Select Board's Tree Protection Committee, to respond to recommendations contained in the 2021 *Urban Forest Climate Resiliency Plan* and to address the funding concerns that have been raised in the past. The proposed bylaw is modeled after the Town of Concord's Tree Protection By-law, which itself is the result of a comprehensive study that was conducted of tree preservation measures in other communities. It is submitted to Town Meeting, now urgently, in order to reduce further mass destruction of significant trees in Brookline, and to address the recommendation in the *Urban Forest Climate Resiliency Plan* that the Town's urban forest be grown and protected.

If enacted by Town Meeting, the proposed by-law would require residential property developers to protect trees – 6" DBH or greater - that are located within the defined perimeter of a lot in connection with significant demolition and/or construction activity. If trees are removed from the protected area, the bylaw would require property owners/developers to either plant replacement trees or pay a fee to a Town Tree Fund for planting elsewhere in town.

This Bylaw, long overdue, is intended to encourage the preservation and maintenance of trees in Brookline, similar to existing, experience-based, Attorney General approved ordinances and by-laws that have been adopted by other communities including in Lexington, Concord and Wellesley. Your favorable action on the Article is respectfully requested.

CONSERVATION COMMISSION COMMENTS

The Conservation Commission writes to offer some comments on Warrant Article 10, following a presentation by the proponents at our October 18, 2022 meeting and further discussion at our November 1, 2022 meeting.

The Commission strongly endorses the overarching aim of the Warrant Article, which is to preserve and protect Brookline's tree canopy, particularly the need to preserve mature, healthy trees which act to mitigate the impacts of climate change and contribute many other environmental benefits. In our view, the common mindset of a "blank slate" for a parcel of property during demolition and construction activities can lead to unconsidered and ill-considered decisions to remove valuable trees as well as other natural environmental assets. We regard Warrant Article 10 as a step in the right direction towards increasing awareness and attention to the value of these important resources.

As discussed with the proponents, we have some questions about how Warrant Article 10, if approved, would be administered in connection with the Conservation Commission's jurisdiction and responsibilities under the state Wetlands Protection Act and the Brookline Wetlands Protection Bylaw. The proponents have suggested that this issue could be addressed as necessary in the regulations. If Warrant Article 10 is approved, we look forward to continuing to work cooperatively to develop and administer requirements that emphasize the importance of maintaining valuable environmental resources in Brookline.

PLANNING BOARD REPORT AND RECOMMENDATION

Summary of Petitioners' Article

Intent: To encourage the preservation and protection of certain trees in connection with significant demolition and/or construction activity by designating areas of a lot where trees must be protected, and by requiring mitigation for trees that are removed.
Applicability: Within all residential districts of the Town, it would be prohibited to remove a protected tree during construction or within the 12 months prior to submitting an application for a demolition or building permit for: (a) demolition of an existing structure of 250 gross square feet or greater; (b) construction of any building or structure on a vacant lot; or (c) construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area (GFA) by 50% or greater.
Standards: Each Protected Tree without a Protected Tree Impact and Removal Permit to be retained on property that is planned for demolition and/or construction activity shall be protected by the establishment of a fenced-off Tree Save Area. The Tree Save Area would be delineated within the submitted Tree Protection & Mitigation Plan. A Protected Tree is any existing tree with a DBH of six (6) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species would not be considered Protected Trees.
Mitigation: Applicant would have option to replant trees or contribute to a Town tree fund.

Planning Board and Public Discussion

On November 2nd, the Planning Board held a public hearing on Article 10. After listening to the petitioner's presentation, the Planning Board heard public comments urging support of this article. There were no speakers in opposition. The presenters and the public stressed that preserving mature trees benefits not only the community but furthers the goals of the Town's Urban Forest Climate Resiliency Action Plan and Climate Action Plan. Although the article would not prevent clear cutting of a lot, many landowners would be deterred from removing trees by the financial penalty that would be imposed. The success of Concord, Massachusetts in preserving trees was cited. A Planning Board member cautioned that developers could find a way around the By-Law's requirements, and therefore it was important to add in the bylaw, itself, and not just in the regulations, that a landscape plan be required, in addition to a tree protection and mitigation plan, in the Plan Review and Permit Issuance section (5.4.a). The Planning Board also strongly recommended that the words "a landscape architect" be added to the Protection section (5.1), where written documentation is required confirming that the Tree Save Yard has been installed before work on a lot commences.

Planning Board Recommendation

Therefore, the Planning Board voted to recommend Favorable Action on Art. X, as moved by the Advisory Committee, with the addition of the words "landscape architect", prior to "architect" in Section 5.1, and a recommendation, if found within the scope of the article by the Moderator, that in Section 5.4.a of the article, the addition of the words "a Landscape Plan and", prior to "a Tree Protection & A Mitigation Plan", both in the title and the body of the text, as shown below (additions in bold).

The roll call vote went as follows: Heikin – aye, Zarrillo – aye, Brue – aye, Chipimo - aye and Hines – aye. (Hiller and Hamlin were not present.)

To see whether the Town will vote to amend the Town's General Bylaws by adding a new Tree Preservation Bylaw, as follows:

ARTICLE X.XX: TREE PRESERVATION BYLAW

X.XX.1. PURPOSE: The intent of this Tree Preservation Bylaw is to encourage the preservation and protection of certain trees in connection with significant demolition and/or construction activity by designating areas of a lot where trees must be protected, and by requiring mitigation for trees that are removed by either the replanting of trees or the collection of fees to support the Town's tree planting and maintenance efforts.

X.XX.2. DEFINITIONS: For the purposes of this Tree Bylaw, the following definitions shall apply:

2.1 Caliper: Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.

2.2 Certified Arborist: A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

2.3 Diameter at Breast Height (DBH): The diameter of a tree trunk at four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade,

the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

2.4 Invasive Species: Any plant or tree listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture, or currently listed as "likely invasive" or potentially invasive" by the Massachusetts Invasive Plant Advisory Group (MIPAG).

2.5 Protected Tree: Any existing tree with a DBH of six (6) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species (as defined herein) shall not be considered Protected Trees.

2.6 Reviewing Agent: Any agent delegated in writing by the Commissioner of Public Works to administer and implement this Tree Protection Bylaw.

2.7 Tree Preservation Fund: An account established under this Bylaw pursuant to M.G.L. 44 § 53E½ for the deposit of permit application fees and contributions in lieu of tree replanting as required by this Tree Preservation Bylaw.

2.8 Tree Protection & Mitigation Plan: A plan submitted to the Reviewing Agent for approval prior to the commencement of demolition and/or construction on any property on which a Protected Tree is located.

2.9 Protected Tree Impact and Removal Permit: A permit issued by the Reviewing Agent prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located.

2.10 Tree Removal: The mechanical destruction or demolition of a living tree, or any act (a) that has caused a tree to die within the previous 12 months or (b) is likely to cause significant decline or death as determined by the Reviewing Agent.

2.11 Tree Save Area: The minimum area beneath the canopy of the tree which must be left undisturbed in order to preserve a sufficient root mass to give the tree a reasonable chance at survival.

2.12 Tree Yard: The area of a lot (as "lot" is defined in Section 2.12 of the Zoning Bylaw) that is located within 20 feet of any property line.

X.XX.3. TOWN OF BROOKLINE TREE FUND: There is hereby established a Town of Brookline Tree Preservation Fund ("Tree Fund") pursuant to M.G.L. 44 § 53E½. Any permit application fees or contributions collected per Section X.XX.5.2(b) of this Bylaw shall be deposited in the Tree Fund, and shall be expended by the Commissioner of Public Works solely for the purpose of purchasing, planting and maintaining trees within the Town and for the implementation of this Tree Protection Bylaw.

X.XX.4. SCOPE AND APPLICABILITY

4.1 Within all residential districts of the Town, it is prohibited to remove a Protected Tree without a Protected Tree Impact and Removal Permit during construction or within the 12 months prior to submitting an application for a demolition or building permit for: (a) demolition of an existing structure of 250 gross square feet or greater; (b) construction of any building or structure on a vacant lot; or (c) construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area (GFA) by 50% or greater, as defined by Zoning Bylaw Section 2.07.1.

4.2 The requirements of this Bylaw shall not apply to: (a) those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR); (b) Public Shade Trees pursuant to M.G.L. Chapter 87; (c) emergency projects necessary for public safety, health and welfare, as determined by the

Reviewing Agent or the Town's Tree Warden; (d) trees severely damaged as the direct result of a natural disaster; (e) trees that are hazardous as determined and confirmed in writing by a Certified Arborist; or (f) trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist.

X.XX.5. TREE PROTECTION & MITIGATION

5.1 Protection: Each Protected Tree without a Protected Tree Impact and Removal Permit to be retained on property that is planned for demolition and/or construction activity shall be protected by the establishment of a fenced-off Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to any demolition or site work, and shall remain in place until work is completed on the property, excluding final landscaping. The applicant shall submit written documentation, prepared, dated and signed by a certified arborist, registered land surveyor, **licensed landscape architect** or licensed architect, to the Reviewing Agent confirming that the required Tree Save Area has been installed as identified in the Tree Protection & Mitigation Plan before work on the property begins.

5.2 Mitigation: The removal of a Protected Tree(s) from a lot in connection with one or more of the circumstances set forth in Section X.XX.4.1 shall require mitigation based upon the aggregate DBH of Protected Trees removed. Mitigation shall be achieved by satisfying one or a combination of the following provisions:

(a) Replanting of Trees: For each inch of DBH of Protected Tree(s) removed, no less than one-half inch of caliper of new tree(s) shall be replanted subject to and in accordance with the following: (1) Each new tree must have a minimum caliper of at least three (3) inches; (2) Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to the issuance of a Final Certificate of Occupancy, or be otherwise assured at such time to the satisfaction of the Reviewing Agent in a manner consistent with the Rules and Regulations established under this By-law; or

(b) Contribution to the Town of Brookline Tree Preservation Fund: The Commissioner of Public Works shall establish a Tree Fund contribution schedule, subject to approval by the Select Board, assigning a value not less than $500.00 per inch of DBH of Protected Tree(s) to be removed and not otherwise mitigated. Such Tree Fund contributions shall be received by the Town prior to the issuance of all applicable permits. Mitigation measures shall be detailed in the submitted Tree Protection and Mitigation Plan. The removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require any additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured to the satisfaction of the Reviewing Agent.

5.3 Unauthorized Removals: The removal of any Protected Tree without a Protected Tree Impact and Removal Permit that is not identified on the Tree Protection & Mitigation Plan shall require mitigation at the rate specified in Section X.XX.5.2. In addition, any person removing or causing to be removed any Protected Tree without a Protected Tree Impact and Removal Permit or not identified on the Tree Protection & Mitigation Plan in violation of this bylaw shall

be subject to a non-criminal disposition fine as specified in Article 10.3 of the Town's General Bylaws of $300 per Protected Tree, per day, until the mitigation required under Section X.XX.5.2 of this By-law is complete.

5.4 Plan Review and Permit Issuance:

(a) **Landscape Plan and** Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a Protected Tree Impact and Removal Permit in connection with one or more of the circumstances set forth in Section X.XX.4.1 on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the property shall submit **a Landscape Plan and** a Tree Protection & Mitigation Plan to the Reviewing Agent along with the required permit application and application fee.

(b) Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan that indicates the applicable Tree Yard, existing improvements, proposed construction, Protected Trees, Tree Save Area and preservation and maintenance procedures in accordance with the Rules and Regulations in effect at the time. It must also specify any tree removals and proposed mitigation measures per Section X.XX.5.2.

(c) Re-Submittal: If demolition or construction has not commenced within twelve (12) months of the date that a Tree Protection & Mitigation Plan was submitted for a property, or if removal of a previously unidentified Protected Tree is necessary during the course of construction, an amended Tree Protection & Mitigation Plan shall be submitted along with the applicable fee identifying any changes from the previous plan and associated mitigation measures. If demolition and/or construction is not completed within 12 months of the date of the Reviewing Agent's initial inspection, an application for a permit extension and re-inspection fee shall be submitted. Additional permit extension applications and re-inspection fees shall be submitted every 12 months thereafter until demolition and construction is completed.

(d) Reviewing Agent Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established Rules and Regulations, and applicable Tree Fund contributions have been submitted, the Reviewing Agent shall issue a Protected Tree Impact and Removal Permit and/or notify the appropriate Town Department. If the proposal does not meet or satisfy these requirements, the Reviewing Agent shall notify the applicant and withhold the Protected Tree Impact and Removal Permit until the requirements of this Bylaw are met. If the Reviewing Agent fails to act on an application within thirty (30) days after the application has been made, it shall be deemed to be approved.

5.5 Maintenance of Protected and Replanted Trees:

(a) Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such a tree die or significantly decline in the opinion of the Reviewing Agent within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from said determination.

(b) Replanted Trees: All new trees planted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such tree die or be removed within this twenty-four (24) month period, the owner of the property shall be responsible for replacing the tree with a tree equal to or greater than the size of the original Replanted Tree at installation; such replacement tree shall be planted within nine (9) months of the death or serious decline of the original Replanted Tree. Tree planting and transplanting shall adhere to the most current American National Standards Institute (ANSI) A300 (Part 6) Tree, Shrub and other Woody Plant Management – Standard Practices (Planting and Transplanting).

X.XX.6. ADMINISTRATION

6.1 Enforcement: The Commissioner of Public Works or their designee is hereby authorized to enforce the provisions of this Tree Preservation Bylaw.

6.2 Appeals: Any person who is aggrieved by refusal, order, or decision of the Reviewing Agent or Commissioner of Public Works under this Bylaw may appeal to the Select Board or its designee within 20 days from the date of such refusal, order, or decision.

X.XX.7 RULES AND REGULATIONS

The Commissioner of Public Works in consultation with Town Counsel may promulgate or amend Rules and Regulations which pertain to the administration of this Tree Bylaw, and shall file a copy of said Rules and Regulations in the office of the Town Clerk. Such Rules and Regulations may prescribe the Protected Tree Impact and Removal Permit application fee, along with the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, and the procedure for determining final compliance with these regulations. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

And also, to amend Article 10.3 of the Town's Non-Criminal Disposition Bylaw by adding the following: Table of Specific Penalties under Article 10.3:
Article X.XX Tree Preservation By-law:
For each violation: $300.00 per Protected Tree, per day, until mitigation required under Article X.XX is complete.

or act on anything relative thereto.

SCHOOL COMMITTEE STATEMENT

On October 20, 2022, the School Committee voted UNANIMOUSLY 7-0-0 to recommend passage of WA10. Voting in favor were Mr. Pearlman, Dr. Liu, Dr. Ehrenberg, Ms. Federspiel, Ms. Gorer, Ms. Monopoli, and Ms. Nobrega.

The School Committee supports the preservation and protection of trees in connection with significant demolition and/or construction activity. Sustainable stewardship of our

environment is increasingly important for the health of our planet. As maintenance of our tree canopy represents an integral component of that effort, the School Committee endorses the proposed By-Law's mitigation requirements for removing trees by either replanting them elsewhere, or collecting fees toward the Town's tree planting and maintenance efforts.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation on Article 10.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 10, as amended by the petitioners, by a vote of 26-0 with 0 abstentions.

Executive Summary	Modelled on a Concord, Mass. bylaw, the proposed bylaw establishes a revolving fund and set of rules, the purpose of which is to incentivise retention and prevent the destruction of trees on private plots in cases of significant construction and/or demolition. In cases where trees are taken down, mitigation in the form of either replanting or paying into the revolving fund, is required. The proposed bylaw is viewed as a small step to save Brookline's tree canopy.
Voting Yes will...	Create a new bylaw regulating the process of taking down trees in cases of significant construction and/or demolition by requiring that the affected trees be preserved, or that trees be replanted, or monies deposited in a revolving fund. The purpose is to maintain and enhance Brookline's tree canopy, a major factor in the fight against global warming, and an aesthetic attribute of the town.
Voting No will...	Retain the status quo, where there is very little regulation regarding taking down trees on private land in cases of significant construction and/or significant demolition.

Financial impact	In most other towns with tree protection ordinances, a staff person is responsible for enforcement, and a significant amount of that person's time is involved. The proposed bylaw would permit contracting with private arborist consultants to implement the bylaw. The exact dollar amount is uncertain, depending upon the time spent and the cost of the private contractor. In Concord, the permit application fee of $200 paid for the cost of the private consultant who reviewed the plans and issued the permits. The revolving fund setup established by the bylaw allows for permit and mitigation fees to be set up in such a way as to cover the costs of reviewing the plans and issuing permits, either by an outside contractor or by a staff person. Petitioners anticipate that initially a contractor will perform the administrative duties, but that eventually a staff person will. Note also that funds in the revolving fund can be used to maintain and enhance Brookline's existing tree canopy.
Legal implications	The proposed bylaw creates new responsibilities for developers to maintain or mitigate 6-inch DBH or greater trees within the 20-foot perimeter of the property. They will be faced with the choice of saving trees or mitigating taking trees down. There are also penalties for those who violate the by law.

Introduction

Town Meeting has discussed tree protection since 2001. While there has been a Moderator's Committee (2001) and a Select Board Committee (2016-2017), and a 2018 amendment to the Town's Storm Water Management bylaw that requires identification of some large trees, nothing effectively protecting trees on private land has been done. The 2021 *Brookline Urban Forest Climate Resiliency Master Plan* recommends, in part, the adoption of an effective tree protection bylaw.

The proposed bylaw would protect trees within all residential districts of the Town:

- In cases of construction, or within 12 months prior to submitting an application for significant construction or demolition, and
- Where the tree is not a member of an invasive species, and
- Where the tree has a diameter of 6 inches or greater, measured at 4.5 feet, also known as Diameter at Breast Height (DBH), and
- Where the tree is located within 20 feet of the property line. (Thus, trees located in the centre of a large lot are not protected under the proposed bylaw.)

Optimally, protected trees are saved. Alternatively, new trees can be planted or monies can be paid into the revolving fund. Thus, there are three possible paths:

1. Save the protected tree.
2. Replant a new tree on the lot or on an adjacent lot. For each inch in diameter of the removed tree, the new tree must have at least ½ inch of diameter. So, if a 6-inch DBH tree is removed, the new tree must be at least 3 inches DBH.
3. Contribute to the Brookline Tree Preservation Fund. The schedule shall be set by the Commissioner of Public Works, approved by the Select Board, and shall be at least $500/inch of DBH of the protected tree.

If a protected tree is removed without authorization, not only must the person mitigate, but such person will be subject to a civil fine of $300/protected tree/day until the mitigation is complete.

Evaluation Methodology/Research

- 2021 *Brookline Urban Forest Climate Resiliency Master Plan*
  https://www.brooklinema.gov/1758/Urban-Forest-Climate-Resiliency-Master-P
- Zoom link and password to the subcommittee hearing:
  https://brooklinema.zoomgov.com/rec/share/6wfA_6rLfKJq29aqBarE_2QKS_1xK4tk3B84AurVdOseVQxQwG3de-3X7kBqOXYY.aAfbJL8PlJ6zB5li
  Passcode: P^9z1Gh%
- Zoom link and password to the Advisory Committee meeting:
  https://brooklinema.zoomgov.com/rec/play/YsqQ7D6dKUhvLGXy6uF46THnKZmtdjDFYpIdIz-mZt_-sISKvzWyFOEx1Xs33yCRiRU4krPi5MstRfkT.nPI9LxDAu5zfyF3u?continueMode=true

Discussion

Trees

By Joyce Kilmer

I think that I shall never see
A poem lovely as a tree.

A tree whose hungry mouth is prest
Against the earth's sweet flowing breast;

A tree that looks at God all day,
And lifts her leafy arms to pray;

A tree that may in Summer wear
A nest of robins in her hair;

Upon whose bosom snow has lain;
Who intimately lives with rain.

Poems are made by fools like me,
But only God can make a tree.

Trees have a number of benefits. These include:

- Improving water quantity and quality
- Mitigating urban heat island effects
- Decreasing energy use
- Improving air quality
- Storing and sequestering carbon
- Providing habitat and support diversity
- Reducing air pollutants
- Protecting us from ultraviolet rays
- Reducing noise and improving privacy
- Enhancing community livability and resilience
- Increasing property values

According to the 2021 *Brookline Urban Forest Climate Resiliency Master Plan*, Brookline has about 204,000 trees. Brookline's tree canopy coverage is the part of the town that is shaded by trees. The Master Plan has a goal of 49.1% coverage over the next ten years, which will require the planting of about 900 trees. However, coverage fell from 46.3% in 2014, to 44.7% in 2020. This was a net loss of 71 acres of tree canopy.

The goal of the petitioners' warrant article is to halt the mass destruction of trees by developers both demolishing old buildings, and building anew. Trees within a prescribed area of lots undergoing development will either be saved, or mitigation requirements will result in new tree plantings.

At the Capital Subcommittee level, everyone who spoke favored the purposes of the bylaw. However, DPW staff expressed concerns about costs and staff time. The subcommittee felt that the revolving fund would temper the concerns of staff.

Additional concerns raised at both the subcommittee level and at the Advisory Committee centered around why the proposed bylaw was so limited. For example,

- Why no protection for trees farther than 20 feet from the property line? The answer from petitioners was that this was just the beginning of an attempt to protect trees, and the idea was to start small.
- Why didn't the bylaw cover an owner who was taking down large trees, but not as part of a construction or demolition project? The purpose is to protect against the mass destruction and clear cutting of trees, and again, it is a start.
- Why is the civil fine capped at $300/protected tree/day? Shouldn't it be more? There is a legal limit as to how much the town can assess as a fine, and that is capped at $300.

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on the following motion under Warrant Article 10 by a vote of 26-0 with 0 abstentions.

VOTED: That the Town will amend the General By-Laws by adding the following Article:

ARTICLE X.XX: TREE PRESERVATION BYLAW

X.XX.1. PURPOSE: The intent of this Tree Preservation Bylaw is to encourage the preservation and protection of certain trees in connection with significant demolition and/or construction activity by designating areas of a lot where trees must be protected, and by requiring mitigation for trees that are removed by either the replanting of trees or the collection of fees to support the Town's tree planting and maintenance efforts.

X.XX.2. DEFINITIONS: For the purposes of this Tree Bylaw, the following definitions shall apply:

2.1 Caliper: Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.

2.2 Certified Arborist: A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

2.3 Diameter at Breast Height (DBH): The diameter of a tree trunk at four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

2.4 Invasive Species: Any plant or tree listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture, or currently listed as "likely invasive" or potentially invasive" by the Massachusetts Invasive Plant Advisory Group (MIPAG).

2.5 Protected Tree: Any existing tree with a DBH of six (6) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species (as defined herein) shall not be considered Protected Trees.

2.6 Reviewing Agent: Any agent delegated in writing by the Commissioner of Public Works to administer and implement this Tree Protection Bylaw.

2.7 Tree Preservation Fund: An account established under this Bylaw pursuant to M.G.L. 44 § 53E½ for the deposit of permit application fees and contributions in lieu of tree replanting as required by this Tree Preservation Bylaw.

2.8 Tree Protection & Mitigation Plan: A plan submitted to the Reviewing Agent for approval prior to the commencement of demolition and/or construction on any property on which a Protected Tree is located.

2.9 Protected Tree Impact and Removal Permit: A permit issued by the Reviewing Agent prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located.

2.10 Tree Removal: The mechanical destruction or demolition of a living tree, or any act (a) that has caused a tree to die within the previous 12 months or (b) is

likely to cause significant decline or death as determined by the Reviewing Agent.

2.11 Tree Save Area: The minimum area beneath the canopy of the tree which must be left undisturbed in order to preserve a sufficient root mass to give the tree a reasonable chance at survival.

2.12 Tree Yard: The area of a lot (as "lot" is defined in Section 2.12 of the Zoning Bylaw) that is located within 20 feet of any property line.

X.XX.3. TOWN OF BROOKLINE TREE FUND: There is hereby established a Town of Brookline Tree Preservation Fund ("Tree Fund") pursuant to M.G.L. 44 § 53E½. Any permit application fees or contributions collected per Section X.XX.5.2(b) of this Bylaw shall be deposited in the Tree Fund, and shall be expended by the Commissioner of Public Works solely for the purpose of purchasing, planting and maintaining trees within the Town and for the implementation of this Tree Protection Bylaw.

X.XX.4. SCOPE AND APPLICABILITY

4.1 Within all residential districts of the Town, it is prohibited to remove a Protected Tree without a Protected Tree Impact and Removal Permit during construction or within the 12 months prior to submitting an application for a demolition or building permit for: (a) demolition of an existing structure of 250 gross square feet or greater; (b) construction of any building or structure on a vacant lot; or (c) construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area (GFA) by 50% or greater, as defined by Zoning Bylaw Section 2.07.1.

4.2 The requirements of this Bylaw shall not apply to: (a) those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR); (b) Public Shade Trees pursuant to M.G.L. Chapter 87; (c) emergency projects necessary for public safety, health and welfare, as determined by the Reviewing Agent or the Town's Tree Warden; (d) trees severely damaged as the direct result of a natural disaster; (e) trees that are hazardous as determined and confirmed in writing by a Certified Arborist; or (f) trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist.

X.XX.5. TREE PROTECTION & MITIGATION

5.1 Protection: Each Protected Tree without a Protected Tree Impact and Removal Permit to be retained on property that is planned for demolition and/or construction activity shall be protected by the establishment of a fenced-off Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to any demolition or site work, and shall remain in place until work is completed on the property, excluding final landscaping. The applicant shall submit written documentation, prepared, dated and signed by a certified arborist, registered land surveyor, or licensed architect, to the Reviewing Agent confirming that the required Tree Save Area has been installed as identified in the Tree Protection & Mitigation Plan before work on the property begins.

5.2 Mitigation: The removal of a Protected Tree(s) from a lot in connection with one or more of the circumstances set forth in Section X.XX.4.1 shall require mitigation based upon the aggregate DBH of Protected Trees removed. Mitigation shall be achieved by satisfying one or a combination of the following provisions:

(a) Replanting of Trees: For each inch of DBH of Protected Tree(s) removed, no less than one-half inch of caliper of new tree(s) shall be replanted subject to and in accordance with the following: (1) Each new tree must have a minimum caliper of at least three (3) inches; (2) Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to the issuance of a Final Certificate of Occupancy, or be otherwise assured at such time to the satisfaction of the Reviewing Agent in a manner consistent with the Rules and Regulations established under this By-law; or

(b) Contribution to the Town of Brookline Tree Preservation Fund: The Commissioner of Public Works shall establish a Tree Fund contribution schedule, subject to approval by the Select Board, assigning a value not less than $500.00 per inch of DBH of Protected Tree(s) to be removed and not otherwise mitigated. Such Tree Fund contributions shall be received by the Town prior to the issuance of all applicable permits. Mitigation measures shall be detailed in the submitted Tree Protection and Mitigation Plan. The removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require any additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured to the satisfaction of the Reviewing Agent.

5.3 Unauthorized Removals: The removal of any Protected Tree without a Protected Tree Impact and Removal Permit that is not identified on the Tree Protection & Mitigation Plan shall require mitigation at the rate specified in Section X.XX.5.2. In addition, any person removing or causing to be removed any Protected Tree without a Protected Tree Impact and Removal Permit or not identified on the Tree Protection & Mitigation Plan in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Article 10.3 of the Town's General Bylaws of $300 per Protected Tree, per day, until the mitigation required under Section X.XX.5.2 of this By-law is complete.

5.4 Plan Review and Permit Issuance:

(a) Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a Protected Tree Impact and Removal Permit in connection with one or more of the circumstances set forth in Section X.XX.4.1 on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the property shall submit a Tree Protection & Mitigation Plan to the Reviewing Agent along with the required permit application and application fee.

(b) Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan that indicates the applicable Tree Yard, existing improvements, proposed construction, Protected Trees, Tree Save Area and preservation and maintenance procedures in accordance with the Rules and Regulations in effect at the time. It must also specify any tree removals and proposed mitigation measures per Section X.XX.5.2.

(c) Re-Submittal: If demolition or construction has not commenced within twelve (12) months of the date that a Tree Protection & Mitigation Plan was submitted for a property, or if removal of a previously unidentified Protected Tree is necessary during the course of construction, an amended Tree Protection &

Mitigation Plan shall be submitted along with the applicable fee identifying any changes from the previous plan and associated mitigation measures. If demolition and/or construction is not completed within 12 months of the date of the Reviewing Agent's initial inspection, an application for a permit extension and re-inspection fee shall be submitted. Additional permit extension applications and re-inspection fees shall be submitted every 12 months thereafter until demolition and construction is completed.

(d) Reviewing Agent Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established Rules and Regulations, and applicable Tree Fund contributions have been submitted, the Reviewing Agent shall issue a Protected Tree Impact and Removal Permit and/or notify the appropriate Town Department. If the proposal does not meet or satisfy these requirements, the Reviewing Agent shall notify the applicant and withhold the Protected Tree Impact and Removal Permit until the requirements of this Bylaw are met. If the Reviewing Agent fails to act on an application within thirty (30) days after the application has been made, it shall be deemed to be approved.

5.5 Maintenance of Protected and Replanted Trees:

(a) Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such a tree die or significantly decline in the opinion of the Reviewing Agent within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from said determination.

(b) Replanted Trees: All new trees planted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such tree die or be removed within this twenty-four (24) month period, the owner of the property shall be responsible for replacing the tree with a tree equal to or greater than the size of the original Replanted Tree at installation; such replacement tree shall be planted within nine (9) months of the death or serious decline of the original Replanted Tree. Tree planting and transplanting shall adhere to the most current American National Standards Institute (ANSI) A300 (Part 6) Tree, Shrub and other Woody Plant Management – Standard Practices (Planting and Transplanting).

X.XX.6. ADMINISTRATION

6.1 Enforcement: The Commissioner of Public Works or their designee is hereby authorized to enforce the provisions of this Tree Preservation Bylaw.

6.2 Appeals: Any person who is aggrieved by refusal, order, or decision of the Reviewing Agent or Commissioner of Public Works under this Bylaw may appeal to the Select Board or its designee within 20 days from the date of such refusal, order, or decision.

X.XX.7 RULES AND REGULATIONS

The Commissioner of Public Works in consultation with Town Counsel may promulgate or amend Rules and Regulations which pertain to the administration of this Tree Bylaw, and shall file a copy of said Rules and Regulations in the office of the Town Clerk. Such Rules and Regulations may prescribe the

Protected Tree Impact and Removal Permit application fee, along with the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, and the procedure for determining final compliance with these regulations. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

And also voted, to amend Article 10.3 of the Town's Non-Criminal Disposition Bylaw by adding the following: Table of Specific Penalties under Article 10.3:
Article X.XX Tree Preservation By-law:
For each violation: $300.00 per Protected Tree, per day, until mitigation required under Article X.XX is complete.

ARTICLE 10 ADVISORY COMMITTEE VOTES

Article Description	**Tree preservation bylaw**
AC recommendation (Favorable Action unless indicated)	**26-0-0**
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y

Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 10

TREE PROTECTION AND TREE PLANTING COMMITTEE REPORT ON JOINT PUBLIC HEARING

Report to Town Meeting on Joint Public Hearing – Tree Protection and Tree Planting Committees, October 17, 2022

This Public Hearing was called to solicit public comment and votes by Tree Protection Committee and Tree Planting Committee relating to warrant article 10 – Tree Preservation – in the Fall 2022 Special Town Meeting. Description from warrant: Create a new Article 8.39 of the Town's General By-Laws to create a Tree Preservation By-Law. (J. Murphy, TMM16, Harris, et. al.)

Attendees: Tree Planting Committee – Hugh Mattison, Liz Erdman, Pam Templer
Tree Protection Committee – Nancy Heller, Harry Bohrs, Ken Goldstein, Roberta Schnoor, Richard Murphy, Clara Bachelor, Liz Erdman
Staff: Tom Brady, Alexandra Vecchio, Erin Gallentine

A quorum of both Committees attended.
Lead petitioner Joslin Murphy (TMM16) presented a slide show which included the background and explained how this new by-law would function.
A number of questions and issues were posed by both joint committee members and the public:

- The current storm-water by-law has not been effective in reducing clear-cutting.
- Because a homeowner is responsible for maintaining a tree for 24 months, we need to provide a way to notify new homeowners of their responsibility.
- The cost of administration, in addition to the cost of the Reviewing Agent, has to be covered by the fees charged. How can we get funding now to implement? How will this be enforced?
- Members of the community have wanted tree protection for many decades, not years. This is modelled on a system (Concord) that has been working.
- The Tree Preservation Fund could be used for preservation and care of public trees
- The unintended consequences may affect North Brookline homeowners where lots are smaller.
- How would this be enforced when the property is turned over to the homeowner?
- In North Brookline, trees are more important because you need a buffer between houses.

There was general consensus that issues, some unknown now, will have to be dealt with. However, Town staff was supportive, agreeing that this was an important issue, and that problems could be resolved.

The Joint Committee members then voted unanimously to recommend approval of Article 10, despite the many reservations that committee members had regarding implementation, cost, and breadth of the article.

The joint Committees also unanimously voted to recommend that the Town administration adopt regulations pursuant to this proposed by-law to require the applicant of the proposed clear-cutting provide effective notice to the new owner (possibly as part of the Purchase and Sale Agreement or other mechanism devised by Town Administration) of his/her obligation to maintain the health of Replanted or existing Protected trees for a period of no less than twenty-four (24) months from the date of planting or Final Inspection.

Prepared and submitted on behalf of the Joint Committee,
Nancy Heller, Chair of Tree Protection Committee
Hugh Mattison, Chair of Tree Planting Committee

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Nancy Heller

To see if the Town will amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold**):

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that** o**ther provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the date of approval by the Attorney General (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said "24 Month Approval Date or that date that otherwise provided above, whichever shall be the later.**

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Why Do We Need an Extended Demolition Delay?

- There are lots of demolitions in Brookline.
- Demolitions harm the climate and the environment. The greenest building is the building that already exists. [This point could be supported in detail with references to embodied carbon, etc.]
- Demolitions eliminate moderately priced housing and replace it with more expensive units. The number of housing units usually does not increase after a demolition. Instead, the demolished building is replaced with a new building that contains the same number of units, but the new units are larger and much more expensive than the demolished units.
- Demolitions eliminate attractive buildings that contribute to the overall look and feel of the streetscape and often replace them with buildings that are out of scale and do not contribute to an attractive and welcoming public realm
- Demolitions often include removing all the trees on a property.

- Demolitions often eliminate greenspace or open space
- Demolitions sometimes destroy buildings with architectural or historical significance.
- Despite our demolition delay by-law, it is frequently the case that developers simply wait out the delay, the building is demolished and replacement structures are often incompatible with neighboring structures.
- Tearing down buildings has adverse effects on the climate and the environment, even if the demolished buildings are not historic.
- Demolition also tends to destroy trees and eliminate open space and greenspace, even if the demolished buildings are not historic.
- Demolition also changes the character of a streetscape (size, form, and massing), even if the demolished buildings are not historic.
- Because the current bylaw provides for demolition stays of a maximum of 12 months (in most cases) or 18 months (if the property is in a National Register of Historic Places district), it often fails to protect buildings of architectural or historical significance. The stay may expire before, for example, neighbors and Town Meeting can establish a local historic district.
- A extended demolition delay would allow more time to consider and implement new policies to reduce the number of demolitions.
- A extended demolition delay also would prevent demolitions while Brookline considers how to respond to the new state legislation (Section 3A of M.G.L. Chapter 40A) calling for "as of right" multifamily development in MBTA communities.

What Can Be Done to Prevent Demolitions?

During the Extended Demolition Delay, the Department of Planning and Community Development could consider revisions to the General By-Laws and Zoning By-Law that could be adopted by Town Meeting before the Extended demolition delay expires. Such revisions could include:

- Extend demolition delays to a maximum of 24 months.
- Require demolition applicants to make a good faith effort to sell the property to someone who will preserve it.
- Extend the special permit for demolition requirement in Section 5.09 2a of the Zoning By-Law to other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) or L-0.5 (CL) Districts requires a special permit for demolition.)
- Extend the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Corner Design Overlay District to other parts of Brookline.

- Allow properties subject to a preservation restriction (preservation easement or single-property LHD?) to include more residential units than allowed by current zoning. For example, single-family houses subject to a preservation restriction could be converted to two-family dwellings or have two accessory dwelling units.
- Reduce the allowable FAR in certain zoning districts where the allowable FAR greatly exceeds the current structure's FAR.
- Allow a greater number of housing units than the underlying zoning if the principal structure is preserved.

PRESERVATION COMMISSION REPORT AND RECOMMENDATION

The Preservation Commission voted on November 1st, 2022 to recommend Favorable Action on Articles 11, 12 and 13 as submitted. The roll call votes went as follows:

Article 11: 6-0-0

Elperin- yes; King- yes; Kleiner-yes; Armstrong- yes; Panciera- yes; Jack- yes

Absent: Batchelor

Article 12: 4-0-2

Elperin- yes; King- yes; Kleiner- abstain; Armstrong- yes; Panciera- yes; Jack- abstain

Absent: Batchelor

Article 13: 6-0-0

Elperin- yes; King- yes; Kleiner-yes; Armstrong- yes; Panciera- yes; Jack- yes

Absent: Batchelor

In addition to these votes, the Preservation Commission has voted unanimously to support the submission of the following memo on Articles 11 & 13. Article 12 was not included in this review due to the late submission of a final draft.

To: Town Meeting Members

From: The Preservation Commission

Date: November 1st, 2022

Regarding: Warrant Articles 11 and 13

The Preservation Commission ("Commission") thanks the Town Meeting Members for the opportunity to comment on Warrant Articles 11 and 13, which address changes to the Zoning By-Law and Demolition By-Law, and are proposed responses to the demolition of significant buildings in Brookline without the benefit of design review of their replacements. **The Commission supports passage of both Warrant Article 11 and 13.**

Warrant Article 11 would create a 24-month delay on the demolition of buildings found to be significant by the Commission. Information shows that most full demolition applications resulting in stays of demolition for 12 months (or 18 months for buildings in National Register Districts, or eligible for same) do not result in design review. The applicants "wait out the stay" and then build what they choose, subject to zoning requirements and design review by the Planning Board, depending on the building's location and number of units. This 24-month delay sunsets and phases out over time, so that at the end of two years after enactment and approval by the Attorney General, the demolition delay would revert to the original 12 or 18 months. Warrant Article 11 may demonstrate whether a 24-month delay would result in the demolition of fewer buildings.

The Commission understands that Article 11 aims to create a time period in which data can be collected and Town Meeting has time to consider more comprehensive planning to address Brookline's housing issues. During this time period, significant buildings would be saved from demolition. The petitioners proposing Article 11 urge action to halt the demolition of significant buildings, while acknowledging that use of the Demolition By-Law does not create a comprehensive approach to housing in Brookline.

The Commission supports the passage of Warrant Article 11. We understand that Town Meeting Members are in the best position to fully debate housing in Brookline and to create a comprehensive approach. It is important to have these debates, and it is detrimental to lose more significant buildings while these debates take place.

The Commission has discussed the following issues, which have led to some reservations concerning Article 11:

Does the 24-month delay with its sunset provision create an adequate time from for Town Meeting to craft a more comprehensive approach?

The Commission staff have in recent years faced a tight time frame for providing notice and hearing of demolition applications. Will Article 11 spur an increase in demolition applications during the time between passage of Article 11 and approval by the Attorney General? If the sunset provision isn't followed by a more comprehensive by-law, will applicants simply wait out the 24-month stay?

The Commission acknowledges the need for affordable housing in Brookline. Article 11 does not address this issue. A more comprehensive plan for housing is needed.

How will the 24-month delay affect the cost of renovations and demolitions for middle-class homeowners?

PLANNING BOARD REPORT AND RECOMMENDATION

Art. 11 is a General By-Law, not a Zoning By-Law, submitted by Citizen Petition to extend demolition delay to 24 months. Currently, if a building is found architecturally or historically significant, the Preservation Commission may impose a demolition delay of 12 months, or 18 months for a property in a National Register District. This By-Law, however, proposes to increase the demolition delay, if a building is found significant, from the 12 or 18 months, to 24 months for full demolitions of principal structures. The extra 6 to 12 month delay is intended to minimize the number of demolitions and result in more adaptive reuse of buildings. During the delay, the applicant can seek to have the Preservation Commission approve proposed plans in place of the exiting building and lift the stay.

The By-Law would not take effect until the Attorney General approves it and the required posting is completed (Approval Date). This would mean that demolition delay applications submitted before the Approval Date would not be affected. After the Approval Date, a project submitted, for example, two months after the Approval Date would be delayed 22 months, and so on, until the demo delay equaled the 12 or 18 months typical delay.

The Advisory Committee subcommittee voted Favorable Action on Warrant Article 11.

On October 19, 2022, a Planning Board public hearing was held on the amended Warrant Article 11 and the citizen petitioner gave a presentation. The Planning Board agreed with the petitioner that preserving the historic character of Brookline is very important and hoped that the extended delay might serve as a disincentive to an applicant seeking to demolish a building.

Therefore, the Planning Board voted Favorable Action on Art. XI as amended by the Petitioner. The roll call vote went as follows: Zarrillo – aye, Hamlin– aye, Brue – aye, and Hines – aye. (Heikin, Hiller and Chipimo were not present.)

SELECT BOARD'S RECOMMENDATION

This citizen petition is a General By-Law, not a Zoning By-Law, and proposes to lengthen demolition stays for buildings found architecturally or historically significant to 24 months, instead of 12 months or18 months for buildings in a National Register District. The goal of this warrant article is to serve as a disincentive for demolitions and provide time to persuade developers to propose a development where the building is reused or repurposed as part of a larger development.

On October 6th, the Select Board held a public hearing on this warrant article. The petitioner explained that the extra time provided by the delay would encourage the developer to realize it would be easier and perhaps less expensive if the building were preserved and reused. Further, she stated that demolitions are increasing in Brookline, and the new larger buildings

are replacing more moderately priced homes, eliminating trees and open space, and producing material waste to be disposed in landfills.

Select Board members did not agree with some of these statements and believed that the added delay would actually make developing housing more expensive. They noted that the Brookline Housing Authority was concerned that this could have a negative impact on some of their upcoming projects. One Select Board member found that this would be an exclusionary practice. Chair Hamilton added that the Town is very divided on these issues. Therefore, the Select Board voted NO ACTION Article 11 as amended by the Petitioners.

ROLL CALL VOTE:

Aye:	No:
Hamilton	Greene
Aschkenasy	VanScoyoc
Sandman	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 11, as amended, by a vote of 20-1 with 2 abstentions.

Executive Summary	Petitioner's motion would amend the Demolition Delay By-Law (Article 5.3 of the Town's General By-Law) to increase the length of a demolition delay to 24 months for buildings found by the Preservation Commission to be significant. Currently the demolition delay lasts for 12 months; in the case of buildings on the National Historic Register the delay is 18 months. During this time, the Building Commissioner may not grant a demolition permit, and it is hoped that the developer would work with Town Staff and others to explore development options that would save the structure. This proposed by-law amendment is a time limited change, with the maximum delay period being 24 months immediately after the effective date of this by-law change and decreasing with each passing day until it returns to the 12 or 18 month current delay length. After six months the proposed change will have no further effect on National Historic Register properties, and after 12 months the proposed change will have no further effect whatsoever.
Voting Yes will...	For a limited period of time, add 6 to 12 months to demolition delays imposed after the effective date of this By-Law change.
Voting No will...	Leave the Demolition Delay By-Law as it is currently, with demolition delays of 12 or 18 months

Financial impact	No financial impacts, other than a potential additional cost to developers associated with a longer time period before demolition.
Legal implications	Associate Town Counsel believes 24 months to be the longest demolition delay in the Commonwealth. The Town of Milton has a 24 month demolition delay in their By-laws. He believes the increased length of stay would be legally defensible.

Introduction

There is a strong concern in the community that we are experiencing an unprecedented acceleration in the number of historically significant residential buildings being demolished. There has also been a strong negative reaction to many of the replacement structures following demolitions. These new buildings are often out of scale with their surroundings, taking up much more of their lot with larger footprints, and are being sold at a price point that is 3-4 times more expensive than the demolished housing. This Warrant Article is meant to give all parties additional time to seek better outcomes, in terms of negotiating the retention of some or all of the original structure, devising more permanent zoning solutions to incentivize the retention of historic structures, etc. While this Article proposes a modest increase in the length of the delay prior to demolition, passage could allow for data gathering as a "pilot" test to determine if such a change will have a positive impact on slowing the rate of demolitions or improving development outcomes.

Evaluation Methodology/Research

- Petitioners cited data showing a marked increase in the yearly number of demolition requests, with 57 full demolition requests in 2021 being the highest ever seen in Brookline. See the Article 11 petitioner's explanation for further data on Demolitions that was presented after the Advisory Committee review and vote.
- Associate Town Counsel opined that he felt confident this temporary increase to 24 months would be legally defensible.
- Associate Town Counsel sought some language changes to better clarify when the By-Law change would take effect.
- Town Counsel confirmed that Milton has permanently adopted a 24 month stay of demolition.
- It was noted by Town staff that an applicant has a total of three years from the time of submitting a building permit application to beginning the construction process. In some cases this could leave only a year to go through the building permit process. Also, some property owners de-commission a building's utilities, etc. leaving a structure vulnerable to demolition by neglect. However, many owners start the building review and permitting process concurrently during the demolition delay period, which minimizes these timing issues.
- The Building Commissioner noted that once a demolition permit is issued it is only valid for 6 months.

Discussion
The Land Use, Zoning and Sustainability Subcommittee hearing was held on Article 11 on Monday, September 19, 2022. The Full Advisory Committee held a public meeting on this Article on September 27, 2022. The recording of the Full Advisory hearing may be accessed here:
https://brooklinema.zoomgov.com/rec/play/Bm8mNLlIh96bHBk5b2QeesMy8r3J3dAcs7ufcq_ZxG8gZmiQVVW2IfNTLe2wuEoqYIFs-TZ2BRRMOXxv.kKito1LKhcp5xlFr?continueMode=true

Petitioners expressed dismay over the number of demolitions in Brookline. In 2021 there were 57 full demolition requests, apparently an all-time high for Brookline. The rate of demolitions appears to be accelerating. Citing the negative consequences of demolition and redevelopment the petitioner's concerns include: 1) the negative environmental impacts from demolition, (embodied carbon of existing structure and carbon emissions created from new construction); 2) loss of trees, vegetation and open space; 3) loss of more moderately priced housing, resulting in replacement structures that are many times more expensive, causing the displacement of current tenants; 4) replacement structures that are often out-of-scale and disruptive to the streetscape; 5) the waste and loss of valuable historic buildings and historic building materials. It was noted that it is important that the Town utilize the extra time granted to work on more permanent solutions, such as incentivizing retention of existing structures.

Concerns were raised at the Full Advisory Committee during public comment about the impacts of the lengthened demolition delay if it were applied to partial demolitions. The commenter believed that imposing demolition delay on partial demolitions may work at cross purposes with preservation of the original structure through the use of additions, extensions, etc. However, the purpose of the demolition delay is to encourage outcomes where owners' needs are accommodated through building additions, etc. in which case the Preservation Commission may agree to lift the stay. Petitioners Dennis DeWitt and Elton Elperin, who have both served lengthy terms on the Preservation Commission (Elton is still a member and was recently the Chair), opined that the partial demolitions rarely result in imposing stays. Instead the applicant and Preservation Commission typically quickly reach a mutually agreeable design solution and the applicant moves on to permitting.

Advisory members also made inquiries about the 24-month demolition delay that is currently utilized in the Town of Milton. Associate Town Counsel confirmed that the Town has permanently adopted this provision, and because Milton is a Town, it can be assumed that the Municipal Law Unit of the Attorney General's Office did approve the 24-month stay in Milton. An Advisory Committee member wanted to know if the delays have in fact been successful in preventing demolition. Petitioners opined that a number of outcomes have been observed, in terms of properties being sold, owner's working with Preservation to retain the structure and accommodate their needs, etc. although a precise percentage or number was not available due to the difficulty of tracking properties through the development process. A question as to what percentage of applications for demolition are found to be significant was raised. Elton Elperin, recently chair of the Preservation Commission, cited data from three recent years, in 2018 there were 36

demolition requests and 19 were found significant; in 2020 it was 40 requests, 20 found significant; and in 2021, 57 applications with 23 significant. Approximately half of the demolition requests were found to be significant, therefore delays on demolitions were imposed in approximately half of the cases. Advisory members also inquired as to what would happen in the interim in terms of planning work to effectuate better outcomes. The petitioners pointed out that the Planning Department would be working on complying with the MBTA Communities multi-family requirements and that this question of demolitions and preservation would be looked at in this context. A suggestion to amend the Article to remove partial demolitions from the extended stay was made, but ultimately not pursued.

One Advisory Committee member felt that longer demolition delay periods would contribute to the cost of development in Brookline and opposed the Article on these grounds. Others opined that permitting can be done simultaneously which mitigates the effects of the delay.

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on the amended motion under Warrant Article 11 by a vote of 20-1 with 2 abstentions. The amended version of Warrant Article 11 appears directly below in clean form. Following the voting summary we include the petitioner's original motion as well as a version showing the differences between the petitioners' motion and the Advisory Committee amendment.

VOTED: That the Town will amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold underlined,** language to be removed from the as-filed version appears in ~~strikethrough~~)
SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the effective date of this section 5.3.9 as amended in 2022 (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or such date that is otherwise provided within this section 5.3.9, whichever shall be the later.**

ARTICLE 11 ADVISORY COMMITTEE VOTES

Article Description	**Extend demolition delay**
AC recommendation (Favorable Action unless indicated)	**20-1-2**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	
Carol Levin	Y
Pam Lodish	Y

Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	A
David Pollak	Y
Stephen Reeders	A
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Carolyn Thall	Y
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Article 11 as filed:

To see if the Town will amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold underlined**):

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the date of approval by the Attorney General (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or that date that otherwise provided above, whichever shall be the later.**

Article 11 as Amended by the Petitioners and Sub-Committee

To see if the Town will amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in **bold underlined,** language to be removed from the as-filed version appears in ~~strikethrough~~) Changes between the as filed and amended version are in red.

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT

The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding, during the first 12 months subsequent to the** ~~date of approval by the Attorney General~~ **effective date of this section 5.3.9 as amended in 2022 (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or** ~~that~~ **such date that is otherwise provided** ~~above,~~ **within this section 5.3.9, whichever shall be the later.**

XXX

ARTICLES 11 &12

PETITIONERS' SUPPLEMENTAL EXPLANATION

Summary

In recent years, many Brookline residents have expressed increasing concern about the number of buildings that are being torn down. There are a lot of reasons for this concern. Often, moderately priced one- and two-family houses are demolished and replaced by very expensive condominiums that are out of character with the surrounding streetscape. In addition, demolition is carbon-intensive and frequently involves removing trees and eliminating greenspace.

Article 11 and Article 12 are intended to work together to limit the number of buildings that are being demolished in Brookline. Article 11 attempts to slow the pace of demolitions by temporarily extending the length of the demolition delays that the Preservation Commission can impose, while Article 12 urges the Department of Planning and Community Development to study and propose measures to reduce the number of demolitions or to mitigate their impact.

The petitioners of Article 11 and Article 12 have made changes in the motions they plan to offer under each article. The current motions thus differ from what was published in the warrant. The changes to the Article 11 motion are relatively minor and are intended to clarify the amendment to the Demolition Delay Bylaw. In the case of Article 12, the petitioners plan to move a resolution instead of the Zoning Bylaw amendment that was included in the original warrant article, which would have imposed a temporary moratorium on demolitions.

Appendix A and Appendix B include data relevant to the impact of recent demolitions in Brookline. The Article 13 petitioners' presentation on that article includes "before" and "after" images that show buildings that have been demolished and what has been built (or is planned to be built) to replace them. Those images are also relevant to Articles 11 and 12.

We hope that this information is useful to Town Meeting members as they review and vote on Articles 11 and 12.

The Article 11 and Article 12 Motions Supported by The Petitioners

The petitioners of Article 11 and Article 12 support the Article 11 and 12 motions offered by the Advisory Committee. Those motions are the petitioners' motions. The full text of each motion can be found in the Advisory Committee's reports on Articles 11 and 12. The Planning Board and the Preservation Commission also recommend favorable action on those motions.

Summary of Articles 11 and 12 and How They (and Article 13) Work Together

Article 11 and Article 12 complement one another. Article 11's purpose is to "pause" demolitions. Article 12's purpose is to ask Brookline's Department of Planning and Community Development to offer a plan for limiting future demolitions and to consider ways to mitigate the impact of demolitions that occur.
The two articles would work together to slow the pace of demolitions to allow time for bylaw amendments that would encourage preservation of existing buildings and reduce the incentives to tear them down.

Article 11 proposes to temporarily amend the existing Demolition Delay Bylaw, which is part of Brookline's General Bylaws. While the amendment is in effect, it would enable the Preservation Commission to grant demolition stays that are six months longer than the current 12 and 18-month stays. The maximum demolition delay would be 24 months immediately after the effective date of the by-law amendment. Subsequently over the next 12 months after the effective date, the maximum demolition delay gradually would be reduced in length from 24 months, until the delay is the same as it is in the current bylaw. See below for examples that make clear how long demolition delays would last under Article 11.

Article 11 only applies to buildings that are determined to be architecturally or historically significant. In recent years, the Town's Preservation Commission staff has determined that about 50% of buildings that the owner wants to demolish are significant. The original version of Article 12 would have imposed a broader moratorium on the demolition of residential buildings, but, after consulting with Town Counsel's office, the petitioners decided to offer the current Article 12 resolution instead of a moratorium bylaw that might be vulnerable to legal challenges. Although it is not as comprehensive as the original Article 12, Article 11 would nevertheless delay the demolition of many buildings and is thus a useful way to stop some teardowns while the Town considers ways to preserve those buildings.

Article 12, as revised by the petitioners, is a resolution that would ask Brookline's Department of Planning and Community Development to study any and all promising options for reducing the incentives to demolish buildings and increase the incentives to preserve buildings. Some of these options could include creating incentives for creating affordable housing in buildings that were preserved. Although Brookline may eventually address these issues in its Comprehensive Plan, many buildings are being demolished now and the Comprehensive Plan is not likely to be ready for several years. The Planning Department will be looking at some zoning issues between now and the November 2023 Town Meeting as it responds to the requirements of Section 3A of M.G.L. Chapter 40A, which mandates that MBTA communities allow for "as of right" multi-family development near public transit stations. The petitioners of Article 12 hope that at the

very least Article 12 will serve as guidance to the Planning Department to ensure that the Town's response to Section 3A minimizes the number of demolitions.

Article 13 addresses another problem related to demolitions. It would amend the Zoning By-Law to extend the existing process of design review. Article 13 recognizes that some buildings will not be preserved, but the Town can still act to preserve the look of Brookline's streetscapes and to ensure that neighborhood concerns are considered when demolished buildings are replaced with new structures.

The Need for Articles 11 and 12: Why We Should Try to Prevent Demolitions

Brookline is experiencing an epidemic of demolitions in which moderately priced one- and two-family houses are being torn down. The ongoing demolitions threaten the character of our neighborhoods by typically replacing moderately priced buildings with multi-million dollar luxury condominiums. Each condominium is often comparable in price to the entire demolished building. The wave of demolitions is causing "McMansionization by condo-box" that, at the same time, degrades neighborhoods, streetscapes, and the sense of community.

These are some of the reasons for trying to prevent demolition of existing structures:

- Demolitions often eliminate moderately priced housing and replace it with a similar number of much more expensive luxury residences.

- Demolishing existing buildings and erecting new ones harms the climate and the environment. Demolition and construction are highly carbon-intensive activities that generate greenhouse gases. One of the biggest problems is e*mbodied* carbon—the carbon expended in the extraction, production, and transportation of materials and the fabrication and demolition of structures. The National Trust for Historic Preservation estimates that it takes 10 to 80 years for a new green building to recover the environmental cost of demolishing an existing one. The greenest building can and should be the one that already exists. Sustainability means preserving and reusing existing buildings.

- Regardless of any architectural or historic importance, demolitions typically destroy buildings of neighborhood significance that contribute to the overall look, feel, and comfort of a coherent streetscape.

- Within the current regulatory (zoning) context, randomly inserted, often "by right" replacements detract from a welcoming public realm — not least because they are raised above blank, street facing, garage doors — showing complete indifference, if not seeming hostility, to neighborhood character.

- As a matter of the developer's convenience, demolitions often include removing all the trees on a property.

- Because the current Demolition Delay Bylaw provides for demolition stays of 12 months (in most cases) or 18 months (if the property is in a National Register district), it often fails to protect buildings from developers intent on maximizing profits, who would in any case spend much of that time in the permitting process. Developers wait out the delay, the building is demolished, and the replacement is often designed in a regulatory framework not structured to meaningfully respond to community needs and values.

- The new buildings constructed after demolition (most often with the same number of units) are built to the maximum Floor Area Ratio (FAR), with garages, elevators, etc., and tend to maximize footprints, increase paved area, maximize skyplane obstruction, destroy trees, and eliminate open space and greenspace that is part of the community's sense of shared streetscape.

- Too often demolition replaces buildings whose components, such as porches, bays, and dormers, create a friendly, welcoming streetscape, with flat-walled, code-driven boxes presenting street level garage doors and rooflines lacking any articulation.

How Significant is the Problem of Demolition of Existing Buildings in Brookline?

As the table in Appendix A shows, the number of demolition applications in Brookline has been slowly but steadily increasing over time. There are annual fluctuations that may reflect changes in the economy and housing markets, but the upward trend is clear.

- About 70% of demolition applications are for full demolition.
- About 46% of full demolition applications are determined to be significant.
- In the 7 years from 2005–2011, the average number of full demolition applications per year was 27.
- In the 10 years from 2012–2021, the average number of full demolition applications per year was 39.
- Compared to 2005–2011, during 2012–2021 there has been a 44% increase in full demolition applications per year.
- Compared to 2005–2011, during 2012–2021 there has been a 113% increase in applications to demolish properties deemed "significant" per year.

<u>Cumulative Impact</u>

Although the number of demolition applications and demolitions in any given year may seem relatively small, even if that number is increasing over time, the cumulative impact of the annual demolitions is significant. Over the course of 20–30 years, hundreds of buildings may be demolished. Demolition is permanent, so it has an enduring impact on Brookline's neighborhoods.

Loss of Moderately Priced Housing

As Appendix B shows, the recent pattern has been for demolitions to eliminate moderately priced one- and two-family houses, particularly but not only in North Brookline. Approximately two-thirds of the residential buildings currently subject to a demolition stay or for which a demolition stay has recently expired are in this category.

Public Support for Preservation of Existing Buildings

Many Brookline residents have expressed concern about the demolition of existing buildings. Town Meeting members say that residents often ask them what can be done to stop a building from being torn down. Director of Planning and Community Development Kara Brewton has reported that there is a lot of public frustration about demolitions.

When a survey conducted in the course of preparing the 2022 Housing Production Plan (HPP) asked what Brookline's priority housing initiatives should be, "Encourage Preservation of Existing Homes" was listed more than any other response.

This public concern about demolitions is increasing. A similar survey had been conducted in 2016 in the process of preparing the HPP. According to the report of the 2022 HPP survey, "The most notable change is the increased support for 'encourage the preservation of existing homes' between 2016 and 2022."

What Article 11 Would Do: Temporarily Allow for Longer Demolition Stays so that Buildings Could be Preserved while the Town Considers Long-Term Options

Brookline currently has a Demolition Delay Bylaw (Article 5.3 of the General By-Laws). When there is an application to demolish a building, the Preservation Commission determines whether the building is significant and then votes whether to impose a demolition delay that temporarily blocks demolition of buildings that are significant. Under the current bylaw, a demolition delay lasts for 12 months for most buildings found to be significant and 18 months for buildings that are on or are eligible for the National or State Registers of historic places. While a demolition delay is in effect, the building commissioner may not grant a demolition permit, During the delay, the developer and the Preservation Commission have an opportunity to negotiate conditions—including preservation of the structure—under which the demolition stay could be lifted.

Article 11 would *temporarily* amend the Demolition Delay Bylaw to increase the length of a demolition delay to 24 months for buildings found by the Preservation Commission to be historically or architecturally significant.

The temporary increase in the length of a demolition delay would gradually be phased out. The 24-month maximum demolition delay would get shorter and shorter during the 24 months that the temporary increase was in effect until any new demolition delay was the same it was before Article 11 went into effect.

Because it does not apply to all proposed demolitions, only those of buildings deemed significant, Article 11 is an imperfect tool for slowing the pace of demolitions. It is, however, a useful tool that takes into account what is legally possible based on advice from Town Counsel's office. The original version of Article 12—a demolition moratorium—would have applied to more potential demolitions, but the petitioners accepted the advice of Town Counsel's office and substituted a resolution under Article 12. Article 11 has the potential to prevent some buildings from being torn down and is likely to survive any legal challenges.

How Long Demolition Delays Would Last Under Article 11

A few examples help to make clear how long a given demolition delay would last while Article 11 is in effect.

Because Article 11 is an amendment to the General Bylaw, it would go into effect when it is approved by the Attorney General's office. After recent Town Meetings, the approval process has usually taken several months.

Assume that the effective date of Article 11 is March 1, 2023. Then, because all demolition delays are at least 12 months and Article 11 would extend those to 24 months, no building whose demolition delay began between March 1, 2023 and February 29, 2024 could be demolished before February 28, 2025, unless the Preservation Commission lifted its stay. (Article 11 cannot be made retroactive, so it would not affect demolition delays already in process.)

Article 11 would extend the duration of 18-month demolition delays that were imposed with a starting date between March 1, 2023 and July 31, 2023. Any 18-month delay beginning after July 31, 2023 would not be affected, as its normal delay would extend past February 28, 2025.

Article 11 would extend the duration of any 12-month delays that were imposed with a starting date between March 1, 2023 and February 29, 2024. Any 12-month delay beginning after February 29, 2024 would not be affected, as its normal delay would extend past February 28, 2025.

Here are some examples of how long a demolition stay would be if Article 11 is approved. These examples all assume that Article 11 would go into effect on March 1, 2023, and remain in effect for two years, i.e., until February, 28, 2025.

- The Preservation Commission imposes a 12-month delay that begins on July 1, 2023 and that would end on June 30, 2024. Under Article 11, that stay would be extended to 20 months and would end on February 28, 2025.

- The Preservation Commission imposes an 18-month delay that begins on July 1, 2023 and that would end on December 31, 2024. Under Article 11, that stay would be extended to 20 months and would end on February 28, 2025.

- The Preservation Commission imposes a 12-month delay that begins on October 1, 2023 and that would end on September 30, 2024. Under Article 11, that stay would be extended to 17 months and would end on February 28, 2025.

- The Preservation Commission imposes an 18-month delay that begins on October 1, 2023 and that would end on March 31, 2025. Under Article 11, that stay would remain 18 months and would still end on March 31, 2025.

- The Preservation Commission imposes a 12-month delay that begins on May 1, 2024 and that would end on April 30, 2025. Under Article 11, that stay would remain 12 months and would still end on April 30, 2025.

How Article 11 Would Help Prevent Demolition

The primary effect of Article 11 would be to delay demolitions while the temporary extension of the demolition delay periods remained in effect. The purpose of the article is to temporarily extend, during a 24-month period, the 12- or 18-month demolition delays imposed by the Preservation Commission so that the Town has some "breathing room" in which to consider ways of reducing the number of residential building demolitions, as urged by Article 12. Because the Preservation Commission only can impose demolition delays when a building has been found to be significant, the longer stays would not apply to all buildings threatened with demolition, but if past patterns hold, about half of the threatened buildings would be found to be significant and would be eligible for a demolition delay.

In addition to imposing a temporary "pause" on demolitions while long-term general options for preservation are considered, Article 11 also could limit the number of

demolitions or produce better development outcomes while it was in effect. There are several ways in which this might occur.

First, a developer who was eager to demolish a building and erect a new structure might be more motivated to negotiate some form of mitigation or preservation with the Preservation Commission in return for having the demolition stay lifted before it expired. Such a developer might choose to "wait out" a 12-month demolition stay, but, when faced with the prospect of a 24-month delay, might be willing to explore development options that would preserve some or all of the existing structure. Such options might include moving the structure or preserving the most important façade(s).

Second, the longer demolition stays would give neighborhood residents more time to work with the Preservation Commission to develop a local historic district (LHD) proposal. The LHD process can be time-consuming. Although six of the nine existing Brookline LHDs were established while a demolition stay was in effect for at least one building in the proposed LHD, a 12-month stay does not always allow enough time for residents to consider the LHD option and for Town Meeting to vote on the proposed LHD. Establishing an LHD that included the structure subject to a demolition delay would protect that structure from being demolished.

Third, even if neighborhood residents decided not to try to establish an LHD, the possibility that they might be able to do so during the longer demolition delay might give the Preservation Commission more leverage in any negotiations with a developer.

Finally, a longer demolition stay would provide more time for the developer and the Preservation Commission to explore all possible options for preserving a structure that is threatened with demolition. Having more time might make it possible to reach an agreement on the conditions for lifting the stay.

Demolition stays do not always prevent demolition of a building, but they can do so. The Coolidge Corner Theatre is a notable example. Its preservation was assured while a demolition delay was in effect.

Although it is primarily intended as a temporary extension of Brookline's demolition delays so that some buildings might escape being torn down while the Town devises longer-term ways to preserve buildings (see Article 12), Article 11 also could serve as a "pilot program" for gathering information on whether the longer demolition delay period helped to limit the number of demolitions or improve any arrangements agreed upon by the Preservation Commission and developers.

Article 12: Developing Potential Long-Term Measures to Prevent Demolitions

The petitioners of Article 12 initially intended to propose a Zoning Bylaw amendment that would impose a temporary moratorium on demolition of residential buildings. While

the moratorium was in effect, the Department of Planning and Community Development would study options for preserving existing building and reducing the incentives for demolition.

After extensive consultations with the office of Town Counsel, however, the petitioners have concluded that there is a risk that such a bylaw amendment would be rejected by the office of the Massachusetts Attorney General. The moratorium also might be vulnerable to legal challenges. In the absence of the demolition moratorium that Article 12 would have established, the provisions of Article 11 will help to temporarily prevent many demolitions while the Town considers long-term measures to reduce the number of demolitions.

The petitioners' revised motion under Article 12 is a resolution that calls on the Department of Planning and Community Development to develop recommendations for limiting the number of demolitions in Brookline so that a future Town Meeting could amend the bylaws to increase incentives for preservation and reduce incentives for demolition. The professional staff of the Planning Department would be able to develop proposals that were integrated with one another, with existing zoning, and with potential changes to the zoning bylaw that are already under consideration (e.g., steps the Town may take to comply with the MBTA Communities Act).

These are some examples—illustrative but not exhaustive—of options that might reduce the number of demolitions in Brookline:

- Reducing the allowable Floor Area Ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures.

- Developing neighborhood-sympathetic form-based zoning.

- Allowing a greater number of housing units—including affordable units—than the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction.

- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw.

- Permanently extending the current 12 month and 18 month demolition delays respectively to 18 and 24 months.

- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it without demolition, as required in some locations in the state.

- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.)

- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline. (Warrant Article 13 of the November 2022 Town Meeting addresses this issue.)

This list is not exhaustive. Additional ideas could emerge from the Planning Department's analysis or other sources. The Planning Department could explore ways to maximize incentives for preserving buildings *and* for creating affordable units in those buildings. During the Planning Board's consideration of Article 12, a member of that body noted that one option would be for a special permit that could allow for the creation of additional affordable units in building that were preserved. Improvements to Brookline's Accessory Dwelling Unit (ADU) bylaw also could increase the incentives for preserving existing buildings while using part of the structures for moderately priced rental housing. The current bylaw has not produced many new ADUs. An alternative might be to offer to reduce property taxes for homeowners who rent ADUs at below-market rates. The City of Salem has such a program, and also offers grants for ADU renovations.

Recent state legislation (Section 3A of M.G.L. Chapter 40A) calls for MBTA communities to adopt zoning for "as of right" multifamily market-rate development in areas near transit. Between now and December 31, 2023, the Department of Planning and Community Development will develop the Town's response to Section 3A of M.G.L. Chapter 40A with the goal of submitting recommendations to the November 2023 Town Meeting. Any new policies and bylaws to reduce the number of demolitions in Brookline need to be carefully integrated with one another and Town's response to Section 3A of M.G.L. Chapter 40A. One implication of Article 12 is the need to respond to Section 3A in a way that does not produce greatly increased incentives for the demolition of Brookline's existing buildings.

DATA RELEVANT TO WARRANT ARTICLES 11 AND 12

Appendix A:
Brookline Demolition Applications by Category, 2005–2021

Year	Total Cases	Full Demolition	Initially Significant	Non-sig	Sig Full	
2005	34	32	9	25	9	
2006	29	25	3	26	3	
2007	25	22	7	18	7	
2008	38	27	12	26	11	
2009	31	25	7	24	7	
2010	30	25	12	18	11	
2011	45	30	24	21	18	
2012	42	37	18	24	15	
2013	37	28	17	20	15	
2014	41	36	31	10	26	
2015	53	41	30	23	20	
2016	63	51	24	39	19	
2017	59	33	35	24	22	
2018	65	36	41	24	19	
2019	71	33	48	23	22	
2020	68	40	32	36	20	
2021	84	57	50	34	23	
Total	815	578	400	415	267	

Source: Preservation Commission Records

Appendix B:
Properties Subject to a Demolition Stay or for which a Stay Expired in 2022

The twenty-one properties listed below are residences for which a demolition stay is in effect or for which a demolition stay has expired in the past six months. Note that 40 Kent Street has been converted from residential use to the Elks lodge, 92 Sewall Avenue has been converted for use as an inn, and 178 Mason Terrace has been used as a childcare center.

These properties provide an indication of the type of property currently slated for demolition that also would be subject to the provisions of Article 11. A longer list of recent and pending demolitions would include properties not deemed to be significant by the Preservation staff.

Seven of the twenty properties are two-family houses with an average assessed value of $1,626,557, ranging from $842,200 to $2,219,300.

One is a two-unit condominium with units assessed at $1,232,900 and $1,568,300.

Five of the properties are moderately-priced (by Brookline standards) single-family houses with an average assessed value of $1,941,860, ranging from $1,562,900 to $2,198,100. One of those houses has three units. One has two units.

Five of the properties are higher-priced single-family houses an average assessed value of $2,754,560 ranging from $2,528,600 to $2,907,900.

Three are properties not currently used as residences.

If the three nonresidential properties are excluded, approximately 67% (12/18) of the residences slated for demolition are moderately-priced one- and two-family residences.

Note that the average FY2022 assessed value of a single-family residence in Brookline is $2,262,816 and two-and three-family residences have an average value of $2,030,278. Source: Brookline Board of Assessors, Presentation at Tax Classification Hearing, November 30, 2021.
https://www.brooklinema.gov/DocumentCenter/View/28076/FY2022_Classification_Hearing_Presentation?bdild=

202 Mason Terrace. Stay expires 9/13/23. Single-family but has two units. Assessment: $1,899,400

15-17 Glenland Road. Stay expires 9/13/23. Two-family. Assessment: $842,400

269 Lee Street. Stay expires 5/23/23. Single family. Assessment: $2,749,400

38 Stedman Street. Stay expires 5/10/23. Single-family. Assessment: $2,049,500

61 Heath Street. Stay expires 10/26/23. Single-family. Assessment: $2,833,900

123 Fuller Street. Stay expires 4/12/23. Single-family. Assessment: $1.562,900

123 Lee Street. Stay expires 1/11/23. Single-family. Assessment: $2,528,600

153 St. Paul Street. Stay expires 1/11/23. Two-family. Assessment: $1,682,000

116 Columbia Street. Stay expires 12/14/22. Two-family. Assessment: $1,839,900

71 Greenough Street. Stay expires 11/22/22. Single-family. Assessment: $1,999,400

12 and 12A Griggs Terrace. Stay expires 5/9/23. Two-family. Assessment: $2,219,300

85 Naples Road. Stay expires 11/9/22. Two-family. Assessment: $2,134,500

77 Thorndike Street. Stay expires 10/27/22. Two-family. Assessment: $1,727,500

135 St. Paul Street. Stay expired 10/12/22. Two-unit condominium.
Assessments: $1,232,900 & $1,568,300.

92 Sewall Avenue. Stay expired 9/29/22. Single-family converted to lodging house/inn.
Assessment: $3,198,400

41 Codman Road. Stay expired 7/21/22. Single-family. Assessment: $2,907,900

40 Kent Street. Stay expired: 6/8/22. Single-family converted to Elks clubhouse.
Assessment: $2,329,600

24 Auburn Street. Stay expired 6/8/22. Single-family; 3 units. Assessment: $2,198,100

314 Clark Road. Stay expired 5/11/22. Single-family. Assessment: $2,753,000

98 Chestnut Street. Stay expired 4/13/22. Two-family. Assessment: $940,300

178 Mason Terrace. Stay expired 4/13/22. Childcare center. Assessment: $1,792,000

Sources:
https://buildings.aboutbrookline.com/endangered
https://www.brooklinema.gov/2068/25995/Full-Demolition-Delays-List

ARTICLE 11

AMENDMENT TO THE PETITIONER MOTION OFFERED BY SIMON GROSSMAN, TMM7, AND C. SCOTT ANANIAN, TMM10
(Original motion in boldface; changes in underline and blue.)

MOVED: To amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in bold):

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding** and excepting a project containing at least 75% affordable housing units as defined in section 4.08 of the zoning bylaw**, during the first 12 months 16 subsequent to the date of approval by the Attorney General (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said "24 Month Approval Date or that date that otherwise provided above, whichever shall be the later.**

ARTICLES 11-13

Amendment to motion on Article 11 as printed on page 11-12 of the combined reports.
This amendment made by Simon Grossman TMM7, seconded by C. Scott Ananian TMM10.
Original motion in boldface; changes in underline and blue.

Moved that the Town ~~will~~ amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in bold):

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding** and excepting a project containing at least 75% affordable housing units as defined in section 4.08 of the zoning bylaw**, during the first 12 months subsequent to the effective date of this section 5.3.9 as amended in 2022 (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or such date that is otherwise provided within this section 5.3.9, whichever shall be the later.**

Amendment to Grossman/Ananian motion on Article 11 as printed in Supplement #2 on the combined reports for Article 11.
This amendment made by Bob Lepson, seconded by Michael Kushner.

To amend the Grossman/Ananian motion on Article 11 by changing "75%" to "50%".

Clean copy of resulting amendment after Lepson/Kushner motion.
Original motion in boldface; changes in underline and blue.

Moved that the Town amend the General By-Laws as follows:

By amending Section 5.3.9 of the Demolition Delay By-Law (language to be inserted appears in bold):

SECTION 5.3.9 EXTENDED WITHHOLDING OF DEMOLITION PERMIT
The Building Commissioner shall withhold the Demolition Permit for a period of one year, or for a period of eighteen months if the building meets the criteria of Section 5.3.5(b), from the date upon which the final determination was made that a building is a Significant Building except as provided in Section 5.3.11, **provided however that other provisions of this section 5.3.9 notwithstanding** and excepting a project containing at least 50% affordable housing units as defined in section 4.08 of the zoning bylaw**, during the first 12 months subsequent to the effective date of this section 5.3.9 as amended in 2022 (the "24 Month Approval Date"), the Building Commissioner shall withhold the Demolition Permit for a period that shall not expire sooner than that date which is 24 months subsequent to said 24 Month Approval Date or such date that is otherwise provided within this section 5.3.9, whichever shall be the later.**

Amendment to motion on article 12 appearing on page 12-11 and following of the combined reports.
This amendment made by Simon Grossman TMM7, seconded by C. Scott Anananian TMM10.
Changes in underline and blue.

A Resolution to urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline

WHEREAS, many buildings are being demolished in Brookline; and

WHEREAS, demolitions contribute to carbon emissions and have negative effects on climate change and the environment, leading many experts to say that "the greenest building is the building that already exists"; and

WHEREAS, demolitions often eliminate moderately priced housing and replace it with more expensive units without increasing the overall number of housing units; and

WHEREAS, demolitions eliminate attractive buildings that contribute to the overall look and feel of the streetscape and often replace them with buildings that are out of scale and do not contribute to an attractive and welcoming public realm; and

WHEREAS, demolitions often include removing all the trees on a property; and

WHEREAS, demolitions often eliminate greenspace or open space; and

WHEREAS, demolitions sometimes destroy buildings with architectural or historical significance; and

WHEREAS, recent state legislation (Section 3A of M.G.L. Chapter 40A) calls for MBTA communities to adopt zoning for "as of right" multifamily development in areas near transit no later than December 31, 2023; and

WHEREAS, Brookline's Department of Planning and Community Development will develop the Town's response to Section 3A of M.G.L. Chapter 40A with the goal of submitting recommendations to the November 2023 Town Meeting; and

WHEREAS, any new policies and bylaws to reduce the number of demolitions in Brookline need to be carefully integrated with one another and the Town's response to Section 3A of M.G.L. Chapter 40A; and

WHEREAS, the Town has just begun a comprehensive planning and zoning reform effort to define a community driven vision for our future land-use, and we need to minimize the loss of significant structures in the interim.

NOW THEREFORE BE IT RESOLVED, that Town Meeting urges the Department of Planning and Community Development, to (1) study the trends and location of demolition activity in Brookline; (2) identify the main contributing factors precipitating demolitions; (3) review Section 5.09 paragraph 4 in relation to how these standards could be applied to improve development outcomes in the case of demolitions; (4) prepare changes to the General By-Laws and the Zoning By-Law that are consistent with sound land use planning goals and that would reduce the number of buildings that are demolished in Brookline, and (5) submit relevant warrant articles for consideration at a future Town Meeting.

BE IT FURTHER RESOLVED that Town Meeting urges the Department of Planning and Community Development to consider measures to reduce the number of demolitions in Brookline, such as:

- Reducing the allowable floor area ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures.
- Developing neighborhood-sympathetic form-based zoning~~.~~, consistent with M.G.L. 40A
- Allowing a greater number of housing units—including affordable units—than the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction.

- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw.
- Extending the current 12 month and 18 month demolition delays respectively to 18 and 24 months, except as it pertains to affordable housing as defined in 4.08 of the Bylaw.
- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it to achieve Brookline's affordable housing goals~~without demolition, as required in some locations in the state~~.
- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.), except if it is part of an affordable housing overlay district or otherwise impedes affordable housing development
- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline.

Amendment to motion on article 13 as it appears on page 13-13 and following of the combined reports.
This amendment made by Simon Grossman TMM7, seconded by C. Scott Ananian TMM10.
Changes in underline and blue.

Moved that the Town ~~will~~ (1) amend the Zoning By-law Article 5.09, Design Review, by adding a new Section 5.09(2)(o), and (2) amend the Zoning By-law, Article 4.01, Permitted Uses, by adding a new Section 4.01(3) (d), both as follows:

18 1. Zoning By-law, § 5.09 Design Review, 2. Scope

(o) Any principal structure for which an application for a full demolition has resulted in a stay of demolition imposed by the Preservation Commission in accordance with the Town's bylaws without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission; provided, however, that this subparagraph o. shall not apply to principal structures in the S-4- and S-25 Districts, nor to any such structure otherwise subject to design review

under this Section 5.09, nor projects containing at least 75% affordable housing units as defined in section 4.08 of the zoning bylaw**.**

2. Zoning By-law, § 4.01, Permitted Uses, 3.
(d) The use necessitates design review that is subject to § 5.09.2.o.

Amendment to Grossman/Ananian motion on Article 13 as printed in supplement #1 of the combined reports on article 13.
This amendment made by Bob Lepson, seconded by Michael Kushner.

To amend the Grossman/Ananian motion on Article 13 by changing "75%" to "50%".

Clean copy of resulting amendment after Lepson/Kushner motion.
Original motion in boldface; changes in underline and blue.

Moved that the Town ~~will~~ (1) amend the Zoning By-law Article 5.09, Design Review, by adding a new Section 5.09(2)(o), and (2) amend the Zoning By-law, Article 4.01, Permitted Uses, by adding a new Section 4.01(3) (d), both as follows:

18 1. Zoning By-law, § 5.09 Design Review, 2. Scope
(o) Any principal structure for which an application for a full demolition has resulted in a stay of demolition imposed by the Preservation Commission in accordance with the Town's bylaws without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission; provided, however, that this subparagraph o. shall not apply to principal structures in the S-4- and S-25 Districts, nor to any such structure otherwise subject to design review under this Section 5.09, nor projects containing at least 50% affordable housing units as defined in section 4.08 of the zoning bylaw**.**

ARTICLE 12

TWELFTH ARTICLE

Submitted by: Nancy Heller and Sean Lynn-Jones

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

By adding the following new Section 4.14 (language to be inserted appears in **bold**):

§4.14--TEMPORARY DEMOLITION MORATORIUM

1. Purpose

The purpose of this section is to temporarily prevent the demolition of buildings that are principal structures while the Department of Planning and Community Development engages in planning studies that respond to Section 3A of M.G.L. Chapter 40A, including reducing the likelihood of demolitions and preserving moderately-priced and affordable housing.

.

2. Moratorium

a. The Building Department shall not issue any permits for demolition of a building in Brookline that is a residential dwelling where the dwelling is to be replaced with any residential structure that will change the building footprint, subject to the exceptions enumerated below. "Demolition" and "Building" are defined as in Section 5.3.2 of Article 5.3 of the Town's General By-Laws.

b. Geographical Scope—The Temporary Demolition Moratorium shall apply throughout Brookline, subject to the exceptions enumerated below.

c. Duration—The Temporary Demolition Moratorium shall be effective from the date of its adoption by Town Meeting until December 31, 2023; provided, however, that by vote at Town meeting before said date, the Temporary Demolition Moratorium may be extended for an additional period to continue planning studies necessary to promote the establishment of long-term regulations consistent with sound land use planning goals and objectives. It is anticipated that any amendments to the General By-Law and any Zoning By-Law and map amendments will be completed no later than the Fall 2023 Special Town Meeting.

3. Exceptions

a. Emergency Demolition for Health and Safety Reasons—The Temporary Demolition Moratorium shall not restrict the Building Commissioner from immediately ordering the demolition of any building in the event of imminent danger to the public's safety or health due to deteriorated conditions. Prior to such demolition the structure shall be inspected by the Building Commissioner, and findings and reasons for immediate demolition shall be recorded in a written report to the Planning Board, Preservation Commission, and Demolition Prevention Committee.

b. Town, State, or Federal Property—The Temporary Demolition Moratorium shall not apply to any buildings owned by the Town of Brookline, the Commonwealth of Massachusetts, the federal government of the United States of America, or any foreign government.

c. Demolition Permits that Have Been Granted—The Temporary Demolition Moratorium shall not apply to any demolition permits that have already been granted as of the effective date of the moratorium.

d. Accident or Disaster—The Temporary Demolition Moratorium shall not apply to demolitions that are the result of fire, accidental catastrophic damage, or a natural disaster. In any such case, demolition will be allowed only if the Building Commissioner declares that the damage is of such an extent that full demolition is necessary.

4. 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 by a court of competent jurisdiction or the office of the Attorney General of the Commonwealth of Massachusetts, the remainder shall continue to be in full force and effect.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Why Do We Need a Demolition Moratorium?

- There are lots of demolitions in Brookline.
- Demolitions harm the climate and the environment. The greenest building is the building that already exists. [This point could be supported in detail with references to embodied carbon, etc.]
- Demolitions eliminate moderately priced housing and replace it with more expensive units. The number of housing units usually does not increase after a demolition. Instead, the demolished building is replaced with a new building that contains the same number of units, but the new units are larger and much more expensive than the demolished units.
- Demolitions eliminate attractive buildings that contribute to the overall look and feel of the streetscape and often replace them with buildings that are out of scale and do not contribute to an attractive and welcoming public realm
- Demolitions often include removing all the trees on a property.
- Demolitions often eliminate greenspace or open space
- Demolitions sometimes destroy buildings with architectural or historical significance.

Why Do We Need a Moratorium if We Already Have a Demolition Delay By-Law?

- The current Demolition Delay By-Law only applies to properties with historical or architectural significance. The moratorium would apply to all residential buildings.
- Despite our demolition delay by-law, it is frequently the case that developers simply wait out the delay, the building is demolished and replacement structures are often incompatible with neighboring structures.
- Tearing down buildings has adverse effects on the climate and the environment, even if the demolished buildings are not historic.
- Demolition also tends to destroy trees and eliminate open space and greenspace, even if the demolished buildings are not historic.
- Demolition also changes the character of a streetscape (size, form, and massing), even if the demolished buildings are not historic.
- Because the current bylaw provides for demolition stays of a maximum of 12 months (in most cases) or 18 months (if the property is in a National Register of Historic Places district), it often fails to protect buildings of architectural or historical significance. The stay may expire before, for example, neighbors and Town Meeting can establish a local historic district.
- A moratorium would allow more time to consider and implement new policies to reduce the number of demolitions.

- A moratorium also would prevent demolitions while Brookline considers how to respond to the new state legislation (Section 3A of M.G.L. Chapter 40A) calling for "as of right" multifamily development in MBTA communities.

What Can Be Done to Prevent Demolitions?

During the Moratorium, the Department of Planning and Community Development could consider revisions to the General By-Laws and Zoning By-Law that could be adopted by Town Meeting before the Moratorium expires. Such revisions could include:

- Extend demolition delays to a maximum of 24 months.
- Require demolition applicants to make a good faith effort to sell the property to someone who will preserve it.
- Extend the special permit for demolition requirement in Section 5.09 2a of the Zoning By-Law to other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) or L-0.5 (CL) Districts requires a special permit for demolition.)
- Extend the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Corner Design Overlay District to other parts of Brookline.
- Allow properties subject to a preservation restriction (preservation easement or single-property LHD?) to include more residential units than allowed by current zoning. For example, single-family houses subject to a preservation restriction could be converted to two-family dwellings or have two accessory dwelling units.
- Reduce the allowable FAR in certain zoning districts where the allowable FAR greatly exceeds the current structure's FAR.
- Allow a greater number of housing units than the underlying zoning if the principal structure is preserved.
- Other preservation incentives that creative thinkers might offer!

<u>Definition of "Building" and "Demolition" in Article 5.3 of the General By-Law</u>
[These definitions could be incorporated into the moratorium or cited by cross-reference.]

c. "Building" - any combination of materials having a roof and permanent foundation and forming a shelter for persons, animals or property.

h. "Demolition" – (i) the act of pulling down, destroying. removing or razing a Building or a significant portion thereof, by substantially removing or substantially covering one side or removing 25% or covering 25% of the exterior walls of the building, or substantially removing or substantially altering the roof;(ii) moving a Building from its site with no permitted new location for said Building; (iii) in the case of a Building within Section 5.3.5(b), substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space that has generally been open to the public and is integral to the historic character of the building; (iv) in the case of a building within Section 5.3.5(b), the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the Building, or (v) commencing any of the foregoing work. "Demolition" as used herein shall be deemed to include Demolition by Neglect.

i. "Demolition by Neglect" - a process of ongoing damage to the fabric, viability and/or functionability of a building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

MOTION OFFERED BY THE PETITIONERS

VOTED: That the Town adopt the following resolution:

A Resolution to urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline

WHEREAS, many buildings are being demolished in Brookline; and

WHEREAS, demolitions contribute to carbon emissions and have negative effects on climate change and the environment, leading many experts to say that "the greenest building is the building that already exists"; and

WHEREAS, demolitions often eliminate moderately priced housing and replace it with more expensive units without increasing the overall number of housing units; and

WHEREAS, demolitions eliminate attractive buildings that contribute to the overall look and feel of the streetscape and often replace them with buildings that are out of scale and do not contribute to an attractive and welcoming public realm; and

WHEREAS, demolitions often include removing all the trees on a property; and

WHEREAS, demolitions often eliminate greenspace or open space; and

WHEREAS, demolitions sometimes destroy buildings with architectural or historical significance; and

WHEREAS, recent state legislation (Section 3A of M.G.L. Chapter 40A) calls for MBTA communities to adopt zoning for "as of right" multifamily development in areas near transit no later than December 31, 2023; and

WHEREAS, Brookline's Department of Planning and Community Development will develop the Town's response to Section 3A of M.G.L. Chapter 40A with the goal of submitting recommendations to the November 2023 Town Meeting; and

WHEREAS, any new policies and bylaws to reduce the number of demolitions in Brookline need to be carefully integrated with one another and the Town's response to Section 3A of M.G.L. Chapter 40A; and

WHEREAS, the Town has just begun a comprehensive planning and zoning reform effort to define a community driven vision for our future land-use, and we need to minimize the loss of significant structures in the interim.

NOW THEREFORE BE IT RESOLVED, that Town Meeting urges the Department of Planning and Community Development, to (1) study the trends and location of demolition activity in Brookline; (2) identify the main contributing factors precipitating demolitions; (3) review Section 5.09 paragraph 4 in relation to how these standards could be applied to improve development outcomes in the case of demolitions; (4) prepare changes to the General By-Laws and the Zoning By-Law that are consistent with sound land use planning goals and that would reduce the number of buildings that are demolished in Brookline, and (5) submit relevant warrant articles for consideration at a future Town Meeting.

BE IT FURTHER RESOLVED that Town Meeting urges the Department of Planning and Community Development to consider measures to reduce the number of demolitions in Brookline, such as:

- Reducing the allowable floor area ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures.

- Developing neighborhood-sympathetic form-based zoning.

- Allowing a greater number of housing units—including affordable units—than

the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction.

- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw.

- Extending the current 12 month and 18 month demolition delays respectively to 18 and 24 months.

- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it without demolition, as required in some locations in the state.

- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.)

- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline.

PLANNING BOARD REPORT AND RECOMMENDATION

This warrant article, submitted by citizen petition, was initially a Zoning By-Law amendment but was subsequently changed by the petitioners to a resolution requesting that the Planning Department study different ways demolitions could be reduced. The resolution came about because Town Counsel had concerns with the legality of the initially submitted Zoning Amendment. The resolution recommends that the Planning Department explore strategies, including form-based zoning, allowing extra affordable units, and having design review boards, to see if any of these methods would help minimize demolitions, maintain the Town's historic character and preserve middle class housing, because demolitions are typically replaced with much bigger structures, and larger units with higher sales prices.

On October 19th, the Planning Board held a public hearing on warrant article 12. The Board members supported the article and felt that some of the alternatives listed above would be useful in reducing demolitions. One members suggested that a special permit process could be used to allow additional units where a building would be saved. A member of the public who had been to France described an older area that had been preserved and became a real draw for tourists.

Therefore, the Planning Board voted Favorable Action on Art. XII. The roll call vote went as follows: Zarrillo – aye, Hamlin– aye, Brue – aye, and Hines – aye. (Heikin, Hiller and Chipimo were not present.)

SELECT BOARD'S RECOMMENDATION

The Select Board will be taking up the proposed resolution at their 11/15/22 meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 12, as amended, by a vote of 23-0 with 1 abstention.

Executive Summary	WA 12 is one of three warrant articles that collectively seek to limit the frequency with which existing residential housing stock in Brookline is lost through the granting of demolition permits. WA 12, as originally submitted, sought to add a new Section 4.14 to the Town's Zoning By-Law whose purpose would have been to "temporarily prevent the demolition of buildings that are principal structures while the Department of Planning and Community Development engages in planning studies that respond to Section 3A of M.G.L. Chapter 40A, including reducing the likelihood of demolitions and preserving moderately-priced and affordable housing." Following concerns expressed by Associate Town Counsel Jonathan Simpson in a September 16, 2022 memorandum to the Advisory Committee's Land Use Subcommittee and at a Subcommittee hearing on September 19, the Petitioners proposed an Alternate Motion under WA 12 as a "Resolution to urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline" in place of the originally proposed by-law. With some small modifications to the text of the Resolution including the elimination of a specific November 2023 deadline for completion of the requested studies, all of which were accepted by the Petitioners, the Advisory Committee voted to support it.
Voting Yes will...	Support the proposed "Resolution to urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline."
Voting No will...	Reject the proposed Resolution

Financial impact	Although the Petitioners have not provided any specific budgetary impact estimate, the tasks outlined in the proposed Resolution would require Planning Department staff resources. With the originally proposed November 2023 deadline eliminated from the draft resolution, the Planning Department did not indicate that any additional staff would be required to pursue the requested studies.
Legal implications	Unknown. The Resolution calls for the Planning Department to study various legal measures that could be implemented; presumably such examinations would consider the legal implications of these potential measures.

Introduction

In their revised Explanation, the Petitioners state that "Article 11 and Article 12 are intended to work together to limit the number of buildings that are being demolished in Brookline. Article 11 attempts to slow the pace of demolitions, while Article 12 [as revised] urges the Department of Planning and Community Development to study and propose measures to reduce the number of demolitions or to mitigate their impact." In its original as-filed version, Article 12 had called for a new zoning by-law provision that would have "temporarily prevent[ed] the demolition of buildings that are principal structures while the Department of Planning and Community Development engages in planning studies that respond to Section 3A of M.G.L. Chapter 40A, including reducing the likelihood of demolitions and preserving moderately-priced and affordable housing."

In a September 16, 2022 memorandum to the Advisory Committee's Land Use, Zoning and Sustainability Subcommittee, Associate Town Counsel Jonathan Simpson advised that he had "substantial concerns about the legality of both Articles 12 and 13 [note: see report on WA 13 for resolution of related concerns]." He advised that "Our office is continuing to research the issues involved, but I am concerned that passage of either article will open the Town up to substantial legal exposure if they are used to deny the issuance of otherwise legitimate demolition permits. It is an open question whether zoning requirements can be applied to demolitions at all. Zoning is fundamentally the regulation of uses of property in order to achieve municipal goals. Demolition, by contrast, is the process by which property transitions from one use to another. … I believe this may be because such a by-law would, if challenged, be found arbitrary, irrational, unreasonable or unrelated to a valid objective of the Zoning By-Law."

Following discussions with the Subcommittee, the Petitioners substituted the original version of WA 12 with a Resolution that would simply "urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline."

Discussion
In the revision, the Petitioners replaced the by-law with a resolution. While the Resolution had originally specified that these studies should be completed in time for the November 2023 Special Town Meeting, Polly Selkoe, Assistant Director for Regulatory Planning, advised that the recommended studies could not be completed in so short a time frame. It was suggested that the specific November 2023 completion deadline be replaced by "a future town meeting," which was agreed to by the Petitioners and Subcommittee.

The Petitioners noted that the number of demolition applications in Brookline has been slowly but steadily increasing over time, and that the upward trend is clear. About 70% of demolition applications are for full demolition. About 46% of full demolition applications are determined by the Preservation Commission to be significant. The Petitioners note that although the number of demolition applications and demolitions in any given year may seem relatively small, the cumulative impact of the annual demolitions is significant – over the seventeen years from 2005 through 2021, 578 applications for full demolition were submitted, of which 400 involved buildings that were considered to be significant.

The Resolution identifies a number of specific potential long-term measures that might be adopted so as to prevent demolitions:

- Reducing the allowable floor area ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures;

- Developing neighborhood-sympathetic form-based zoning;

- Allowing a greater number of housing units—including affordable units—than the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction;

- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw;

- Extending the current 12 month and 18 month demolition delays respectively to 18 and 24 months;

- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it without demolition, as required in some locations in the state;

- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.); and

- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline. (Warrant Article 13 of the November 2022 Town Meeting addresses this issue.)

These were not offered either as an exhaustive or a mandatory list of approaches that would be studied, but as suggestions for addressing the demolition issue generally.

In the subcommittee discussion, the concern was raised that the Resolution is too broad, targeting all demolitions. As such, it's too blunt an instrument and because of this presents an anti-growth, anti-density, anti-economic development and anti-affordable housing agenda. However, others suggested that the Petitioners were not "anti-growth," but want "quality growth." The petitioners noted that the resolution has attempted to strike a balance between summarily opposing all demolitions (some of which might well be improvements over existing conditions) and simply allowing the acceleration of the spate of as-of-right demolitions to continue unabated without regard to their impacts on the community overall.

It was also suggested that uncontrolled demolitions operate at cross-purposes with the Town's (and the State's) net-zero carbon emissions goals. "The greenest building is the building that already exists." Preservation Commission member and former Chair Elton Elperin noted that "on average, new construction takes 30 years of the carbon use of that building to equal the carbon footprint of its construction."

Recommendation
With the language modifications as adopted by the Petitioners and the Subcommittee, the Advisory Committee voted 23-0-1 to recommend FAVORABLE ACTION on Warrant Article 12. The amended motion follows.

VOTED: That the Town adopt the following resolution:

<u>A Resolution to urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline</u>

WHEREAS, many buildings are being demolished in Brookline; and

WHEREAS, demolitions contribute to carbon emissions and have negative effects on climate change and the environment, leading many experts to say that "the greenest building is the building that already exists"; and

WHEREAS, demolitions often eliminate moderately priced housing and replace it with more expensive units without increasing the overall number of housing units; and

WHEREAS, demolitions eliminate attractive buildings that contribute to the overall look and feel of the streetscape and often replace them with buildings that are out of scale and do not contribute to an attractive and welcoming public realm; and

WHEREAS, demolitions often include removing all the trees on a property; and

WHEREAS, demolitions often eliminate greenspace or open space; and

WHEREAS, demolitions sometimes destroy buildings with architectural or historical significance; and

WHEREAS, recent state legislation (Section 3A of M.G.L. Chapter 40A) calls for MBTA communities to adopt zoning for "as of right" multifamily development in areas near transit no later than December 31, 2023; and

WHEREAS, Brookline's Department of Planning and Community Development will develop the Town's response to Section 3A of M.G.L. Chapter 40A with the goal of submitting recommendations to the November 2023 Town Meeting; and

WHEREAS, any new policies and bylaws to reduce the number of demolitions in Brookline need to be carefully integrated with one another and the Town's response to Section 3A of M.G.L. Chapter 40A; and

WHEREAS, the Town has just begun a comprehensive planning and zoning reform effort to define a community driven vision for our future land-use, and we need to minimize the loss of significant structures in the interim.

NOW THEREFORE BE IT RESOLVED, that Town Meeting urges the Department of Planning and Community Development, to (1) study the trends and location of demolition activity in Brookline; (2) identify the main contributing factors precipitating demolitions; (3) review Section 5.09 paragraph 4 in relation to how these standards could be applied to improve development outcomes in the case of demolitions; (4) prepare changes to the General By-Laws and the Zoning By-Law that are consistent with sound land use planning goals and that would reduce the number of buildings that are demolished in Brookline, and (5) submit relevant warrant articles for consideration at a future Town Meeting.

BE IT FURTHER RESOLVED that Town Meeting urges the Department of Planning and Community Development to consider measures to reduce the number of demolitions in Brookline, such as:

- Reducing the allowable floor area ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures.

- Developing neighborhood-sympathetic form-based zoning.

- Allowing a greater number of housing units—including affordable units—than the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction.

- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw.

- Extending the current 12 month and 18-month demolition delays respectively to 18 and 24 months.

- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it without demolition, as required in some locations in the state.

- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.)

- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline.

ARTICLE 14 ADVISORY COMMITTEE VOTES

Article Description	**Resolution to Study Proposals to Reduce the Number of Demolitions in Brookline**

AC recommendation (Favorable Action unless indicated)	**23-0-1**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	A
Patty Correa	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	
Joslin Murphy	
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y

Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 12

AMENDMENT TO THE HELLER, LYNN-JONES MOTION OFFERED BY SIMON GROSSMAN, TMM7, AND C. SCOTT ANANIAN, TMM10
(Changes in underline and blue.)

A Resolution to urge the Department of Planning and Community Development to study proposals to reduce the number of demolitions in Brookline

WHEREAS, many buildings are being demolished in Brookline; and

WHEREAS, demolitions contribute to carbon emissions and have negative effects on climate change and the environment, leading many experts to say that "the greenest building is the building that already exists"; and

WHEREAS, demolitions often eliminate moderately priced housing and replace it with more expensive units without increasing the overall number of housing units; and

WHEREAS, demolitions eliminate attractive buildings that contribute to the overall look and feel of the streetscape and often replace them with buildings that are out of scale and do not contribute to an attractive and welcoming public realm; and

WHEREAS, demolitions often include removing all the trees on a property; and

WHEREAS, demolitions often eliminate greenspace or open space; and

WHEREAS, demolitions sometimes destroy buildings with architectural or historical significance; and

WHEREAS, recent state legislation (Section 3A of M.G.L. Chapter 40A) calls for MBTA communities to adopt zoning for "as of right" multifamily development in areas near transit no later than December 31, 2023; and

WHEREAS, Brookline's Department of Planning and Community Development will develop the Town's response to Section 3A of M.G.L. Chapter 40A with the goal of submitting recommendations to the November 2023 Town Meeting; and

WHEREAS, any new policies and bylaws to reduce the number of demolitions in Brookline need to be carefully integrated with one another and the Town's response to Section 3A of M.G.L. Chapter 40A; and

WHEREAS, the Town has just begun a comprehensive planning and zoning reform effort to define a community driven vision for our future land-use, and we need to minimize the loss of significant structures in the interim.

NOW THEREFORE BE IT RESOLVED, that Town Meeting urges the Department of Planning and Community Development, to (1) study the trends and location of demolition activity in Brookline; (2) identify the main contributing factors precipitating demolitions; (3) review Section 5.09 paragraph 4 in relation to how these standards could be applied to improve development outcomes in the case of demolitions; (4) prepare changes to the General By-Laws and the Zoning By-Law that are consistent with sound land use planning goals and that would reduce the number of buildings that are demolished in Brookline, and (5) submit relevant warrant articles for consideration at a future Town Meeting.

BE IT FURTHER RESOLVED that Town Meeting urges the Department of Planning and Community Development to consider measures to reduce the number of demolitions in Brookline, such as:

- Reducing the allowable floor area ratio (FAR) in certain zoning districts where the allowable FAR significantly exceeds the FAR of current structures.
- Developing neighborhood-sympathetic form-based zoning~~-~~, consistent with M.G.L. 40A
- Allowing a greater number of housing units—including affordable units—than the underlying zoning allows, if the principal structure is preserved, perhaps through a preservation restriction.
- Allowing the creation of Neighborhood Conservation Districts and a related design review board under M.G.L. Chapter 40A (Zoning) to replace the Town's disallowed Home Rule based Neighborhood Conservation District bylaw.
- Extending the current 12 month and 18 month demolition delays respectively to 18 and 24 months, except as it pertains to affordable housing as defined in 4.08 of the Bylaw.
- Requiring demolition applicants to make a documented good faith effort to sell the property to someone who will use or repurpose it to achieve Brookline's affordable housing goals~~without demolition, as required in some locations in the state~~.
- Extending the special permit for demolition required in Section 5.09 2a of the Zoning By-Law to certain other parts of Brookline. (According to that section, all properties on or within 100 feet of Washington, Harvard, Beacon, and Boylston Streets, and Brookline Avenue or any structure or outdoor use on a lot any part of which is located in the G-1.75 (CC) or L-0.5 (CL) Districts requires a special permit and design review for demolition and subsequent construction.), except if it is part of an affordable housing overlay district or otherwise impedes affordable housing development

- Extending the design review/special permit requirement that applies to any substantially complete demolition of a principal structure in the Coolidge Comer Design Overlay District to certain other parts of Brookline.

ARTICLE 13

THIRTEETH ARTICLE

Submitted by: Susan M. Roberts (TMM Pct. 17), Elton Elperin, Dennis DeWitt

To see if the Town will (1) amend the Zoning By-law Article 5.09, Design Review, by adding a new Section 5.09(2)(o), and (2) amend the Zoning By-law, Article 4.01, Permitted Uses, by adding a new Section 4.01(3) (d), both as follows:

1. Zoning By-law, § 5.09 Design Review, Section 2
   (o) Any demolition of a principal structure for which a stay of demolition imposed by the Preservation Commission in accordance with the Town's bylaws has expired without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission.
2. Zoning By-law, § 4.01, Permitted Uses, Section 3
   (d) The use necessitates the demolition of a principal structure that is subject to § 5.09(2)(o).

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Goal. This proposed warrant article seeks to reduce the alarming number of demolitions of 19th and early 20th century single, two- and three-family homes throughout Town by encouraging neighborhood projects that (i) preserve, renovate, or add to principal structures found by the Preservation Commission to be historically or architecturally significant, and therefore subject to the Town's demolition by-laws, or (ii) replaces them with structures that have been subject to design review in accordance with Brookline's Community and Environmental Impact and Design Standards.

The Needed By-law Change. The proposed new Zoning By-law provision is similar to Brookline's existing Design Review By-law, §5.09(2)(m), which requires a special permit for any substantially complete demolition of a principal structure within Coolidge Corner Overlay District. The new provision expands the geographic applicability of the required special permit to all parts of Town, but narrows applicability only to those demolitions of structures found by the Preservation Commission to be historically or architecturally significant under the Town's demolition By-laws. **In other words, we already have a By-law that would help accomplish our goal, but it only applies to Coolidge Corner.**

An Exposé of the Problem. Many of the recent small project developments in Brookline have been greeted with general, if not universal, dismay. The projects often are single-lot insertions into a residential neighborhood, requiring demolition of a 19th or early 20th century homes that neighbors regard with affection. The replacement structures typically cater to the luxury market, sometimes adding a unit if the zoning allows that by right. Following demolition, the new structures generally fail to fit gently into the existing streetscape. They have a markedly larger footprint than the original structure resulting in loss of ground level green space and removal of trees. Less open space necessitates below grade, beneath-the-building parking, a luxury component which, when combined with elevators, can accommodate owners' reaching their units by elevator from the parking garage. However, below-building parking requires the buildings to be elevated, making the traditional entranceways difficult to achieve. The buildings presenting a blank wall to the street where the windows of the first floor would have been. The resulting replacement buildings now end up taller than their neighbors, especially given elevator heads, outdoor patios, and parapets. To maximize square footage and marketability, the buildings' composition is best served by being a squared-off box, rather than a form that incorporates features of the original building, such as a gabled or hipped roof with dormers. Buildings that once had contributed to the neighborhood scale, landscaping, and social interactions have now been replaced by structures that turn their backs on their neighbors, both functionally and aesthetically. Community cohesion has been degraded.

A Key Collateral Concern:

Neighbors and community members throughout Brookline detest the wastefulness of these demolitions. However, in our struggle with climate change we can measure that waste. It is estimated that the construction industry causes roughly 20% of annual CO2 emissions. The carbon footprint of building replacement after demolition should be avoided wherever possible. It can be avoided by building additions to existing structures. This can preserve the beloved streetscape while preserving embodied carbon.

The Bottom Line: Certainly, there is a time and place for demolitions to occur. But time will tell whether, if adopted, the proposed warrant article will be effective in encouraging preservation of structures with additions. **One thing appears clear in Brookline: The community, given the opportunity to demolish their neighbors' buildings, would prefer not to. But, if demolition is forced on them, they would at least like the opportunity to review the proposed replacement**.

MOTION OFFERED BY THE PETITIONERS

VOTED: That the Town (1) amend the Zoning By-law Article 5.09, Design Review, by adding a new Section 5.09(2)(o), and (2) amend the Zoning By-law, Article 4.01, Permitted Uses, by adding a new Section 4.01(3) (d), both as follows (language to be inserted appears in **bold underlined**):

1. Zoning By-law, § 5.09 Design Review, Section 2

   (o) Any principal structure for which an application for a full demolition has resulted in a stay of demolition imposed by the Preservation Commission in

accordance with the Town's bylaws without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission; provided, however, that this subparagraph o. shall not apply to principal structures in the S-40 and S-25 Districts, nor to any such structure otherwise subject to design review under this Section 5.09.

2. Zoning By-law, § 4.01, Permitted Uses, Section 3

(d) The use necessitates design review that is subject to § 5.09(2)(o).

ADDITIONAL EXPLANATION PROVIDED BY THE PETITIONERS

Co-Petitioners Support Advisory Committee's Recommendation in Favor of Warrant Article 13. Co-petitioners are very appreciative of the boards', committees' and commissions' public hearings in connection with Warrant Article 13, along with comments provided by the public and Town Counsel, Planning and Community Development, and Building Commission staff. *The Advisory Committee now has made their recommendation in favor of Warrant Article 13, as amended from the original warrant article, and co-petitioners support that recommendation.*

Warrant Article 13 Clarifications and Limitations in Scope. During the warrant article vetting process, certain questions and concerns were raised that co-petitioners addressed by clarifying some of the article's language and narrowing its scope.

Co-petitioners clarified that the article (i) promotes design review of replacement structures following demolition of structures found significant by the Preservation Commission (*e.g.*, it does not promote delaying or halting demolitions), (ii) does not require that developers wait until the end of a demolition delay before proceeding with design review, and (iii) does not apply to any structures otherwise subject to design review under the existing Zoning By-law.

Co-petitioners narrowed the article's scope by (iv) limiting its coverage to full demolitions only, and (v) excluding from applicability Zoning Districts S-25 and S-40.

WARRANT ARTICLE 13 EXPLANATION [Submitted with original warrant article, as last amended on 10/22/22]

The Goal. This proposed warrant article seeks to reduce the alarming number of demolitions of historically or architecturally significant 19th and early 20th century single, two- and three-family homes throughout Town and their ever more frequent replacement by disharmonious structures. By requiring design review under Brookline's Zoning By-law in certain specified instances, the warrant article, if passed, would encourage neighborhood projects that (i) preserve, renovate, and/or add to principal structures found by the Preservation Commission to be historically or architecturally significant under the Town's demolition By-law, or (ii) include

replacements of such significant structures that have been subject to the Town's design review process, so as to comply with, among other applicable By-laws, Brookline's Community and Environmental Impact and Design Standards.

The Needed By-law Change. The proposed new Zoning By-law provision is similar to Brookline's existing Design Review By-law, §5.09(2)(m), which requires a special permit for any substantially complete demolition of a principal structure within Coolidge Corner Overlay District. The new provision expands the geographic applicability of the required special permit to all parts of Town (except for S-25 and S-40 Districts) but narrows applicability only to full demolitions of structures found by the Preservation Commission to be historically or architecturally significant under the Town's demolition By-laws. **In other words, we already have a By-law that would help accomplish our goal, but it only applies to Coolidge Corner.**

An Exposé of the Problem. Many of the recent small project developments in Brookline have been greeted with general, if not universal, dismay. The projects often are single-lot insertions into a residential neighborhood, requiring demolition of 19th or early 20th century homes that neighbors regard with affection. The replacement structures typically cater to the luxury market, sometimes adding a unit if the zoning allows that by right. Following demolition, the new structures generally fail to fit gently into the existing streetscape. They have a markedly larger footprint than the original structure resulting in loss of ground level green space and removal of trees. Less open space necessitates below grade, beneath-the-building parking, a luxury component which, when combined with elevators, can accommodate owners' reaching their units by elevator from the parking garage. However, below-building parking requires the buildings to be elevated, making traditional entranceways difficult to achieve, with buildings presenting a blank wall to the street where the windows of the first floor would have been. The resulting replacement buildings now end up taller than their neighbors, especially given elevator heads, outdoor patios as open space, and parapets. To maximize square footage and marketability, the buildings' composition is best served by being a squared-off box, rather than a form that incorporates features of the original building, such as a gabled or hipped roof with dormers. Buildings that once had contributed to the neighborhood scale, landscaping, and social interactions have now been replaced by structures that turn their backs on their neighbors, both functionally and aesthetically. Community cohesion has been degraded in such circumstances.

A Key Collateral Concern is the Environmental Impact. It is hoped that design review in the instances required by Warrant Article 13, which would include the application of the Community and Environmental Impact and Design Review Standards (particularly those relating to preservation and climate protection), would result in an increase in designs that include preservation of some or all of a significant structure, as doing so would result in significantly less adverse environmental impact when compared with a full building demolition. It is evident from Town Meeting's overwhelming approval of climate protection related warrant articles over the last several years that climate protection is a critical underpinning of Brookline's future. It follows that many in Brookline detest the wastefulness and adverse environmental impacts from building demolitions and the significant increases in carbon footprint emissions that measurably result. As Carl Elefante, former president of the American Institute of Architects, is famously quoted on this point, "[t]he greenest building is the one that already exists." By

saving the essence of our significant structures, we can lessen demolition's adverse environmental impacts and preserve beloved streetscapes.

The Bottom Line: Time will tell whether, if adopted, this proposed warrant article will more frequently encourage preservation of structures that are renovated and may include additions. **One thing appears clear in Brookline, however: The community, given the opportunity to demolish their neighbors' buildings, would prefer not to. Therefore, if demolition is forced on them, they would at least like the opportunity to review the proposed replacement via Brookline's design review process that includes applying the Zoning By-law's Community and Environmental Impact and Design Standards.**

[Excerpts from Zoning By-law 5.09.4
"Community and Environmental Impact and Design Standards"]
(Highlights added by Co-petitioners flag Standards that relate to consideration of neighboring properties and streetscapes)

Brookline Zoning By-law 5.09.4 Community and Environmental Impact and Design Standards

The following standards shall be utilized by the Board of Appeals and Planning Board reviewing all site and building plans. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the reviewing authority. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specification of one or more particular architectural styles is not included in these standards. The standards of review outlined in paragraphs a. through o. below shall also apply to all accessory buildings, structures, freestanding signs and other site features, however related to the major buildings or structures.

a. Preservation of Trees and Landscape -Trees and other landscape features shall be preserved
in a natural state, insofar as practicable, by minimizing tree and soil removal, and any grade
changes shall be in keeping with the general appearance of neighboring developed areas. Public shade trees within the public right-of-way are governed by Massachusetts General Law Chapter 87 and, where feasible, shall be preserved and the appropriate addition of such trees is encouraged.

b. Relation of Buildings to Environment—Proposed development shall be related harmoniously to the terrain, trees, landscape, and natural features. **The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets.**

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, massing, height, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area including existing abutting buildings and existng [sic] buildings that conform to the zoning by-law on lots of similar size in the neighborhood. **The Board of Appeals may require a modification in**

massing, scale, height, setbacks or design so as to make the proposed building more consistent with the form of such existing buildings and the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the massing, scale, setbacks and height of the building to more closely match such existing buildings and the existing streetscape, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

d. Open Space—**All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties.** The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance. All landscaped open space shall be continuously maintained.

k. **Heritage—With respect to Brookline's heritage, removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.**

l. Microclimate—With respect to the localized climatic characteristics of a given area**, any development which proposes new structures, new hard-surface ground coverage**, or the installation of machinery which emits heat, vapor, or fumes, **shall endeavor to minimize, insofar as practicable, any adverse impact on light, air,** and water resources, or on noise and temperature levels of the immediate environment. The development shall comply with the provisions of the Noise Control By-law.

m. Energy Efficiency—To the maximum extent possible, proposals shall utilize energy-efficient technology and renewable energy resources and shall adhere to the principles of energy conscious design with regard to orientation, building materials, shading, landscaping, and other elements. **Efforts shall be made to harmonize energy-related components with the character of the building and its surroundings and to prevent adverse effects on the energy consumption of neighboring structures and on the environment**.

PRESERVATION COMMISSION REPORT AND RECOMMENDATION

The Preservation Commission voted on November 1st, 2022 to recommend Favorable Action on Articles 11, 12 and 13 as submitted. The roll call votes went as follows:

Article 13: 6-0-0
Elperin- yes; King- yes; Kleiner-yes; Armstrong- yes; Panciera- yes; Jack- yes
Absent: Batchelor

Warrant Article 13 would amend the zoning by-law to require design review for all cases of full demolition of significant buildings, even after the stay of demolition has expired. This design review would be performed either by the Planning Board or by the Commission. The Commission believes that design review can achieve a pleasant fit of new buildings into the existing streetscape. It provides an independent critique by the Commission's design professionals, and allows them to mediate between concerned neighbors and the developer's team. Replacement buildings in areas where design review is not required sometimes fit poorly in the streetscape, with little regard for the design of their neighbors.
Volunteer time available to the Planning Board and Commission is limited. Our experience over many years is that the most intense concern for streetscape and neighborhood continuity is felt by the denser neighborhoods of north Brookline, so that is where our limited time should be spent. For that reason, we support the exclusion of the least dense neighborhoods, S-25 and S-40, from required review.

The Commission supports passage of Warrant Article 13.

Some commissioners have expressed the following concerns:

Volunteer time for design review is not unlimited, and an increase in design review will affect staff workload as well.

Brookline has a pressing need for affordable housing, and Article 13 does not address this issue. A comprehensive plan for housing is needed.

Requiring design review in additional cases may contribute to delay and increased costs for owners and developers.

Design review may lead to uniformity at the expense of quality architecture. Design review standards are vague.

PLANNING BOARD REPORT AND RECOMMENDATION

This zoning warrant article, submitted by citizen petition, would require design review of a replacement structure of any principal building (residential or commercial) proposed for full demolition, that is found to be architecturally or historically significant by the

Preservation Commission and could not reasonably be saved and was not located in an S-25 or S-40 zoning district.

The design review would be conducted by Planning Board under Sec. 5.09 Design Review, if the stay of demolition imposed by the Preservation Commission has expired, unless the Preservation Commission either (i) has found that there is no reasonable likelihood that the building can be preserved, restored, or moved; or (ii) has approved the use and design of the property following demolition. If the applicant waits out the stay or does not obtain approval of the replacement design from the Preservation Commission, a special permit would be required under a new section of the Zoning By-Law, Sec. 5.09.2.o, Scope. This new section of the Zoning By-Law is similar to the Design Review special permit that is required for buildings in the Coolidge Corner Overlay District under Sec. 5.09.m, except that it would apply town-wide. The purpose of this zoning by-law is to strongly encourage the applicant to work with the Preservation Commission on either preserving the building or proposing a plan that the Preservation Commission finds appropriate, so that the applicant does not have to go through the lengthy Planning Board and Board of Appeals Special Permit review and approval process. The petitioners made a presentation comparing projects where design review was involved with those lacking design review, and made a case for improved outcomes with design review.

Article 13 is different from Article 11, a General By-Law, because that article proposes to increase the demolition delay, if a building is found significant, to 24 months from the typical 12 month delay, or the longer 18 month delay for National Register Districts. No design review is required. Article 12 has now been changed from a Zoning By-Law to a Resolution for the Planning Department to study different methods that could be implemented to reduce the number of requested demolitions.

On October 12, 2022, a joint public hearing of the Zoning By-Law Committee and the Planning Board was held on Warrant Article 13. Paul Saner explained that EDAB had voted a recommendation of No Action on Warrant Article 13 because it applies town-wide and is too broad. However, several other Zoning By-Law Committee members pointed out that many projects are already subject to design review, and more than 50% of full demolitions are found significant. They were supportive of a Favorable Action vote. The Planning Board members agreed that Design Review under Section 5.09 had often improved projects, and felt that this proposal would not significantly increase the number of projects requiring design review. There was concern that broadening the number of projects requiring Design Review could potentially complicate the Town's efforts to meet the MBTA Communities regulations requirement that the Town create a zoning district where multi-family housing could be developed without a Special Permit. However, it was noted that the MBTA Communities zoning district could be exempted from this Special Permit requirement, while still utilizing Site Plan Review and Design Review. The Planning Board therefore felt that this warrant article was reasonable and they supported it.

Therefore, the Planning Board voted Favorable Action on Art. XIII as amended by the Petitioner. The roll call vote went as follows: Heikin – aye, Zarrillo – aye, Hamlin– aye, Brue – aye, Chipimo – aye, and Hines – aye. (Hiller and Hines– not present.)

SELECT BOARD'S RECOMMENDATION

This citizen petition proposes to require design review when an application is made for a full demolition of a principal building found significant by the Preservation Commission. There are some exceptions to this design review requirement, for example, a building in such poor condition that it could not be saved or if the building is located in one of the two larger residential zones (S-25 and S-40).

At its November 1st hearing, the Select Board heard a presentation by the petitioner why passage of this warrant article was important to help preserve the character of the Town. Design review by the Preservation Commission would be required if an applicant wished to lift a demolition stay. If the applicant chose not to ask for a lift of stay and did not seek design review of the new building, a special permit for design review by the Planning Board under Section 5.09 of the Zoning By-Law would be required. The petitioner explained that a design review special permit is already required for any new building in the Coolidge Corner Overlay District and for any new single or two-family residential building anywhere in Town, where a basement could be finished as habitable space in the future.

The Select Board discussed whether design review would necessarily result in a building that was considered more aesthetic by the majority of people in Town. It was noted that some buildings that don't undergo design review are generic in form, with no discernable design, and are built as large as possible under zoning, resulting in an unattractive building not in scale with the surrounding buildings. Conversely, they noted a good example of design review, where an Inn was saved from demolition and instead incorporated into the design of an attached new building. This design proved more acceptable to the neighborhood and included more housing units for the Town.

A majority of the Select Board felt that encouraging applicants to work with the Preservation Commission or Planning Board on design issues would result in more buildings being preserved or if demolished, new buildings that were more consistent with the character of its surrounding neighborhood.

Therefore, the Select Board voted Favorable Action on Article 13, as amended by the Petitioner.

ROLL CALL VOTE:

Aye:	No:	Abstain:
VanScoyac	Aschkenasy	Hamilton
Greene		
Sandman		

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 13, as amended, by a vote of 23-0 with no abstentions.

Executive Summary	Warrant Article 13 Amends Section 5.09 paragraph 2 of the Zoning By-Law to require Design Review when a structure found to be significant by the Preservation Commission is slated for full demolition. Two zoning districts, S-25 and S-40 are exempt from this By-Law change, which otherwise would be in effect Town-wide. The proposed change would extend the requirement for Design Review beyond those cases already named in Section 4.01, paragraph 3, item d., and Section 5.09, paragraph 2, items a through m. Design review is already a frequent and common occurrence due to the fact that our Zoning By-Law requires it along all major corridors, whenever a new building has 4 or more dwelling units, and for all development within the Coolidge Corner Overlay District, to name a few. The goal of the Article is to reduce the number of full demolitions and/or to improve the design and neighborhood fit of any replacement structure.
Voting Yes will...	Require Design Review for property owners/developers when they plan on demolishing structures found to be significant by the Preservation Commission in cases where design review is not already required under our Zoning By-Law.
Voting No will...	Make no change to the circumstances where Design Review is required.
Financial impact	The Planning Board and to a lesser degree the Planning and Community Development staff would add a small number of additional Design Review cases to their workload.
Legal implications	Town Counsel has agreed that the current language is workable and legal.

Introduction
Article 13 has been brought to Town Meeting by Susie Roberts, a TMM Pct. 17, Dennis DeWitt, former Preservation Commission member and Elton Elperin, current member of the Preservation Commission.

There has been an escalation in the number of demolitions in Brookline, with the highest number of full demolition requests on record being 57 in 2021. Widespread concern about the impacts on neighborhoods and streetscapes has been activated, with residents expressing dismay and unhappiness with the results. It should also be noted that year after year of demolishing significant structures has a cumulative impact, resulting in significant, unplanned change. Petitioner's noted that recent demolitions have resulted in the loss of moderately priced housing, including rentals, which are replaced with the same number of housing units, but the new units are super-luxury condominiums, an outcome that does not further the Town's efforts to retain affordable housing. The devastating environmental impact of demolition from embodied carbon and new construction, combined with site clear-cutting were also cited as negative consequences. The Advisory Committee was shown a presentation that illustrated some of the improvement possible through the imposition of Design Review, along with before and after demolition and redevelopment images that illustrate some of the concerns raised by the petitioners. This Article expands Design Review requirements beyond those cases already cited in our Zoning By-Law. It is hoped that more principal structures that are significant may be retained, and where that is not the case, that resulting redevelopment is better and more compatible with streetscapes and neighborhoods.

Evaluation Methodology/Research

- "Preserve existing housing" was the most frequently chosen response to a questionnaire about housing issues given as a part of the 2022 Housing Production Plan community input process. This was not the case for the previous 2016 HPP.
- Petitioners showed images of several projects where design review substantially improved development outcomes compared to those same projects as originally proposed.
- Requests for full demolitions are increasing, with 57 in 2021 being the highest number since 2005.
- Since 2005 there has been 578 Full Demolition requests, with 267 being for Significant structures.
- About 46% of Full Demolition requests are found to be Significant by the Preservation Commission.
- Comparing the time period of 2005-2011 vs. 2012-2021, there has been a 113% increase in applications to demolish properties deemed "significant" per year.
- Our current Zoning By-Law already requires Design Review in many situations, such as:
    - all structures in the Coolidge Corner Overlay District,
    - any structure within 100 ft. of Washington St., Beacon St., Commonwealth Ave., Harvard St., Brookline Avenue or Boylston St.,
    - Residential buildings with four or more units,
    - non-residential uses with 10,000 sq. ft. or 20 parking spaces,
    - non-residential uses greater than 5,000 sq. ft. in residential districts,
    - any exterior addition for which a special permit is required for FAR,
    - etc.

- Design Review is a common and frequent part of our development review process already. This Article simply expands the applicability of Design Review to cases of full demolition of significant principal structures that are not captured by existing Zoning By-Law requirements.

Discussion

The Land-Use, Zoning and Sustainability Sub-committee of the Advisory Committee held a (virtual) public hearing on Article 13 on Monday September 19, 2022 and a public meeting on Thursday, October 13, 2022. The Full Advisory Committee held a public meeting on Article 13 on Thursday, October 27, 2022.

The Advisory Committee strongly supports Article 13. The Committee agreed that adding a Design Review requirement had the potential to improve redevelopment outcomes. The Sub-Committee had heard comments from some members of the public that this additional requirement might make replacement structures more expensive or interfere with needed economic development and/or production of affordable housing. It was noted however that given the current Design Review requirements, including along all our major corridors and for buildings with 4 or more dwelling units, it was likely that most new development would already be required to go through Design Review, which is a customary, common and frequent part of Brookline's development review process. Also, petitioner's noted that residents of affordable housing deserved well-designed buildings too. This Article is in a sense, closing a loophole by adding Design Review for replacement structures when a significant building is demolished in neighborhoods. It is in the neighborhood setting where these changes can have significant impacts to the streetscape and the public realm. Petitioners presented several compelling photographic examples where Design Review substantially improved the resulting redevelopment. Ultimately, the Advisory Committee agreed with the petitioners that Design Review is appropriate when historically significant structures are demolished due to the likely neighborhood and streetscape impacts caused by such redevelopment. Petitioners noted that previous to this meeting, the Planning Board and Zoning By-Law Committee both voted favorable action on Article 13. The Housing Advisory Board and the Economic Development Advisory Board voted No Action.

A Subcommittee member questioned the rationale for excluding the large lot single-family zoning districts, (S-25 and S-40). A Preservation Commission member noted that they encounter very little concern or interest from neighbors when reviewing demolitions in these zoning districts, so in an effort to focus the Town's development review Boards' time and energy where it is most impactful, it made sense to remove the large lot zones from this proposed By-law amendment.

At the first public hearing on Article 13, public comment raised the concern about including partial demolitions in this By-Law amendment. In response, the petitioners amended the Article to focus only on full demolitions.

The question of the potential for conflict between this Article and compliance with the "by-right" development requirement in the MBTA Communities Act was raised. Kara Brewton noted that the use of an overlay zoning mechanism would likely be employed in any future attempt to comply with the MBTA Communities Act, in which case there

would be a clear distinction between the "by-right" overlay conditions and the underlying zoning, including its requirements for Design Review.

Meeting Recording: https://brooklinema.zoomgov.com/rec/play/P-GGzyDAG3luI_3IvbF3RFcw9gjJ_DXlCarlWG66T5fH9vz0zwnX-fUgI9jJnPJ1JTB8yiBqmW9IRwo.zvQb5I_85KfHnS3q?continueMode=true

Recommendation
The Advisory Committee voted 23-0 with 0 Abstentions to recommend FAVORABLE ACTION on the following motion. (Following the presentation of the vote totals we present a comparison between Article 13 as filed and the amended Motion as voted by the Advisory Committee.)

VOTED: That the Town (1) amend the Zoning By-law Article 5.09, Design Review, by adding a new Section 5.09(2)(o), and (2) amend the Zoning By-law, Article 4.01, Permitted Uses, by adding a new Section 4.01(3) (d), both as follows (language to be inserted appears in **bold underlined**):

1. Zoning By-law, § 5.09 Design Review, 2. Scope

   (o) Any principal structure for which an application for a full demolition has resulted in a stay of demolition imposed by the Preservation Commission in accordance with the Town's bylaws without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission; provided, however, that this subparagraph o. shall not apply to principal structures in the S-40 and S-25 Districts, nor to any such structure otherwise subject to design review under this Section 5.09.

2. Zoning By-law, § 4.01, Permitted Uses, 3.

   (d) The use necessitates design review that is subject to § 5.09(2)(o).

ARTICLE 13 ADVISORY COMMITTEE VOTES

Article Description	**Amend Zoning Bylaw to require design review after the expiration of a stay of demolition**
AC recommendation (Favorable Action unless indicated)	**23-0-0**
Ben Birnbaum	Y

Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	
Joslin Murphy	
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Carolyn Thall	Y

Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

A comparison between Article 13 as filed and the amended Motion as voted by the Advisory Committee is presented below. Deletions from the as-filed version are shown in ~~strikethrough~~ and additions are shown as **bold underline.**

1. Zoning By-law, § 5.09 Design Review, ~~Section 2~~ **2. Scope**
   (o) Any ~~demolition of a~~ principal structure for which **an application for a full demolition has resulted in** a stay of demolition imposed by the Preservation Commission in accordance with the Town's bylaws ~~has expired~~ without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission**; provided, however, that this subparagraph o. shall not apply to principal structures in the S-4- and S-25 Districts, nor to any such structures otherwise subject to design review under this Section 5.09.**

2. Zoning By-law, § 4.01, Permitted Uses, ~~Section~~ 3**.**

(d) The use necessitates ~~the demolition of a principal structure~~ **design review** that is subject to § 5.09**.2.o.**~~(2)(o)~~.

XX

ARTICLE 13

AMENDMENT TO THE PETITIONER MOTION OFFERED BY SIMON GROSSMAN, TMM7, AND C. SCOTT ANANIAN, TMM10
(Original motion in boldface; changes in underline and blue.)

MOVED: That the Town will (1) amend the Zoning By-law Article 5.09, Design Review, by adding a new Section 5.09(2)(o), and (2) amend the Zoning By-law, Article 4.01, Permitted Uses, by adding a new Section 4.01(3) (d), both as follows:

18 1. Zoning By-law, § 5.09 Design Review, Section 2

(o) Any demolition of a principal structure for which a stay of demolition imposed by the Preservation Commission in accordance with the Town's bylaws has expired without the Preservation Commission having advised the Building Commissioner in writing that the Commission: (i) has found that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved, and (ii) is satisfied with the use, design and improvement of the property following demolition, as stipulated by the Commission; provided, however, that this subparagraph o. shall not apply to principal structures in the S-40 and S-25 Districts, nor to any such structure otherwise subject to design review under this Section 5.09, nor projects containing at least 75% affordable housing units as defined in section 4.08 of the zoning bylaw**.**

2. Zoning By-law, § 4.01, Permitted Uses, Section 3

(d) The use necessitates the demolition of a principal structure that is subject to § 5.09(2)(o).

ARTICLE 13

**MOTION TO REFER OFFERED BY CHI CHI WU, TMM P7,
AND AMANDA ZIMMERMAN, TMM P7**

MOVED: That Warrant Article13 be referred to to the Planning and Community Development Department for an analysis of potential conflict with the zoning changes required to comply with the Town of Brookline's obligations under the MBTA Communities Act

EXPLANATION: Article 13 would impose a new design review requirement when an application is made for a demolition after a demolition stay has expired, if the building has been found to be significant by the Preservation Commission. Any project involving such demolition will require a special permit after review using Brookline's Community and Environmental Impact and Design Review Procedures and Standards.

The MBTA Communities Act requires that a community that includes a transit station such as Brookline must have at least one zoning district in which multi-family housing (3 or more units on a lot) is permitted as of right. Being permitted as of right means that a project to build multi-family housing would not require a discretionary permit. The special permit required by the design review contemplated by Article 13 could constitute such a discretionary permit.

Indeed, in a May 22, 2022 document entitled "MBTA Community Information Form," Director of Planning & Community Development Kara Brewton cited the current design review requirement for the Coolidge Corner Overlay District as a potential impediment that District including it in the mandated multi-family zoning district, noting that "We don't know whether we cannot include parcels in the Coolidge Corner Overlay District, *which requires special permits for demolition*." (emphasis added). See /www.brooklinema.gov/DocumentCenter/View/32142/MBTACommunitiesInformationForm_Submission_959867238

Thus, if the requirement of design review is expanded from the Coolidge Corner Overlay District to all of Brookline except the S-40 and S25 districts, that could pose a serious conflict with the creation of the mandatory multi-family zoning district.

We are recommending that this question - whether the design review by special permit process conflicts with the MBTA Communities Act requirement - be resolved before Brookline amends its zoning laws to expand the areas covered by this process to most of the Town. Hence, we are moving for referral of this Article to the Planning Department to await a determination by the Department of Housing and Community Development as to whether Article 13 would create a prohibited or inappropriate obstacle to Brookline's compliance with the MBTA Communities Act.

ARTICLE 13

REVISED EXPLANATION PROVIDED BY CHI CHI WU, TMM P7, AND AMANDA ZIMMERMAN, TMM P7

Article 13 would impose a new design review requirement when an application is made for a demolition after a demolition stay has expired, if the building has been found to be significant by the Preservation Commission. Any project involving such demolition will require a special permit after review using Brookline's Community and Environmental Impact and Design Review Procedures and Standards. The stated goal of Article 13 is to "reduce the alarming number of demolitions of 19th and early 20th century single, two- and three-family homes throughout Town by encouraging neighborhood projects…"

Another important goal in the Commonwealth of Massachusetts is to increase the number of housing units, given that we have a deficit of over 108,000 homes. As the Boston Foundation noted in October 2022, "Greater Boston is facing a crippling housing shortage."

Housing production is especially needed near public transit, which is the goal behind the MBTA Communities Act. That Act requires a community that includes a transit station such as Brookline must have at least one zoning district in which multi-family housing (3 or more units on a lot) is permitted as of right. Being permitted as of right means that a project to build multi-family housing would not require a discretionary permit.

Thus, if the requirement of design review is expanded from the Coolidge Corner Overlay District to all of Brookline except the S-40 and S25 districts, that could pose a conflict with the creation of the mandatory multi-family zoning district.

The submitters of this motion understand the dismay at demolitions when the structure is merely replaced with the same number of units which are even more expensive. However, Article 13 is not limited to instances where there is a one-to-one replacement of units, but would apply to projects that increase density, including near transit stations as contemplated by the MBTA Communities Act.

We are recommending that this question - whether the design review by permit process conflicts with the letter or goals of the MBTA Communities Act requirement - be resolved before Brookline amends its zoning laws to expand the areas covered by this process to most of the Town. Hence, we are moving for referral of this Article to the Planning Department to determine whether Article 13 would create a prohibited or inappropriate obstacle to Brookline's compliance with the MBTA Communities Act or the goals thereof.

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: Alec Lebovitz TMM8 and Mike Toffel TMM8

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

ARTICLE 4.2 ANNUAL REPORTS

SECTION 4.2.7 ASSESSORS' REPORT

The Assessors shall append to their annual report a table of the valuation, real, personal and total, the rate of taxation, and the amount of money raised.

The Assessors shall include in the Town's Annual Report a table listing all real property that is not required to pay property tax and is not government-owned, and for each such property, the amount that would be assessed if the property were required to pay property tax, whether (and when) the Town has requested from the property owner a Payment in Lieu of Tax (PILOT) Agreement or other agreement, the payment amount the Town requested, the proposed or applied tax rate and annual index rate specified in that request or agreement, the payment amount received from the property owner, the percent of the payment requested that was received, the remaining amount requested that was not paid, the most recent date the agreement was issued or amended, and other related information.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Town of Brookline Payment In Lieu of Tax (PILOT) Policy was adopted by the Select Board in 2007 and was most recently revised in 2011. Key provisions state that:

- "all property owners should contribute a fair share toward the cost" of Town services,
- "The Town will seek voluntary PILOT Agreements with all tax exempt institutions within the community that own real property, or that rent real property from the Town (pursuant to MGL Chapter 59 section 5, sub-section 2B)", and

- "These PILOT Agreements should be based upon fair market value and tax levy. PILOT Agreements should be established on the basis that the non-profit organization's payment amount is equal to the percentage of tax levy that supports the critical services of the Town's Police, Fire and Public Works operations. The Town has determined that this share is equal to at least 25% of the full levy".

The full Town of Brookline Payment In Lieu of Tax (PILOT) Policy is available at https://www.brooklinema.gov/DocumentCenter/View/677

However, Brookline does not currently publicly report the list of properties with tax exempt status, which of those institutions have PILOT agreements or other agreements, the payment amount agreed to, or how much they actually pay.

In its February 2020 final report, the Brookline Fiscal Advisory Committee (BFAC) recommended to the Select Board and Town Administrator "that Brookline's PILOT payments be disclosed annually, such as is done by the City of Boston, and benchmarked against other municipalities."[1] However, in the ensuing two years, the Select Board has not discussed this idea, according to the reports of the BFAC Moderator's Committee that Town Meeting created to provide transparency around progress (or lack thereof) surrounding the Town Bodies' deliberations of BFAC recommendations.[2]

This article seeks to require, via a bylaw amendment, that the Town publicly report this information annually within the Town's Annual Report, in order to promote greater transparency and accountability. Such reporting is done in other towns, including Boston, which reports the information in summary form and in detail. The Town Assessor confirmed that each data element required to comply with this Warrant Article is already being collected by the Town, and that aggregating them would entail negligible costs. The petitioners also consulted with Town Counsel's office regarding this bylaw change, and incorporated recommended changes to better specify the reporting requirements.

For example, here is Boston's recent PILOT summary report by category:

Boston's Fiscal Year PILOT Contributions

Category	Requested PILOT	Community Benefits Credit	Cash Contribution	% of PILOT Request met
Educational	$ 64,744,373	$ 29,058,983	$ 14,585,786	69%
Medical	$51,156,456	$24,599,544	$ 20,040,322	88%
Cultural	$ 4,326,715	$ 1,729,368	$ 459,025	51%
Total	$ 120,227,544	$ 55,387,895	$ 35,085,133	77%

Source: https://www.boston.gov/departments/assessing/payment-lieu-tax-pilot-program

And here are two excerpts from Boston's PILOT line-item report for Fiscal Year 2021:

Boston's Fiscal Year 2021 Educational PILOT Contributions (excerpt)

[1] The Brookline Fiscal Advisory Committee (BFAC) final report and presentations are available at https://www.brooklinema.gov/2242/Important-BFAC-Documents

[2] BFAC Moderator Committee reports are available at https://www.brooklinema.gov/1978/Moderators-Committee---Brookline-Fiscal-

Institution	PILOT Value Basis	Requested PILOT	Community Benefits Report Received?	Amount of Community Benefits Credit Received	% of Community Benefits Credit Utilized	Cash Contribution	Remaining PILOT Request	% of PILOT Request met
Berklee College	$ 173,943,523	$ 1,395,481	Yes	$ 697,740	100%	$ 348,870	$ 348,870	75%
Boston College	$ 536,095,300	$ 4,575,075	No	-	0%	$ 368,270	$ 3,541,457	23%
Boston University	$ 2,464,305,624	$ 21,313,417	Yes	$ 10,656,708	100%	$ 6,300,000	$ 4,047,076	81%

Boston's Fiscal Year 2021 Medical PILOT Contributions (excerpt)

Institution	PILOT Value Basis	Requested PILOT	Community Benefits Report Received?	Amount of Community Benefits Credit Received	% of Community Benefits Credit Utilized	Cash Contribution	Remaining PILOT Request	% of PILOT Request met
Beth Israel Deaconess	$ 813,129,901	$ 7,007,363	Yes	$ 3,503,682	100%	$ 3,503,682	-	100%
Boston Children's Hospital	$ 724,318,100	$ 6,187,759	Yes	$ 4,640,820	100%	$ 1,229,474	$ 0	100%
Boston Medical Center	$ 59,006,200	$ 1,173,927	Yes	$ 880,445	100%	-	$ 263,975	78%
Brigham and Women's Hosp.	$ 820,202,335	$ 7,065,219	Yes	$ 3,024,525	86%	$ 3,024,526	$ 1,016,168	86%

Source:
https://www.boston.gov/sites/default/files/file/2022/03/FY21%20PILOT%20Recap%20Metrics%20-%20Website%20Mar%2022%202022_5.pdf

Boston excludes properties worth less than $15 million and properties owned by religious institutions from PILOT reporting requirements. The petitioners considered including similar exemptions, but decided against this in order to ensure a full and transparent accounting of all tax exempt properties. Boston also reports the monetary value of community benefits provided by an exempt property, which are counted as a credit against the properties' negotiated PILOT contribution. Brookline does not currently apply community benefits as a credit towards PILOT contributions, and the valuation of community benefits were therefore not included as a reporting requirement.

The initial implementation of this Article, assuming timely approval by the Attorney General's Office, would occur in February 2023 with the issuance of the Town of Brookline's 2022 Annual Report.

SELECT BOARD'S RECOMMENDATION

A report and recommendation will be included in the Supplement.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 14, as amended, by a vote of 17-6 with no abstentions.

Executive Summary	Article 14 proposes amending the Town's General By-Laws to include a reporting requirement of the assessed value of tax-exempt properties in town, (excluding government owned properties). The reporting requirement would include public information that is already collected by the Town such as: the proposed or applied tax rate for that property; the amount the Town has requested that entity pay; the amount, if any, those entities have agreed to the pay the town (in lieu of taxes); when and what portion of those amounts have been paid; and the date of the latest agreement between the Town and the tax-exempt entity. The stated purpose of the article is to improve reporting and transparency as they relate to PILOTs, without overburdening Town staff. The hope is that such reporting will incentivize tax-exempt entities who do not have these agreements to do so.
Voting Yes will...	Obligate the Town Assessor to collaborate with the Director of Finance and report information, which is specified in the language of the proposed by-law, on the Town website no less than annually.
Voting No will...	There will be no additional mandated public reporting of information related to PILOTS, however, the information which is public will remain available to those who ask, although the Assessor, in collaboration with the Director of Finance could take it upon themselves to disclose the information publicly.
Financial impact	The costs are ostensibly low in terms of staff time since the Town already collects the data the Assessor's office would report.
Legal implications	None identified.

Introduction

Warrant articles 14 and 36 dovetail in-so-far-as they both relate to payment in lieu of taxes (PILOTS), which are voluntary, negotiated payments made by institutions which have been deemed by the state legislature to be tax exempt because of their non-profit status. These institutions include but are not limited to universities, private schools, religious institutions, and non-profit hospitals. These institutions benefit from Town services and all the community has to offer, but are not required to pay taxes to the Town.

Brookline has been a leader with its PILOT program, benefitting from the experience of a past Finance Director who, prior to coming to Brookline, had negotiated PILOTs and created best practices training for the state as early as 1993. Brookline first adopted a PILOT program in 2007 recognizing that meaningful negotiations between some tax-exempt entities in Town would be fair and beneficial. A citizen study committee, commissioned in 2008 in anticipation of the 2010 override, reviewed the Town's PILOT

policy then. And the Town last revisited and amended the PILOT policy in 2011. The policy is available on the Town website.

Warrant Article 14, the subject of this report, seeks to amend the Town By-Laws so that the Town Assessor must include a prescriptive list of information related to PILOTs, so that the public can more readily identify which tax-exempt institutions are participating and which are not, while article 36 asks for creation of a Moderator's committee to study and pursue means of increasing PILOT in Brookline, reporting findings and recommendations by August 1, 2023. It may be that if both articles pass, the Moderator's committee may recommend amending or removing the information published should WA14 pass, either for relevance, ease of use or some other strategic purpose.

Relevant Links
● *Brookline's PILOT policy*

Abbreviated Background of PILOTs in Brookline

The current PILOT policy reflects past negotiations and community sentiment that the Town not pursue PILOTs with religious institutions. It also reflects that fact that larger, secular institutions participating in initial PILOT discussions wanted assurances that all institutions, regardless of size or purpose, be treated equally, in order for them to enter into PILOT agreements at all. As a result, when formulating current policy, the Town chose not to use the term religious for a separate designation of PILOTS. It also determined the proper level of payment and lieu of tax would be twenty five percent of the assessed value of tax-exempt entities' property or properties; the calculation was based on the cost of services (police, fire, DPW maintenance and snow removal etc.) the entities benefit from.

Currently Boston University and Children's Hospital have entered into PILOTs with Brookline. Notably, some tax-exempt properties come in and out of tax-exempt status depending on their use. For example, if a building or a portion of a building is used for educational or administrative purposes, it is exempt. If it is later used as commercial space, it is not. Consider also that some tax-exempt entities are in Town owned buildings, like the auto museum. Those entities are generally given the option to pay rent rather than enter into a PILOT.

Unlike Boston, Newton and surrounding communities, Brookline's practice has been to enter into contracts with PILOT participants in order to ensure the fruits of the negotiations bear out. These contracts are usually re-negotiated every four to five years. Without a contract, PILOTs are more difficult if not impossible to enforce if the tax-exempt entity fails to pay as promised; the Interim Director of Finance, provided an example of a large institution doing just that in a neighboring city.

Discussion
Despite the considerable support from the Advisory Committee for this article, the discussion aired the following significant concerns:

Will the article achieve its intended purpose, or will it have the opposite effect?
The petitioners stated purpose of this article is to make what is already public information regarding PILOTS, more readily available, in the hopes that better publicizing PILOT participation will put pressure on non-participating tax-exempt entities to enter into negotiations with the Town. The committee then heard from the petitioners about the strides Boston has made in raising revenue with their PILOT program, and attributed some of their success to publication of PILOT participation.

Some members on the committee, however, questioned whether or not a "shame and blame" strategy would be effective and whether or not it was the sort of course the Town ought to enter into. There was also trepidation that by actively publishing who was and was not participating in PILOTS, it might actually dissuade those who have entered into agreements with the Town when seeing who was not participating, and that it might embolden those who are not participating to remain steadfast in their refusal; however, the Interim Director of Finance, who was the architect of the original PILOT program in Brookline, generally supported the effort, a fact that seemed to hold considerable sway over the outcome of the discussion.

Is the proposed language too prescriptive?
The committee also questioned whether the very prescriptive language in warrant article 14 regarding how the information was to be published was necessary.

On this point, the petitioner's agreed to amend the first line of their proposed language so that rather than requiring the Assessor to publish the prescribed information in the Town's Annual Report, the Assessor will post the information on the Town website (less prescriptive) at least annually. The Assessor indicated that it may actually be accomplished twice a year, but that is not required by the propose warrant article or incumbent on the Assessor.

The proposed format is confusing, will it actually create transparency?
The committee also noted that information the Assessor is required to post per the warrant article may not be the most helpful or illuminating to the public. If the purpose is to increase transparency and provide clarity, perhaps other choices would be better. For example, aggregating the property owned by specific entities would be useful. The petitioners answered that their goal of transparency was balanced against the sentiment that Town employees' time is valued and often over-stretched, and opted to ask for readily available data that could logically fit into existing tables rather than asking the Assessor to create something from whole-cloth.

Is this warrant article premature?
The committee also inquired whether or not warrant article 14 was premature. Perhaps a Moderator's committee (likely created if it's sister warrant article 36 passes) would recommend another tack entirely. Perhaps publishing the data would in-fact prove to be problematic and decrease PILOT participation. The petitioners reiterated their goal of making public information easier for the public to find, independent of any work done by

a Moderator's committee. If the reporting requirements called for in WA14 are imperfect, they may be amended in the future.

Impact on In-Kind Services
Notably, in-kind services, such as discreet payments from a non-profit for a particular purpose (such as erecting a statue or supporting an event or agreements with private schools for use of their playing fields) are not considered PILOT agreements and do not impact the Town's revenue stream; however, in-kind services and existing agreements the Town currently enjoys may be impacted by future PILOT agreements. The balance and potential loss or limits to current benefits the Town now enjoys with some non-profits needs to be carefully considered in this push for transparency, which is also a push for participation.

Committee's Conclusions
The warrant article brought to light a good deal of Brookline's pro-active history regarding PILOTs, and while there were some reservations about this particular article, the committee was largely supportive because: all indications are that publication may in fact increase PILOT participation; the architect of Brookline's PILOT program, who has a great deal of experience with PILOT programs, was supportive of the concept; and if it proves problematic, it may be amended in the future.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/Dgysi4pqu5IViLc6roqdij__JBr8moxMTkBKhOV2TEswuNRhQLgyxawPKFBhuH5sjTe_QbzIhjZDG-Wc.LWdgF0K-u3FEK0D-?continueMode=true

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 14, as amended, by a vote of 17-6 with no abstentions. The amended motion follows.

VOTED that the Town adopt the following amendment of the General Bylaws (language to be added appearing in underline):

ARTICLE 4.2 ANNUAL REPORTS

SECTION 4.2.7 ASSESSORS' REPORT

The Assessors shall append to their annual report a table of the valuation, real, personal and total, the rate of taxation, and the amount of money raised.

The Assessors **shall publish on the Town website, no less than annually,** a table listing all real property that is not required to pay property tax and is not government-owned, and for each such property, the amount that would be assessed if the property were required to pay property tax, whether (and when) the Town has requested from the property owner a Payment in Lieu of Tax (PILOT) Agreement or other agreement, the payment amount the Town requested, the proposed or applied tax rate and annual index rate

specified in that request or agreement, the payment amount received from the property owner, the percent of the payment requested that was received, the remaining amount requested that was not paid, the most recent date the agreement was issued or amended, and other related information.

ARTICLE 14 ADVISORY COMMITTEE VOTES

Article Description	**Require annual reporting on the Town's PILOT program**
AC recommendation (Favorable Action unless indicated)	**17-6–0**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	
John Doggett	Y
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	N
Joslin Murphy	N

Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	N
Lee Selwyn	
Alok Somani	N
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 14

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

At the Select Board meeting on 11/15 the Select Board discussed Article 14. The Board received a recommendation from the new Finance Director on this article. The Finance Director did not recommend support of this article because he did not believe that it would advance the goal of greater participation in the PILOT program. Proactively publishing details on organizations participating in this program, and on those that do not participate, was viewed as confrontational, and could discourage currently participating entities from continuing their involvement. A majority of the Board agreed that the carrot approach towards engaging with non-profits was preferable over the stick approach suggested by the petitioners. Two Board members did not see the transparent intent under this article as being a deterent for the program.

The Select Board voted NO ACTION on the motion offered under Article 14.

ROLL CALL VOTE:

Aye:	No:
Hamilton	Aschkenasy
Greene	Sandman
VanScoyoc	

ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: Susan Park TMM17, Bruce Levin TMM17, Wadner Oge TMM15, Cher Duffield TMM10, Ana Otero TMM6, Ariel Soiffer TMM2, Rich Snyder TMM2, Aone Wang TMM8, Alitza Soiffer (high school student)

Article 8.37.4

To see if the Town will amend the General By-Laws, Part VIII – Public Health and Safety, Article 8.37, Marijuana Establishments, Section 8.37.4, Caps on the Number Select Board Licenses for Marijuana Retailers, as follows (additions are underlined and deletions appear in stricken text):

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses than the number that is ~~20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction~~ listed after each category: a) Storefront Marijuana Retailers, 4 (four); b) Delivery- Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

…or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Background- In 2016 the State of Massachusetts legalized recreational marijuana (the ballot initiative had the support of 54% voters) and in 2017 established the Cannabis Control Commission to implement and administer the laws enabling access to adult use marijuana.

Current Licensing- Brookline has already granted FOUR marijuana retail licenses and has approved the granting of licenses for FOUR marijuana delivery and FOUR courier businesses to establish operations in Brookline with EXTENDED hours (July 2022). The new hours of delivery are Sunday-Saturday 8am-9pm.The delivery and courier licenses have been reserved for applicants qualifying as social equity businesses. Anyone in Brookline eligible to consume cannabis has convenient access to medical and recreational marijuana. Legal cannabis is readily available to Brookline residents by the presence of 35 retail, delivery and courier businesses that are authorized to commence operations and are located in Brookline and the surrounding communities of Boston within 10 miles (including West Roxbury, Jamaica Plain, Allston, Brighton), Newton, Cambridge, Watertown and Framingham, Somerville, Chelsea, Needham, Arlington, Quincy, and Melrose.

Some residents may be concerned that 4 recreational cannabis stores is enough and would like to vote on the expansion of more stores in Brookline. This warrant article is a pathway back to the voters-letting them decide.

Some residents may also be concerned that new cannabis licenses will require the applicant to enter and effectively compete in an already crowded marketplace which is likely to require considerable working capital - further discouraging economically disadvantaged applicants from applying for a new license.

Density- Brookline is only about 25% less in population than Newton but has about 1/3 the land area. Newton can allow 8 storefront licenses at this time and they have many more commercial areas with 13 villages than does Brookline. Brookline cannot compare the number of stores like Newton and Boston because our commercial areas are different.

Revenue- Revenue generated by host community agreements are increasingly available only for activity meant to mitigate actual negative impact of licensing and are unavailable for general purposes. M.G.L.94G,Sec.3.

Some residents may be concerned that the excise tax collected from the sale of recreational marijuana in Brookline only represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$n.n) when they thought much more revenue would be coming to town.

New licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition for market share resulting in unintended and likely negative consequences.

Growing Teen Use- Some residents may be concerned about the underage drug use including marijuana. This is especially important for teenagers because recent studies suggest that there is a link between “experimenting” and social acceptance, and that there is strong evidence that marijuana causes disproportionate harm to the developing brain including psychosis with the lack of caps on THC potency.

Some residents may be concerned that rates of cannabis use disorder in people aged 12 to 17 grew 25% more in states that legalized recreational marijuana than in those that didn’t, according to a 2020 study as reported in the Washington Post 6/9/22.

Balance- The purpose of the No More Than Four warrant article is to preserve the ability of Brookline residents to legally and conveniently obtain marijuana while seeking to limit the unintended negative effects that marijuana may have on the Town, particularly upon teenagers, should additional licenses in any category be made available.

Some residents may also be concerned that when they voted YES in 2016, they didn’t realize there could be more than 4 cannabis stores in Brookline. Fortunately, the cannabis statute has a unique design that points to ballot initiative as a method for residents to weigh in on commercialization in their municipality. That is what this warrant article is about. If this Warrant Article passes, it will then go on the May Town wide ballot for residents to

weigh in on the expansion of cannabis stores in Brookline. Now that the landscape is different from 2016 with 4 cannabis stores, 4 delivery licenses and 4 courier licenses, in addition to the 4 extended hours in delivery and courier, 2 hours earlier and 2 hours later, the cannabis footprint has changed in 6 years. More stores are opening around the boundaries of Brookline (the list is below). Residents may want the opportunity to weigh in now. If this warrant article passes, the community can decide for themselves to stay where we are at 4 cannabis stores or keep growing. Medical marijuana stores will not be impacted.

Brookline's 4 Cannabis Licenses/Stores- The four retail outlets, three of which are in operation and the fourth for which the Select Board approved license conditions on June 8, 2021 are listed below:

https://www.brooklinema.gov/1940/Marijuana-Retail-Establishments

- New England Treatment Access (NETA) – 170 Washington Street and Boylston Street (Brookline Village)
- Sanctuary Medicinals, Inc. – 1351 Beacon Street (Coolidge Corner)
- Mission MA, Inc. – 1022-1024 Commonwealth Avenue (Packard's Corner)
- Comm Ave Canna, Inc. – 1030 Commonwealth Avenue (Packard's Corner)

Nearby Cannabis Stores- According to the Cannabis Control Commission website, there are 35 stores within 10 miles of Brookline (02446 zip code) and the surrounding communities offering access to retail marijuana. There are 25 stores within 5 miles of Brookline (02246 zip code). In addition, delivery and courier services provide home delivery in Brookline. Convenient access to recreational marijuana is assured.

Below are other cannabis stores nearby Brookline:
Seed 401A Centre Street Jamaica Plain
11am-8pm everyday
Med Men 120 Brookline Ave (near Fenway)
Mon.-Fri. 10am—5p.m. Sunday 12:00pm-6:00pm
Redi Eliot St Newton
m-s 9:00am—9:00 27 parking spaces; separate from residential area Ascend 1089 Washington St Newton, MA
Daily 9:00-9:00 very large parking lot; separate from residential area Ethos ArseNnal Street Watertown
Mon-Sat 10:00am—8:00pm

An additional license applications in Boston and the surrounding area are pending. These provisional licenses (waiting for CCC to grant them an order to commence are below):
Newton (have received special permit from City)

- MedMen 232 Boylston Street (Wegman's Plaza)
- Union Twist 1158 Beacon Street
- Green Lady 740 Beacon Street Brighton
- HVV 1937-1939 Beacon Street (former "MaryAnne's")

- Pure Oasis 535 Washington Street

Allston
- Opco 144 Harvard Street
- Mass. Greenwoods 166 Harvard Street
- Union Twist 259 Cambridge Street Fenway and Back Bay
- Cyprus Tree 1114 Boylston Street
- New Dia 48-62 Boylston Street
- Rooted 371 Newbury Street
- Sira Naturals 827-829 Boylston Street

What Was Promised and What Actually Happened- When voters in Massachusetts and Brookline voted to legalize marijuana, addressing the harmful effects of the "war on drugs" on minority and disadvantaged communities, this was often cited as a major reason. In the ensuing period, Brookline, along with many other MA cities and towns, have granted licenses but many of the licenses went to corporations not applicants from minority or disadvantaged communities.

Granting Additional Licenses- This will not address "the war on drugs" on minority and disadvantaged communities because the underlying factors keeping minority and disadvantaged applicants from participating have not been addressed. And now, with over 190 businesses in Massachusetts devoted to recreational cannabis, the market is close to saturation. As in many new markets, after a period of rapid entry, the industry may enter a period of consolidation where competition for market share shakes out weaker entrants. In the ensuing battle, marketplace competitors may turn to advertising, product innovation, loyalty programs, price wars and other incentive schemes to capture and maintain market share.

Following Another Big Tobacco- For a product such as marijuana, for which the health effects are not well known, the unintended consequences may be similar to the trajectory of the tobacco industry. Tobacco, which has been used since the 15th century, was at the height of popularity in the post-WW2 years during which tobacco was included in c-rations. The dangers of tobacco were known in the 1600's but it wasn't until 1964 when the Surgeon General declared a link between tobacco and lung disease that public opinion began to shift, culminating in the 2009 passage of the Family Smoking Prevention and Tobacco Control Act which regulated tobacco. It took many, many years to understand and acknowledge the negative health effects of tobacco use. And the industry fought back each step of the way; and as some critics have pointed out, continually sought to attract young people through advertising and social acceptance. In the last year Bigbelly trash bins had cannabis delivery ads on them around Coolidge Corner and St. Mary's even across from Florida Ruffin Ridley School. Some residents were concerned of the thousands of children passing these advertisements multiple times a day and addressed this. Residents received cannabis delivery mailers in the mail. Advertising will increase with more cannabis stores.

Excise Tax- In addition to a desire to address economic disadvantage, tax revenue is another argument cited by those in favor of additional licensing. In FY22, Brookline

collected [$] in excise tax revenue. Additional licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition which could result in unintended and likely negative consequences as marketing and promotion is ramped up in the fight for market share and the fight to increase market size.

Retail sales of marijuana in MA are subject to three taxes – a 10.75% marijuana excise tax, up to 3% marijuana local tax option, and a 6.25% sales tax, with medical marijuana being exempt from most taxes. The total tax burden on retail marijuana is about 20%. All pending proposals in Congress seeking federal legalization of cannabis seek to add an accompanying federal tax.

The cost of one ounce of marijuana in MA is over $340. Typically, one ounce will last consumers one month. Ironically, despite legalization, the black market for marijuana is still alive as the price for legal marijuana is significantly higher due to the cost burden associated with taxation and regulations associated with operations.

Health Unknowns- Although products sold through licensed retailers are regulated unlike black market marijuana, the THC levels are much higher- 3, 4, or 5 times stronger then they used to be in the 60's-90's. There is much we don't as yet know about marijuana and the short- and long-term effects of high THC marijuana on health, especially on those under twenty-five.

Teenagers and Use- Adults may freely weigh the benefits of marijuana against various mental and physical health risks associated with its use and - similar to alcohol and tobacco - choose if, when and how to participate. Teenagers on the other hand, may be unduly influenced by social factors such as peer pressure, general acceptability, availability, popularity (flavored products, celebrity endorsed products, etc), detection avoidance (vape, edibles), and other factors that may encourage "experimentation."

What has also been widely reported is that in 2019, 37% of US high school students reported use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. And large percentages of middle and high school students reported past-year marijuana vaping - 8% of eighth graders, 19% of 10th graders, and 22% of 12th graders.

Given the prevalence of teen use of marijuana with high THC concentration, researchers are studying the impact marijuana may be having on developing brains. The initial studies indicate high THC marijuana use by those under 25 years of age is connected with increased risk of mental health disorders, psychosis, suicidal ideation and has strong additive potential. See list of links below to learn more.

Conclusion- In 2016 when the community voted on marijuana, they were told about disadvantaged communities and a bountiful revenue stream. Many people voted for these reasons. 6 years later, now that we see disadvantaged communities have not greatly benefited from the new industry and the excise tax collected from the sale of

recreational marijuana in Brookline represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$?). Some residents may want to reassess and have another opportunity to have a say in the Town's decisions regarding marijuana. The first WA that caps storefronts to 4 allows voters to decide if 4 cannabis stores is enough in Brookline or if they want more. Some residents may be concerned because they thought 4 shops would be the limit. Now that the community has more experience with the local impacts of the State regulations, the voters should have the opportunity to weigh in, as state law provides. The first 3 WA's address the three categories of marijuana retailers: storefront marijuana (4), delivery-only marijuana retailers (4), and couriers (4), and social consumption cafes (1). The passing of the last three Zoning By-Laws will codify the 3 WA's if they pass so that the Zoning Board of Appeals shall not issue a special permit that would allow more than what is in the Zoning By-Laws.

References:

1. Tablet Article 8/30/22 https://www.tabletmag.com/sections/news/articles/how-weed- became-new-oxycontin-marijuana-psychosis-addiction
2. New York Times 8/24/22 article nytimes.comUse of Marijuana and Psychedelics Is Soaring Among Young Adults,
3. Washington Post 8/24/22 article https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
4. New York Times 6/23/22 https://www.nytimes.com/2022/06/23/well/mind/teens-thc-cannabis.html
5. Washington Post 6/9/22 article https://www.washingtonpost.com/business/how-legal- weed-has-changed-the-us-for-better-and-worse/2022/06/09/6bc6299a-e801-11ec-a422-11bbb91db30b_story.html
6. New York Times Article 1/14/22 https://www.nytimes.com/2022/01/14/well/family/marijuana-edibles-children.html https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
7. https://www.cdc.gov/marijuana/factsheets/pdf/marijuanafactsheets- teens-508compliant.pdf
8. https://www.cdc.gov/marijuana/health-effects/teens.html
9. https://www.nih.gov/news-events/news-releases/cannabis-use-may-be-associated-suicidality-young-adults
10. https://www.caron.org/blog/behind-the-numbers-colorado-ranks-1-in-youth-use-of- marijuana
11. Study FindsThe annual U.S. survey of substance use captures the growing mainstream acceptance of cannabis and hallucinogenic compounds.
12. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7901265/

DIRECTOR OF HEALTH AND HUMAN SERVICES REPORT

Commissioner Reiss recommends no action on Warrant Articles 15 and 18 to allow the Moderator's Committee on Recreational Marijuana Policies and the ACPH/BDPHHS guided marijuana impact study to conclude.

As the licensing authority for retail marijuana stores currently rests with the Select Board, the Commissioner, with input from Advisory Council on Public Health, has considered the existing evidence of public health impacts of retail marijuana establishments and the pending marijuana reporting underway in Brookline, from Fall 2021 Town Meeting, to inform both Town Meeting and the Select Board.

On October 19th the Advisory Council on Public Health held a public hearing on Warrant Articles 15 and 18. After hearing from the petitioner and Health Department staff on the latest science and local data, the ACPH voted unanimously in favor of Warrant Articles 15 & 18.

With input from the Advisory Council on Public Health the Commissioner agrees that retail marijuana outlet density is increasing across the Greater Boston region. Research shows that higher retail density contributes to known substance use risk factors such as decreased perception of risk, and increased exposure to marijuana advertising. There is clear evidence that increases in tobacco and alcohol retail density are associated with increases tobacco and alcohol use in a community particularly among vulnerable populations. Data from nationally representative samples and other regional studies shows an increase in current and heavy marijuana use among young adults (ages 19-30 y/o) that's likely associated with the increase in states legalizing recreational marijuana use in the past decade. However, the relationship between legalization and youth use remains less conclusive.

There was a decrease in youth marijuana use in Brookline, neighboring communities and nationally during the pandemic. We can surmise that this was a result of less access to marijuana as many youth were home during the pandemic. It is too soon to know if this trend will continue or if rates will climb back to pre-pandemic levels. The Health Department hopes to partner with the Public Schools of Brookline this coming April on another round of student surveys to better understand this phenomenon and evolving trends in marijuana attitudes, beliefs, and behaviors.

While reducing retail outlet density is an evidence-based strategy in the tobacco and alcohol literature. It is worth noting that in Brookline there are currently fives times as many off-premise retail alcohol outlets as there are off-premise retail marijuana outlets. Just last year, the Select Board proposed increasing the number of retail outlets by two for equity applicants (Fall 21 Town Meeting, Warrant Article 7). That proposal – Warrant Article 7 – was referred to a Moderator's Committee on Recreational Marijuana Policies to study the issue further. In addition, Warrant Article 9 – Establishing a marijuana study committee was referred to the Advisory Council on Public Health. These groups are currently evaluating two important aspect to this debate, equitable access to the economic opportunity of the marijuana industry and the impacts of retail marijuana on the community. The Health Department is heavily involved in both the Moderator's Committee on Recreational Marijuana Policies and the ACPH/BDPHHS guided marijuana impact study. These reports will provide more information to inform licensing policy moving forward. In addition, the Health Department and its divisions including the Brookline Substance Abuse Prevention Program (B-SAPP) are committed to preventing youth substance use and reducing the negative health impacts from substances use including, but

not limited to marijuana. However, this policy proposal seems premature given the ongoing work of the above committees.

Therefore, I recommend no action on Warrant Articles 15 and 18 to allow the Moderator's Committee on Recreational Marijuana Policies and the ACPH/BDPHHS guided marijuana impact study to conclude. These reports will allow for a better understanding of equitable access to the economic opportunity and public health impacts of retail marijuana establishments in Brookline.

SELECT BOARD'S RECOMMENDATION

Article 15 is a citizen petition that seeks to revise the by-law pertaining to the cap on retail marijuana establishments with the intent of compelling a town wide ballot on capping the number of establishments at four. The Board felt that the voters have already spoken on this issue, and Town Meeting has provided the structure that we operate under. The issues raised by the petitioner are being studied by a Moderator's Committee, which was formed at the last Town Meeting. The Cannabis Mitigation Advisory Committee monitors the impact these establishments have on the community.

The Select Board voted 4-0-1 NO ACTION on Article 15.

ROLL CALL VOTE:

Aye:	Abstain:
Hamilton	Sandman
VanScoyoc	
Greene	
Aschkenasy	

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends NO ACTION on Warrant Article 15 by a vote of 9-12 with 3 abstentions.

Executive Summary	Warrant Article 15 would amend Section 8.37.4 of the General By-Laws to cap the number of Storefront Marijuana Establishment licenses at 4, 20% of the current number of outstanding off-premises liquor licenses. However, a favorable vote by Town Meeting on this Article would not immediately cap the number at 4, because Massachusetts law states that the baseline number can only be lowered through a Town-wide ballot question. The vote at Town Meeting is a procedural step required to get the question on the ballot in May 2023. Therefore, whether or not one supports capping the number at 4, this Article additionally presents the question as to who should make the decision regarding the cap. A negative vote has Town Meeting decide; a favorable vote lets a Town-wide vote decide. The Advisory Committee voted 13-9-6 for no action on Article 15.
Voting Yes will...	Make no immediate change in the By-Law but shift the question of whether the number of Storefront Marijuana Establishments should be capped at 4 to a Town-wide vote in May 2023.
Voting No will...	Make no change to the existing By-Law and maintain the current method of determining the number of licenses, which caps the number at 20% of the number of liquor licenses (currently 20) for off-premises alcohol consumption, rounded up to the nearest whole number.
Financial impact	None, other than the cost of adding a ballot question to the May 2023 ballot, estimated to be about $130, and the unknown economic impact on the Town of losing the ability to add additional retail dispensaries.
Legal implications	Should WA15 pass Town Meeting and then pass a referendum question by the voters, Section 8.37.4 of the General By-Laws would be amended, capping the number of Storefront Marijuana Establishments at the current existing number: 4.

Introduction

Section 8.37.4 of the General By-Laws caps the number of "Storefront Marijuana Establishments" ("SME") at "20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138 Section 15, as rounded up to the nearest whole number in the event the number is a fraction." Based on the current number of such liquor licenses (20), the current cap is 4. Petitioners want the cap to stay at 4: "No More than Four." If the Select Board were to issue an additional off-premises liquor license, the cap would increase to 5, and would stay there until the Select Board issued a 26th liquor license, when the cap would increase to 6 (etc.).

Pursuant to state law, this cap can only be changed through a Town-wide ballot question; the proposed vote at Town Meeting is a procedural step required to get the question on the ballot in May, 2023. A negative vote would have Town Meeting decide that no change should be made; a favorable vote would let a Town-wide vote decide.

Evaluation Methodology/Research

1. State law authorizes Town Meeting to increase the number of Storefront Marijuana Establishments. State law requires a Town-wide vote to decrease the number of SME's.
   https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94G
   https://masscannabiscontrol.com/municipal-equity/#license-caps
   https://www.mass.gov/doc/935-cmr-500-adult-use-of-marijuana/download
2. Section 8.37.4 of the Town's General By-Laws
https://brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws
3. Brookline has already granted 4 storefront licenses. There are 25 stores within 5 miles of the Brookline 02446 zip code, and 35 within 10 miles. In addition, between Newton, Brighton, Allston, Fenway and Back Bay, there are an additional 12 stores planned, which would bring the number of stores within 10 miles of Brookline to 47.
4. Nationally, the current black market price for an ounce of marijuana is lower than the legal retail price.
5. None of the retail marijuana stores in Brookline is owned by an applicant from a disadvantaged community.
6. A recent public survey through Survey Monkey indicated that 55.57% of 788 respondents want a cap at 4.
7. No store can be located closer than 500 feet from a school or 200 feet from another store.
https://www.brooklinema.gov/DocumentCenter/View/36033/Marijuana_map_500buffers_w_cutoff_201805091406409618
8. A recent RAND study found associations between adverse outcomes from the use of cannabis by young adults, defined as those 21 and older, and the density of cannabis outlets.
9. In FY22, Brookline collected just over $1 million in excise tax revenue from marijuana sales, and sales revenues have been flat. No evidence was offered as to the potential effect of additional licenses on the amount of taxes collected.
10. There is developing science about the adverse consequences of marijuana usage by minors on their health and brain development. According to a pediatrician who spoke, 100% of drug users admitted to rehabilitation programs have used marijuana before 16 years old, and 17% of youth develop a Cannabis Use Disorder. According to a CDC fact sheet on marijuana and teens,

a. Marijuana use has been linked to a range of mental health problems, such as depression and social anxiety. People who use marijuana are more likely to develop temporary psychosis (not knowing what is real, hallucinations, and paranoia) and long-lasting mental disorders, including schizophrenia. The association between marijuana and schizophrenia is stronger in people who start using marijuana at an earlier age and use marijuana more frequently.

a. Approximately 3 in 10 people who use marijuana have marijuana use disorder, i.e, they become addicted. The risk of developing marijuana use disorder is stronger in

people who start using marijuana during youth or adolescence and who use marijuana more frequently.

b. Compared with teens who do not use marijuana, teens who use marijuana may be less likely to graduate from high school or college.

According to a 2020 study, rates of cannabis use disorder among those age 12 to 17 grew 25% more in states that legalized recreational marijuana than in those that did not.

11. A study published in the September 16, 2022, issue of the Journal of the American Medical Association concluded that rates of emergency room visits for Cannabinoid hyperemesis syndrome (CHS) increased by 13-fold over 7.5 years in Ontario. CHS is a condition that leads to repeated and severe bouts of vomiting. It is rare and only occurs in daily long-term users of marijuana. The study concluded that legalization was not associated with increased CHS visits, but market commercialization, which overlapped with the COVID-19 pandemic, was.
https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2796355

12. Marijuana is now considerably more potent than it was "when we were kids."
13. Brookline, through the Department of Public Health, is currently conducting a study that will look at public health community impacts of marijuana, including youth substance use, youth access, adult/youth perception of risk, exposure and attitudes (as risk and protective factors), impacts on mental health, and advertising impacts. This study, budgeted at $64,000, is likely to be completed by July 2023.
14. The sale of marijuana to minors, like the sale of alcohol and cigarettes, is illegal. There is no evidence that the four SMEs are selling to minors, although Brookline police report one incident in which an adult was alleged to have resold product to a minor outside of one of the SMEs a year ago. That incident was investigated and ended with no clear finding.
15. A flyer from a Brookline arts group went home in the homework folders of elementary school children. The flyer had the logo and name of a dispensary on it, as the dispensary was sponsoring the arts group. The arts group and the school, not the dispensary, were responsible for the flyer being placed in the folders. The Article would not address concerns about advertising and promotions by dispensaries.
16. There have been numerous cannabis articles over the past years, almost all of which have failed in Town Meeting. Warrant Article 8 at the November 2021 Town Meeting sought to eliminate the "rounding up" language in the By-Laws which would have, as a practical matter, achieved the same cap as the proposed article (at least until, if ever, the number of off-premises liquor licenses hits. That article failed by eight votes, 108-116, with 15 abstentions.
17. A vote of favorable action on the Warrant Article does not necessarily signal agreement with its merits; one could vote for it simply to have voters decide in May, and then vote "No" on the ballot question..

Discussion
Proponents of the Article argued principally that there is sufficient access to Marijuana and that increasing the number of SMEs risks further normalizing the use of Marijuana and endangering our children. They argued that, given the additional information that has accumulated since 2016, when marijuana was legalized – e.g., market saturation and

studies regarding health effects -- the voters, many of whom were likely not focused on the number of potential SMEs at the time they voted, should have an opportunity, as state law allows, to weigh in again.

Those against the Article argued that there is little or no new evidence that was not previously available to the public when they voted in 2016; that WA 8 in November 2021 was defeated; that minors have far more public exposure to alcohol and cigarettes than they do to marijuana; that much of petitioners' rhetoric is anti-cannabis; that increased price competition could further undermine the illegal market; that one more store in a market already saturated with 47 stores is not going to make any difference; and that an additional store is unlikely to open in any event if the market is as saturated as claimed.

In addition, following Public Health Director Sigalle Reiss's opinion, some opponents argued that any Town-wide vote should be delayed until after the Town completes its marijuana impact study in July 2023 and the voters can be informed by its results.

Meeting Recording: https://brooklinema.zoomgov.com/rec/play/P-GGzyDAG3luI_3IvbF3RFcw9gjJ_DXlCarlWG66T5fH9vz0zwnX-fUgI9jJnPJ1JTB8yiBqmW9IRwo.zvQb5I_85KfHnS3q?continueMode=true

Recommendation
The Advisory Committee recommends NO ACTION on Warrant Article 15 by a vote of 9-12-3.
ARTICLE 15 ADVISORY COMMITTEE VOTES

Article Description	**Cap storefront marijuana retailers to four**
AC recommendation	**NO ACTION 9-12-3**
Ben Birnbaum	N
Harry Bohrs	
Cliff Brown	N
Patty Correa	N
John Doggett	A
Katherine Florio	
Harry Friedman	Y
David-Marc Goldstein	N
Neil Gordon	N
Susan Granoff	N

Kelly Hardebeck	N
Amy Hummel	Y
Anita Johnson	N
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	N
Pam Lodish	
Joslin Murphy	
Donelle O'Neal, Sr.	A
Linda Olson Pehlke	N
Markus Penzel	N
David Pollak	N
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	A
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 15

MOTION OFFERED BY THE PETITIONERS

MOVED: That the Town amend the General By-Laws, Part VIII – Public Health and Safety, Article 8.37, Marijuana Establishments, Section 8.37.4, Caps on the Number Select Board Licenses for Marijuana Retailers, as follows (additions are underlined and deletions appear in stricken text):

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, §15, as rounded up to the nearest whole number in the event the number is a fraction: ~~a)Storefront Marijuana Retailers, b)~~a) Marijuana Delivery Operators, ~~c)~~b)Social Consumption Retailers, and ~~d)~~c) Marijuana Couriers.

a) The Select Board shall not issue more than four Storefront Marijuana Retailer licenses

ARTICLE 15

MOTION TO REFER THE SUBJECT MATTER OF ARTICLE 15 TO THE MODERATOR'S COMMITTEE ON RECREATIONAL MARIJUANA OFFERED BY SELECT BOARD MEMBER MIRIAM ASCHKENASY

Be it moved that Warrant Article 15 be referred as follows:

VOTED:
To refer the subject matter of Article 15 to the Moderator's Committee on Recreational Marijuana for further study and consideration.

Reccomendations on this WA to be included with the other final reccomendations of the committee.

ARTICLE 16

SIXTEETH ARTICLE

Submitted by: Susan Park TMM17, Bruce Levin TMM17, Wadner Oge TMM15, Cher Duffield TMM10, Ana Otero TMM6, Ariel Soiffer TMM2, Rich Snyder TMM2, Aone Wang TMM8, Alitza Soiffer (high school student)

Section 8.37.4

To see if the Town will amend the General By-Laws, Part VIII – Public Health and Safety, Article 8.37, Marijuana Establishments, Section 8.37.4, Caps on the Number Select Board Licenses for Marijuana Retailers, as follows (additions are underlined and deletions appear in stricken text):

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses than the number that is ~~20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction~~ listed after each category: a) Storefront Marijuana Retailers~~,~~; b) Delivery- Only Marijuana Retailers, 4 (four); and c) Social Consumption Marijuana Retailers.

…or act upon anything else thereto.

PETITIONER'S ARTICLE DESCRIPTION

Background- In 2016 the State of Massachusetts legalized recreational marijuana (the ballot initiative had the support of 54% voters) and in 2017 established the Cannabis Control Commission to implement and administer the laws enabling access to adult use marijuana.

Current Licensing- Brookline has already granted FOUR marijuana retail licenses and has approved the granting of licenses for FOUR marijuana delivery and FOUR courier businesses to establish operations in Brookline with EXTENDED hours (July 2022). The new hours of delivery are Sunday-Saturday 8am-9pm.The delivery and courier licenses have been reserved for applicants qualifying as social equity businesses. Anyone in Brookline eligible to consume cannabis has convenient access to medical and recreational marijuana. Legal cannabis is readily available to Brookline residents by the presence of 35 retail, delivery and courier businesses that are authorized to commence operations and are located in Brookline and the surrounding communities of Boston within 10 miles (including West Roxbury, Jamaica Plain, Allston, Brighton), Newton, Cambridge, Watertown and Framingham, Somerville, Chelsea, Needham, Arlington, Quincy, and Melrose.

Some residents may be concerned that 4 recreational cannabis stores is enough and would like to vote on the expansion of more stores in Brookline. This warrant article is a pathway back to the voters-letting them decide.

Some residents may also be concerned that new cannabis licenses will require the applicant to enter and effectively compete in an already crowded marketplace which is likely to require considerable working capital - further discouraging economically disadvantaged applicants from applying for a new license.

Density- Brookline is only about 25% less in population than Newton but has about 1/3 the land area. Newton can allow 8 storefront licenses at this time and they have many more commercial areas with 13 villages than does Brookline. Brookline cannot compare the number of stores like Newton and Boston because our commercial areas are different.

Revenue- Revenue generated by host community agreements are increasingly available only for activity meant to mitigate actual negative impact of licensing and are unavailable for general purposes. M.G.L.94G,Sec.3.

Some residents may be concerned that the excise tax collected from the sale of recreational marijuana in Brookline only represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$1.01mm) when they thought much more revenue would be coming to town.

New licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition for market share resulting in unintended and likely negative consequences.

Growing Teen Use- Some residents may be concerned about the underage drug use including marijuana. This is especially important for teenagers because recent studies suggest that there is a link between "experimenting" and social acceptance, and that there is strong evidence that marijuana causes disproportionate harm to the developing brain.

Some residents may be concerned that rates of cannabis use disorder in people aged 12 to 17 grew 25% more in states that legalized recreational marijuana than in those that didn't, according to a 2020 study as reported in the Washington Post 6/9/22.

Balance- The purpose of the No More Than Four warrant article is to preserve the ability of Brookline residents to legally and conveniently obtain marijuana while seeking to limit the unintended negative effects that marijuana may have on the Town, particularly upon teenagers, should additional licenses in any category be made available.

Some residents may also be concerned that when they voted YES in 2016, they didn't realize there could be more than 4 cannabis stores in Brookline. Fortunately, the cannabis statute has a unique design that points to ballot initiative as a method for residents to weigh in on commercialization in their municipality. If the cap on 4 Warrant Article passes, it will then go on the May Townwide ballot for residents to weigh in on the expansion of cannabis stores in Brookline. Now that the landscape is different from 2016 with FOUR cannabis stores, **FOUR delivery licenses and FOUR courier licenses,** in addition to the **FOUR extended hours in delivery and courier, 2 hours earlier and 2 hours later, the cannabis footprint has changed in 6 years.** More stores are opening around the boundaries of Brookline (the list is below). Residents may want the opportunity to weigh in now. If this warrant article passes, the community can decide for themselves to stay where we are at 4 cannabis stores or keep growing. Medical marijuana stores will not be impacted.

Brookline's 4 Cannabis Licenses/Stores- The four retail outlets, three of which are in operation and the fourth for which the Select Board approved license conditions on June 8, 2021 are listed below:

https://www.brooklinema.gov/1940/Marijuana-Retail-Establishments

- New England Treatment Access (NETA) – 170 Washington Street and Boylston Street (Brookline Village)
- Sanctuary Medicinals, Inc. – 1351 Beacon Street (Coolidge Corner)
- Mission MA, Inc. – 1022-1024 Commonwealth Avenue (Packard's Corner)
- Comm Ave Canna, Inc. – 1030 Commonwealth Avenue (Packard's Corner)

Nearby Cannabis Stores- According to the Cannabis Control Commission website, there are 35 stores within 10 miles of Brookline (02446 zip code) and the surrounding communities offering access to retail marijuana. There are 25 stores within 5 miles of Brookline (02246 zip code). In addition, delivery and courier services provide home delivery in Brookline. Convenient access to recreational marijuana is assured.

Below are other cannabis stores nearby Brookline:
Seed 401A Centre Street Jamaica Plain
11am-8pm everyday
Med Men 120 Brookline Ave (near Fenway)
Mon.-Fri. 10am—5p.m.
Sunday 12:00pm-6:00pm
Redi Eliot St Newton
m-s 9:00am—9:00 27 parking spaces; separate from residential area
Ascend 1089 Washington St Newton, MA
Daily 9:00-9:00 very large parking lot; separate from residential area
Ethos ArseNnal Street Watertown
Mon-Sat 10:00am—8:00pm

An additional license applications in Boston and the surrounding area are pending. These provisional licenses (waiting for CCC to grant them an order to commence are below):
Newton (have received special permit from City)

- MedMen 232 Boylston Street (Wegman's Plaza)
- Union Twist 1158 Beacon Street
- Green Lady 740 Beacon Street

Brighton

- HVV 1937-1939 Beacon Street (former "MaryAnne's")
- Pure Oasis 535 Washington Street

Allston

- Opco 144 Harvard Street
- Mass. Greenwoods 166 Harvard Street
- Union Twist 259 Cambridge Street

Fenway and Back Bay

- Cyprus Tree 1114 Boylston Street
- New Dia 48-62 Boylston Street
- Rooted 371 Newbury Street
- Sira Naturals 827-829 Boylston Street

What Was Promised and What Actually Happened- When voters in Massachusetts and Brookline voted to legalize marijuana, addressing the harmful effects of the "war on drugs" on minority and disadvantaged communities, this was often cited as a major reason. In the ensuing period, Brookline, along with many other MA cities and towns, have granted licenses but many of the licenses went to corporations not applicants from minority or disadvantaged communities.

Granting Additional Licenses- This will not address "the war on drugs" on minority and disadvantaged communities because the underlying factors keeping minority and disadvantaged applicants from participating have not been addressed. And now, with over 190 businesses in Massachusetts devoted to recreational cannabis, the market is close to saturation. As in many new markets, after a period of rapid entry, the industry may enter a period of consolidation where competition for market share shakes out weaker entrants. In the ensuing battle, marketplace competitors may turn to advertising, product innovation, loyalty programs, price wars and other incentive schemes to capture and maintain market share.

Following Another Big Tobacco- For a product such as marijuana, for which the health effects are not well known, the unintended consequences may be similar to the trajectory of the tobacco industry. Tobacco, which has been used since the 15th century, was at the height of popularity in the post-WW2 years during which tobacco was included in c-rations. The dangers of tobacco were known in the 1600's but it wasn't until 1964 when the Surgeon General declared a link between tobacco and lung disease that public opinion began to shift, culminating in the 2009 passage of the Family Smoking Prevention and Tobacco Control Act which regulated tobacco. It took many, many years to understand and acknowledge the negative health effects of tobacco use. **And the industry fought back each step of the way;** and as some critics have pointed out, continually sought to attract young people through advertising and social acceptance. In the last year Bigbelly trash bins had cannabis delivery ads on them around Coolidge Corner and St. Mary's even across from Florida Ruffin Ridley School. Some residents were concerned of the thousands of children passing these advertisements multiple times a day and addressed this. Residents received cannabis delivery mailers in the mail. Advertising will increase with more cannabis stores. With more delivery licenses, MORE ADVERTISING is coming.

Excise Tax- In addition to a desire to address economic disadvantage, tax revenue is another argument cited by those in favor of additional licensing. In FY22, Brookline collected $1,010,239.04 in excise tax revenue. Additional licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition which could result in unintended and likely negative consequences as marketing and promotion is ramped up in the fight for market share and the *fight to increase market size*.

Retail sales of marijuana in MA are subject to three taxes – a 10.75% marijuana excise tax, up to 3% marijuana local tax option, and a 6.25% sales tax, with medical marijuana being exempt from most taxes. The total tax burden on retail marijuana is about 20%. All

pending proposals in Congress seeking federal legalization of cannabis seek to add an accompanying federal tax.

The cost of one ounce of marijuana in MA is over $340. Typically, one ounce will last consumers one month. Ironically, despite legalization, the black market for marijuana is still alive as the price for legal marijuana is significantly higher due to the cost burden associated with taxation and regulations associated with operations.

Health Unknowns- Although products sold through licensed retailers are regulated unlike black market marijuana, the THC levels are much higher than what was available when marijuana was not legal. And there is much we don't as yet know about marijuana and the short- and long-term effects of high THC marijuana on health, especially on those under twenty-five.

Teenagers and Use- Adults may freely weigh the benefits of marijuana against various mental and physical health risks associated with its use and - similar to alcohol and tobacco - choose if, when and how to participate. Teenagers on the other hand, may be unduly influenced by social factors such as peer pressure, general acceptability, availability, popularity (flavored products, celebrity endorsed products, etc), detection avoidance (vape, edibles), and other factors that may encourage "experimentation."

What has also been widely reported is that in 2019, 37% of US high school students reported use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. And large percentages of middle and high school students reported past-year marijuana vaping - 8% of eighth graders, 19% of 10th graders, and 22% of 12th graders.

Given the prevalence of teen use of marijuana with high THC concentration, researchers are studying the impact marijuana may be having on developing brains. The initial studies indicate high THC marijuana use by those under 25 years of age is connected with increased risk of mental health disorders, psychosis, suicidal ideation and has strong additive potential. See list of links below to learn more.

Conclusion- In 2016 when the community voted on marijuana, they were told about disadvantaged communities and a bountiful revenue stream. Many people voted for these reasons. 6 years later, now that we see disadvantaged communities have not greatly benefitted from this new industry, and the excise tax collected from the sale of recreational marijuana in Brookline represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$?), some residents may want to reassess and have another opportunity to have a say in the Town's decisions regarding marijuana. The first WA that caps storefronts to 4 allows voters to decide if 4 cannabis stores is enough in Brookline or if they want more. Some residents may be concerned because they thought 4 shops would be the limit. Now that the community has more experience with the local impacts of the State regulations, the voters should have the opportunity to weigh in, as state law provides. The first 3 WA's address the three categories of marijuana retailers: storefront marijuana (4), delivery-only marijuana retailers (4), and couriers (4), and social consumption cafes (1). The passing of the last three Zoning By-Laws will codify the 3 WA's if they pass so

that the Zoning Board of Appeals shall not issue a special permit that would allow more than what is in the Zoning By-Laws.

References:

1. New York Times 8/24/22 article
nytimes.comUse of Marijuana and Psychedelics Is Soaring Among Young Adults,
2. Washington Post 8/24/22 article
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
3. New York Times 6/23/22
https://www.nytimes.com/2022/06/23/well/mind/teens-thc-cannabis.html
4. Washington Post 6/9/22 article https://www.washingtonpost.com/business/how-legal-weed-has-changed-the-us-for-better-and-worse/2022/06/09/6bc6299a-e801-11ec-a422-11bbb91db30b_story.html
5. New York Times Article 1/14/22
https://www.nytimes.com/2022/01/14/well/family/marijuana-edibles-children.html
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
6. https://www.cdc.gov/marijuana/factsheets/pdf/marijuanafactsheets-teens-508compliant.pdf
7. https://www.cdc.gov/marijuana/health-effects/teens.html
8. https://www.nih.gov/news-events/news-releases/cannabis-use-may-be-associated-suicidality-young-adults
9. https://www.caron.org/blog/behind-the-numbers-colorado-ranks-1-in-youth-use-of-marijuana
10. Study FindsThe annual U.S. survey of substance use captures the growing mainstream acceptance of cannabis and hallucinogenic compounds.
11. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7901265/
12. Tablet Article 8/30/22 https://www.tabletmag.com/sections/news/articles/how-weed-became-new-oxycontin-marijuana-psychosis-addiction

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioners are not making a motion under Article 16.

ADVISORY COMMITTEE'S RECOMMENDATION

There is no motion offered under this article.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE

Submitted by: Susan Park TMM17, Bruce Levin TMM17, Wadner Oge TMM15, Cher Duffield TMM10, Ana Otero TMM6, Ariel Soiffer TMM2, Rich Snyder TMM2, Aone Wang TMM8, Alitza Soiffer (high school student)

To see if the Town will amend the General By-Laws, Part VIII – Public Health and Safety, Article 8.37, Marijuana Establishments, Section 8.37.4, Caps on the Number Select Board Licenses for Marijuana Retailers, as follows (additions are underlined and deletions appear in stricken text):

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses than the number that is ~~20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction~~ listed after each category: a) Storefront Marijuana Retailers,; b) Delivery- Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers,1 (one).

...or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Background- In 2016 the State of Massachusetts legalized recreational marijuana (the ballot initiative had the support of 54% voters) and in 2017 established the Cannabis Control Commission to implement and administer the laws enabling access to adult use marijuana.

Current Licensing- Brookline has already granted FOUR marijuana retail licenses and has approved the granting of licenses for FOUR marijuana delivery and FOUR courier businesses to establish operations in Brookline with EXTENDED hours (July 2022). The new hours of delivery are Sunday-Saturday 8am-9pm.The delivery and courier licenses have been reserved for applicants qualifying as social equity businesses. Anyone in Brookline eligible to consume cannabis has convenient access to medical and recreational marijuana. Legal cannabis is readily available to Brookline residents by the presence of 35 retail, delivery and courier businesses that are authorized to commence operations and are located in Brookline and the surrounding communities of Boston within 10 miles (including West Roxbury, Jamaica Plain, Allston, Brighton), Newton, Cambridge, Watertown and Framingham, Somerville, Chelsea, Needham, Arlington, Quincy, and Melrose.

Some residents may be concerned that 4 recreational cannabis stores is enough and would like to vote on the expansion of more stores in Brookline. This warrant article is a pathway back to the voters-letting them decide.

Some residents may also be concerned that new cannabis licenses will require the applicant to enter and effectively compete in an already crowded marketplace which is likely to require considerable working capital - further discouraging economically disadvantaged applicants from applying for a new license.

Density- Brookline is only about 25% less in population than Newton but has about 1/3 the land area. Newton can allow 8 storefront licenses at this time and they have many more commercial areas with 13 villages than does Brookline. Brookline cannot compare the number of stores like Newton and Boston because our commercial areas are different.

Revenue- Revenue generated by host community agreements are increasingly available only for activity meant to mitigate actual negative impact of licensing and are unavailable for general purposes. M.G.L.94G,Sec.3.

Some residents may be concerned that the excise tax collected from the sale of recreational marijuana in Brookline only represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$1.0mm) when they thought much more revenue would be coming to town.

New licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition for market share resulting in unintended and likely negative consequences.

Growing Teen Use- Some residents may be concerned about the underage drug use including marijuana. This is especially important for teenagers because recent studies suggest that there is a link between “experimenting” and social acceptance, and that there is strong evidence that marijuana causes disproportionate harm to the developing brain.

Some residents may be concerned that rates of cannabis use disorder in people aged 12 to 17 grew 25% more in states that legalized recreational marijuana than in those that didn’t, according to a 2020 study as reported in the Washington Post 6/9/22.

Balance- The purpose of the No More Than Four warrant article is to preserve the ability of Brookline residents to legally and conveniently obtain marijuana while seeking to limit the unintended negative effects that marijuana may have on the Town, particularly upon teenagers, should additional licenses in any category be made available.

Some residents may also be concerned that when they voted YES in 2016, they didn’t realize there could be more than 4 cannabis stores in Brookline. Fortunately, the cannabis statute has a unique design that points to ballot initiative as a method for residents to weigh in on commercialization in their municipality. That is what this warrant article is about. If this Warrant Article passes, it will then go on the May Town wide ballot for residents to weigh in on the expansion of cannabis stores in Brookline. Now that the landscape is different from 2016 with 4 cannabis stores, 4 delivery licenses and 4 courier licenses, in

addition to the 4 extended hours in delivery and courier, 2 hours earlier and 2 hours later, the cannabis footprint has changed in 6 years. More stores are opening around the boundaries of Brookline (the list is below). Residents may want the opportunity to weigh in now. If the first warrant article in this series passes, the community can decide for themselves to stay where we are at 4 cannabis stores or keep growing. Medical marijuana stores will not be impacted.

Brookline's 4 Cannabis Licenses/Stores- The four retail outlets, three of which are in operation and the fourth for which the Select Board approved license conditions on June 8, 2021 are listed below:

https://www.brooklinema.gov/1940/Marijuana-Retail-Establishments

- New England Treatment Access (NETA) – 170 Washington Street and Boylston Street (Brookline Village)

- Sanctuary Medicinals, Inc. – 1351 Beacon Street (Coolidge Corner)

- Mission MA, Inc. – 1022-1024 Commonwealth Avenue (Packard's Corner)

- Comm Ave Canna, Inc. – 1030 Commonwealth Avenue (Packard's Corner)
  Nearby Cannabis Stores- According to the Cannabis Control Commission website, there are 35 stores within 10 miles of Brookline (02446 zip code) and the surrounding communities offering access to retail marijuana. There are 25 stores within 5 miles of Brookline (02246 zip code). In addition, delivery and courier services provide home delivery in Brookline. Convenient access to recreational marijuana is assured.

Below are other cannabis stores nearby Brookline:
Seed- 401A Centre Street Jamaica Plain 11am-8pm everyday

Med Men- 120 Brookline Ave (near Fenway) Mon.-Fri. 10am—5p.m.
Sunday 12:00pm-6:00pm

Redi- 24 Elliot St., Newton
M-S 9:00am—9:00 27 parking spaces; separate from residential area

Ascend- 1089 Washington St Newton, MA
Daily 9:00-9:00 very large parking lot; separate from residential area

Ethos- 390 Arsenal Street, Watertown
Mon-Sat 10:00am—8:00pm

Additional license applications in Boston and the surrounding area are pending. These provisional licenses (waiting for CCC to grant them an order to commence are below):

Newton (have received special permit from City)

- MedMen 232 Boylston Street (Wegman's Plaza)
- Union Twist 1158 Beacon Street
- Green Lady 740 Beacon Street

Brighton

- HVV 1937-1939 Beacon Street (former "MaryAnne's")
- Pure Oasis 535 Washington Street

Allston

- Opco 144 Harvard Street
- Mass. Greenwoods 166 Harvard Street
- Union Twist 259 Cambridge Street

Fenway and Back Bay

- Cyprus Tree 1114 Boylston Street

- New Dia 48-62 Boylston Street

- Rooted 371 Newbury Street

- Sira Naturals 827-829 Boylston Street

What Was Promised and What Actually Happened- When voters in Massachusetts and Brookline voted to legalize marijuana, addressing the harmful effects of the "war on drugs" on minority and disadvantaged communities, this was often cited as a major reason. In the ensuing period, Brookline, along with many other MA cities and towns, have granted licenses but many of the licenses went to corporations not applicants from minority or disadvantaged communities.

Granting Additional Licenses- This will not address "the war on drugs" on minority and disadvantaged communities because the underlying factors keeping minority and disadvantaged applicants from participating have not been addressed. And now, with over 190 businesses in Massachusetts devoted to recreational cannabis, the market is close to saturation. As in many new markets, after a period of rapid entry, the industry may enter a period of consolidation where competition for market share shakes out weaker entrants. In the ensuing battle, marketplace competitors may turn to advertising, product innovation, loyalty programs, price wars and other incentive schemes to capture and maintain market share.

Following Another Big Tobacco- For a product such as marijuana, for which the health effects are not well known, the unintended consequences may be similar to the trajectory of the tobacco industry. Tobacco, which has been used since the 15th century, was at the height of popularity in the post-WW2 years during which tobacco was included in c-rations. The dangers of tobacco were known in the 1600's but it wasn't until 1964 when the Surgeon General declared a link between tobacco and lung disease that public opinion began to shift, culminating in the 2009 passage of the Family Smoking Prevention and Tobacco Control Act which regulated tobacco. It took many, many years to understand and acknowledge the negative health effects of tobacco use. **And the industry fought back each step of the way;** and as some critics have pointed out, continually sought to attract young people through advertising and social acceptance. In the last year Bigbelly trash bins had cannabis delivery ads on them around Coolidge Corner and St. Mary's even across from Florida Ruffin Ridley School. Some residents were concerned of the thousands of children passing these advertisements multiple times a day and addressed this. Residents received cannabis delivery mailers in the mail. Advertising will increase

with more cannabis stores.

Excise Tax- In addition to a desire to address economic disadvantage, tax revenue is another argument cited by those in favor of additional licensing. In FY22, Brookline collected $1.0mm in excise tax revenue. Additional licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition which could result in unintended and likely negative consequences as marketing and promotion is ramped up in the fight for market share and the *fight to increase market size*.

Retail sales of marijuana in MA are subject to three taxes – a 10.75% marijuana excise tax, up to 3% marijuana local tax option, and a 6.25% sales tax, with medical marijuana being exempt from most taxes. The total tax burden on retail marijuana is about 20%. All pending proposals in Congress seeking federal legalization of cannabis seek to add an accompanying federal tax.

The cost of one ounce of marijuana in MA is over $340. Typically, one ounce will last consumers one month. Ironically, despite legalization, the black market for marijuana is still alive as the price for legal marijuana is significantly higher due to the cost burden associated with taxation and regulations associated with operations.

Health Unknowns- Although products sold through licensed retailers are regulated unlike black market marijuana, the THC levels are much higher than what was available when marijuana was not legal. And there is much we don't as yet know about marijuana and the short- and long-term effects of high THC marijuana on health, especially on those under twenty-five.

Teenagers and Use- Adults may freely weigh the benefits of marijuana against various mental and physical health risks associated with its use and - similar to alcohol and tobacco - choose if, when and how to participate. Teenagers on the other hand, may be unduly influenced by social factors such as peer pressure, general acceptability, availability, popularity (flavored products, celebrity endorsed products, etc), detection avoidance (vape, edibles), and other factors that may encourage "experimentation."

What has also been widely reported is that in 2019, 37% of US high school students reported use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. And large percentages of middle and high school students reported past-year marijuana vaping - 8% of eighth graders, 19% of 10th graders, and 22% of 12th graders.

Given the prevalence of teen use of marijuana with high THC concentration, researchers are studying the impact marijuana may be having on developing brains. The initial studies indicate high THC marijuana use by those under 25 years of age is connected with increased risk of mental health disorders, psychosis, suicidal ideation and has strong additive potential. See list of links below to learn more.

Conclusion- In 2016 when the community voted on marijuana, they were told about disadvantaged communities and a bountiful revenue stream. Many people voted for these reasons. 6 years later, now that we see disadvantaged communities have not greatly benefitted from this new industry, and the excise tax collected from the sale of

recreational marijuana in Brookline represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$1.0mm), some residents may want to reassess and have another opportunity to have a say in the Town's decisions regarding marijuana. The first WA that caps storefronts to 4 allows voters to decide if 4 cannabis stores is enough in Brookline or if they want more. Some residents may be concerned because they thought 4 shops would be the limit. Now that the community has more experience with the local impacts of the State regulations, the voters should have the opportunity to weigh in, as state law provides. The first 3 WA's address the three categories of marijuana retailers: storefront marijuana (4), delivery-only marijuana retailers (4), and couriers (4), and social consumption cafes (1). The passing of the last three Zoning By-Laws will codify the 3 WA's if they pass so that the Zoning Board of Appeals shall not issue a special permit that would allow more than what is in the Zoning By-Laws. Social consumption retailers are coming down the pike. This Warrant Article limits the number to one after a Town wide vote IF the town even wants social consumption retailers. The lower the number protects the town from many social consumption retailers coming in all at once. This allows the town to assess and choose more IF this is what they want. By having a higher number like 4, 4 social consumption retailers could come in as a minimum if it passes at the Town wide vote. Keeping the number at 1 gives control to our communities and not the big businesses.

References:

1. New York Times 8/24/22 article
nytimes.comUse of Marijuana and Psychedelics Is Soaring Among Young Adults,
2. Washington Post 8/24/22 article
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
3. New York Times 6/23/22 https://www.nytimes.com/2022/06/23/well/mind/teens-thc-cannabis.html
4. Washington Post 6/9/22 article https://www.washingtonpost.com/business/how-legal-weed-has-changed-the-us-for-better-and-worse/2022/06/09/6bc6299a-e801-11ec- a422-11bbb91db30b_story.html
5. New York Times Article 1/14/22
https://www.nytimes.com/2022/01/14/well/family/marijuana-edibles-children.html
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
6. https://www.cdc.gov/marijuana/factsheets/pdf/marijuanafactsheets- teens-508compliant.pdf
7. https://www.cdc.gov/marijuana/health-effects/teens.html
8. https://www.nih.gov/news-events/news-releases/cannabis-use-may-be-associated-suicidality-young-adults
9. https://www.caron.org/blog/behind-the-numbers-colorado-ranks-1-in-youth-use-of-marijuana

10. Study FindsThe annual U.S. survey of substance use captures the growing mainstream acceptance of cannabis and hallucinogenic compounds.
11. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7901265/

12. Tablet Article 8/30/22 https://www.tabletmag.com/sections/news/articles/how-weed-became-new-oxycontin-marijuana-psychosis-addiction

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioners are not making a motion under Article 17.

ADVISORY COMMITTEE'S RECOMMENDATION

There is no motion offered under this article.

XXX

ARTICLE 18

EIGHTEENTH ARTICLE

Submitted by: Susan Park TMM17, Bruce Levin TMM17, Wadner Oge TMM15, Cher Duffield TMM10, Ana Otero TMM6, Ariel Soiffer TMM2, Rich Snyder TMM2, Aone Wang TMM8, Alitza Soiffer (high school student)

Section 4.13

To see if the Town will amend the Zoning By-Laws, Section 4.13., Marijuana Establishments: Cap on the Number of Special Permits for Marijuana Retailers, as follows (additions are underlined and deletions appear in stricken text):

If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment licenses than the number that is ~~20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction~~ listed after each category: a) Storefront Marijuana Retailers, 4 (four); b) Delivery- Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

...or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Background- In 2016 the State of Massachusetts legalized recreational marijuana (the ballot initiative had the support of 54% voters) and in 2017 established the Cannabis Control Commission to implement and administer the laws enabling access to adult use marijuana.

Current Licensing- Brookline has already granted FOUR marijuana retail licenses and has approved the granting of licenses for FOUR marijuana delivery and FOUR courier businesses to establish operations in Brookline with EXTENDED hours (July 2022). The new hours of delivery are Sunday-Saturday 8am-9pm.The delivery and courier licenses have been reserved for applicants qualifying as social equity businesses. Anyone in Brookline eligible to consume cannabis has convenient access to medical and recreational marijuana. Legal cannabis is readily available to Brookline residents by the presence of 35 retail, delivery and courier businesses that are authorized to commence operations and are located in Brookline and the surrounding communities of Boston within 10 miles (including West Roxbury, Jamaica Plain, Allston, Brighton), Newton, Cambridge, Watertown and Framingham, Somerville, Chelsea, Needham, Arlington, Quincy, and Melrose.

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Revenue- Revenue generated by host community agreements are increasingly available only for activity meant to mitigate actual negative impact of licensing and are unavailable for general purposes. M.G.L.94G,Sec.3.

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Growing Teen Use- Some residents may be concerned about the underage drug use including marijuana. This is especially important for teenagers because recent studies suggest that there is a link between “experimenting” and social acceptance, and that there is strong evidence that marijuana causes disproportionate harm to the developing brain.

Some residents may be concerned that rates of cannabis use disorder in people aged 12 to 17 grew 25% more in states that legalized recreational marijuana than in those that didn’t, according to a 2020 study as reported in the Washington Post 6/9/22.

Balance- The purpose of the No More Than Four warrant article is to preserve the ability of Brookline residents to legally and conveniently obtain marijuana while seeking to limit the unintended negative effects that marijuana may have on the Town, particularly upon teenagers, should additional licenses in any category be made available.

Some residents may also be concerned that when they voted YES in 2016, they didn’t realize there could be more than 4 cannabis stores in Brookline. Fortunately, the cannabis statute has a unique design that points to ballot initiative as a method for residents to weigh in on commercialization in their municipality. That is what this warrant article is about. If this Warrant Article passes, it will then go on the May Town wide ballot for residents to weigh in on the expansion of cannabis stores in Brookline. Now that the landscape is different from 2016 with 4 cannabis stores, 4 delivery licenses and 4 courier licenses, in addition to the 4 extended hours in delivery and courier, 2 hours earlier and 2 hours later, the cannabis footprint has changed in 6 years. More stores are opening around the boundaries of Brookline (the list is below). Residents may want the opportunity to weigh in now. If this warrant article passes, the community can decide for themselves to stay where we are at 4 cannabis stores or keep growing. Medical marijuana stores will not be impacted.

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https://www.brooklinema.gov/1940/Marijuana-Retail-Establishments

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Below are other cannabis stores nearby Brookline:
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11am-8pm everyday
Med Men 120 Brookline Ave (near Fenway)
Mon.-Fri. 10am—5p.m.
Sunday 12:00pm-6:00pm
Redi Eliot St Newton
M-S 9:00am—9:00 27 parking spaces; separate from residential area
Ascend 1089 Washington St Newton, MA
Daily 9:00-9:00 very large parking lot; separate from residential area
Ethos Arsenal Street Watertown
Mon-Sat 10:00am—8:00pm

An additional license applications in Boston and the surrounding area are pending. These provisional licenses (waiting for CCC to grant them an order to commence are below):
Newton (have received special permit from City)

- MedMen 232 Boylston Street (Wegman's Plaza)
- Union Twist 1158 Beacon Street
- Green Lady 740 Beacon Street

Brighton

- HVV 1937-1939 Beacon Street (former "MaryAnne's")
- Pure Oasis 535 Washington Street

Allston

- Opco 144 Harvard Street
- Mass. Greenwoods 166 Harvard Street
- Union Twist 259 Cambridge Street

Fenway and Back Bay

- Cyprus Tree 1114 Boylston Street
- New Dia 48-62 Boylston Street
- Rooted 371 Newbury Street
- Sira Naturals 827-829 Boylston Street

What Was Promised and What Actually Happened- When voters in Massachusetts and Brookline voted to legalize marijuana, addressing the harmful effects of the "war on drugs" on minority and disadvantaged communities, this was often cited as a major reason. In the ensuing period, Brookline, along with many other MA cities and towns, have granted licenses but many of the licenses went to corporations not applicants from minority or disadvantaged communities.

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Excise Tax- In addition to a desire to address economic disadvantage, tax revenue is another argument cited by those in favor of additional licensing. In FY22, Brookline collected $1,010,239 in excise tax revenue. Additional licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition which could result in unintended and likely negative consequences as marketing and promotion is ramped up in the fight for market share and the *fight to increase market size*.

Retail sales of marijuana in MA are subject to three taxes – a 10.75% marijuana excise tax, up to 3% marijuana local tax option, and a 6.25% sales tax, with medical marijuana being exempt from most taxes. The total tax burden on retail marijuana is about 20%. All pending proposals in Congress seeking federal legalization of cannabis seek to add an accompanying federal tax.

The cost of one ounce of marijuana in MA is over $340. Typically, one ounce will last consumers one month. Ironically, despite legalization, the black market for marijuana is still alive as the price for legal marijuana is significantly higher due to the cost burden associated with taxation and regulations associated with operations.

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Teenagers and Use- Adults may freely weigh the benefits of marijuana against various mental and physical health risks associated with its use and - similar to alcohol and tobacco - choose if, when and how to participate. Teenagers on the other hand, may be unduly influenced by social factors such as peer pressure, general acceptability, availability, popularity (flavored products, celebrity endorsed products, etc), detection avoidance (vape, edibles), and other factors that may encourage "experimentation."

What has also been widely reported is that in 2019, 37% of US high school students reported use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. And large percentages of middle and high school students reported past-year marijuana vaping - 8% of eighth graders, 19% of 10th graders, and 22% of 12th graders.

Given the prevalence of teen use of marijuana with high THC concentration, researchers are studying the impact marijuana may be having on developing brains. The initial studies indicate high THC marijuana use by those under 25 years of age is connected with increased risk of mental health disorders, psychosis, suicidal ideation and has strong additive potential. See list of links below to learn more.

Conclusion- In 2016 when the community voted on marijuana, they were told about disadvantaged communities and a bountiful revenue stream. Many people voted for these reasons. 6 years later, now that we see disadvantaged communities have not greatly impacted from this new industry, and the excise tax collected from the sale of recreational marijuana in Brookline represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$?), some residents may want to reassess and have another opportunity to have a say in the Town's decisions regarding marijuana. The first WA that caps storefronts to 4 allows voters to decide if 4 cannabis stores is enough in Brookline or if they want more. Some residents may be concerned because they thought 4 shops would be the limit. Now that the community has more experience with the local impacts of the State regulations, the voters should have the opportunity to weigh in, as state law provides.

The first 3 WA's address the three categories of marijuana retailers: storefront marijuana (4), delivery-only marijuana retailers (4), and couriers (4), and social consumption cafes (1). The passing of the last three Zoning By-Laws will codify the 3 WA's if they pass so that the Zoning Board of Appeals shall not issue a special permit that would allow more than what is in the Zoning By-Laws.

References:

1. New York Times 8/24/22 article
nytimes.comUse of Marijuana and Psychedelics Is Soaring Among Young Adults,
2. Washington Post 8/24/22 article
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
3. New York Times 6/23/22
https://www.nytimes.com/2022/06/23/well/mind/teens-thc-cannabis.html
4. Washington Post 6/9/22 article https://www.washingtonpost.com/business/how-legal-weed-has-changed-the-us-for-better-and-worse/2022/06/09/6bc6299a-e801-11ec-a422-11bbb91db30b_story.html
5. New York Times Article 1/14/22
https://www.nytimes.com/2022/01/14/well/family/marijuana-edibles-children.html
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
6. https://www.cdc.gov/marijuana/factsheets/pdf/marijuanafactsheets-teens-508compliant.pdf
7. https://www.cdc.gov/marijuana/health-effects/teens.html
8. https://www.nih.gov/news-events/news-releases/cannabis-use-may-be-associated-suicidality-young-adults
9. https://www.caron.org/blog/behind-the-numbers-colorado-ranks-1-in-youth-use-of-marijuana
10. Study FindsThe annual U.S. survey of substance use captures the growing mainstream acceptance of cannabis and hallucinogenic compounds.
11. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7901265/
12. Tablet Article 8/30/22 https://www.tabletmag.com/sections/news/articles/how-weed-became-new-oxycontin-marijuana-psychosis-addiction

PLANNING BOARD REPORT AND RECOMMENDATION

Pursuant to M.G.L c.138 sec. 15, a municipality that is a so-called "Yes" community (meaning a majority of its voters supported the referendum legalizing the sale, possession, and consumption of marijuana) may limit the number of marijuana establishments in its community as long as the cap is no less than 20% of the number of off-premises liquor licenses issued. Brookline incorporates this requirement into Section 8.37.34 of its General By-Laws and Article 4.13 of its Zoning By-Laws, imposing a cap of "20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138 sec. 15, as rounded up to the nearest whole number in the event the number is a fraction." Because 20 off-premises liquor licenses have been issued, no more than four special permits for storefront marijuana retailers, for delivery may be

granted by the Board of Appeals. Because of the latest population count, the Town could issue up to six more off-premises liquor licenses, and if it does, two more special permits for marijuana retailers could be granted. Currently, the Town has not received any additional applications for liquor licenses. There are now four storefront retail special permits/licenses that have been issued, and three retailers are in operation. Under M.G.L. c. 94 Sec. 3, Town Meeting may vote to limit the cap below the 20% minimum allowed by the State. If Town Meeting votes to pass these articles, then the question of lowering the cap would be put on a Town-wide ballot for a general vote.

On October 12, 2022, a joint public hearing of the Zoning By-Law Committee and the Planning Board was held. Petitioner Susan Park gave a presentation to support both Warrant Articles 15 and 18 to limit the number of marijuana retailers to four. She explained that if these warrant articles are passed, a Town-wide referendum would be held to allow voters to decide the correct number of retailers in Town. The petitioners argue that more marijuana establishments may influence an increase in drug use among teens; that market saturation may limit the ability of social equity business owners to compete; and that increased competition would mean lower sales, and in turn would mean an inconsequential source of revenue for the Town, which would justify further restricting the number of marijuana businesses. They also emphasized that with three marijuana retailers operating in Town, citizens could now more accurately measure the impacts to the Town.

Several Zoning By-Law Committee members suggested that more competition is better and supported free market forces. If the market becomes saturated, new retail marijuana stores will not open. A couple of members stated that voters supported the state statute, and multiple referendums were not appropriate and could lead to voter fatigue. It was pointed out that neither of the articles mention that if the articles are passed there would be a town-wide vote. Additionally, there is currently a Moderator's Committee that was appointed to study marijuana issues. Accordingly, the ZBLC recommended No Action on Warrant Article XVIII in a 9-4 vote.

The Planning Board did not engage in further discussion of the pros and cons of more retail marijuana establishments, and acknowledged that the issue could be left to a general referendum to decide. However, Planning Board members felt a better sequence was to wait and see if Town Meeting approves Article 15 and the electorate votes to limit marijuana retailers, and then adopt a zoning amendment consistent with the vote. Planning Board members therefore agreed with the Zoning By-Law Committee and were not in favor of supporting Article 18 at this time.

The Planning Board unanimously recommended No Action on Warrant Article XVIII in a 7-0 vote. The roll call vote went as follows: Heikin – aye, Zarrillo – aye, Hamlin– aye, Brue – aye, Chipimo – aye, Hiller – aye, and Hines – aye.

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioners are not making a motion under Article 18.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee offers no motion under this article.

XXX

ARTICLE 19

NINETEENTH ARTICLE

Submitted by: Susan Park TMM17, Bruce Levin TMM17, Wadner Oge TMM15, Cher Duffield TMM10, Ana Otero TMM6, Ariel Soiffer TMM2, Rich Snyder TMM2, Aone Wang TMM8, Alitza Soiffer (high school student)

To see if the Town will amend the Zoning By-Laws, Section 4.13., Marijuana Establishments: Cap on the Number of Special Permits for Marijuana Retailers, as follows (additions are underlined and deletions appear in stricken text):

If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment licenses than the number that is ~~20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction~~ listed after each category: a) Storefront Marijuana Retailers, b) Delivery- Only Marijuana Retailers, 4 (four); and c) Social Consumption Marijuana Retailers.

…or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Background- In 2016 the State of Massachusetts legalized recreational marijuana (the ballot initiative had the support of 54% voters) and in 2017 established the Cannabis Control Commission to implement and administer the laws enabling access to adult use marijuana.

Current Licensing- Brookline has already granted FOUR marijuana retail licenses and has approved the granting of licenses for FOUR marijuana delivery and FOUR courier businesses to establish operations in Brookline with EXTENDED hours (July 2022). The new hours of delivery are Sunday-Saturday 8am-9pm.The delivery and courier licenses have been reserved for applicants qualifying as social equity businesses. Anyone in Brookline eligible to consume cannabis has convenient access to medical and recreational marijuana. Legal cannabis is readily available to Brookline residents by the presence of 35 retail, delivery and courier businesses that are authorized to commence operations and are located in Brookline and the surrounding communities of Boston within 10 miles (including West Roxbury, Jamaica Plain, Allston, Brighton), Newton, Cambridge, Watertown and Framingham, Somerville, Chelsea, Needham, Arlington, Quincy, and Melrose.

Some residents may be concerned that 4 recreational cannabis stores is enough and would like to vote on the expansion of more stores in Brookline. This warrant article is a pathway back to the voters-letting them decide.

Some residents may also be concerned that new cannabis licenses will require the applicant to enter and effectively compete in an already crowded marketplace which is likely to require considerable working capital - further discouraging economically disadvantaged applicants from applying for a new license.

Density- Brookline is only about 25% less in population than Newton but has about 1/3 the land area. Newton can allow 8 storefront licenses at this time and they have many more commercial areas with 13 villages than does Brookline. Brookline cannot compare the number of stores like Newton and Boston because our commercial areas are different.

Revenue- Revenue generated by host community agreements are increasingly available only for activity meant to mitigate actual negative impact of licensing and are unavailable for general purposes. M.G.L.94G,Sec.3.

Some residents may be concerned that the excise tax collected from the sale of recreational marijuana in Brookline only represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$1.0mm) when they thought much more revenue would be coming to town.

New licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition for market share resulting in unintended and likely negative consequences.

Growing Teen Use- Some residents may be concerned about the underage drug use including marijuana. This is especially important for teenagers because recent studies suggest that there is a link between “experimenting” and social acceptance, and that there is strong evidence that marijuana causes disproportionate harm to the developing brain.

Some residents may be concerned that rates of cannabis use disorder in people aged 12 to 17 grew 25% more in states that legalized recreational marijuana than in those that didn’t, according to a 2020 study as reported in the Washington Post 6/9/22.

Balance- The purpose of the No More Than Four warrant article is to preserve the ability of Brookline residents to legally and conveniently obtain marijuana while seeking to limit the unintended negative effects that marijuana may have on the Town, particularly upon teenagers, should additional licenses in any category be made available.

Some residents may also be concerned that when they voted YES in 2016, they didn’t realize there could be more than 4 cannabis stores in Brookline. Fortunately, the cannabis statute has a unique design that points to ballot initiative as a method for residents to weigh in on commercialization in their municipality. That is what this warrant article is about. If this Warrant Article passes, it will then go on the May Town wide ballot for residents to weigh in on the expansion of cannabis stores in Brookline. Now that the landscape is different from 2016 with 4 cannabis stores, 4 delivery licenses and 4 courier

licenses, in addition to the 4 extended hours in delivery and courier, 2 hours earlier and 2 hours later, the cannabis footprint has changed in 6 years. More stores are opening around the boundaries of Brookline (the list is below). Residents may want the opportunity to weigh in now. If this warrant article passes, the community can decide for themselves to stay where we are at 4 cannabis stores or keep growing. Medical marijuana stores will not be impacted.

Brookline's 4 Cannabis Licenses/Stores- The four retail outlets, three of which are in operation and the fourth for which the Select Board approved license conditions on June 8, 2021 are listed below:

https://www.brooklinema.gov/1940/Marijuana-Retail-Establishments

- New England Treatment Access (NETA) – 170 Washington Street and Boylston Street (Brookline Village)
- Sanctuary Medicinals, Inc. – 1351 Beacon Street (Coolidge Corner)
- Mission MA, Inc. – 1022-1024 Commonwealth Avenue (Packard's Corner)
- Comm Ave Canna, Inc. – 1030 Commonwealth Avenue (Packard's Corner)

Nearby Cannabis Stores- According to the Cannabis Control Commission website, there are 35 stores within 10 miles of Brookline (02446 zip code) and the surrounding communities offering access to retail marijuana. There are 25 stores within 5 miles of Brookline (02246 zip code). In addition, delivery and courier services provide home delivery in Brookline. Convenient access to recreational marijuana is assured.

Below are other cannabis stores nearby Brookline:
Seed 401A Centre Street Jamaica Plain
11am-8pm everyday
Med Men 120 Brookline Ave (near Fenway)
Mon.-Fri. 10am—5p.m.
Sunday 12:00pm-6:00pm
Redi Eliot St Newton
m-s 9:00am—9:00 27 parking spaces; separate from residential area
Ascend 1089 Washington St Newton, MA
Daily 9:00-9:00 very large parking lot; separate from residential area
Ethos Arsenal Street Watertown
Mon-Sat 10:00am—8:00pm

An additional license applications in Boston and the surrounding area are pending. These provisional licenses (waiting for CCC to grant them an order to commence are below):
Newton (have received special permit from City)

- MedMen 232 Boylston Street (Wegman's Plaza)
- Union Twist 1158 Beacon Street
- Green Lady 740 Beacon Street

Brighton

- HVV 1937-1939 Beacon Street (former "MaryAnne's")
- Pure Oasis 535 Washington Street

Allston

- Opco 144 Harvard Street
- Mass. Greenwoods 166 Harvard Street
- Union Twist 259 Cambridge Street

Fenway and Back Bay

- Cyprus Tree 1114 Boylston Street
- New Dia 48-62 Boylston Street
- Rooted 371 Newbury Street
- Sira Naturals 827-829 Boylston Street

What Was Promised and What Actually Happened- When voters in Massachusetts and Brookline voted to legalize marijuana, addressing the harmful effects of the "war on drugs" on minority and disadvantaged communities, this was often cited as a major reason. In the ensuing period, Brookline, along with many other MA cities and towns, have granted licenses but many of the licenses went to corporations not applicants from minority or disadvantaged communities.

Granting Additional Licenses- This will not address "the war on drugs" on minority and disadvantaged communities because the underlying factors keeping minority and disadvantaged applicants from participating have not been addressed. And now, with over 190 businesses in Massachusetts devoted to recreational cannabis, the market is close to saturation. As in many new markets, after a period of rapid entry, the industry may enter a period of consolidation where competition for market share shakes out weaker entrants. In the ensuing battle, marketplace competitors may turn to advertising, product innovation, loyalty programs, price wars and other incentive schemes to capture and maintain market share.

Following Another Big Tobacco- For a product such as marijuana, for which the health effects are not well known, the unintended consequences may be similar to the trajectory of the tobacco industry. Tobacco, which has been used since the 15th century, was at the height of popularity in the post-WW2 years during which tobacco was included in c-rations. The dangers of tobacco were known in the 1600's but it wasn't until 1964 when the Surgeon General declared a link between tobacco and lung disease that public opinion began to shift, culminating in the 2009 passage of the Family Smoking Prevention and Tobacco Control Act which regulated tobacco. It took many, many years to understand and acknowledge the negative health effects of tobacco use. **And the industry fought back each step of the way;** and as some critics have pointed out, continually sought to attract young people through advertising and social acceptance. In the last year Bigbelly trash bins had cannabis delivery ads on them around Coolidge Corner and St. Mary's even across from Florida Ruffin Ridley School. Some residents were concerned of the thousands of children passing these advertisements multiple times a day and addressed this. Residents received cannabis delivery mailers in the mail. Advertising will increase with more cannabis stores.

Excise Tax- In addition to a desire to address economic disadvantage, tax revenue is another argument cited by those in favor of additional licensing. In FY22, Brookline collected $1,010,239 in excise tax revenue. Additional licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition which could result in unintended and likely negative consequences as marketing and promotion is ramped up in the fight for market share and the *fight to increase market size*.

Retail sales of marijuana in MA are subject to three taxes – a 10.75% marijuana excise tax, up to 3% marijuana local tax option, and a 6.25% sales tax, with medical marijuana being exempt from most taxes. The total tax burden on retail marijuana is about 20%. All pending proposals in Congress seeking federal legalization of cannabis seek to add an accompanying federal tax.

The cost of one ounce of marijuana in MA is over $340. Typically, one ounce will last consumers one month. Ironically, despite legalization, the black market for marijuana is still alive as the price for legal marijuana is significantly higher due to the cost burden associated with taxation and regulations associated with operations.

Health Unknowns- Although products sold through licensed retailers are regulated unlike black market marijuana, the THC levels are much higher than what was available when marijuana was not legal. And there is much we don't as yet know about marijuana and the short- and long-term effects of high THC marijuana on health, especially on those under twenty-five.

Teenagers and Use- Adults may freely weigh the benefits of marijuana against various mental and physical health risks associated with its use and - similar to alcohol and tobacco - choose if, when and how to participate. Teenagers on the other hand, may be unduly influenced by social factors such as peer pressure, general acceptability, availability, popularity (flavored products, celebrity endorsed products, etc), detection avoidance (vape, edibles), and other factors that may encourage "experimentation."

What has also been widely reported is that in 2019, 37% of US high school students reported use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. And large percentages of middle and high school students reported past-year marijuana vaping - 8% of eighth graders, 19% of 10th graders, and 22% of 12th graders.

Given the prevalence of teen use of marijuana with high THC concentration, researchers are studying the impact marijuana may be having on developing brains. The initial studies indicate high THC marijuana use by those under 25 years of age is connected with increased risk of mental health disorders, psychosis, suicidal ideation and has strong additive potential. See list of links below to learn more.

Conclusion- In 2016 when the community voted on marijuana, they were told about disadvantaged communities and a bountiful revenue stream. Many people voted for these reasons. 6 years later, now that we see disadvantaged communities have not greatly

benefitted from this new industry, and the excise tax collected from the sale of recreational marijuana in Brookline represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$?), some residents may want to reassess and have another opportunity to have a say in the Town's decisions regarding marijuana. The first WA that caps storefronts to 4 allows voters to decide if 4 cannabis stores is enough in Brookline or if they want more. Some residents may be concerned because they thought 4 shops would be the limit. Now that the community has more experience with the local impacts of the State regulations, the voters should have the opportunity to weigh in, as state law provides. The first 3 WA's address the three categories of marijuana retailers: storefront marijuana (4), delivery-only marijuana retailers (4), and couriers (4), and social consumption cafes (1). The passing of the last three Zoning By-Laws will codify the 3 WA's if they pass so that the Zoning Board of Appeals shall not issue a special permit that would allow more than what is in the Zoning By-Laws.

References:

1. New York Times 8/24/22 article
nytimes.comUse of Marijuana and Psychedelics Is Soaring Among Young Adults,
2. Washington Post 8/24/22 article
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
3. New York Times 6/23/22
https://www.nytimes.com/2022/06/23/well/mind/teens-thc-cannabis.html
4. Washington Post 6/9/22 article https://www.washingtonpost.com/business/how-legal-weed-has-changed-the-us-for-better-and-worse/2022/06/09/6bc6299a-e801-11ec-a422-11bbb91db30b_story.html
5. New York Times Article 1/14/22
https://www.nytimes.com/2022/01/14/well/family/marijuana-edibles-children.html
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
6. https://www.cdc.gov/marijuana/factsheets/pdf/marijuanafactsheets-teens-508compliant.pdf
7. https://www.cdc.gov/marijuana/health-effects/teens.html
8. https://www.nih.gov/news-events/news-releases/cannabis-use-may-be-associated-suicidality-young-adults
9. https://www.caron.org/blog/behind-the-numbers-colorado-ranks-1-in-youth-use-of-marijuana
10. Study FindsThe annual U.S. survey of substance use captures the growing mainstream acceptance of cannabis and hallucinogenic compounds.
11. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7901265/
12. Tablet Article 8/30/22 https://www.tabletmag.com/sections/news/articles/how-weed-became-new-oxycontin-marijuana-psychosis-addiction

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioners are not making a motion under Article 19.

ADVISORY COMMITTEE'S RECOMMENDATION

There is no motion offered under this article.

XXX

ARTICLE 20

TWENTIETH ARTICLE

Submitted by: Susan Park TMM17, Bruce Levin TMM17, Wadner Oge TMM15, Cher Duffield TMM10, Ana Otero TMM6, Ariel Soiffer TMM2, Rich Snyder TMM2, Aone Wang TMM8, Alitza Soiffer (high school student)

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Redi Eliot St Newton
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Ascend 1089 Washington St Newton, MA
Daily 9:00-9:00 very large parking lot; separate from residential area
Ethos ArseNnal Street Watertown
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Granting Additional Licenses- This will not address "the war on drugs" on minority and disadvantaged communities because the underlying factors keeping minority and disadvantaged applicants from participating have not been addressed. And now, with over 190 businesses in Massachusetts devoted to recreational cannabis, the market is close to saturation. As in many new markets, after a period of rapid entry, the industry may enter a period of consolidation where competition for market share shakes out weaker entrants. In the ensuing battle, marketplace competitors may turn to advertising, product innovation, loyalty programs, price wars and other incentive schemes to capture and maintain market share.

Following Another Big Tobacco- For a product such as marijuana, for which the health effects are not well known, the unintended consequences may be similar to the trajectory of the tobacco industry. Tobacco, which has been used since the 15th century, was at the height of popularity in the post-WW2 years during which tobacco was included in c-rations. The dangers of tobacco were known in the 1600's but it wasn't until 1964 when the Surgeon General declared a link between tobacco and lung disease that public opinion began to shift, culminating in the 2009 passage of the Family Smoking Prevention and Tobacco Control Act which regulated tobacco. It took many, many years to understand and acknowledge the negative health effects of tobacco use. **And the industry fought back each step of the way;** and as some critics have pointed out, continually sought to attract young people through advertising and social acceptance. In the last year Bigbelly trash bins had cannabis delivery ads on them around Coolidge Corner and St. Mary's even across from Florida Ruffin Ridley School. Some residents were concerned of the thousands of children passing these advertisements multiple times a day and addressed this. Residents received cannabis delivery mailers in the mail. Advertising will increase with more cannabis stores.

Excise Tax- In addition to a desire to address economic disadvantage, tax revenue is another argument cited by those in favor of additional licensing. In FY22, Brookline collected $1.0mm in excise tax revenue. Additional licenses are unlikely to increase the amount of excise tax collected by the Town because the market is increasingly saturated. New licenses may instead increase competition which could result in unintended and likely negative consequences as marketing and promotion is ramped up in the fight for market share and the *fight to increase market size*.

Retail sales of marijuana in MA are subject to three taxes – a 10.75% marijuana excise tax, up to 3% marijuana local tax option, and a 6.25% sales tax, with medical marijuana being exempt from most taxes. The total tax burden on retail marijuana is about 20%. All pending proposals in Congress seeking federal legalization of cannabis seek to add an accompanying federal tax.

The cost of one ounce of marijuana in MA is over $340. Typically, one ounce will last consumers one month. Ironically, despite legalization, the black market for marijuana is still alive as the price for legal marijuana is significantly higher due to the cost burden associated with taxation and regulations associated with operations.

Health Unknowns- Although products sold through licensed retailers are regulated unlike black market marijuana, the THC levels are much higher than what was available when marijuana was not legal. And there is much we don't as yet know about marijuana and the short- and long-term effects of high THC marijuana on health, especially on those under twenty-five.

Teenagers and Use- Adults may freely weigh the benefits of marijuana against various mental and physical health risks associated with its use and - similar to alcohol and tobacco - choose if, when and how to participate. Teenagers on the other hand, may be unduly influenced by social factors such as peer pressure, general acceptability, availability, popularity (flavored products, celebrity endorsed products, etc), detection avoidance (vape, edibles), and other factors that may encourage "experimentation."

What has also been widely reported is that in 2019, 37% of US high school students reported use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. And large percentages of middle and high school students reported past-year marijuana vaping - 8% of eighth graders, 19% of 10th graders, and 22% of 12th graders.

Given the prevalence of teen use of marijuana with high THC concentration, researchers are studying the impact marijuana may be having on developing brains. The initial studies indicate high THC marijuana use by those under 25 years of age is connected with increased risk of mental health disorders, psychosis, suicidal ideation and has strong additive potential. See list of links below to learn more.

Conclusion- In 2016 when the community voted on marijuana, they were told about disadvantaged communities and a bountiful revenue stream. Many people voted for these reasons. 6 years later, now that we see disadvantaged communities have not greatly benefitted from this new industry, and the excise tax collected from the sale of recreational marijuana in Brookline represents less than 1% of the total Town budget (FY20-$1.8mm, FY21-$1.0mm and FY22-$?), some residents may want to reassess and have another opportunity to have a say in the Town's decisions regarding marijuana. The first WA that caps storefronts to 4 allows voters to decide if 4 cannabis stores is enough in Brookline or if they want more. Some residents may be concerned because they thought 4 shops would be the limit. Now that the community has more experience with the local impacts of the State regulations, the voters should have the opportunity to weigh in, as state law provides.

The first 3 WA's address the three categories of marijuana retailers: storefront marijuana (4), delivery-only marijuana retailers (4), and couriers (4), and social consumption cafes (1). The passing of the last three Zoning By-Laws will codify the 3 WA's if they pass so that the Zoning Board of Appeals shall not issue a special permit that would allow more than what is in the Zoning By-Laws.

References:

1. New York Times 8/24/22 article
nytimes.comUse of Marijuana and Psychedelics Is Soaring Among Young Adults,
2. Washington Post 8/24/22 article
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
3. New York Times 6/23/22
https://www.nytimes.com/2022/06/23/well/mind/teens-thc-cannabis.html
4. Washington Post 6/9/22 article https://www.washingtonpost.com/business/how-legal-weed-has-changed-the-us-for-better-and-worse/2022/06/09/6bc6299a-e801-11ec-a422-11bbb91db30b_story.html
5. New York Times Article 1/14/22
https://www.nytimes.com/2022/01/14/well/family/marijuana-edibles-children.html
https://www.washingtonpost.com/health/2022/08/24/marijuana-cannabis-psychedelics-drug-study/
6. https://www.cdc.gov/marijuana/factsheets/pdf/marijuanafactsheets-teens-508compliant.pdf
7. https://www.cdc.gov/marijuana/health-effects/teens.html
8. https://www.nih.gov/news-events/news-releases/cannabis-use-may-be-associated-suicidality-young-adults
9. https://www.caron.org/blog/behind-the-numbers-colorado-ranks-1-in-youth-use-of-marijuana
10. Study FindsThe annual U.S. survey of substance use captures the growing mainstream acceptance of cannabis and hallucinogenic compounds.
11. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7901265/
12. Tablet Article 8/30/22 https://www.tabletmag.com/sections/news/articles/how-weed-became-new-oxycontin-marijuana-psychosis-addiction

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioners are not making a motion under Article 16.

ADVISORY COMMITTEE'S RECOMMENDATION

There is no motion offered under this article.

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ARTICLE 21

TWENTY-FIRST ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to create a betterment loan program for the funding of residential electrification in the Town of Brookline; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition:

An Act authorizing the establishment of a betterment loan program for the funding of electrification initiatives in the Town of 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. This legislation authorizes the town of Brookline to achieve this objection through the creation and administration of a loan program, using municipal betterments, to provide low-interest loans to qualifying households for the electrification of residential households.

SECTION 2. To achieve the purposes and objectives stated in section 1 of this act, this act's provisions are enacted by the General Court notwithstanding any general or special laws to the contrary.

SECTION 3. As used in this act, the term "electrification" shall the installation or removal of structures or equipment for the purpose of powering a residential home or structure by means of electricity or removing a fossil-fuel energy system, including but not limited to the installation of solar panels or electric appliances, the removal of fossil fuel heating equipment or appliances, and the related equipment, structures, and labor and other costs associated with such activities.

SECTION 4. The town of Brookline is hereby authorized to enter into a written agreement with any property owner to finance the payment of expenses for the installation or removal of equipment or structures, included related labor and other costs and expenses, for the electrification of a residential structure. A property owner who enters into such an agreement with the town shall be responsible for all expenses incurred by the town for such installation.

SECTION 5. A notice of an agreement entered into pursuant to this act shall be recorded as a betterment and be subject to the provisions of chapter eighty relative to the apportionment, division, reassessment and collection of assessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, such lien shall take effect by operation of law on the day immediately following

the due date of such assessment or apportioned part of such assessment and such assessment may bear interest at a rate determined by the city or town treasurer by agreement with the owner at the time such agreement is entered into between the town of Brookline and the property owner. In addition to remedies available under chapter eighty, the property owner shall be personally liable for the repayment of the total costs incurred by the city or town under this section; provided, however, that upon assumption of such personal obligation to a purchaser or other transferee of all of the original owner's
interest in the property at the time of conveyance and the recording of such assumption, the owner shall be relieved of such personal liability.

SECTION 6. Any costs incurred under the provisions of this act may be funded by an appropriation or issuance of debt by the town of Brookline, provided that any debt incurred shall be subject to the provisions of chapter forty-four and shall not exceed twenty years. Any appropriation or borrowing by the town for purposes contained within this section shall not be included in the computation of the levy or borrowing limits otherwise imposed upon the town by the general laws.

SECTION 7. An agreement between a property owner and the town pursuant to this act shall not be considered a breach of limitation or prohibition contained in a note, mortgage, or contract on the transfer of an interest in property.

SECTION 8. The town shall implement said program through the adoption of regulations by the town of Brookline Select Board, following a public hearing.

SECTION 9. Decisions by the town to extend or deny a loan pursuant to a program established under this act shall be discretionary, legislative determinations by the town that are final and conclusive and shall not be reviewable in any court.

PETITIONER'S ARTICLE DESCRIPTION

This Municipal Climate Empowerment Program (MCEP) Article is one of many needed to achieve the emissions reduction goals this Town Meeting agreed upon last year, when we declared a goal of net-zero emissions by 2040. It is also part of a larger strategy to spur broad climate action with political leadership emanating from this Town Meeting. The specific goal of the MCEP Articles is to address a critical and urgent need for both the ***resources*** and the ***authority*** to implement necessary local climate policy in Brookline. We need new laws to allow Brookline — and other municipalities — to summon the will that cannot yet be summoned by the Commonwealth-at-large.

Brookline Town Meeting showed tremendous climate action leadership when we passed the first ever cold-climate gas ban for new construction in 2019, only a few months after Berkeley, CA passed the first ever gas ban in the United States. Doing so was vitally

important, even after the Attorney General disallowed it by ruling that it conflicted with legacy laws enacted by the MA Legislature decades ago to protect the utilities. Because of Brookline's forward-thinking action in passing this by-law, many municipalities in Massachusetts have followed our leadership. Because of Brookline's bold action, the State Legislature asked for an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And because of Brookline's assertive action, the State Legislature included a provision in their 2022 climate bill that allowed 10 municipalities to enact such gas bans. By passing practical, impactful and forward-thinking policies in our town, Brookline has provided — and can continue to provide — strong leadership for other communities and catalyze much needed climate action at the state level.

We urgently need to stop burning fossil fuels — not today, not tomorrow, but NOW. The most conservative climate organizations in the world — the UN International Panel on Climate Change and the International Energy Agency — have both issued stark warnings: to avoid catastrophic climate change, we must stop using fossil fuels *immediately*. To achieve this goal, we need to first stop buying new equipment designed to burn these fossil fuels. This equipment includes boilers, furnaces, hot water heaters, dryers, and cooking equipment that burn gas or oil, as well as gasoline cars.

It's easy to stop purchasing these fossil fuel-burning devices when doing major construction — which is why we started in 2019 with so-called "gas bans" that prohibit new fossil fuel infrastructure from being installed during new construction or major renovations. That policy, soon-to-be-law, is the easy part.

It's equally necessary — but often more difficult — to avoid purchasing fossil fuel equipment when an appliance or heating system in an existing building needs to be replaced. This is a climate imperative, but it is also an economic imperative as gas prices will continue to be highly volatile and rise further due to the inevitable costs of replacing gas pipes ("GSEP") and other factors. It is also a health imperative, as we know that these buildings create unhealthy indoor and outdoor air quality. And it is an environmental justice imperative, as our wasteful habits most affect at-risk populations both in our own communities and on our planet.

This is why the number one *personal* action you can take on climate is to make a plan for how you can avoid purchasing another heating system, appliance, or vehicle designed to burn fossil fuels. We need your help to "electrify everything" so that everything can be powered by an electrical grid that is already green and getting greener by the year — including 100% green in Brookline by 2024. It's the only way to achieve the emissions goals we've already agreed upon.

But we all know that personal action, as important as it is, can't get us to where we need to go, fast enough. That's why we also need policies to protect us. And while the State is supposed to provide these protections for us, it is not acting with the urgency or the scope necessary to address this existential threat. **Therefore, the number one *collective* action you can take on climate is to support government policy to help you and others**

succeed in electrifying your own transportation and homes. This is the motivation for this Article.

Electrification of a building is a costly process and requires significant capital. This Article would empower the Town to offer low interest loans for electrification that could be repaid on a property tax bill. Doing so is called a "betterment" agreement, which is why the term "betterment" is used in this article and proposed petition. A similar program is already in existence for repairs of septic systems.

The loans would be used for a variety of building electrification projects, including installation of solar panels or batteries, or replacement of any fossil fueled appliance with an electric appliance for residential use (including equipment costs, labor costs, and costs for associated electrical upgrades or fossil fuel pipe removal).

The property owner would be responsible for repaying the Town for the total costs incurred, unless the property is sold, in which case the new owner would be responsible for the remainder of the repayment.

Implementation of this program would take place only after the Select Board adopts regulations, following a public hearing.

In order to respond to climate change with the urgency required, more widespread funding opportunities such as this are needed. This Article is important because the Town is in a position to offer loans at lower interest rates than private lenders, thus allowing more individuals to be able to afford the necessary home improvements.

SELECT BOARD'S RECOMMENDATION

The Select Board is not making a recommendation under Article 21.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 21 as amended by a vote of 15 in favor, 10 opposed, and one abstention.

Executive Summary	WA 21 seeks home rule authorization for special legislation that would authorize the Town to establish and administer low interest loans for qualifying homeowners seeking to transition their homes from fossil fuel energy sources to electricity.
Voting Yes will...	Favorable action on WA 21 will authorize the Town to establish and administer these low interest loans. Staff time and expertise will be required to establish and administer the program.

Voting No will...	The Town will not be able to administer low interest loans for the stated purposes, which will result in this particular incentive not being available to households seeking to transition to electricity.
Financial impact	The petitioner representatives described the loan program as "cost neutral" to the Town based on a small surcharge on the cost of the loan being charged that is expected to pay for the administrative costs of the program.
Legal implications	Written agreements between the Town and participating property owners, recorded as betterments, will be required under the loan program. These agreements will establish legal obligations between the parties that must be met.

Introduction
In response to the environmental carbon pollution crisis, the ZEAB introduced a "slate" of warrant articles, including WA 21, in an effort to make timely and meaningful progress toward the Town's goal of achieving a 50% reduction in carbon emissions by 2030 and net zero by 2040. Together, these articles are referred to as the Municipal Climate Empowerment Plan. Because the greatest source of carbon pollution comes from fossil fueled transportation and buildings, the slate focuses on these sources. Article 21 is intended to *incentivize* the transition from fossil fuel to electricity in qualifying households by offering low interest loans for such electrification.

Evaluation Methodology/Research
The petitioner representatives stated that WA 21 is modeled after the state septic tank betterment program which has reportedly been implemented successfully in Massachusetts.

Discussion
The petitioner representatives stressed that a degree of "optionality" is built into the entire slate of Municipal Climate Empowerment articles, including WA 21. Should the article be approved by Town Meeting, it would next require approval by the Legislature, followed by the adoption of implementing regulations by the Select Board after a public hearing. Questions arose from the Committee including whether homeowners with conventional mortgages would be able to take advantage of the program; whether sufficient renewable sources of electricity are available on a nationwide basis to support the program; whether the administrative work of managing the program could be shifted to a banking institution; and whether the program should be extended to include energy efficiency measures such as insulation, which resulted in an amendment to Section 3 to permit such an extension.

Meeting Recording: https://brooklinema.zoomgov.com/rec/play/tDmZ8F-2TnvhsACe1n4wi1qdmijPRDM14fkZ6P_aMepUZ3_GUTvz0mfT59IBM7E8uuavEZZvFcD2wiY.nfBY_NEPb8mbCZfq?continueMode=true

Motion to Amend:
A motion to amend the language in Section 3 by adding the words "energy efficiency measures" immediately after the words "including but not limited to" was approved by a unanimous vote of 26 in favor, none opposed, and no abstentions.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 21, as so amended, by a vote of 15-10-1. The full text of the amended resolution follows:

VOTED: That the Town authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to create a betterment loan program for the funding of residential electrification in the Town of Brookline; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition.

An Act authorizing the establishment of a betterment loan program for the funding of electrification initiatives in the Town of 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. This legislation authorizes the Town of Brookline to achieve this objective through the creation and administration of a loan program, using municipal betterments, to provide low-interest loans to qualifying households for the electrification of residential households.

SECTION 2. To achieve the purposes and objectives stated in section 1 of this act, this act's provisions are enacted by the General Court notwithstanding any general or special laws to the contrary.

SECTION 3. As used in this act, the term "electrification" shall mean the installation or removal of structures or equipment for the purpose of powering a residential home or structure by means of electricity or removing a fossil-fuel energy system, including but not limited to energy efficiency measures, the installation of solar panels or electric appliances, the removal of fossil fuel heating equipment or appliances, and the related equipment, structures, and labor and other costs associated with such activities.

SECTION 4. The Town of Brookline is hereby authorized to enter into a written agreement with any property owner to finance the payment of expenses for the installation or removal of equipment or structures, including related labor and other costs and expenses, for the electrification of a residential structure. A property owner who enters into such an agreement with the Town shall be responsible for all expenses incurred by the Town for such installation.

SECTION 5. A notice of an agreement entered into pursuant to this act shall be recorded as a betterment and be subject to the provisions of MGL ch. 80 relative to the apportionment, division, reassessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, **a lien** shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment and such assessment may bear interest at a rate determined by the Brookline treasurer by agreement with the owner at the time such agreement is entered into between the Town of Brookline and the property owner. In addition to remedies available under MGL ch. 80, the property owner shall be personally liable for the repayment of the total costs incurred by the Town of Brookline under this section, provided that upon the conveyance of such property, the obligations of this Act shall be assumed by the transferee, and the owner shall be relieved of such personal liability. However, the owner remains responsible for any unpaid obligations that accrued prior to the transfer of the property.

SECTION 6. Any costs incurred under the provisions of this act may be funded by an appropriation or issuance of debt by the Town of Brookline, provided that any debt incurred shall be subject to the provisions of MGL ch. 44 and shall not exceed twenty years. Any appropriation or borrowing by the Town for purposes contained within this section shall not be included in the computation of the levy or borrowing limits otherwise imposed upon the Town by the general laws.

SECTION 7. An agreement between a property owner and the Town pursuant to this act shall not be considered a breach of limitation or prohibition contained in a note, mortgage, or contract on the transfer of an interest in property.

SECTION 8. The Town shall implement said program through the adoption of regulations by the Town of Brookline Select Board, following a public hearing

SECTION 9. Decisions by the Town to extend or deny a loan pursuant to a program established under this act shall be discretionary. Legislative determinations by the Town are final and conclusive and shall not be reviewable in any court.

ARTICLE 21 ADVISORY COMMITTEE VOTES

Article Description	**Betterment loan program for funding of electrification initiatives**
AC recommendation	**15-10-1**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y

John Doggett	N
Katherine Florio	N
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	A
Anita Johnson	N
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	N
Pam Lodish	N
Joslin Murphy	Y
Donelle O'Neal, Sr.	N
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	
Stephen Reeders	N
Carlos Ridruejo	
Lee Selwyn	Y
Alok Somani	N
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	

* Chairperson does not vote except to break a tie	

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ARTICLE 22

TWENTY-SECOND ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize and empower the Select Board to file a petition with the Massachusetts General Court for special legislation, as set forth below: (1) to establish the Town's position in the order of approvals for participation in the demonstration project created by Section 84 of Chapter 179 of the Acts of 2022, if, and only if, the prior petition on this subject matter is found to be inadequate for that purpose; (2) to authorize the Town to adopt and further amend general or zoning by-laws that regulate natural gas infrastructure; and (3) to authorize the Building Commissioner to administer such by-laws, including through the withholding of building permits; provided, that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ADOPT AND ENFORCE LOCAL BY-LAWS RESTRICTING NEW FOSSIL FUEL INFRASTRUCTURE IN CERTAIN CONSTRUCTION

SECTION 1. This act shall not preempt, supersede, nullify or otherwise negate the home rule petition previously authorized by the Town of Brookline pursuant to Warrant Article 39 of the Town's Fall 2020 Special Town Meeting, and submitted to the 192nd Great and General Court, unless the prior petition is found by the Department of Energy Resources to be inadequate for the purposes of establishing the order of approvals referenced in paragraph (c) of the fossil fuel-free demonstration project created by Section 84 of Chapter 179 of the Acts of 2022. This act has received local approval and is a home rule petition on the subject matter of Section 84 of Chapter 179 of the Acts of 2022, within the meaning of paragraph (c) of the Act.

SECTION 2. Notwithstanding chapter 164 of the General Laws, section 13 of chapter 142 of the General Laws, the State Building Code, or any other general or special law or regulation to the contrary, the Town of Brookline is hereby authorized to adopt and further amend general or zoning by-laws that restrict new construction or major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act.

SECTION 3. Notwithstanding section 7 of chapter 40A of the General Laws, or any other general or special law or regulation to the contrary, the Building Commissioner of the Town of Brookline, or any designee thereof, shall be authorized to enforce general or zoning by-laws adopted by the Town of Brookline that restrict new construction or major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act, including through the withholding of building permits.

SECTION 4. As used in this act, the term "fossil-fuel-free" shall refer to construction or renovation that results in an entire building or an entire condominium unit that does not utilize coal, oil, natural gas or other fossil fuels in support of its operation.

SECTION 5. This act shall take effect upon its passage.

This Article will be subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting; or to take any other action in relation thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article is a continuation of the climate action that began with Brookline Town Meeting back in the fall of 2019, documented here as well as on the Town website. It is part of a larger strategy to spur broad and much needed climate action with political leadership. Our Town Meeting is well-suited to provide this leadership, as a politically and intellectually vibrant body that understands the urgency of the global climate crisis.

In fall 2019, Brookline Town Meeting overwhelmingly passed Warrant Article 21, the Prohibition on New Fossil Fuel Infrastructure in Major Construction. This was the first "gas ban" outside California, the first in a cold-weather climate, and the first to include major renovations. It was passed as a general by-law, modeled after the one passed a few months earlier — the first in the US — in Berkeley, California.

Although our 2019 by-law was rejected by the Attorney General, its passage sparked a movement which spread throughout Massachusetts, with other municipalities following us. Our reach has proven to be even wider — gas bans have since been announced in New York City and Washington, DC. Our Town Meeting action helped advocate for the MA Legislature to include an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And it prompted AG Maura Healey to ask the gas utilities to make a plan for achieving the Commonwealth's legally binding emissions targets. What seemed a little crazy to some of us in 2019 is now appreciated as necessary, and the first step in reducing the emissions of our building stock.

In Brookline, we passed a Home Rule Petition (HRP) in 2020, asking the legislature for permission to implement our FFF policy. Subsequently, Home Rule Petitions modeled upon ours were passed by Acton, Aquinnah, Arlington, Cambridge, Concord, Lexington, Lincoln, Newton, and West Tisbury. These HRPs prompted the inclusion of Chapter 179 (signed by Gov. Baker in the summer of 2022), a "pilot program" enabling ***TEN*** municipalities to adopt gas bans. This policy achievement was covered by the Washington Post, with a quote from Brookline's Lisa Cunningham. Since then, Somerville announced their own gas ban HRP, and Boston announced their intention to pass one. One Twitter commentator suggested that Mass Department of Energy Resources (DOER) hold a reality TV show to adjudicate which cities and towns get to become one of the ***TEN***. However, the reality is that while we await DOER interpretation of Chapter 179, along with all municipalities in the Commonwealth, we still lack the ability to implement our 2019 policy.

In 2021, Brookline Town Meeting acted again, passing a pair of zoning incentive by-laws, intended to assert our zoning authority to achieve the same policy goals of the original gas ban. Although these zoning incentives were disallowed by the Attorney General earlier this year, the Town and petitioners are appealing this decision.

This Article is a revised Home Rule Petition (HRP) that specifically references the DOER Fossil Fuel Free pilot program, in the eventuality that DOER requires such an HRP. It does not contain new policy elements.

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioner is not making a motion under Article 22.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 22.

Summary: Warrant Articles 22 and 24 were submitted by the Zero Emissions Advisory Board in order to assure Brookline's participation in the fossil fuel free demonstration project established by the recently passed Act Driving Clean Energy and Offshore Wind (Chapter 179 of the Acts of 2022).

On October 7, 2022 Associate Town Counsel Jonathan Simpson spoke with and shared information provided by Johannes Buchanan, Legislative Director for the Commonwealth's Department of Energy Resources (DOER) regarding the Town's participation in the fossil-fuel free demonstration project. Director Buchanan believes that, as far as DOER is concerned, Brookline has already met the requirements from the Act when it submitted its original Home Rule Petition in 2020. The Act requires the submission of a Home Rule Petition and "local approval" by the relevant body (here, Town Meeting). Director Buchanan believes both requirements have been met. Further, Brookline's place in the queue to apply to the demonstration project as one of the original 10 communities is set, as Brookline has also already complied with the requirement related to percentage of housing that is considered affordable.

Recommendation: Based on the information provided above, the petitioners of Warrant Article 22 informed the Advisory Committee that they do not intend to move Warrant Article 22. Accordingly, the Advisory Committee offers no recommendation.

ARTICLE 23

TWENTY-THIRD ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to modify its Community Choice Aggregation Plan with certain features designed to reduce the net carbon emissions created by residents of the Town, subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition:

An Act authorizing the Town of Brookline to amend its Community Choice Aggregation Plan.

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. (a) Notwithstanding the provisions of any general or special law to the contrary, the Town of Brookline may amend the municipal load aggregation plan previously approved by the department of public utilities pursuant to chapter 164, section 134 of the General Laws. Following authorization by a majority vote of town meeting, such amendments shall be filed with the department, for its final review and approval. Prior to its decision, the department shall conduct a public hearing. The department shall not review any section of the Town's load aggregation plan which has not been altered from the Town's load aggregation plan last approved by the department, except to the extent that proposed amendments to the plan change the meaning or operation of such unaltered section.

The department shall approve the amendments set forth in this section. The amended load aggregation plan may authorize the aggregated entity to charge all participating ratepayers an excise of up to $0.15 per kWh to fund (i) programs to build in the Town solar energy generation facilities or energy storage systems for the storage of energy generated by solar energy generation facilities; (ii) programs to promote the adoption of electric energy infrastructure in new buildings and in existing buildings with fossil fuel infrastructure; and (iii) demand-response programs that offer reduced rates for off-peak consumption or demand-response. The plan may authorize the aggregated entity to offer ratepayers a reduced rate in exchange for agreement to pay an early termination fee. The plan may require that participating ratepayers install or permit the installation of advanced meter infrastructure for the purpose of providing the aggregated entity with time-varying use data from electric vehicle charging stations, and may provide for a reduction or elimination of participating ratepayers' cost for electric vehicle charging or other electrical consumption during daily off-peak hours or demand-response reduction periods.

The aggregated entity is authorized to access the time-varying data from advanced meter infrastructure to the same extent that such data is made available to local distribution companies.

Participation by any retail customer in the amended load aggregation program shall be voluntary. The amended program shall take effect 30 days following its approval by the department. Ratepayers participating in the existing load aggregation program shall be automatically enrolled in the amended plan. Once enrolled in the amended aggregated entity, any ratepayer choosing to opt out within 180 days shall be entitled to receive basic service as if he or she was originally enrolled therein. Nothing in this section shall be construed as authorizing the Town to restrict the ability of retail electric customers to obtain or receive service from any authorized provider thereof.

It shall be the duty of the aggregated entity to fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity. In addition, such disclosure shall prominently state all charges to be made and shall include full disclosure of the basic service rate and how to access it.

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

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Municipal Climate Empowerment Program (MCEP) Article is one of many needed to achieve the emissions reduction goals this Town Meeting agreed upon last year, when we declared a goal of net-zero emissions by 2040. It is also part of a larger strategy to spur broad climate action with political leadership emanating from this Town Meeting. The specific goal of the MCEP Articles is to address a critical and urgent need for both the ***resources*** and the ***authority*** to implement necessary local climate policy in Brookline. We need new laws to allow Brookline — and other municipalities — to summon the will that cannot yet be summoned by the Commonwealth-at-large.

Brookline Town Meeting showed tremendous climate action leadership when we passed the first ever cold-climate gas ban for new construction in 2019, only a few months after Berkeley, CA passed the first ever gas ban in the United States. Doing so was vitally important, even after the Attorney General disallowed it by ruling that it conflicted with legacy laws enacted by the MA Legislature decades ago to protect the utilities. Because of Brookline's forward-thinking action in passing this by-law, many municipalities in Massachusetts have followed our leadership. Because of Brookline's bold action, the State Legislature asked for an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And because of Brookline's assertive action, the State Legislature included a provision in their 2022 climate bill that allowed 10

municipalities to enact such gas bans. By passing practical, impactful and forward-thinking policies in our town, Brookline has provided — and can continue to provide — strong leadership for other communities and catalyze much needed climate action at the state level.

We urgently need to stop burning fossil fuels — not today, not tomorrow, but NOW. The most conservative climate organizations in the world — the UN International Panel on Climate Change and the International Energy Agency — have both issued stark warnings: to avoid catastrophic climate change, we must stop using fossil fuels *immediately*. To achieve this goal, we need to first stop buying new equipment designed to burn these fossil fuels. This equipment includes boilers, furnaces, hot water heaters, dryers, and cooking equipment that burn gas or oil, as well as gasoline cars.

It's easy to stop purchasing these fossil fuel-burning devices when doing major construction — which is why we started in 2019 with so-called "gas bans" that prohibit new fossil fuel infrastructure from being installed during new construction or major renovations. That policy, soon-to-be-law, is the easy part.

It's equally necessary — but often more difficult — to avoid purchasing fossil fuel equipment when an appliance or heating system in an existing building needs to be replaced. This is a climate imperative, but it is also an economic imperative as gas prices will continue to be highly volatile and rise further due to the inevitable costs of replacing gas pipes ("GSEP") and other factors. It is also a health imperative, as we know that these buildings create unhealthy indoor and outdoor air quality. And it is an environmental justice imperative, as our wasteful habits most affect at-risk populations both in our own communities and on our planet.

This is why the number one *personal* action you can take on climate is to make a plan for how you can avoid purchasing another heating system, appliance, or vehicle designed to burn fossil fuels. We need your help to "electrify everything" so that everything can be powered by an electrical grid that is already green and getting greener by the year — including 100% green in Brookline by 2024. It's the only way to achieve the emissions goals we've already agreed upon.

But we all know that personal action, as important as it is, can't get us to where we need to go, fast enough. That's why we also need policies to protect us. And while the State is supposed to provide these protections for us, it is not acting with the urgency or the scope necessary to address this existential threat. **Therefore, the number one *collective* action you can take on climate is to support government policy to help you and others succeed in electrifying your own transportation and homes.** This is the motivation for this Article.

This Article is a Home Rule Petition that would enable Brookline Green Electricity to help lead on building electrification.

Brookline Green Electricity is the name we have given to our Community Choice Aggregation plan (CCA). A CCA gives municipalities power to negotiate and procure their

own wholesale electricity, instead of using an electric utility such as Eversource or National Grid. Traditionally, Brookline has chosen to use our CCA to make sure that the electricity we provide to our town is of the greenest percentage that we can afford. Our goal has been to procure 100% green electricity, and we are set to achieve that by 2024. Of note, it always has been and will continue to be possible to opt-out of Brookline Green Electricity and instead receive electrical service from a utility.

This Article will expand the powers of our CCA to not only procure electricity, but also impose rate structures that incentivize off-peak electricity consumption, such as night-time Electric Vehicle (EV) charging, or that disincentivize consumption during peak consumption periods. In addition, it will authorize a per kilowatt-hour tax to fund Town solar or electrical storage projects, as well as programs to help promote the adoption of building electrification in both new and existing buildings. It will also allow the program to offer lower rates to customers willing to commit for a longer period of time.SW

MOTION OFFERED BY THE PETITIONER

MOVED: That Brookline Town Meeting vote to authorize the Brookline Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to modify its Community Choice Aggregation Plan with certain features designed to reduce the net carbon emissions created by residents of the Town; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition.

An Act authorizing the Town of Brookline to amend its Community Choice Aggregation Plan.

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. (a) Notwithstanding the provisions of any general or special law to the contrary, the Town of Brookline may amend the municipal load aggregation plan previously approved by the Massachusetts Department of Public Utilities pursuant to chapter 164, section 134 of the Massachusetts General Laws. Following authorization by a majority vote of town meeting, such amendments shall be filed with the Department of Public Utilities for its final review and approval. Prior to its decision, the Department shall conduct a public hearing. The Department shall not review any section of the Town's load aggregation plan which has not been altered from the Town's load aggregation plan last approved by the Department, except to the extent that proposed amendments to the plan change the meaning or operation of such unaltered section.

The Department of Public Utilities shall approve the amendments set forth in this section. The amended load aggregation plan may authorize the aggregated entity, Brookline's Community Choice Aggregation program, known as Brookline Green Electricity, to charge all participating ratepayers an excise of up to $0.02 per kWh to fund:

(i) programs to build in the Town solar energy generation facilities or energy storage systems, and

(ii) programs to accelerate the adoption of electric energy infrastructure in new buildings and in existing buildings with fossil fuel infrastructure.

The amended load aggregation plan may authorize the aggregated entity to charge all participating ratepayers an excise of up to $0.13 per kWh to fund or enable:

(i) demand-response programs that enable program participants to reduce their electricity costs by taking advantage of time-varying rates; and

(ii) investments in renewable energy or energy storage infrastructure that would reduce net rates for program participants over the lifetime of the installed infrastructure.

The aggregation plan may authorize the aggregated entity to offer ratepayers a reduced rate in exchange for agreement to pay an early termination fee. The aggregation plan may require that participating ratepayers install or permit the installation of advanced meter infrastructure for the purpose of providing the aggregated entity with time-varying use data, and may provide for a discounted rate for participating ratepayers' electric vehicle charging or other electrical consumption costs during off-peak or other hours or demand response periods.

The aggregated entity is authorized to access the time-varying data from advanced meter infrastructure to the same extent that such data is made available to local electricity distribution companies.

Participation by any retail customer in the amended load aggregation program shall be voluntary. An amended aggregation plan shall take effect 30 days following its approval by the Department of Public Utilities. Ratepayers participating in the existing load aggregation program shall be automatically enrolled in the amended plan. Once enrolled in an amended plan, any ratepayer choosing to opt out within 180 days shall be entitled to receive basic service. Nothing in this section shall be construed as authorizing the Town to restrict the ability of retail electric customers to obtain or receive service from any authorized provider of electricity supply.

It shall be the duty of the aggregated entity to fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity plan. In addition, such disclosure by the aggregated entity shall prominently state all charges to be made and shall include full disclosure of the basic service rate and how to access it.

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

SELECT BOARD'S RECOMMENDATION

The Select Board is not making a recommendation on Article 23.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 23, as amended by the petitioners, by a vote of 16-4 with 6 abstentions.

Executive Summary	Warrant Article 23 was submitted by the Zero Emissions Advisory Board and seeks to create consumer incentives and a funding mechanism to support Brookline's goal of being net zero by 2040. Warrant article 23 seeks authorization to petition the state legislature for authorization to add a surcharge of $0.02 per kWh for all ratepayers participating in Brookline Green Electricity, to authorize Brookline Green Electricity to add a surcharge of up to $0.13 per kWh to fund a demand response program or make investments in energy storage or renewable energy infrastructure.
Voting Yes will...	Authorize the Select Board to petition the state legislature for special legislation that would empower Brookline to petition the Department of Public Utilities (DPU) for the following: • Amend the Community Choice Aggregation Program to add a surcharge of up to $0.02 per kWh for all ratepayers of Brookline Green Electricity • Fund the creation of a demand-response program, investments in renewable energy infrastructure or energy storage by authorizing Brookline Green Electricity to levy an excise of up to $0.13 per kWh for all ratepayers
Voting No will...	Maintain the status quo
Financial impact	There are no direct costs associated with these warrant articles, however, should Brookline be granted permission by the legislature to impose these surcharges, additional staff time will be needed to establish and administer the programs.
Legal implications	The petitioners were assisted in drafting by private counsel. Town Counsel has not yet offered an opinion on the articles, but they are presumed to be legally viable.

Introduction

NOTE: The Advisory Committee's report on Warrant Article 21 includes a full description of ZEAB's Municipal Climate Empowerment (MCEP) slate of warrant articles.

Article 23, if passed, would authorize the Select Board to file a home rule petition with the General Court for special legislation that would authorize Brookline to file amendments with the Department of Public Utilities to modify the Community Choice Aggregation Plan. The amendments seek to allow Brookline to create surcharges to fund programs and initiatives to accelerate the adoption of electric energy infrastructure in Brookline, create a demand-response program to provide time-varying rates for electricity, and fund investments in renewable energy infrastructure or energy storage.

The article does not set specific rates, but provides an upper limit for each of the requested surcharges. The additional fee for all ratepayers is capped at $0.02 per kWh and a cap of $0.13 is set for the excise to fund the demand-response program. Participation in Brookline Green Energy is voluntary and residents may opt out by completing a form on the Brookline Green Energy website. The existing low-income discount rates and budget plans offered by Brookline Green Electricity through Eversource would not be impacted by this article. (Eversource offers eligible consumers a 36% discount off their entire electricity bill.)

As with the other MCEP articles, the home rule petition is enabling legislation and multiple steps are needed for approval and implementation. If the legislature approves the home rule petition, the Town Administrator and Town Staff would draft the specific regulations and file an amendment with the Department of Public Utilities (DPU). As stipulated in the home rule petition, the DPU would hold a public hearing on the requested amendments and take public comment before approval is granted.

The petitioners amended Article 23 to create two separate surcharges and more clearly delineate how the funds from each would be used. Other edits were made for clarity but did not substantially change the article.

Discussion
Brookline has set the ambitious goal of achieving Net Zero by 2040 while Massachusetts' goal is to achieve the same status by 2050. The state has a target, but has yet to create a comprehensive plan for achieving it. As a result, large-scale programs to incentivize electrification, investments in renewable energy and emissions reductions have not been created. Because of these gaps in authority, the ZEAB has created a slate of articles that target where Brookline can exert local control to create funding and programs. Warrant Article 23 seeks to create funding for the Town to build its own solar energy generation facilities, and make investments in renewable energy or energy storage facilities by adding a surcharge to Brookline Green Electricity customers.

Although the article is enabling legislation and will not create policy until the Massachusetts Legislature and the Department of Public Utilities act, concerns were raised about increasing the cost of electricity for consumers who opted in to Brookline

Green Electricity, the overall capacity of the electrical grid and overall availability of electricity generated from renewable sources. Questions were also raised about whether amending the Community Choice Aggregation program for Brookline only would be viewed unfavorably by the Attorney General who is a strong advocate for ratepayers.

The petitioners shared that adding a surcharge to electric bills is something other municipalities, including Boulder, Colorado and Albany, California, have started to do so to fund climate change initiatives. The proposed surcharges are designed to work in tandem and, according to the petitioners, have the potential to reduce the long term cost of electricity for Brookline Green Electricity ratepayers. An increase of $0.02 per kWh would increase the average electric bill by approximately $10.00 per month and raise an estimated $2.7M annually for programs to accelerate electric energy infrastructure in new and existing buildings or to build solar energy generation facilities.

The proportion of electricity generated from renewable sources is increasing overall and Brookline Green Electricity will be 100% renewable by January 2024. In 2021, approximately 54% of the electricity generated in New England was from fossil fuel according to a report from ISO New England. The remainder came from a mix of renewable sources including solar, wind and hydro-power.

A demand response system provides consumers with incentives for using electricity when the overall demand is low. Lower prices for off-peak use can shift consumer behavior and help load balance the system. The proposed surcharge of up to $0.13 would allow the Town Administrator and Brookline Green Electricity to create a proposed rate structure that would incent off-peak usage. (For example, Xcel Energy in Colorado has a three tiered pricing system that charges between $0.17 and $0.28 per kWh for peak time usage, $0.10 for off-peak usage and $0.14 to $0.19 for middle tier usage.) The determination of what constitutes peak or off-peak usage is at the discretion of the utility. Advanced meter infrastructure (Smart Meters) is being piloted in Massachusetts now and will facilitate better demand response management where power consumption could be automatic.

The Advisory Committee supports favorable action on Warrant Article 23 as it supports the Town's zero emissions goals, is flexible in its approach to the surcharges and allows consumers to opt-out easily. By a vote of 16-4-6, the Advisory Committee recommends FAVORABLE ACTION on the article as amended by the petitioners.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/4w94eKUzBd3_gRkaEmAbpu0DdLoLd_210zKlu1F5EtOaZWc07AzOqWUOIzlKzb0EVtdvVcB9Oizepp8.594DXkdSQcLLaz6g?continueMode=true

Research Methodology:

- January 2021Progress Update to Brookline Climate Action Committee
- Brookline Green Electricity
- Bureau of Labor Statistics 9/22 Average Energy Prices - Boston, Cambridge Newton
- Massachusetts Household Heating Costs est 2022-23

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 23 as amended by the petitioners by a vote of 16-4-6.

ARTICLE 23 ADVISORY COMMITTEE VOTES

Article Description	**Require annual reporting on the Town's PILOT program**
AC recommendation (Favorable Action unless indicated)	**16-4-6**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	A
Kelly Hardebeck	Y
Amy Hummel	A
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	A
Pam Lodish	A
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y

Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	
Stephen Reeders	N
Carlos Ridruejo	
Lee Selwyn	N
Alok Somani	Y
Carolyn Thall	A
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 24

TWENTY-FOURTH ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will apply to participate in the demonstration project created by Section 84 of Chapter 179 of the Acts of 2022, authorizing general or zoning by-laws that require new building construction or major renovation projects to be fossil fuel-free, in accordance said Section 84 and with any requirements established by the Department of Energy Resources, subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting; or to take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article is a continuation of the climate action that began with Brookline Town Meeting back in the fall of 2019, documented here as well as on the Town website. It is part of a larger strategy to spur broad and much needed climate action with political leadership. Our Town Meeting is well-suited to provide this leadership, as a politically and intellectually vibrant body that understands the urgency of the global climate crisis.

In fall 2019, Brookline Town Meeting overwhelmingly passed Warrant Article 21, the Prohibition on New Fossil Fuel Infrastructure in Major Construction. This was the first "gas ban" outside California, the first in a cold-weather climate, and the first to include major renovations. It was passed as a general by-law, modeled after the one passed a few months earlier — the first in the US — in Berkeley, California.

Although our 2019 by-law was rejected by the Attorney General, its passage sparked a movement which spread throughout Massachusetts, with other municipalities following us. Our reach has proven to be even wider — gas bans have since been announced in New York City and Washington, DC. Our Town Meeting action helped advocate for the MA Legislature to include an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And it prompted AG Maura Healey to ask the gas utilities to make a plan for achieving the Commonwealth's legally binding emissions targets. What seemed a little crazy to some of us in 2019 is now appreciated as necessary, and the first step in reducing the emissions of our building stock.

In Brookline, we passed a Home Rule Petition (HRP) in 2020, asking the legislature for permission to implement our FFF policy. Subsequently, Home Rule Petitions modeled upon ours were passed by Acton, Aquinnah, Arlington, Cambridge, Concord, Lexington, Lincoln, Newton, and West Tisbury. These HRPs prompted the inclusion of Chapter 179 (signed by Gov. Baker in the summer of 2022), a "pilot program" enabling ***TEN*** municipalities to adopt gas bans. This policy achievement was covered by the Washington Post, with a quote from Brookline's Lisa Cunningham. Since then,

Somerville announced their own gas ban HRP, and Boston announced their intention to pass one. One Twitter commentator suggested that Mass Department of Energy Resources (DOER) hold a reality TV show to adjudicate which cities and towns get to become one of the ***TEN***. However, the reality is that while we await DOER interpretation of Chapter 179, along with all municipalities in the Commonwealth, we still lack the ability to implement our 2019 policy.

In 2021, Brookline Town Meeting acted again, passing a pair of zoning incentive by-laws, intended to assert our zoning authority to achieve the same policy goals of the original gas ban. Although these zoning incentives were disallowed by the Attorney General earlier this year, the Town and petitioners are appealing this decision.

This Article is a formal declaration of the Town's desire to participate in the DOER Fossil Fuel Free pilot program, in the eventuality that DOER requires such an expression from Town Meeting. It does not contain new policy elements.

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioner is not making a motion under Article 24.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 24.

Summary: Warrant Articles 22 and 24 were submitted by the Zero Emissions Advisory Board in order to assure Brookline's participation in the fossil fuel free demonstration project established by the recently passed Act Driving Clean Energy and Offshore Wind (Chapter 179 of the Acts of 2022).

On October 7, 2022 Associate Town Counsel Jonathan Simpson spoke with and shared information provided by Johannes Buchanan, Legislative Director for the Commonwealth's Department of Energy Resources (DOER) regarding the Town's participation in the fossil-fuel free demonstration project. Director Buchanan believes that, as far as DOER is concerned, Brookline has already met the requirements from the Act when it submitted its original Home Rule Petition in 2020. The Act requires the submission of a Home Rule Petition and "local approval" by the relevant body (here, Town Meeting). Director Buchanan believes both requirements have been met. Further, Brookline's place in the queue to apply to the demonstration project as one of the original 10 communities is set, as Brookline has also already complied with the requirement related to percentage of housing that is considered affordable.

Recommendation: Based on the information provided above, the petitioners of Warrant

Article 24 informed the Advisory Committee that they do not intend to move Warrant Article 24. Accordingly, the Advisory Committee offers no recommendation.

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ARTICLE 25

TWENTY-FIFTH ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to allow the Town of Brookline to adopt zoning bylaws pursuant to *M.G.L.* c.40A, §5 that may require land use and development standards intended to reduce greenhouse gas emissions, and that may impose more progressive requirements than are articulated in the State Building Code or elsewhere; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition:

An Act authorizing the Town of Brookline to adopt green zoning bylaws and regulations.

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. Green Zoning. Notwithstanding the provisions of section 3 of chapter 40A, section 95 of chapter 143, those further statutes and regulations relating to the State Building Code and its incorporated specialty codes, chapter 164, or any other general or special law to the contrary, the Town of Brookline is authorized to adopt zoning bylaws and regulations for the purpose of reducing greenhouse gas emissions, increasing energy efficiency, and otherwise addressing specific harms stemming from or contributing to the climate crisis.

SECTION 2. Building Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

(a) the use of materials or methods of construction of buildings, whether or not otherwise regulated by the State Building Code; or
(b) the use, inclusion, or prohibition of certain design elements, components, equipment, or infrastructure for the construction of buildings, including without limitation heating and cooling systems, solar energy systems, and electric vehicle charging systems.

SECTION 3. Emissions Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

(a) air emissions regulated by the Massachusetts Department of Environmental Protection;
(b) seasonal, annual or lifetime greenhouse gas emissions of structures; or
(c) greenhouse gas emissions attributable to construction, including those attributable to the production and transportation of building materials.

SECTION 4. Utility Connection Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

(a) the installation or prohibition of appliances or equipment, whether for residential or commercial purposes, that consume a utility product regulated under chapter 164 or otherwise by the Massachusetts Department of Public Utilities;
(b) new connections to a transmission or distribution system for consumer utility products that may impact directly or indirectly the sale or distribution of such utility products, including without limitation natural gas, fuel oil, electricity, renewable natural gas, hydrogen, steam, or hot or chilled water; or
(c) greenhouse gas emissions attributable to the production, transmission, distribution, or consumption of such utility products.

SECTION 5. Severability. If any provision of this chapter or the application thereof to any person or circumstance shall be found to be invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the chapter shall be deemed to be affected to the minimum extent necessary, so as to secure the purposes thereof.

SECTION 4. This act shall take effect upon its passage.

or to take any other action in relation thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Municipal Climate Empowerment Program (MCEP) Article is one of many needed to achieve the emissions reduction goals this Town Meeting agreed upon last year, when we declared a goal of net-zero emissions by 2040. It is also part of a larger strategy to spur broad climate action with political leadership emanating from this Town Meeting. The specific goal of the MCEP Articles is to address a critical and urgent need for both the ***resources*** and the ***authority*** to implement necessary local climate policy in Brookline. We need new laws to allow Brookline — and other municipalities — to summon the will that cannot yet be summoned by the Commonwealth-at-large.

Brookline Town Meeting showed tremendous climate action leadership when we passed the first ever cold-climate gas ban for new construction in 2019, only a few months after Berkeley, CA passed the first ever gas ban in the United States. Doing so was vitally

important, even after the Attorney General disallowed it by ruling that it conflicted with legacy laws enacted by the MA Legislature decades ago to protect the utilities. Because of Brookline's forward-thinking action in passing this by-law, many municipalities in Massachusetts have followed our leadership. Because of Brookline's bold action, the State Legislature asked for an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And because of Brookline's assertive action, the State Legislature included a provision in their 2022 climate bill that allowed 10 municipalities to enact such gas bans. By passing practical, impactful and forward-thinking policies in our town, Brookline has provided — and can continue to provide — strong leadership for other communities and catalyze much needed climate action at the state level.

We urgently need to stop burning fossil fuels — not today, not tomorrow, but NOW. The most conservative climate organizations in the world — the UN International Panel on Climate Change and the International Energy Agency — have both issued stark warnings: to avoid catastrophic climate change, we must stop using fossil fuels *immediately*. To achieve this goal, we need to first stop buying new equipment designed to burn these fossil fuels. This equipment includes boilers, furnaces, hot water heaters, dryers, and cooking equipment that burn gas or oil, as well as gasoline cars.

It's easy to stop purchasing these fossil fuel-burning devices when doing major construction — which is why we started in 2019 with so-called "gas bans" that prohibit new fossil fuel infrastructure from being installed during new construction or major renovations. That policy, soon-to-be-law, is the easy part.

It's equally necessary — but often more difficult — to avoid purchasing fossil fuel equipment when an appliance or heating system in an existing building needs to be replaced. This is a climate imperative, but it is also an economic imperative as gas prices will continue to be highly volatile and rise further due to the inevitable costs of replacing gas pipes ("GSEP") and other factors. It is also a health imperative, as we know that these buildings create unhealthy indoor and outdoor air quality. And it is an environmental justice imperative, as our wasteful habits most affect at-risk populations both in our own communities and on our planet.

This is why the number one *personal* action you can take on climate is to make a plan for how you can avoid purchasing another heating system, appliance, or vehicle designed to burn fossil fuels. We need your help to "electrify everything" so that everything can be powered by an electrical grid that is already green and getting greener by the year — including 100% green in Brookline by 2024. It's the only way to achieve the emissions goals we've already agreed upon.

But we all know that personal action, as important as it is, can't get us to where we need to go, fast enough. That's why we also need policies to protect us. And while the State is supposed to provide these protections for us, it is not acting with the urgency or the scope necessary to address this existential threat. **Therefore, the number one *collective* action you can take on climate is to support government policy to help you and others**

succeed in electrifying your own transportation and homes. This is the motivation for this Article.

In 2019 Brookline Town Meeting passed the first cold-climate and the first East Coast prohibition on installing gas appliances in new and substantially renovated buildings. We passed that bylaw because we knew that the future of climate action was in electrification, and the easiest and most cost-effective way to electrify a building is to build it that way from the start. Unfortunately, the Attorney General's Office disallowed our 2019 general bylaw.

One significant reason our original bylaw prohibiting new gas infrastructure in new and major construction was rejected by the Attorney General, is that it was thought by the Attorney General to be in conflict with the State Building Code.

This Article would ask for legal permission to empower the Town to impose "green" building standards if they exceed those mentioned in the building code. This power is allowed in many other states that are leading on climate efforts, such as California. With something as critical as the future of our planet on the line, it is important that Brookline be given every power possible to address fossil fuel emissions within our borders through "green zoning" such as this Article provides.

This authority would enable us to impose requirements for EV charging, Passive House performance, money-saving greywater heat waste recovery units, solar panels, net-zero, and more. The Building Code has proven again and again to be a barrier to this kind of requirement, so we need a new policy instrument for localities in Massachusetts.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation under Article 25.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 25 will be included in the Supplemental mailing.

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ARTICLE 25

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends NO ACTION on Warrant Article 25 as amended by the Petitioner by a vote of 10 in favor, 14 opposed, with 2 abstentions.

Executive Summary	Article 25 is a proposed Home Rule Petition ("HRP", *i.e.,* a bill filed with the State legislature asking for local legal authority to act) filed by the Zero Emissions Advisory Board (ZEAB). This proposed HRP asks the State legislature for authority — notwithstanding the Home Rule Amendments Act of the Massachusetts Constitution, Massachusetts building and electrical codes and utility law, and other applicable State law — to create zoning bylaws targeted to reduce the Town's greenhouse gas emissions. Petitioner states that the legislative authority the proposed HRP seeks extends beyond that afforded by the Town's expected participation in a small fossil fuel free (FFF) demonstration project authorized by the 2022 State climate bill. The proposed HRP is intended to empower the Town to pass related but different zoning measures that otherwise could conflict with superseding State law. Petitioner maintains that the possible zoning measures that would be authorized by the proposed HRP would greatly increase the Town's chances of meeting the Town's 2040 and the State's 2050 emissions targets.
Voting Yes will...	Authorize the Select Board to file an HRP with the Massachusetts legislature seeking local legal authority to pass zoning measures targeted to reduce the Town's greenhouse gas emissions, beyond the authority afforded by the Town's expected participation in the State's FFF demonstration project.
Voting No will...	Refrain from asking the legislature for this additional legal authority.

Financial impact	There are no direct costs associated with filing the HRP with the State legislature. Should the legislature approve the HRP, additional staff (and Town board and commission) time would be needed to promulgate and implement zoning measures intended to further reduce the Town's greenhouse gas emissions.
Legal implications	The petitioners were assisted in drafting by private counsel. Associate Town Counsel Jonathan Simpson states that the HRP's specific language does not raise legal concerns.

Introduction

Article 25, filed by the Town's Zero Emissions Advisory Board (ZEAB), is a home rule petition (HRP) seeking authority for zoning bylaws that may be beyond the scope of fossil fuel restrictions to be passed through anticipated Town participation in a Massachusetts Department of Energy Resources (DOER) demonstration project. The Article's Explanation cites examples that include zoning requirements "for EV charging, Passive House performance, money-saving greywater heat waste recovery units, solar panels, net-zero, and more." Together with Articles 21, 23, 26, 28, and 29, ZEAB files Article 25 as part of a "Municipal Climate Empowering Plan" (MCEP) of home rule petitions seeking local legislative authority on matters that may otherwise be regulated by superseding State law.

Background

Meeting materials for the November 10, 2022, Advisory Committee meeting are found here. The meeting materials include a detailed Ad Hoc Subcommittee report regarding the State Net Zero rubric and recent Town Meeting measures briefly summarized below. The Subcommittee report is found here.

Section 1 of the Appendix to this report contains a non-narrative rendition of links to background information and materials the Subcommittee report details.

a. 2021 IPCC Report

In 2021, the Intergovernmental Panel on Climate Change (IPCC, the United Nations body responsible for assessing climate change science) stated that "unless there are immediate, large-scale, and rapid reductions in GHG emissions, limiting global warming at or near 1.5 degrees Celsius or even 2 degrees Celsius above pre-industrial levels will be beyond reach."

b. Massachusetts

Recent State legal developments undertaking to address the urgency of the 2021 IPCC report include the 2022 Massachusetts "Drive Act" (establishing the DOER fossil fuel free municipal demonstration project), prior 2021 State legislation setting statewide targets for greenhouse gas (GHG) emissions and requiring 5-year statewide incremental goals, and 2022 DOER drafts of a new stretch code and municipal opt-in stretch code.

To highlight a few components of the State rubric, Massachusetts set a 2050 GHG emissions reduction target of 85-90% below 1990 levels, and a 2025/2030 GHG emissions reduction target of 50% below 1990 levels. These State targets implement Massachusetts's "2050 Decarbonization Roadmap" released in 2019, which stressed "electrification of end uses, particularly space heating through the use of electric heat pumps," as "the most economically advantageous and cost-effective decarbonization strategy for widespread deployment". The State's rubric calls for the electrification of 1,000,000 homes by 2030. The State's rubric also calls for the phase-out of combustion engine passenger vehicles and trucks by 2030 and the creation of a robust charging network for electric vehicles (EV), among other measures.

In September 2022, DOER released a proposed new stretch code which relies on performance standards, including "passivehouse". "Passivehouse" design reduces energy use through building envelope improvements (*e.g.,* air sealing, insulation, quality windows and doors), management of solar impacts to heat/cool, and higher efficiency heating, cooling and ventilation systems. The Planning Director stated that she anticipates that her Department will file a warrant article for the 2023 Annual Town Meeting to adopt the new codes, if they are available by then.

c. Brookline

Between 2019 and 2022, Town Meeting overwhelmingly voted in favor of various articles proposing general and zoning bylaws restricting fossil fuel infrastructure and setting EV charging standards, three (3) of which the Attorney General's Office disapproved as conflicting with superseding State law, and one (1) of which awaits a decision. In 2020, Town Meeting overwhelming voted in favor of a home rule petition seeking legal authority to enact fossil fuel restrictions. While the home rule petition did not pass at the legislature, the Petitioner states that the Town's home rule petition (and similar filings by other municipalities which followed) precipitated the 2022 Drive Act's creation of a 10-municipality DOER fossil fuel free demonstration project.

The 2021 Annual Town Meeting resolved to declare a climate emergency and establish a net zero carbon emissions target date of 2040.

Discussion and Conclusions

The meeting materials for the November 10, 2022, Advisory Committee meeting are found here. The meeting materials include a detailed Ad Hoc subcommittee report

regarding the Massachusetts Net Zero legal and policy rubric and recent Town Meeting measures. The Subcommittee's detailed report is found here.

The Petitioner stressed its view that local action can precipitate statewide and national action to address the climate crisis by reducing carbon emissions. It referenced Town Meeting's 2019 gas infrastructure ban as a catalyst for the enactment of the 2022 Massachusetts Drive Act's DOER municipal fossil fuel free demonstration project, in addition to gas bans instituted by New York City and elsewhere. Article 25 is a home rule petition seeking local authority for new tools to enable the Town to expedite the rate of electrification of buildings and their EV charging readiness, which is now happening at an insufficient rate to comply with State and local net zero goals. There will be opportunities for detailed Town vetting of zoning bylaws that would be created under the new local authority sought by Article 25.

The Petitioner states that Article 25, if approved by the legislature, permits local sustainable building standards, including regarding EV charging readiness and net zero construction standards. States that are leading on climate efforts, such as California, permit local building standards; Massachusetts is in a minority of 10 states that generally prohibit them (aside from opt-in special codes, and now, the DOER fossil fuel free demonstration project). This is why the Petitioner seeks Article 25's home rule petition seeking local authority. The new proposed Massachusetts DOER codes do not include net zero energy standards, even though new federal money (through the Inflation Reduction Act) will be made available to States and municipalities to develop net zero energy codes.

A 14-member majority of the Advisory Committee who voted NO ACTION on Article 25 expressed the following concerns:

- There will be administrative costs and burdens on the Town arising from enforcement of any future zoning bylaws to be enacted with the authority.

- Having local building standards may increase construction costs within the Town.

- A member expressed a favorable view of the performance standards in the new State stretch codes to be made available in 2023, and their focus on reducing energy demand. Implementing those locally will promote State uniformity.

- Electrification of buildings does not make sense when the grid continues to be powered by fossil fuels, a problem beyond the reach of the Town.

- The Petitioner has not yet proposed a climate action plan to serve as a blueprint for the requested Town Meeting actions.

- There is a lack of detail currently about how Petitioner proposes to use the requested local authority.

A 10-member minority of the Advisory voting support for Article 25 expressed the following views:

- Just as there was a time when building cars didn't make sense because there were not roads to drive them on, it is now necessary to advance building electrification even though the grid is not entirely powered by renewables at this time. We have to both electrify buildings while the State continues to improve the grid's renewables portfolio. Someone has to go first. Brookline should lead.

- Article 25 simply seeks authority, it does not propose any policy proposal. Town Meeting would need to approve a zoning by-law implementing the new authority by a 2/3 vote. Town Meeting's vote on Article 37 to the 2021 Annual Town Meeting directs an aggressive plan to implement the Town's net zero goal.

A recording of the Advisory Committee's November 10, 2022, meeting and vote is here: https://brooklinema.zoomgov.com/rec/share/H-glPhMjI1-AI9Xl-5b0B4VMpOy8aGYil2_7DuANDRSiktZKlE3SUPcDQlgh0_kV.n58XJgtKd6z_fMaA

A recording of the Ad Hoc Subcommittee's October 19, 2022, public hearing, meeting and vote is here: https://brooklinema.zoomgov.com/rec/share/lWC69SaYfnQMNXbHMj9OlGaCdkriFaIRsidj7zFyBBi5lLDjDiAymxrYlm-v1n2U._RsK7BJfHHyXkn-d

Recommendation
The Advisory Committee recommends **NO ACTION** on Article 25 as amended by the Petitioner, by a vote of 10-14 with 2 abstentions.

The Advisory Committee's vote was on Article 25 as amended by Petitioner, as follows:

[In clean text. For a marked-up version of Article 25 showing changes offered by this Motion to Amend, see Section 2 of the Appendix which follows the voting summary table.]

MOVED: That Brookline Town Meeting authorize the Brookline Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to allow the Town of Brookline to adopt zoning bylaws pursuant to *M.G.L.* c.40A, §5 that may require land use and development standards intended to reduce greenhouse gas emissions, and that may impose more progressive requirements than are articulated in the State Building Code or elsewhere; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition

An Act authorizing the Town of Brookline to adopt green zoning bylaws and regulations.

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. Green Zoning. Notwithstanding the provisions of section 3 of chapter 40A, section 95 of chapter 143 of the Massachusetts General Laws, those further statutes and regulations relating to the State Building Code and its incorporated specialty codes, MGL chapter 164, or any other general or special law to the contrary, the Town of Brookline is authorized to adopt zoning bylaws and regulations for the purpose of reducing greenhouse gas emissions, increasing energy efficiency, and otherwise addressing specific harms stemming from or contributing to the climate crisis.

SECTION 2. Building Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

c. the use of materials or methods of construction of buildings, whether or not otherwise regulated by the State Building Code; or

d. the use, inclusion, or prohibition of certain design elements, components, equipment, or infrastructure for the construction of buildings, including without limitation heating and cooling systems, solar energy systems, and electric vehicle charging systems.

SECTION 3. Emissions Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

d. air emissions regulated by the Massachusetts Department of Environmental Protection;
e. seasonal, annual or lifetime greenhouse gas emissions of structures; or
f. greenhouse gas emissions attributable to construction, including those attributable to the production and transportation of building materials.

SECTION 4. Utility Connection Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

d. the installation or prohibition of appliances or equipment, whether for residential or commercial purposes, that consume a utility product regulated under MGL chapter 164 or otherwise by the Massachusetts Department of Public Utilities;
e. new connections to a transmission or distribution system for consumer utility products that may impact directly or indirectly the sale or distribution of such utility products, including without limitation natural gas, fuel oil, electricity, renewable natural gas, hydrogen, steam, or hot or chilled water; or
f. greenhouse gas emissions attributable to the production, transmission, distribution, or consumption of such utility products.

SECTION 5. Severability. If any provision of this chapter or the application thereof to any person or circumstance shall be found to be invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the chapter shall be deemed to be affected to the minimum extent necessary, so as to secure the purposes thereof.

SECTION 4. This act shall take effect upon its passage.

ARTICLE 25 ADVISORY COMMITTEE VOTES

Article Description	**Petition for a special act regarding Green Zoning**
AC recommendation	**NO ACTION 10-14-2**
Ben Birnbaum	N
Harry Bohrs	
Cliff Brown	A
Patty Correa	Y

John Doggett	N
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	N
Anita Johnson	A
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	N
Pam Lodish	N
Joslin Murphy	Y
Donelle O'Neal, Sr.	N
Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	N
Lee Selwyn	N
Alok Somani	N
Carolyn Thall	Y

Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

1. RELEVANT LINKS

A. International:

2021 IPCC Report

B. Massachusetts:

2019 Massachusetts 2050 Decarbonization Roadmap

2021 "An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy"

2022 "An Act Driving Clean Energy and Offshore Wind" (the "Drive Act")

2022 Massachusetts 2025/2030 GHG emissions reduction interim targets and plan

2022 DOER proposed final stretch code and municipal opt-in stretch code

C. Town Meeting

2019 Special Town Meeting, Article 21 (fossil fuel free general bylaw)
- 211-3-6 Town Meeting vote
- July 21, 2020 Attorney General's Office's disapproval

2020 Special Town Meeting, Article 39 (fossil fuel free home rule petition)
- 217-3-4 Town Meeting vote

2021 Annual Town Meeting, Article 25 (Emerald Isle Special District fossil fuel free zoning bylaw)
208-3-2 Town Meeting vote
February 25, 2022 Attorney General's Office's disapproval

2021 Annual Town Meeting, Article 26 (zoning bylaw tying fossil fuel free infrastructure measures to special permitting)
206-6-4 Town Meeting vote
February 25, 2022 Attorney General's Office's disapproval

2021 Annual Town Meeting, Article 37 (resolving to declare a climate emergency and setting net zero carbon emissions target date of 2040)
228-1-4 Town Meeting vote

2022 Annual Town Meeting, Article 17 (zoning bylaw specifying EV charging infrastructure standards)
231-2-6 Town Meeting vote
ATTORNEY GENERAL'S OFFICE'S DECISION IS PENDING

2. Petitioner's Motion As Amended, REDLINED to Show Changes From Originally-Filed Version

[Additions are shown in ***bold italics,*** deletions are shown in bold ~~**strikeout**~~.]

To see if the ***Brookline Town Meeting*** ~~**Town**~~ will vote to authorize the ***Brookline*** Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to allow the Town of Brookline to adopt zoning bylaws pursuant to *M.G.L.* c.40A, §5 that may require land use and development standards intended to reduce greenhouse gas emissions, and that may impose more progressive requirements than are articulated in the State Building Code or elsewhere; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition

An Act authorizing the Town of Brookline to adopt green zoning bylaws and regulations.

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. Green Zoning. Notwithstanding the provisions of section 3 of chapter 40A, ~~**and**~~ section 95 of chapter 143 ***of the Massachusetts General Laws***, those further statutes and regulations relating to the State Building Code and its incorporated specialty codes, ***MGL*** chapter 164, or any other general or special law to the contrary, the Town of

Brookline is authorized to adopt zoning bylaws and regulations for the purpose of reducing greenhouse gas emissions, increasing energy efficiency, and otherwise addressing specific harms stemming from or contributing to the climate crisis.

SECTION 2. Building Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

e. the use of materials or methods of construction of buildings, whether or not otherwise regulated by the State Building Code; or

f. the use, inclusion, or prohibition of certain design elements, components, equipment, or infrastructure for the construction of buildings, including without limitation heating and cooling systems, solar energy systems, and electric vehicle charging systems.

SECTION 3. Emissions Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

g. air emissions regulated by the Massachusetts Department of Environmental Protection;

h. seasonal, annual or lifetime greenhouse gas emissions of structures; or

i. greenhouse gas emissions attributable to construction, including those attributable to the production and transportation of building materials.

SECTION 4. Utility Connection Standards. Zoning bylaws and regulations, the adoption of which is authorized by this chapter, shall not be deemed invalid or unenforceable, or have their approval withheld by the Office of the Attorney General on the basis that they regulate any of the following:

g. the installation or prohibition of appliances or equipment, whether for residential or commercial purposes, that consume a utility product regulated under MGL chapter 164 or otherwise by the Massachusetts Department of Public Utilities;

h. new connections to a transmission or distribution system for consumer utility products that may impact directly or indirectly the sale or distribution of such utility products, including without limitation natural gas, fuel oil, electricity, renewable natural gas, hydrogen, steam, or hot or chilled water; or

i. greenhouse gas emissions attributable to the production, transmission, distribution, or consumption of such utility products.

SECTION 5. Severability. If any provision of this chapter or the application thereof to any person or circumstance shall be found to be invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the chapter shall be deemed to be affected to the minimum extent necessary, so as to secure the purposes thereof.

SECTION 4. This act shall take effect upon its passage.

ARTICLE 26

TWENTY-SIXTH ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to fund greenhouse gas emissions reductions in the Town of Brookline, subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition:

An Act authorizing the Town of Brookline to impose a methane emissions surcharge and authorize non-pipeline alternatives
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. Emissions Reduction Fund. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, the Town of Brookline shall establish a separate account to be known as the Emissions Reduction Fund of which the town treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the Town Meeting, and the town treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the commonwealth or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth that are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall not exceed the amounts recommended by the Brookline Zero Emissions Advisory Board.

SECTION 2. Methane Surcharge. Notwithstanding the provisions of any general or special law to the contrary, the Town of Brookline may impose a surcharge on the use of natural gas within the town. The surcharge shall apply to all properties in the Town of Brookline served by gas companies. Said surcharge shall be assessed and collected on gas bills for properties located in the Town of Brookline. The rate of such surcharge shall be 25 per cent of the cost per therm of gas.

SECTION 3. Residential Exemption. (a) For the purposes of this section, the term "area median income" shall mean the median family income for the Boston-Cambridge-Quincy area, adjusted for family size for the property, as established by United States Department of Housing and Urban Development.
(b) There shall be a complete exemption from the surcharge for qualifying residential customers who attest that, in the immediately prior calendar year, they earned less than 110 per cent of area median income. There shall be a 50 per cent exemption from the surcharge for qualifying residential customers who attest that, in the immediately prior calendar year, they earned between at least 110 and but less than 200 per cent of area median income. The exemption shall be applied to the primary residence of the taxpayer only.
(c) Customers shall qualify for the exemption if all the following criteria are met:
(i) The applicant or joint applicant's prior year's income would make the applicant or joint applicants eligible for the exemption; and
(ii) The qualifying residential property is occupied by the applicant or joint applicants as their primary residence; and
(iii) Applicants complete annual certification, meeting the stated criteria relative to income and residency.
(d) Upon initial connection to gas service, and every April thereafter, the utility shall provide an application, the contents of which shall be created in consultation with and subject to the approval of the Town of Brookline, to determine whether a customer qualifies for a total or partial exemption from the surcharge. A person who seeks to qualify for an exemption shall complete said application. Qualifying applicants shall be entitled to the exemption. The application shall be completed in each year for which the applicant seeks the exemption.
SECTION 3. Collection. The gas company shall collect all amounts received pursuant to the surcharge established in section 2 and maintain them in a segregated account. The gas company shall remit all funds collected under said surcharge, no later that the 15th of the month following receipt of such amounts, to the Emissions Reduction Fund established in section 1. Late payments of the surcharge shall be exempt from the calculation of any late payment charges otherwise authorized for utility bills. Annually, the gas company shall provide an audited report to the town of all collections and disbursements of funds made pursuant to this act.
SECTION 4. Expenditures for emissions reductions (a)(1) The Brookline Zero Emissions Advisory Board shall, from time to time, make recommendations to the Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said board may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may then take such action and approve such appropriations from the Emissions Reduction Fund established pursuant to section 1, in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein

shall be deemed to constrain the Brookline Town Meeting from appropriating such additional amounts as it deems appropriate to carry out the Boards recommendations from a source other than the Emissions Reduction Fund.

SECTION 5. Administrative expenses. In each fiscal year, the Brookline Town Meeting may make such appropriations from the Emissions Reduction Fund as it deems necessary for the administrative and operating expenses of the Brookline Zero Emissions Advisory Board, but the appropriations shall not exceed 5 per cent of the annual revenues in the Emissions Reduction Fund. Funds that are set aside shall be held in the Emissions Reduction Fund and spent in that year or later years, but funds set aside for a specific purpose shall be spent only for the specific purpose. The Emissions Reduction Fund shall not replace existing operating funds, only augment them.

SECTION 6. Properties purchased by the Emissions Reduction Fund. (a) A real property interest that is purchased with monies from the Emissions Reduction Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the town. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the town with the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the town, but Town Meeting may delegate management of such property to the Brookline Zero Emissions Advisory Board or other town board or commission, as it may deem appropriate. Town Meeting may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

SECTION 7. Record keeping. The Brookline Zero Emissions Advisory Board shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Emissions Reduction Fund. The board shall also keep records of any real property interests acquired, disposed of, or improved by the town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration. The records and accounts shall be public records.

SECTION 8. Matching funds. Funds in the Brookline Emissions Reduction Fund may be made available and used by the town as the local share for state or federal grants upon recommendation of the Brookline Zero Emissions Advisory Board and approval by Town Meeting, as provided for in section 4, if such grants and such local share are used in a manner consistent with the recommendations of the Brookline Zero Emissions Advisory Board.

SECTION 9. Notwithstanding any general or special law to the contrary, a gas company shall offer a program of alternatives to the gas company's distribution of natural gas, as annually approved by the Brookline Zero Emissions Advisory Board, to all gas customers in the Town of Brookline. Such program shall include, but need not be limited to:

i. Gas energy efficiency programs;

ii. The sale or lease, installation and servicing of ground source or air source heat pumps and other electric heating or cooling devices;
iii. The sale or lease, installation, and servicing of electric appliances to displace or supplement gas appliances, including but not limited to hot water heaters, dryers and ranges; and
iv. The sale or lease, installation, and servicing of renewable energy storage and generation equipment.

SECTION 10. Notwithstanding any general or special law to the contrary, the gas company shall offer on-bill financing for the non-pipeline alternatives provided for in section 9 of this Act; and may also be allowed, in addition, to ratebase all or portions of these investments where they serve to accelerate electrification.

SECTION 11. Notwithstanding any general or special law to the contrary, a gas company may, subject to all applicable local by-laws and regulations, engage in renewable energy generation and storage thereof in the Town of Brookline.

SECTION 12. As used in this act, the term "gas company" shall have the same meaning as defined in Section 1 of Chapter 164.

PETITIONER'S ARTICLE DESCRIPTION

This Municipal Climate Empowerment Program (MCEP) Article is one of many needed to achieve the emissions reduction goals this Town Meeting agreed upon last year, when we declared a goal of net-zero emissions by 2040. It is also part of a larger strategy to spur broad climate action with political leadership emanating from this Town Meeting. The specific goal of the MCEP Articles is to address a critical and urgent need for both the ***resources*** and the ***authority*** to implement necessary local climate policy in Brookline. We need new laws to allow Brookline — and other municipalities — to summon the will that cannot yet be summoned by the Commonwealth-at-large.

Brookline Town Meeting showed tremendous climate action leadership when we passed the first ever cold-climate gas ban for new construction in 2019, only a few months after Berkeley, CA passed the first ever gas ban in the United States. Doing so was vitally important, even after the Attorney General disallowed it by ruling that it conflicted with legacy laws enacted by the MA Legislature decades ago to protect the utilities. Because of Brookline's forward-thinking action in passing this by-law, many municipalities in Massachusetts have followed our leadership. Because of Brookline's bold action, the State Legislature asked for an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And because of Brookline's assertive action, the State Legislature included a provision in their 2022 climate bill that allowed 10 municipalities to enact such gas bans. By passing practical, impactful and forward-thinking policies in our town, Brookline has provided — and can continue to provide — strong leadership for other communities and catalyze much needed climate action at the state level.

We urgently need to stop burning fossil fuels — not today, not tomorrow, but NOW. The most conservative climate organizations in the world — the UN International Panel on Climate Change and the International Energy Agency — have both issued stark warnings: to avoid catastrophic climate change, we must stop using fossil fuels *immediately*. To achieve this goal, we need to first stop buying new equipment designed to burn these fossil fuels. This equipment includes boilers, furnaces, hot water heaters, dryers, and cooking equipment that burn gas or oil, as well as gasoline cars.

It's easy to stop purchasing these fossil fuel-burning devices when doing major construction — which is why we started in 2019 with so-called "gas bans" that prohibit new fossil fuel infrastructure from being installed during new construction or major renovations. That policy, soon-to-be-law, is the easy part.

It's equally necessary — but often more difficult — to avoid purchasing fossil fuel equipment when an appliance or heating system in an existing building needs to be replaced. This is a climate imperative, but it is also an economic imperative as gas prices will continue to be highly volatile and rise further due to the inevitable costs of replacing gas pipes ("GSEP") and other factors. It is also a health imperative, as we know that these buildings create unhealthy indoor and outdoor air quality. And it is an environmental justice imperative, as our wasteful habits most affect at-risk populations both in our own communities and on our planet.

This is why the number one *personal* action you can take on climate is to make a plan for how you can avoid purchasing another heating system, appliance, or vehicle designed to burn fossil fuels. We need your help to "electrify everything" so that everything can be powered by an electrical grid that is already green and getting greener by the year — including 100% green in Brookline by 2024. It's the only way to achieve the emissions goals we've already agreed upon.

But we all know that personal action, as important as it is, can't get us to where we need to go, fast enough. That's why we also need policies to protect us. And while the State is supposed to provide these protections for us, it is not acting with the urgency or the scope necessary to address this existential threat. **Therefore, the number one *collective* action you can take on climate is to support government policy to help you and others succeed in electrifying your own transportation and homes.** This is the motivation for this Article.

This Article has two main parts.

PART ONE:

Electrification can be a costly process. The purpose of this article and the Home Rule Petition that it proposes is to create a source of capital so that Brookline can more effectively transition our buildings and transportation away from fossil fuels and reduce the Town's carbon footprint.

To generate those funds, the petition would authorize the Town to start charging so-called "natural" gas consumers a surcharge on their gas use. In other words, the price of so-called “natural” gas would increase to better reflect the “true” cost of that use: a cost that includes the corresponding efforts the Town must take to combate that usage’s climate impacts.

Local gas distribution companies (such as National Grid) would be required to collect this surcharge as part of their bills to consumers within Brookline. The monies collected would be placed in a newly formed Emissions Reduction Fund. The Zero Emissions Advisory Board (ZEAB) would then be responsible for making recommendations to Town Meeting for which emissions reduction activities should be funded.

Some potential uses for the funds include:

- Funding for low-income building decarbonization retrofits
- Funding for hired professional project managers to manage or guide the process of whole building decarbonization
- Funding for necessary design studies for multi-unit buildings
- Funding additional sustainability positions in Town staff

The surcharge rate would be 25% of the cost per therm of gas used. Gas bills are highly individualized based on how much gas is used, so it is impossible to accurately estimate how much this would increase an individual’s specific bill.

In order to equitably manage this surcharge, this Article exempts households with annual income below 110% of area median income (currently $120,000 for a 2-person family), and provides for a 50% exemption on households below 200% area median income (currently $215,000 for a 2-person family).

PART TWO:

Because it is necessary to transition away from the burning of so-called “natural” gas, this Article provides alternative “non-pipeline” programs a gas company can offer to users in Brookline. The companies would be able to offer on-bill financing for these “non-pipeline” alternative programs.

Examples of “non-pipeline” programs include:

- Energy efficiency programs
- Selling, leasing, installing or servicing Ground Source or Air Source Heat Pumps as well as other electric heating or cooling devices
- Selling, leasing, installing or servicing electric appliances that would displace or supplement gas appliances (such as stoves, hot water heaters, and dryers)
- Selling, leasing, installing and servicing renewable energy generation and storage equipment (like solar panels and batteries).

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation under Article 26.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 26 will be included in the Supplemental mailing.

XXX

ARTICLE 26

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 26 as amended by the Advisory Committee by a vote of 19 in favor, 4 opposed, with 3 abstentions.

Executive Summary	As amended, Article 26 is a resolution urging the Massachusetts Legislature to enact statewide legislation to allow towns and cities to add a gas utility surcharge to the bills of gas utility customers. The surcharge is designed to incentivize demand reduction and help fund local decarbonization efforts. The resolution also calls for lower-income exemptions for a household's primary residence.
Voting Yes will...	Urge Brookline's legislative delegation to file legislation to allow towns and cities to add a gas utility surcharge to utility customers bills.
Voting No will...	Maintain the status quo
Financial impact	If the Massachusetts Legislature eventually enacts statewide legislation to add the Town to add a gas utility surcharge, a *future* Town Meeting could enact such a surcharge. There is no direct financial impact from this Article.
Legal implications	None

Introduction
NOTE: See the Advisory Committee's report on Warrant Article 21 for a full description of ZEAB's Municipal Climate Empowerment (MCEP) slate of warrant articles.

Warrant Article 26 is a resolution that seeks to have Brookline's legislative delegation introduce legislation to allow towns and cities in Massachusetts to add a surcharge to gas utility customers' bills. A surcharge would serve two purposes: to incentivize reduction

in the use of natural gas and provide a funding source for a municipality's decarbonization efforts.

WA26 was originally filed by the petitioners as a home rule petition and was amended by the Advisory Committee to be a resolution because the need for funding for decarbonization efforts is not unique to Brookline. To achieve the state's goal of net zero emissions by 2050, all cities and towns in Massachusetts will need additional sources of revenue to implement their decarbonization plans. A resolution encourages Brookline's legislative delegation to file legislation that would allow any municipality to add a surcharge to gas utility customers' bills, rather than requesting that permission for Brookline only.

Because usage taxes disproportionately impact low-income consumers, the resolution does not specify how the surcharge should be levied and it calls for exemptions for the primary residence for low-income households.

As noted, Article 26 is one of several Articles introduced by the ZEAB to reduce the Town's carbon footprint. As with many of the Articles introduced by the ZEAB in this Town Meeting, multiple steps must occur before any changes are enacted. In this case, before any additional tax would be enacted, the Legislature would first have to enact enabling legislation and a future Town Meeting must set the policy and choose the tax rate. This Article is the first step.

Discussion
The Advisory Committee expressed support for the petitioners' article as written but raised questions about the implementation as described in the original article and the use of a home rule petition to create a funding source solely for Brookline's decarbonization efforts. Committee members were also concerned about the level of detail provided in the article. Home rule petitions become law upon approval by the Legislature and the committee questioned whether the language in the article as written was comprehensive and inclusive of the proper details.

During the discussion, questions were raised about the capacity of the electrical grid to support the increased demand that will arise from electrification efforts and how much electricity was being generated from renewable sources. Committee members also expressed concern about the ability of gas utility companies to adjust their business process to add a calculated surcharge for only Brookline natural gas customers. Others worried that the surcharge would penalize residents who replaced aging, inefficient heating systems with newer, more energy efficient ones that will not need replacement for decades.

The committee also noted that surcharges and other increased fees feel punitive and suggested more incentives or carrots were needed to change residents' behavior as there is no direct linkage between the surcharge and a benefit to the payee. The surcharge could be considered a Pigouvian tax as it is designed to discourage the use of natural gas and

the accumulated negative effects burning fossil fuels have on Earth's climate. The petitioners aim to use the funding created by the surcharge to further the Town's efforts to combat climate change thus creating an overall benefit for the consumers who paid the fees.

Broadly, the Committee recognized that Brookline is one of 257 cities and towns in Massachusetts whose residents use natural gas and saw the benefit of seeking state legislation that would allow each municipality to opt-in to a surcharge that would benefit that town's efforts to meet its net zero emissions goal. Amending the article to be a resolution addresses the concerns raised by the committee and creates an opportunity for broader sponsorship and support.

The article, as amended, has strong support from the Advisory Committee which recommends FAVORABLE ACTION.

Meeting Recording: https://brooklinema.zoomgov.com/rec/share/H-glPhMjI1-AI9Xl-5b0B4VMpOy8aGYil2_7DuANDRSiktZKlE3SUPcDQlgh0_kV.n58XJgtKd6z_fMaA

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 26, as amended, by a vote of 19-4-3. A clean version of the substitute motion is shown below.

Substitute Motion

VOTED: That the Town adopt the following resolution:

A Resolution Urging the Massachusetts General Court to enact legislation to add a gas utility surcharge to the bill of all properties served by a gas utility, with appropriate lower income exemptions for the primary residence of households, to be remitted to the municipality in which that household is located and those surcharges to be used to fund programs or activities to promote emissions reduction in that municipality.

WHEREAS, the Commonwealth of Massachusetts has set a goal to have Net Zero emissions by 2050 and published a "Decarbonization Road Map" in February 2020 which sets a target of Net Zero emissions in the State by 2050 and a "Clean Energy and Climate Plan for 2025 and 2030 published in June 2022; and

WHEREAS, Brookline Town Meeting has set a goal to have Net Zero emissions by 2040 (Warrant Article 37, Spring 2021) and published plans including a Greenhouse Gas Inventory (2000-2008), Climate Action Plan 2002, Zero Emissions by 2050 Climate Action Plan in 2018 as well as numerous Town Meeting resolutions, by-law and zoning changes; and

WHEREAS, in 2020 the Commonwealth of Massachusetts emitted 50.3 Million Metric Tons of CO2 (MMT) and in 2008 emitted 76.7MMT; and

WHEREAS in 2008 Brookline emitted 0.54 MT (0.48 MMT), less than 1% of Commonwealth emissions at that time; and

WHEREAS, Massachusetts emissions from residential and commercial buildings is about 27% of total statewide emissions, and to keep pace with targets, the Commonwealth needs to decarbonize about 2 million buildings; and

WHEREAS, Brookline emissions for residential and commercial buildings is about 66% of total emissions, with over 26,800 housing units (is comprised of single-family houses, two, and three family dwellings, apartment blocks and condominiums of which only a very few dwellings are fully electric and/or have solar power) accounting for 46% of Brookline total emissions and over 1500 commercial establishments (ranging from local cafés, stores, medical offices etc. to multi-story office towers) accounting for 20% of emissions; and

WHEREAS, natural gas is used for building space and hot water heating in 257 cities and towns in the Commonwealth including Brookline: and

WHEREAS, the cost of conversion to electric power is substantial and for Brookline it could easily cost well over $300 million for residential decarbonization alone; and

WHEREAS, a surcharge on a gas utility bill will incentivize demand reductions, thus lowering emissions, as well as providing some funding for decarbonization projects; and

WHEREAS, all Cities and Towns in Massachusetts need tools to help raise revenue for those municipalities to achieve their climate goals for decarbonization of residential, commercial, and municipal buildings; as well as transportation; and

WHEREAS, an act of the state legislature is necessary to provide additional revenue generating sources to enable municipalities to achieve decarbonization goals; and

WHEREAS, Resolutions urging our legislative delegation to introduce a bill addressing the statewide policy question are more likely to be successfully advanced through the legislature. Home Rule petitions are more appropriately used to address issues unique to a city or town, and not as a general exception to the law;

THEREFORE, be it RESOLVED, that Brookline Town Meeting hereby requests that the General Court of Massachusetts enact legislation that will allow Brookline and any other

city or town in Massachusetts, to enact local legislation to enable a municipality to add a gas utility surcharge to the bill of all properties served by a gas utility, with appropriate lower income exemptions, where the utility company collects and forwards to the city or town concerned those remittances to be used to fund programs or activities to promote emissions reductions and have appropriate lower income exemptions for the primary residence of households; and

Be it further RESOLVED, that our legislative delegation include in their legislation as much as possible of the clause details contained in the citizen petitioners original home rule legislation cited below in the explanation to this resolution; 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 26 ADVISORY COMMITTEE VOTES

Article Description	**Resolution regarding a gas utility surcharge**
AC recommendation (Favorable action unless indicated)	**19-4-3**
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	A
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	

Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	A
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	N
Carolyn Thall	Y
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

MAIN MOTION OFFERED BY THE ADVISORY COMMITTEE (PETITIONERS CONCUR)

VOTED: That the Town will adopt the following resolution:

A Resolution Urging the Massachusetts General Court to enact legislation to add a gas utility surcharge to the bill of all properties served by a gas utility, with appropriate lower income exemptions for the primary residence of households, to be remitted to the municipality in which that household is located and those surcharges to be used to fund programs or activities to promote emissions reduction in that municipality.

WHEREAS, the Commonwealth of Massachusetts has set a goal to have Net Zero emissions by 2050 and published a "Decarbonization Road Map" in February 2020 which sets a target of Net Zero emissions in the State by 2050 and a "Clean Energy and Climate Plan for 2025 and 2030 published in June 2022[1]; and

WHEREAS, Brookline Town Meeting has set a goal to have Net Zero emissions by 2040 (Warrant Article 37, Spring 2021) and published plans including a Greenhouse Gas Inventory (2000-2008), Climate Action Plan 2002, Zero Emissions by 2050 Climate Action Plan in 2018 as well as numerous Town Meeting resolutions, by-law and zoning changes[2]; and

WHEREAS, in 2020 the Commonwealth of Massachusetts emitted 50.3 Million Metric Tons of CO2 (MMT) and in 2008 emitted 76.7MMT[3]; and

WHEREAS in 2008 Brookline emitted 0.54 MT (0.48 MMT), less than 1% of Commonwealth emissions at that time[4]; and

WHEREAS, Massachusetts emissions from residential and commercial buildings is about 27% of total statewide emissions, and to keep pace with targets, the Commonwealth needs to decarbonize about 2 million buildings[5]; and

WHEREAS, Brookline emissions for residential and commercial buildings is about 66% of total emissions, with over 26,800 housing units (is comprised of single-family houses, two, and three family dwellings, apartment blocks and condominiums of which only a very few dwellings are fully electric and/or have solar power) accounting for 46% of Brookline

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[1]mass.gov/doc/ma-2050-decarbonization-roadmap/download
mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download
[2]Collins Report: brooklinema.gov/DocumentCenter/View/22352/Brookline-Sustainability-Final-Report---August-2020
GHG Inventory: brooklinema.gov/ArchiveCenter/ViewFile/Item/628
[3]USEIA: eia.gov/environment/emissions/state/
[4]GHG Inventory: brooklinema.gov/ArchiveCenter/ViewFile/Item/628
USEIA: eia.gov/environment/emissions/state/
[5]mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download

total emissions and over 1500 commercial establishments (ranging from local cafés, stores, medical offices etc. to multi-story office towers) accounting for 20% of emissions[6]; and

WHEREAS, natural gas is used for building space and hot water heating in 257 cities and towns in the Commonwealth including Brookline[7]: and

WHEREAS, the cost of conversion to electric power is substantial and for Brookline it could easily cost well over $300 million for residential decarbonization alone; and

WHEREAS, a surcharge on a gas utility bill will incentivize demand reductions, thus lowering emissions, as well as providing some funding for decarbonization projects; and

WHEREAS, all Cities and Towns in Massachusetts need tools to help raise revenue for those municipalities to achieve their climate goals for decarbonization of residential, commercial, and municipal buildings; as well as transportation; and

WHEREAS, an act of the state legislature is necessary to provide additional revenue generating sources to enable municipalities to achieve decarbonization goals; and

WHEREAS, Resolutions urging our legislative delegation to introduce a bill addressing the statewide policy question are more likely to be successfully advanced through the legislature. Home Rule petitions are more appropriately used to address issues unique to a city or town, and not as a general exception to the law;

THEREFORE, be it RESOLVED, that Brookline Town Meeting hereby requests that the General Court of Massachusetts enact legislation that will allow Brookline and any other city or town in Massachusetts, to enact local legislation to enable a municipality to add a gas utility surcharge to the bill of all properties served by a gas utility, with appropriate lower income exemptions, where the utility company collects and forwards to the city or town concerned those remittances to be used to fund programs or activities to promote emissions reductions and have appropriate lower income exemptions for the primary residence of households; and

Be it further RESOLVED, that our legislative delegation include in their legislation as much as possible of the clause details contained in the citizen petitioners original home rule legislation cited below in the explanation to this resolution; 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.

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[6]Brookline Assessors database FY2022 PROPERTY ASSESSMENTS.xlsx
GHG Inventory: brooklinema.gov/ArchiveCenter/ViewFile/Item/628
[7]mass.gov/doc/natural-gas-providers/download

Explanation

The proposers of this substitute motion believe firmly that the Town will be more successful in getting the tools needed to help building and transport conversion to electric power through petitioning the General Court, rather than asking for home rule legislation for Brookline alone. A resolution enables all cities and towns to participate through their representatives in agreeing to the kind of tools that they need to be able to achieve their municipal Net Zero goals. This process enables the whole Commonwealth to benefit from Brookline's leadership.

Home Rule petitions are appropriately used to address issues unique to a city or town, and not as a general exception to the law. Resolutions urging our legislative delegation to introduce a bill addressing a statewide policy question would be more likely to successfully advance through the legislature. This is very much the case here, as all cities and towns in the Commonwealth need to have a plan and implementation tools to decarbonize their municipality.

The petitioners original home rule petition is as follows:

To see if the Town of Brookline will vote to authorize its Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to fund greenhouse gas emissions reductions in the Town of Brookline; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition.

An Act authorizing the Town of Brookline to impose a methane emissions surcharge and authorize non-pipeline alternatives.

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

SECTION 1. Emissions Reduction Fund. Notwithstanding the provisions of Massachusetts General Law section 53 of chapter 44, or any other general or special law to the contrary, the Town of Brookline shall establish a separate account to be known as the Emissions Reduction Fund of which the Town treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the Town Meeting, and the Town treasurer shall pay such expenses in accordance with MGL chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the Commonwealth of Massachusetts or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the Commonwealth, banking companies incorporated under

the laws of the Commonwealth that are members of the Federal Deposit Insurance Corporation,or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the Commonwealth or in the manner authorized by MGL section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall not exceed the amounts recommended by the Brookline Zero Emissions Advisory Board.

SECTION 2. Methane Surcharge. Notwithstanding the provisions of any general or special law to the contrary, the Town of Brookline may impose a surcharge on the use of natural gas within the town. The surcharge shall apply to all properties in the Town of Brookline served by gas companies. Said surcharge shall be assessed and collected on gas bills for properties located in the Town of Brookline. The of such surcharge, to be determined by Town Meeting, shall be no greater than 25% of all charges for gas service on the customer's bill.

SECTION 3. Residential Exemption. (a) For the purposes of this section, the term "area median income" shall mean the median family income for the Boston-Cambridge-Quincy area, adjusted for family size, as established by the United States Department of Housing and Urban Development.

(b) There shall be a complete exemption from the surcharge for qualifying residential customers who already receive a means-tested discounted rate from the utility, or for qualifying residential customers whose income in the immediately prior year was less than 200% of the area median income, provided that the Brookline Town Meeting may increase this percentage. The exemption shall be applied to the primary residence of the taxpayer only.

(c) Customers shall qualify for the exemption if all the following criteria are met:

(i) The applicant or joint applicants' prior year income would make the applicant or joint applicants eligible for the exemption; or the applicant or joint applicants receive gas service from the utility under a means-tested discounted rate; or the applicant or joint applicants are qualified participants in the Low Income Home Energy Assistance Program administered by the Massachusetts Department of Housing and Community Development; and

(ii) The qualifying residential property is occupied by the applicant or joint applicants as their primary residence; and

(iii) Applicants complete annual certification, meeting the stated criteria relative to income and residency.

(d) Town Meeting may in addition wholly or partially exempt any set of gas utility customers from this surcharge, and the Emissions Reduction Fund may wholly or partially reimburse any resident for surcharge paid by their condo association or landlord.

(e) Upon initial connection to gas service, and every April thereafter, the utility shall provide an application, the contents of which shall be created in consultation with and subject to the approval of either the Brookline Town Treasurer or the Town Assessor, to determine whether a customer qualifies for a total or partial exemption from the surcharge.

A person who seeks to qualify for an exemption shall complete said application. Qualifying applicants shall be entitled to the exemption. The application shall be completed in each year for which the applicant seeks the exemption.

SECTION 4. Collection. The gas company shall collect all amounts received pursuant to the surcharge established in section 2 hereof and maintain them in a segregated account. The gas company shall remit all funds collected under said surcharge no later than the 15th of the month following receipt of such amounts, to the Emissions Reduction Fund established in section 1 hereof. Late payments of the surcharge shall be exempt from the calculation of any late payment charges otherwise authorized for utility bills. Annually, the gas company shall provide an audited report to the Town of all collections and disbursements of funds made pursuant to this act.

SECTION 5. Expenditures for emissions reductions (a)(1) hereof: The Brookline Zero Emissions Advisory Board shall, from time to time, make recommendations to the Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said Board may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may then take such action and approve such appropriations from the Emissions Reduction Fund established pursuant to section 1 hereof in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein shall be deemed to constrain the Brookline Town Meeting from appropriating such additional amounts as it deems appropriate to carry out the Boards recommendations from a source other than the Emissions Reduction Fund.

SECTION 6. Administrative expenses. In each fiscal year, Brookline Town Meeting may vote to make such appropriations from the Emissions Reduction Fund as it deems necessary for the administrative and operating expenses of the Brookline Zero Emissions Advisory Board, but the appropriations shall not exceed 5% of the annual revenues in the Emissions Reduction Fund. Funds that are set aside shall be held in the Emissions Reduction Fund and spent in that year or later years, but funds set aside by the Zero Emissions Advisory Board as approved by Town Meeting for a specific purpose shall be spent only for the specific purpose. The Emissions Reduction Fund shall not replace existing operating funds, only augment them.

SECTION 7. Properties purchased by the Emissions Reduction Fund. (a) A real property interest that is purchased with monies from the Emissions Reduction Fund shall be bound by a permanent deed restriction that meets the requirements of MGL chapter 184, limiting the use of the property to the purpose for which it was acquired. The deed restriction shall

run with the land and shall be enforceable by the Town. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the Town with the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the Town, but Town Meeting may delegate management of such property to the Brookline Zero Emissions Advisory Board or other Town board or commission, as it may deem appropriate. Town Meeting may also delegate management of such property to a nonprofit organization created under MGL chapter 180 or MGL chapter 203.

SECTION 8. Record keeping. The Brookline Zero Emissions Advisory Board shall keep a full and accurate account of all its actions, including its recommendations and any action taken on them, and it shall maintain records of all appropriations or expenditures made from the Emissions Reduction Fund. The Board shall also keep records of any real property interests acquired, disposed of, or improved by the Town upon the Board's recommendation, including the names and addresses of the grantors or grantees and the nature and amount of the consideration paid. The records and accounts shall be public records.

SECTION 9. Matching funds. Funds in the Brookline Emissions Reduction Fund may be made available and used by the Town as the local share for state or federal grants upon recommendation of the Brookline Zero Emissions Advisory Board and approval by Town Meeting, as provided for in section 5 hereof, if such grants and such local share are used in a manner consistent with the recommendations of the Brookline Zero Emissions Advisory Board.

SECTION 10. Accountability. The Brookline Emissions Reduction Fund shall have a ceiling, initially set to $15,000,000 in inflation-adjusted 2022 dollars, for unallocated funds. If at the end of any fiscal year there are more dollars in the fund than the ceiling, excluding (1) any portion of funds already allocated by Town Meeting, (2) any portion of funds deposited within that fiscal year, and (3) any portion of funds provided by the Commonwealth rather than from local revenue, such excess shall be transferred to the Town's Free Cash. Town Meeting may modify the ceiling.

At any point more than five years after the effective date, Town Meeting may choose to terminate the Emissions Reduction Fund. If terminating the Fund, Town Meeting may transfer remaining funds to other funds or to free cash, and may choose whether to terminate individual programs generating revenue for the Fund or to redirect those programs to generate revenue for another purpose.

SECTION 11. Notwithstanding any general or special law to the contrary, a gas company shall offer a program of financing for alternatives to the gas company's distribution of natural gas, as annually approved by the Brookline Zero Emissions Advisory Board, to all gas customers in the Town of Brookline. Such program shall include, but need not be limited to, financing for:

i. The saleor lease, installation, and servicing of ground source or air source heat pumps and other electric heating or cooling devices;
ii. The sale or lease, installation, and servicing of electric appliances to replace or supplement gas appliances, including but not limited to hot water heaters, dryers and ranges; and
iii. The sale or lease, installation, and servicing of renewable energy storage and generation equipment.

SECTION 12. Notwithstanding any law to the contrary, the gas company shall offer on-bill financing for the non-pipeline alternatives provided for in section 11 of this Act; and may also be allowed, in addition, tobase all or portions of the financing costs for these investments if they serve to accelerate electrification.

SECTION 13. Notwithstanding any law to the contrary, a gas company may, subject to all applicable local by-laws and regulations, engage in renewable energy generation and storage thereof in the Town of Brookline.

SECTION 14. As used in this act, the term “gas company” shall have the same meaning as defined in MGL Section 1 of Chapter 164.

ARTICLE 26

AMENDMENT TO ADVISORY COMMITTEE'S SUBSTITUE MOTION, OFFERED BY JONATHAN MARGOLIS, TMM P7, PETRA BIGNAMI, TMM P12, AND PAUL WARREN, TMM P1

MOVED, That the Town adopt the following resolution (changes in bold underline text).

A Resolution Urging the Massachusetts General Court to enact legislation to add a gas utility surcharge to the bill of all properties served by a gas utility, with appropriate lower income exemptions for the primary residence of households, to be remitted to the municipality in which that household is located and those surcharges to be used to fund programs or activities to promote emissions reduction in that municipality.

WHEREAS, the Commonwealth of Massachusetts has set a goal to have Net Zero emissions by 2050 and published a "Decarbonization Road Map" in February 2020 which sets a target of Net Zero emissions in the State by 2050 and a "Clean Energy and Climate Plan for 2025 and 2030 published in June 2022; and

WHEREAS, Brookline Town Meeting has set a goal to have Net Zero emissions by 2040 (Warrant Article 37, Spring 2021) and published plans including a Greenhouse Gas Inventory (2000-2008), Climate Action Plan 2002, Zero Emissions by 2050 Climate Action Plan in 2018 as well as numerous Town Meeting resolutions, by-law and zoning changes;

WHEREAS, in 2020 the Commonwealth of Massachusetts emitted 50.3 Million Metric Tons of CO2 (MMT) and in 2008 emitted 76.7MMT; and

WHEREAS in 2008 Brookline emitted 0.54 MT (0.48 MMT), less than 1% of Commonwealth emissions at that time; and

WHEREAS, Massachusetts emissions from residential and commercial buildings is about 27% of total statewide emissions, and to keep pace with targets, the Commonwealth needs to decarbonize about 2 million buildings; and

WHEREAS, Brookline emissions for residential and commercial buildings is about 66% of total emissions, with over 26,800 housing units (is comprised of single-family houses, two, and three family dwellings, apartment blocks and condominiums of which only a very few dwellings are fully electric and/or have solar power) accounting for 46% of Brookline total emissions and over 1500 commercial establishments (ranging from local cafés, stores, medical offices etc. to multi-story office towers) accounting for 20% of emissions; and

WHEREAS, natural gas is used for building space and hot water heating in 257 cities and towns in the Commonwealth including Brookline: and

WHEREAS, the cost of conversion to electric power is substantial and for Brookline it could easily cost well over $300 million for residential decarbonization alone; and

WHEREAS, a surcharge on a gas utility bill will incentivize demand reductions, thus lowering emissions, as well as providing some funding for decarbonization projects; and

WHEREAS, all Cities and Towns in Massachusetts need tools to help raise revenue for those municipalities to achieve their climate goals for decarbonization of residential, commercial, and municipal buildings; as well as transportation; and

WHEREAS, an act of the state legislature is necessary to provide additional revenue generating sources to enable municipalities to achieve decarbonization goals; and

WHEREAS, Resolutions urging our legislative delegation to introduce a bill addressing the statewide policy question are more likely to be successfully advanced through the legislature. Home Rule petitions are more appropriately used to address issues unique to a city or town, and not as a general exception to the law;

THEREFORE, be it RESOLVED, that Brookline Town Meeting hereby requests that the General Court of Massachusetts enact legislation that will allow Brookline and any other city or town in Massachusetts, to enact local legislation **following an affirmative vote by its electorate,** to enable a municipality to add a gas utility surcharge to the bill of all properties served by a gas utility, with appropriate lower income exemptions, where the utility company collects and forwards to the city or town concerned those remittances to be used to fund programs or activities to promote emissions reductions and have appropriate lower income exemptions for the primary residence of households; and

Be it further RESOLVED, that our legislative delegation include in their legislation as much as possible of the clause details contained in the citizen petitioners original home rule legislation cited below in the explanation to this resolution; 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.

Explanation: The Advisory Committee's substitute motion raises the distinct possibility that a significant number of homeowners and renters in Brookline will be subject to a surcharge (whether described that way or as a tax increase) that could be substantial; the Committee's motion to does not specify any limits on who would be affected by such a charge, or its amount. This motion amends the Advisory Committee's motion to provide simply that the Town's voters would have to approve such a charge before it could go into effect. The sponsors note that a similar condition is incorporated in the proposed Art. 28.

ARTICLE 27

TWENTY-SEVENTH ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will adopt the following new zoning by-law, to be numbered appropriately, , subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting:

§4.15 – Use of New On-Site Fossil Fuel Infrastructure Prohibited

1. Purpose

This Article is adopted by the Town of Brookline, to protect the health and welfare of the inhabitants of the Town from air pollution, including greenhouse gas emissions that cause climate change and thereby threaten the Town and its inhabitants.

2. Definitions

As used in this Article, the following terms shall have the following meanings:

"New Building" is defined as a building not in existence on the date of an application for a building permit that is subject to this Article.

"On-Site Fossil Fuel Infrastructure" is defined as fossil fuel piping that is in a building, in connection with a building, or otherwise within the property lines of premises, including piping that extends from a supply source; provided, however, that "On-Site Fossil Fuel Infrastructure" shall not include:

a. Fuel gas piping connecting a supply source to a meter or to the meter itself; or

b. Fossil fuel piping related to backup electrical generators or portable propane appliances for outdoor cooking and heating.

"Significant Rehabilitation" is defined as an alteration, requiring a building permit, to a building in existence on the date of an application for a building permit that is subject to this Article, and that:

a. For existing buildings regulated by the 9th Edition of the Massachusetts State Building Code 780 CMR 51.00, the Massachusetts Residential Code, includes the reconfiguration of space or building systems, in which the Work Area is more than 50% of the gross floor area as defined in the Zoning By-Law, prior to the project; or

b. For existing buildings regulated by the 9th Edition of the Massachusetts State Building Code 780 CMR 34.00, the Massachusetts State Basic Commercial Code, includes the reconfiguration of space and/or building systems, in which the Work Area is more than 50% of the gross floor area, as defined by the Massachusetts Building Code, prior to the project.

"Work Area" is defined as 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, refinishing or incidental work occur or where work not initially intended by the applicant is specifically required by the applicable Building Code.

3. Applicability

The requirements of this Article shall apply to all building permit applications for New Buildings or Significant Rehabilitations proposed to be located in whole or in part within the Town, except as follows:

a. The requirements of this Article shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping if fossil fuel piping is not installed.

b. The requirements of this Article shall not apply to research laboratories for scientific or medical research, or to hospitals or medical offices regulated by the department of public health as a health care facility.

c. The requirements of this Article shall not apply to repairs or replacement of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.

4. Use of New On-Site Fossil Fuel Infrastructure Prohibited

Except as otherwise provided in this Article, no building permit shall issue for a New Building or Significant Rehabilitation unless the proposal does not involve the installation of any new On-Site Fossil Fuel Infrastructure.

5. Waivers

A waiver of the prohibition stated in this Article may be granted by a special permit issued by the Board of Appeals, upon a finding that:

a. If supported by a detailed cost comparison provided by the applicant, that strict compliance with the requirements of this Article would be financially infeasible, including after utilizing available rebates and credits, or otherwise impractical to implement; or

b. That strict compliance with the requirements of this Article would result in the loss of new affordable housing units eligible for inclusion in the Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory.

In considering any waiver request, the Board of Appeals shall evaluate whether particular portions of a project are financially infeasible or impractical to implement, or would result in the loss of new affordable housing units, and the Board of Appeals shall issue waivers narrowly for those portions, where appropriate, rather than for an entire project.

6. Rules, Regulations, and Guidelines

The Planning Board shall adopt, and may in its discretion thereafter amend, guidelines for procedures and waivers that will provide for the uniform and equitable application of this section. The Board of Appeals may consider such guidelines in making special permit decisions subject to this section.

Or act on anything relative thereto.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Article is a continuation of the climate action that began with Brookline Town Meeting back in the fall of 2019, documented here as well as on the Town website. It is part of a larger strategy to spur broad and much needed climate action with political leadership. Our Town Meeting is well-suited to provide this leadership, as a politically and intellectually vibrant body that understands the urgency of the global climate crisis.

In fall 2019, Brookline Town Meeting overwhelmingly passed Warrant Article 21, the Prohibition on New Fossil Fuel Infrastructure in Major Construction. This was the first "gas ban" outside California, the first in a cold-weather climate, and the first to include major renovations. It was passed as a general by-law, modeled after the one passed a few months earlier — the first in the US — in Berkeley, California.

Although our 2019 by-law was rejected by the Attorney General, its passage sparked a movement which spread throughout Massachusetts, with other municipalities following us. Our reach has proven to be even wider — gas bans have since been announced in New

York City and Washington, DC. Our Town Meeting action helped advocate for the MA Legislature to include an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And it prompted AG Maura Healey to ask the gas utilities to make a plan for achieving the Commonwealth's legally binding emissions targets. What seemed a little crazy to some of us in 2019 is now appreciated as necessary, and the first step in reducing the emissions of our building stock.

In Brookline, we passed a Home Rule Petition (HRP) in 2020, asking the legislature for permission to implement our FFF policy. Subsequently, Home Rule Petitions modeled upon ours were passed by Acton, Aquinnah, Arlington, Cambridge, Concord, Lexington, Lincoln, Newton, and West Tisbury. These HRPs prompted the inclusion of Chapter 179 (signed by Gov. Baker in the summer of 2022), a "pilot program" enabling ***TEN*** municipalities to adopt gas bans. This policy achievement was covered by the Washington Post, with a quote from Brookline's Lisa Cunningham. Since then, Somerville announced their own gas ban HRP, and Boston announced their intention to pass one. One Twitter commentator suggested that Mass Department of Energy Resources (DOER) hold a reality TV show to adjudicate which cities and towns get to become one of the ***TEN***. However, the reality is that while we await DOER interpretation of Chapter 179, along with all municipalities in the Commonwealth, we still lack the ability to implement our 2019 policy.

In 2021, Brookline Town Meeting acted again, passing a pair of zoning incentive by-laws, intended to assert our zoning authority to achieve the same policy goals of the original gas ban. Although these zoning incentives were disallowed by the Attorney General earlier this year, the Town and petitioners are appealing this decision.

As a reminder, our original Home Rule Petition in 2020 called for no fossil fuel infrastructure in new or substantially renovated buildings. It included a few exemptions, including for gas cooking and large-building hot water heaters. This article is an updated, strengthened version of our 2019 policy designed to be legally stronger, fully compatible with the DOER pilot program, and more consistent with the emissions reductions we've agreed upon in the Town of Brookline, which is net-zero emissions by 2040, with a 50% reduction by 2030.

Over the past two years it has become clear that exempting cooking is no longer acceptable from a climate or a public health perspective. There have been multiple studies published showing the health risks of gas stoves: that they are associated with a risk of asthma equal to having a smoker in the home, and that they leak methane (and benzene) even when off . Moreover, those who have tried induction cooking are quick converts, since it is superior to gas cooking in almost every way. Our new HRP therefore no longer exempts gas cooking.

We have also updated this new Home Rule Petition to provide a more realistic and widely accepted floor area threshold for gut renovations, using a 50% floor area, instead of the prior 75% floor area for residential construction. The commercial threshold remains the same, at 50%. In this Article, we used the definition of work area from the 2021 version of

the policy, which includes square footage of an addition, thereby making it more likely for additions to trigger the requirement.

The new HRP also recognizes advances in recent technology over the past three years by eliminating the qualified exemption for installing gas hot water heaters in buildings over 10,000 square feet, and instead requiring a waiver to bypass this requirement.

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioner is not making a motion under Article 27.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 27.

Summary: Warrant Article 27 was submitted by the Zero Emissions Advisory Board to facilitate Brookline's participation in the fossil fuel free demonstration project established by the recently passed Act Driving Clean Energy and Offshore Wind (Chapter 179 of the Acts of 2022).

On October 7, 2022 Associate Town Counsel Jonathan Simpson spoke with and shared information provided by Johannes Buchanan, Legislative Director for the Commonwealth's Department of Energy Resources (DOER) regarding the Town's participation in the fossil-fuel free demonstration project. Director Buchanan stated that DOER intends to promulgate regulations related to the demonstration project, and that it would be prudent for the Town to incorporate certain requirements from those regulations into whatever fossil fuel-free zoning by-law it intends to, ultimately, utilize in the demonstration project. However, DOER has barely begun drafting these regulations; its deadline to promulgate them is July 1, 2023. In Director Buchanan's mind, this makes passing a fossil-fuel free by-law at the November 2022 Town Meeting somewhat premature. And he was not sure how the Attorney General's Office will treat a fossil fuel-free by-law submitted for review by a community that is not currently in the demonstration project, but almost certainly will be within the next year.

Recommendation: Based on the information provided above, the petitioners of Warrant Article 27 informed the Advisory Committee that they do not intend to move Warrant Article 27. Accordingly, the Advisory Committee offers no recommendation.

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ARTICLE 28

TWENTY-EIGHTH ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to fund greenhouse gas emissions reductions in the Town of Brookline, subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition:

An Act authorizing the Town of Brookline to fund reductions in greenhouse gas emissions

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. Emissions Reduction Fund. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, the Town of Brookline, shall establish a separate account to be known as the Emissions Reduction Fund of which the town treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the Town Meeting, and the town treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the commonwealth or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth that are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall not exceed the amounts recommended by the Brookline Zero Emissions Advisory Board.

SECTION 2. Surcharge on real property; residential exemptions (a) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the town of Brookline shall impose a surcharge on real property of between 1 and 3 per cent of the real estate tax levy against real property, as determined annually by the board of

assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(b) No exemption or abatement of real property taxation authorized by said chapter 59 or any other law for which a taxpayer qualifies shall be affected by this chapter. The surcharge to be paid by a taxpayer receiving an abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.
(c) (1) For the purposes of this section the term “area median income” shall mean the median family income for the Boston-Cambridge-Quincy area, adjusted for family size for the property, as established by United States Department of Housing and Urban Development.
(2) There shall be a complete exemption from the surcharge for qualifying residential real property owners who demonstrate, pursuant to subsection (d) hereof that, in the immediately prior calendar year, that they earned less than 110 per cent of area median income. There shall be a 50 per cent exemption from the surcharge for qualifying residential real property owners who demonstrate, pursuant to subsection (d) hereof that, in the immediately prior calendar year, that they earned between 110 and 200 per cent of area median income. The exemption shall be applied to the primary residence of the taxpayer only. In the event that a property owner’s primary residence is in an owner-occupied multi-family property, the exemption shall be applied on a pro-rated basis only to the value of the owner-occupied unit.
(3) Real property shall qualify for the exemption if all of the following criteria are met:
(i) The applicant or joint applicant’s prior year’s income would make the applicant or joint applicants eligible for the exemption;
(ii) The qualifying real property is owned and occupied by the applicant or joint applicants as their primary residence; and
(iii) The board of assessors has approved the application.
(d) There shall be a complete exemption from the surcharge for properties with a structure thereon, where the entire building or an entire condominium unit does not use on-site coal, oil, natural gas or other fossil fuels in support of its operation. Town Meeting may from time to time consider complete or partial exemptions from the surcharge including but not limited to properties where there has been a MassSave or other energy audit, and the recommendations of such an audit have been implemented.
(e) A person who seeks to qualify for an exemption shall, before the deadline established by the board of assessors, file an application, on a form to be adopted by the board of assessors, with the supporting documentation of the applicant’s income as described in the application. The application shall be filed each year for which the applicant seeks the exemption.
(f) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

SECTION 3. Surcharge on real property; collection (a) Upon the assessors' warrant to the tax collector, the surcharge shall be imposed.

(b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall cause appropriate

books and accounts to be kept with respect to such surcharge. The property card shall include a “Y” or an “N” to identify whether the landowner has been granted an exemption. The tax collector shall pay the amounts so collected, quarterly or semi-annually, according to the town of Brookline’s schedule for collection of property taxes for the tax on real property, to the town's treasurer for transfer into the Emissions Reduction Fund established pursuant to section 1.

(c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.

SECTION 4. Expenditures for emissions reductions (a)(1) The Brookline Zero Emissions Advisory board shall, from time to time, make recommendations to the Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said board may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may then take such action and approve such appropriations from the Emissions Reduction Fund established pursuant to section 1, in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein shall be deemed to constrain the Brookline Town Meeting from appropriating such additional amounts as it deems appropriate to carry out the Boards recommendations from a source other than the Emissions Reduction Fund.

SECTION 5. Administrative expenses. In each fiscal year, the Brookline Town Meeting may make such appropriations from the Emissions Reduction Fund as it deems necessary for the administrative and operating expenses of the Brookline Zero Emissions Advisory Board, but the appropriations shall not exceed 5 per cent of the annual revenues in the Emissions Reduction Fund. Funds that are set aside shall be held in the Emissions Reduction Fund and spent in that year or later years, but funds set aside for a specific purpose shall be spent only for the specific purpose. The Emissions Reduction Fund shall not replace existing operating funds, only augment them.

SECTION 6. Properties purchased by the Emissions Reduction Fund. (a) A real property interest that is purchased with monies from the Emissions Reduction Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the town. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the town with the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the town, but Town Meeting may delegate management of such property to the Brookline Zero Emissions Advisory Board or other town board or commission, as it may deem

appropriate. Town Meeting may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

SECTION 7. Record keeping. The Brookline Zero Emissions Advisory Board shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Emissions Reduction Fund. The board shall also keep records of any real property interests acquired, disposed of, or improved by the town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration. The records and accounts shall be public records.

SECTION 8. Matching funds. Funds in the Brookline Emissions Reduction Fund may be made available and used by the town as the local share for state or federal grants upon recommendation of the Brookline Zero Emissions Advisory Board and Town Meeting, as provided for in section 4, if such grants and such local share are used in a manner consistent with the recommendations of the Brookline Zero Emissions Advisory Board.

SECTION 9. This act shall take effect upon the approval by Town Meeting of the surcharge amount pursuant to section 2 of this chapter and the acceptance by the voters of a ballot question as set forth in this section. The actions of Town Meeting shall be submitted for acceptance to the voters of Brookline at a regular municipal or state election following enactment of this chapter. The Town Clerk or the State Secretary shall place it on the ballot in the form of the following question:

"Shall the Town of Brookline accept An Act authorizing the Town of Brookline to fund reductions in greenhouse gas emissions, as approved by Town Meeting, a summary of which appears below?"

> (Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect, but not otherwise.

The final date for notifying or filing a petition with the city or Town Clerk or the State Secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

PETITIONER'S ARTICLE DESCRIPTION

This Municipal Climate Empowerment Program (MCEP) Article is one of many needed to achieve the emissions reduction goals this Town Meeting agreed upon last year, when we declared a goal of net-zero emissions by 2040. It is also part of a larger strategy to spur broad climate action with political leadership emanating from this Town Meeting.

The specific goal of the MCEP Articles is to address a critical and urgent need for both the ***resources*** and the ***authority*** to implement necessary local climate policy in Brookline. We need new laws to allow Brookline — and other municipalities — to summon the will that cannot yet be summoned by the Commonwealth-at-large.

Brookline Town Meeting showed tremendous climate action leadership when we passed the first ever cold-climate gas ban for new construction in 2019, only a few months after Berkeley, CA passed the first ever gas ban in the United States. Doing so was vitally important, even after the Attorney General disallowed it by ruling that it conflicted with legacy laws enacted by the MA Legislature decades ago to protect the utilities. Because of Brookline's forward-thinking action in passing this by-law, many municipalities in Massachusetts have followed our leadership. Because of Brookline's bold action, the State Legislature asked for an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And because of Brookline's assertive action, the State Legislature included a provision in their 2022 climate bill that allowed 10 municipalities to enact such gas bans. By passing practical, impactful and forward-thinking policies in our town, Brookline has provided — and can continue to provide — strong leadership for other communities and catalyze much needed climate action at the state level.

We urgently need to stop burning fossil fuels — not today, not tomorrow, but NOW. The most conservative climate organizations in the world — the UN International Panel on Climate Change and the International Energy Agency — have both issued stark warnings: to avoid catastrophic climate change, we must stop using fossil fuels *immediately*. To achieve this goal, we need to first stop buying new equipment designed to burn these fossil fuels. This equipment includes boilers, furnaces, hot water heaters, dryers, and cooking equipment that burn gas or oil, as well as gasoline cars.

It's easy to stop purchasing these fossil fuel-burning devices when doing major construction — which is why we started in 2019 with so-called "gas bans" that prohibit new fossil fuel infrastructure from being installed during new construction or major renovations. That policy, soon-to-be-law, is the easy part.

It's equally necessary — but often more difficult — to avoid purchasing fossil fuel equipment when an appliance or heating system in an existing building needs to be replaced. This is a climate imperative, but it is also an economic imperative as gas prices will continue to be highly volatile and rise further due to the inevitable costs of replacing gas pipes ("GSEP") and other factors. It is also a health imperative, as we know that these buildings create unhealthy indoor and outdoor air quality. And it is an environmental justice imperative, as our wasteful habits most affect at-risk populations both in our own communities and on our planet.

This is why the number one *personal* action you can take on climate is to make a plan for how you can avoid purchasing another heating system, appliance, or vehicle designed to burn fossil fuels. We need your help to "electrify everything" so that everything can be powered by an electrical grid that is already green and getting

greener by the year — including 100% green in Brookline by 2024. It's the only way to achieve the emissions goals we've already agreed upon.

But we all know that personal action, as important as it is, can't get us to where we need to go, fast enough. That's why we also need policies to protect us. And while the State is supposed to provide these protections for us, it is not acting with the urgency or the scope necessary to address this existential threat. **Therefore, the number one *collective* action you can take on climate is to support government policy to help you and others succeed in electrifying your own transportation and homes.** This is the motivation for this Article.

Decarbonizing and electrifying our existing building stock — something that we MUST do in order to meet our climate goals — is a costly process requiring significant upfront capital. This Article requests permission from the State legislature to implement an opt-in property tax surcharge of 1-3% to fund local building decarbonization. This policy is modeled on the popular Community Preservation Act, an innovative state-local partnership opportunity that Brookline and many other municipalities adopted to fund historic preservation, open space, and affordable housing.

This Article also incentivizes electrification by exempting buildings that have no on-site combustion of fossil fuels.

Furthermore, in order to equitably manage this surcharge, this Article exempts households with annual income below 110% of area median income (currently $120,000 for a 2-person family), and provides for a 50% exemption on households below 200% area median income (currently $215,000 for a 2-person family).

It is estimated that this tax could generate from $2,000,000-$6,000,000 annually.

The proceeds, which could also be supplemented with state funds, would be entered into a newly established Emissions Reduction Fund. The Zero Emissions Advisory Board (ZEAB) would then be responsible for making recommendations to Town Meeting for which emissions reduction activities should be funded.

Some potential uses for the funds include:

- Funding for low-income building decarbonization retrofits
- Funding for hired professional project managers to manage or guide the process of whole building decarbonization
- Funding for necessary design studies for multi-unit buildings
- Funding additional sustainability positions in Town staff
-

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation under Article 28.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 28 will be included in the Supplemental mailing.

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ARTICLE 28

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends NO ACTION on Warrant Article 28 by a vote of 9 in favor, 12 opposed, with 4 abstentions.

Executive Summary	Warrant Article 28 seeks Home Rule authorization for the Town to implement a property tax surcharge of up to 3% on real property that is occupied by fossil-fueled buildings; and to establish an Emissions Reduction Fund to further support the reduction of greenhouse gas emissions in Brookline. Under the proposed legislation, qualifying residential property owners and fossil fuel free properties and condominium units would be exempt from the surcharge. If approved, the proposed legislation would be subject to further action by Town Meeting and acceptance by the voters by way of a ballot question.
Voting Yes will...	Authorize the Select Board to petition the Legislature for special legislation authorizing the Town to implement a property tax surcharge of up to 3% and establish an Emissions Reduction Fund to support the reduction of greenhouse gas emissions in Brookline.
Voting No will...	Maintain the status quo
Financial impact	If Town Meeting approves Article 28, the Legislature enacts the home rule petition, and Brookline voters support the measure, Brookline households earning 200% or more of the area median income may be required to pay an additional surcharge of up to 3% of the real estate tax levy on the real property they own. The actual rate will be determined by a future Town Meeting. Staff in the Assessor's and Treasurer's Offices will be required to implement and enforce payment of the added surcharge and establish the Emissions Reduction Fund, which is not expected to substantially increase staff workload.
Legal implications	None

Introduction
Article 28 is one of several Articles introduced by the ZEAB to reduce the Town's carbon footprint, in this case by discouraging the use of home heating and cooling equipment that is fossil fueled and encouraging the transition to electrification. As with many of the Articles introduced by the ZEAB in this Town Meeting, several steps must occur before any changes are enacted. In this case: Town Meeting must approve this Article; the Select Board must petition the Legislature; the Legislature must approve the home rule petition; a future Town Meeting must choose the tax rate, and the action taken by Town Meeting must be accepted by the voters by way of a ballot question. This Article is the first step.

Since the Article was published in the Warrant, the petitioners made the following changes:

- Clarifying that homes that have taken significant steps to weatherize and electrify may be exempted from the surcharge by Town Meeting;
- Increasing the income threshold for entitlement to a full exemption from the surcharge from 110% to 200% AMI and removing the 50% exemption entirely;
- Establishing a $15,000,000 ceiling for unallocated funds in the Emissions Reduction Fund, and clarifying that the excess shall be deposited into free cash; and
- Clarifying that Town Meeting may terminate the Emissions Reduction Fund after a minimum of 5 years.

Discussion
Buildings are believed to be responsible for 60% of carbon emissions. This Warrant Article, which is modeled after the Community Preservation Act, seeks to discourage the use of fossil fueled home heating and cooling equipment and encourage electrification. A motion was made to amend the Article by replacing the proposed surcharge of "1 – 3%" with "up to 3%". The motion was adopted as a "friendly" amendment with the agreement of the petitioners.

Discussion of the Article centered on the difficulties that some homeowners may have in making this transition and concerns about how the funds will be spent. Many Advisory Committee members expressed the concern that the surcharge proposed by this plan is too much "stick" and not enough "carrot." Some expressed the concern that there is no oversight proposed for the spending of the funds raised — to ensure that the funds are spent in a way that would maximize the efforts of the Town in achieving its carbon reduction goals.

Meeting Recording: https://brooklinema.zoomgov.com/rec/share/H-glPhMjI1-AI9Xl-5b0B4VMpOy8aGYil2_7DuANDRSiktZKlE3SUPcDQlgh0_kV.n58XJgtKd6z_fMaA

Recommendation
The Advisory Committee recommends NO ACTION on the main motion, as amended by the
petitioners and Advisory Committee, by a vote of 9 – 12 with 4 abstentions.
ARTICLE 28 ADVISORY COMMITTEE VOTES

Article Description	**Home rule petition for a property tax surcharge on fossil-fueled buildings**
AC recommendation	**NO ACTION 9-12-4**
Ben Birnbaum	N
Harry Bohrs	
Cliff Brown	A
Patty Correa	Y
John Doggett	N
Katherine Florio	A
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	N
Anita Johnson	N
Alisa Jonas	Y
Janice Kahn	A
Carol Levin	N

Pam Lodish	
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	N
Lee Selwyn	N
Alok Somani	N
Carolyn Thall	Y
Christine Westphal	A
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 28

MOTION OFFERED BY THE PETITIONERS

VOTED that the Town ~~will vote to~~ authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to fund greenhouse gas emissions reductions in the Town of Brookline~~, subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting~~; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition~~:~~.

An Act authorizing the Town of Brookline to ~~fund reductions in greenhouse gas emissions~~Create an Emissions Reduction Fund

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. Emissions Reduction Fund. Notwithstanding the provisions of MGL section 53 of chapter 44 or any other ~~general or special~~ law to the contrary, the Town of Brookline~~,~~ shall establish a separate account to be known as the Emissions Reduction Fund of which the ~~town treasurer~~Town Treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the Town Meeting, and the ~~town treasurer~~Town Treasurer shall pay ~~such~~ expenses in accordance with MGL chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a)~~-~~ all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the ~~commonwealth~~Commonwealth or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The ~~treasurer~~Treasurer may deposit or invest the proceeds of the ~~fund~~Fund in savings banks, trust companies incorporated under the laws of the ~~commonwealth,~~Commonwealth of Massachusetts banking companies incorporated under the laws of the ~~commonwealth~~Commonwealth that are members of the Federal Deposit Insurance Corporation or national banks~~, or~~. The Treasurer may also invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the ~~commonwealth~~Commonwealth or in the manner authorized by MGL section 54 of chapter 44, and any income therefrom shall be credited to the ~~fund~~Fund. The expenditure of revenues from the ~~fund~~Fund shall not exceed the amounts recommended by the Brookline Zero Emissions Advisory Board.

SECTION 2. Surcharge on real property; residential exemptions (a) Notwithstanding the provisions of MGL chapter 59 or any other ~~general or special~~ law to the contrary, the ~~town~~Town

of Brookline shall impose a surcharge on real property of ~~between 1 and~~up to 3 ~~per cent~~% of the real estate tax levy against ~~real~~such property, as determined annually by the ~~board~~Brookline Board of ~~assessors~~Assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of MGL section 21C of said chapter 59.

(b) No exemption or abatement of real property taxation authorized by ~~said~~MGL chapter 59 or any other exemption or abatement law for which a taxpayer qualifies, shall be affected by this chapter. The surcharge to be paid by a taxpayer receiving an abatement of real property authorized by ~~said~~MGL chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

(c) (1) For the purposes of this section the term "area median income" shall mean the median family income for the Boston-Cambridge-Quincy area, adjusted for family size ~~for the property~~, as established by United States Department of Housing and Urban Development.

(2) There shall be a complete exemption from the surcharge for qualifying residential real property owners who demonstrate, pursuant to subsection (~~d~~e) hereof, that~~,~~ their income in the immediately prior ~~calendar~~ year~~, that they earned~~ was less than ~~110 per cent~~200% of the area median income~~. There~~, provided that Brookline Town Meeting shall ~~be a 50 per cent exemption from the surcharge for qualifying residential real property owners who demonstrate, pursuant to subsection (d) hereof~~determine this income percentage and may specify another value provided that~~, in the immediately prior calendar year, that they earned between 110 and 200 per cent~~ it is greater than 200% of area median income. The exemption shall be applied to the primary residence of the taxpayer only. ~~In the event that~~If a property owner's primary residence is in an owner-occupied multi-family property, the exemption shall be applied on a pro-rated basis only to the value of the owner-occupied unit.

(3) Real property shall qualify for the exemption if all of the following criteria are met:

(i) The applicant or joint ~~applicant's~~applicants' prior year's income would make the applicant or joint applicants eligible for the exemption;

(ii) The qualifying real property is owned and occupied by the applicant or joint applicants as their primary residence; and

(iii) The ~~board~~Brookline Board of ~~assessors~~Assessors has approved the application.

(d) There shall be a complete exemption from the surcharge for properties with a structure thereon, where the entire building or an entire condominium unit does not use on-site coal, oil, natural gas or other fossil fuels in support of its operation. Town Meeting may ~~from time to time consider~~also grant complete or partial exemptions from the surcharge, including but not limited to, properties where there has been a MassSave or other energy audit, and the recommendations of such an audit have been implemented.

(e) A person who seeks to qualify for an exemption shall, before the deadline established by the ~~board~~Brookline Board of ~~assessors~~Assessors, file an application, on a form to be adopted by the ~~board~~Board of assessors, together with the supporting documentation of the applicant's income as described in the application. ~~The~~An application shall be filed each year for which the applicant seeks the surcharge exemption.

(f) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in ~~section 57 of said~~MGL chapter 59 section 57.

SECTION 3. Surcharge on real property; collection

(a) Upon the ~~assessors'~~Brookline Assessor's warrant to the ~~tax collector~~Brookline Tax Collector, the surcharge shall be imposed.

(b) After receipt of the warrant, the ~~tax collector~~Tax Collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall cause appropriate books and accounts to be kept with respect to such surcharge. The Brookline Assessor's property card shall include a "Y" or an "N" to identify whether the landowner has been granted an exemption. The tax collector shall pay the amounts so collected, quarterly or semi-annually, according to the town of Brookline's schedule for collection of property taxes for the tax on real property, to the town's treasurer for transfer into the Emissions Reduction Fund established pursuant to section 1.

(c) The remedies provided by MGL chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.

SECTION 4. Expenditures for emissions reductions

(a~~)(1))~~The Brookline Zero Emissions Advisory board shall, from time to time, make recommendations to ~~the~~ Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said board may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 hereof to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may ~~then take such action and~~vote to approve such appropriations from the Emissions Reduction Fund established pursuant to section 1 hereof, in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein shall be deemed to constrain ~~the~~ Brookline Town Meeting from appropriating such additional amounts as it deems appropriate to carry out the ~~Boards~~Board's recommendations from a source other than the Emissions Reduction Fund.

SECTION 5. Administrative expenses.

In each fiscal year, ~~the~~ Brookline Town Meeting may make such appropriations from the Emissions Reduction Fund as it deems necessary for the administrative and operating expenses of the Brookline Zero Emissions Advisory Board, but the appropriations shall not exceed 5 ~~per cent~~% of the annual revenues in the Emissions Reduction Fund. Funds ~~that are set aside shall be~~ held in the Emissions Reduction Fund ~~and~~may be spent in ~~that~~the year ~~or later years, but~~in which the surcharge was collected, provided that funds set aside for a specific purpose shall be spent

only for the specific purpose. The Emissions Reduction Fund shall not replace existing operating funds, only augment them.

SECTION 6. Properties purchased by the Emissions Reduction Fund.

(a) A real property interest that is purchased with monies from the Emissions Reduction Fund shall be bound by a permanent deed restriction that meets the requirements of MGL chapter 184, limiting the use of the property interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the ~~town~~Town. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the ~~town with~~Town, which has the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the ~~town~~Town, but Town Meeting may delegate management of such property to the Brookline Zero Emissions Advisory Board or other ~~town~~Town board or commission, as it may deem appropriate. Town Meeting may also delegate management of such property to a nonprofit organization created under MGL chapter 180 or chapter 203.

SECTION 7. Record keeping.

The Brookline Zero Emissions Advisory Board shall keep a full and accurate account of all of its actions, including its recommendations and the action taken ~~on them~~thereon, and shall keep records of all appropriations or expenditures made from the Emissions Reduction Fund. The ~~board~~Board shall also keep records of any real property interests acquired, disposed of, or improved by the ~~town~~Town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration given. The records and accounts shall be public records.

SECTION 8. Matching funds.

Funds in the Brookline Emissions Reduction Fund may be made available and used by the ~~town~~Town as the local share for state or federal grants upon recommendation of the Brookline Zero Emissions Advisory Board and approval of Town Meeting, as provided for in section 4~~, if~~ above as long as such grants and ~~such~~ local share are used in a manner consistent with the recommendations of the Brookline Zero Emissions Advisory Board.

SECTION 9. Effective Date

This act shall take effect upon the approval by Town Meeting of the surcharge amount pursuant to section 2 ~~of this chapter~~above and the acceptance by the voters of a ballot question as ~~set forth in this section. The actions of~~described below. If Town Meeting approves this act, it shall be submitted for acceptance to the voters of Brookline at a regular municipal or state election following enactment of this chapter. The Town Clerk or the State Secretary shall place it on the ballot in the form of the following question:

"Shall the Town of Brookline accept An Act authorizing the Town of Brookline to fund reductions in greenhouse gas emissions, as approved by Town Meeting, a summary of which appears below?"

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then ~~its~~the Act's provisions shall take effect, but not otherwise.

The final date for notifying or filing a petition with the ~~city or~~Brookline Town Clerk or the ~~State~~ Massachusetts Secretary of State to place such a question on the ballot shall be 35 days before the ~~city or town~~Brookline local election or 60 days before the state election.

SECTION 10. Accountability

The Brookline Emissions Reduction Fund shall have a ceiling, initially set to $15,000,000 in inflation-adjusted 2022 dollars, for unallocated funds. If at the end of any fiscal year there are more dollars in the fund than the ceiling, excluding (1) any portion of funds already allocated by Town Meeting, (2) any portion of funds deposited within that fiscal year, and (3) any portion of funds provided by the Commonwealth rather than from local revenue, such excess shall be transferred to the Town's Free Cash. Town Meeting may modify the ceiling.

At any point more than five years after the effective date, Town Meeting may choose to terminate the Emissions Reduction Fund. If terminating the Fund, Town Meeting may transfer remaining funds to other funds or to free cash, and may choose whether to terminate individual programs generating revenue for the Fund or to redirect those programs to generate revenue for another purpose.

ARTICLE 29

TWENTY-NINETH ARTICLE

Submitted by: Zero Emissions Advisory Board, Chair Jesse Gray, TMM10

To see if the Town will vote to authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to charge, in addition to the excise tax on registered motor vehicles set forth in Chapter 60A, Section 1 of the Massachusetts General Laws, an excise tax on gasoline-powered vehicles, subject to such modifications or conditions as shall be specified from time to time by votes of Town Meeting; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition:

An Act authorizing the Town of Brookline to assess a surcharge upon gasoline-powered motor vehicles.

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. Definitions. The words "gasoline-powered motor vehicle," when used in this chapter, shall mean a motor vehicle capable of being powered, whether wholly or in combination with other power sources, by a distillate of petroleum or allied substance with suitable volatility and other characteristics to be used as a fuel for operating internal combustion engines, whether or not it is mixed with other materials.

SECTION 2. Surcharge; valuation. Notwithstanding the provisions of any general or special law to the contrary, the Board of Assessors of the Town of Brookline may assess a surcharge on motor vehicles to be added to the excise tax bill set forth in chapter 60A, section 1 of the General Laws. Such surcharge shall be valued at the rate of twenty-five dollars per thousand of valuation of the vehicle. For the purpose of this surcharge, the value of each such motor vehicle shall be as defined in section 1 of chapter 60A. No surcharge shall be added under this chapter on any vehicle valued pursuant to chapter 60A at less than thirty thousand dollars. The surcharge shall be abated in equal proportion to any abatement granted pursuant to chapter 60A, and shall otherwise be subject to all provisions of chapter 60A, including for assessment, exemptions, abatement, collection, deferral, and remedies for nonpayment. The funds collected from this surcharge shall be deposited in the Emissions Reduction Fund established by Section 4.

SECTION 3. Exemption. The surcharge imposed by this chapter shall apply only to gasoline-powered motor vehicles. A person who qualifies for any calendar year for exemption from the surcharge imposed by this chapter on a motor vehicle owned and registered or leased by such person shall be entitled to the exemption upon application to the assessors for that year as provided in section 2 of chapter 60A for the procedure of an owner aggrieved by the excise assessed. An application for exemption may be made by such person; the person's spouse, if the motor vehicle is jointly owned and registered or leased in the names of the person and spouse; or, if the person is deceased, a surviving spouse, administrator, executor or trustee of the estate, will or trust, as the case may be.

SECTION 4. Emissions Reduction Fund. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, the Town of Brookline, shall establish a separate account to be known as the Emissions Reduction Fund of which the town treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the Town Meeting, and the town treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the commonwealth or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth that are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the Brookline Zero Emissions Advisory Board for reducing transportation emissions and providing administrative and operating expenses to the board.

SECTION 5. This act shall take effect on July 1 of the year immediately following its passage.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Municipal Climate Empowerment Program (MCEP) Article is one of many needed to achieve the emissions reduction goals this Town Meeting agreed upon last year, when we declared a goal of net-zero emissions by 2040. It is also part of a larger strategy to spur broad climate action with political leadership emanating from this Town Meeting. The specific goal of the MCEP Articles is to address a critical and urgent need for both the ***resources*** and the ***authority*** to implement necessary local climate policy in Brookline. We need new laws to allow Brookline — and other municipalities — to summon the will that cannot yet be summoned by the Commonwealth-at-large.

Brookline Town Meeting showed tremendous climate action leadership when we passed the first ever cold-climate gas ban for new construction in 2019, only a few months after Berkeley, CA passed the first ever gas ban in the United States. Doing so was vitally important, even after the Attorney General disallowed it by ruling that it conflicted with legacy laws enacted by the MA Legislature decades ago to protect the utilities. Because of Brookline's forward-thinking action in passing this by-law, many municipalities in

Massachusetts have followed our leadership. Because of Brookline's bold action, the State Legislature asked for an opt-in net-zero "specialized" stretch code in the 2021 Climate bill — albeit a code which has yet to be delivered. And because of Brookline's assertive action, the State Legislature included a provision in their 2022 climate bill that allowed 10 municipalities to enact such gas bans. By passing practical, impactful and forward-thinking policies in our town, Brookline has provided — and can continue to provide — strong leadership for other communities and catalyze much needed climate action at the state level.

We urgently need to stop burning fossil fuels — not today, not tomorrow, but NOW. The most conservative climate organizations in the world — the UN International Panel on Climate Change and the International Energy Agency — have both issued stark warnings: to avoid catastrophic climate change, we must stop using fossil fuels *immediately*. To achieve this goal, we need to first stop buying new equipment designed to burn these fossil fuels. This equipment includes boilers, furnaces, hot water heaters, dryers, and cooking equipment that burn gas or oil, as well as gasoline cars.

It's easy to stop purchasing these fossil fuel-burning devices when doing major construction — which is why we started in 2019 with so-called "gas bans" that prohibit new fossil fuel infrastructure from being installed during new construction or major renovations. That policy, soon-to-be-law, is the easy part.

It's equally necessary — but often more difficult — to avoid purchasing fossil fuel equipment when an appliance or heating system in an existing building needs to be replaced. This is a climate imperative, but it is also an economic imperative as gas prices will continue to be highly volatile and rise further due to the inevitable costs of replacing gas pipes ("GSEP") and other factors. It is also a health imperative, as we know that these buildings create unhealthy indoor and outdoor air quality. And it is an environmental justice imperative, as our wasteful habits most affect at-risk populations both in our own communities and on our planet.

This is why the number one *personal* action you can take on climate is to make a plan for how you can avoid purchasing another heating system, appliance, or vehicle designed to burn fossil fuels. We need your help to "electrify everything" so that everything can be powered by an electrical grid that is already green and getting greener by the year — including 100% green in Brookline by 2024. It's the only way to achieve the emissions goals we've already agreed upon.

But we all know that personal action, as important as it is, can't get us to where we need to go, fast enough. That's why we also need policies to protect us. And while the State is supposed to provide these protections for us, it is not acting with the urgency or the scope necessary to address this existential threat. **Therefore, the number one *collective* action you can take on climate is to support government policy to help you and others succeed in electrifying your own transportation and homes.** This is the motivation for this Article.

Increasing the sustainability of our transportation infrastructure is costly. This Article requests permission from the legislature to place an additional excise tax on fossil fuel vehicles assessed at $30,000 or greater. It is intended to target new, relatively high-end fossil fuel vehicles in the first several years of their manufacturing. It would mirror the existing excise tax structure, where a vehicle is taxed $25 for every $1,000 of valuation. Thus, for vehicles worth more than $30,000 this Article would double the amount of tax owed.

The goal of this Article is twofold: to provide a disincentive to purchase a new fossil fuel vehicle and to provide increased funding for emissions-reduction efforts.

The proceeds would be deposited into a newly established Emissions Reduction Fund and earmarked specifically for emissions reduction efforts in the transportation sector. The Zero Emissions Advisory Board (ZEAB) would then be responsible for making recommendations to Town Meeting for which transportation emission reducing activities should be funded.

Some potential uses of these funds include:

- Funding for electric vehicle charging stations
- Funding for bicycle infrastructure
- Funding for expansion of public transportation options

For example, the town currently has ten public charging stations available, which is inadequate. They are not equitably distributed throughout the geography of the town. For people without the ability to install their own charging station for any reason, expanding public charging access is invaluable.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation under Article 29.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation under Article 29 will be included in the Supplemental mailing.

XXX

ARTICLE 29

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 29 as amended by the petitioners and Advisory Committee by a vote of 13 in favor, 9 opposed, and 2 abstentions.

Executive Summary	Article 29 seeks home rule authority to add an excise tax surcharge on gasoline powered motor vehicles that are valued over $30,000; and to establish an Emissions Reduction Fund to provide funding for future emissions reduction efforts. Because MA has banned the sales of new gasoline powered vehicles by 2035, this surcharge would be temporary. The intent of the Article is to *discourage* the purchase of new gasoline powered vehicles and to *encourage* the transition to electric vehicles ("EVs") in Brookline.
Voting Yes will...	Voting *Yes* on the Article will authorize the Select Board to petition the Legislature for home rule authority to charge an additional excise tax surcharge on gasoline powered vehicles, and to establish an Emissions Reduction Fund to receive the additional tax.
Voting No will...	Voting *No* will result in no change to the current excise tax on motor vehicles.
Financial impact	If Town Meeting approves Article 29 and the Legislature enacts the home rule petition, Brookline residents may pay an additional surcharge on excise tax at a rate of up to $25 per $1000 of valuation on gasoline powered vehicles that are valued over $30,000. The actual rate will be determined by a future Town Meeting. Staff in the Assessor's and Treasurer's Offices will be required to implement and enforce payment of the added surcharge and establish the Emissions Reduction Fund, neither of which is expected to substantially increase staff workload.
Legal implications	None

Introduction
Article 29 is one of several Articles introduced by the ZEAB to reduce the Town's carbon footprint, in this case by discouraging the use of fossil fueled vehicles and encouraging the transition to electric vehicles, while also establishing a fund to support emissions reductions in Brookline. As with many of the Articles introduced by the ZEAB in this Town Meeting, several steps must occur before any changes are enacted. In this case: Town Meeting must approve this Article; the Select Board must petition the Legislature; the Legislature must approve the home rule petition; and a future Town Meeting must choose the tax rate. This Article is the first step.

Since the Article was published in the Warrant the petitioners made several clarifying changes in response to concerns raised during the public hearing. Most notably, these changes included language:

- clarifying that Town Meeting will determine the amount of the excise surcharge
- acknowledging that plug-in hybrid vehicles could be exempted from the surcharge at Town Meeting's discretion
- clarifying how funds collected by this surcharge can be expended
- adding a termination option

Evaluation Methodology/Research
https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter60A/Section1

Discussion
Fossil fueled vehicles have been identified as a significant source of carbon emissions. The goal of Article 29 is to discourage the purchase of new gasoline powered "luxury" vehicles, and to establish an Emissions Reduction Fund to support emissions reductions by funding elements such as the town's electric vehicle charging infrastructure and promoting bicycle and pedestrian transportation. In response to comments made to the petitioners, the Article was amended to include accountability and termination clauses. Discussion of the Article centered on the lack of existing EV charging facilities, particularly for residents who reside in apartments and condominiums; on whether further demands should be placed on Brookline's taxpayers; and on whether the Article should be supported as a Home Rule Petition or resolution. The petitioners stated that they believe the proposal is well suited for a Home Rule Petition, and they would be opposed to a resolution. A substitute motion replacing the Home Rule Petition with a resolution was made and seconded, and failed by a vote of 8 – 15 with one abstention. A motion was made to amend the main motion by adding after the words "thirty thousand dollars," the words "with such figure to be adjusted for changes in the Boston Consumer Price Index-Urban (CPI-U) after December, 2022". The motion was adopted as a "friendly" amendment with the agreement of the petitioners.

Meeting Recording: https://brooklinema.zoomgov.com/rec/share/H-glPhMjI1-AI9Xl-5b0B4VMpOy8aGYil2_7DuANDRSiktZKlE3SUPcDQlgh0_kV.n58XJgtKd6z_fMaA

Recommendation
The Advisory Committee recommends favorable action on the main motion, amended by the petitioners and by the Advisory Committee as described above, by a vote of 13 – 9 with 2 abstentions. The clean version of the motion is shown below. After the vote summary table we include an appendix showing the differences between the amended motion and the version published in the Warrant.

Amended Motion

VOTED: That the Town authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to charge, in addition to the excise tax on registered motor vehicles set forth in Chapter 60A, Section 1 of the Massachusetts General Laws, an excise tax on gasoline-powered vehicles; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition.

An Act authorizing the Town of Brookline to assess a surcharge upon gasoline-powered motor vehicles.

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. Definitions. The words "gasoline-powered motor vehicle," when used in this chapter, shall mean a motor vehicle capable of being powered, whether wholly or in combination with other power sources, by a distillate of petroleum or allied substance with suitable volatility and other characteristics to be used as a fuel for operating internal combustion engines, whether or not the fuel is mixed with other materials.

SECTION 2. Surcharge; valuation. Notwithstanding the provisions of any general or special law to the contrary, the Board of Assessors of the Town of Brookline may assess a surcharge on motor vehicles to be added to the excise tax bill set forth in chapter 60A, section 1 of the Massachusetts General Laws. The amount of the surcharge shall be determined by Town Meeting and valued at a rate not greater than twenty-five dollars per thousand of valuation of the vehicle. For the purpose of this surcharge, the value of each motor vehicle shall be as defined in MGL section 1 of chapter 60A. No surcharge shall be added under this chapter on any vehicle valued pursuant to MGL chapter 60A at less than thirty thousand dollars, with such figure to be adjusted for changes in the Boston Consumer Price Index-Urban (CPI-U) after December, 2022. The surcharge shall be abated in equal proportion to any abatement granted pursuant to MGL chapter 60A, and shall otherwise be subject to all provisions of chapter 60A, including assessment, exemptions, abatement, collection, deferral, and remedies for nonpayment. The funds

collected from this surcharge shall be deposited in the Emissions Reduction Fund established by Section 4, below.

SECTION 3. Exemption. The surcharge imposed by this chapter shall apply only to gasoline-powered motor vehicles, including, unless expressly exempted by Town Meeting, plug-in hybrid electric vehicles. A person who qualifies for any calendar year for exemption from the surcharge imposed by this chapter on a motor vehicle owned and registered or leased by such person shall be entitled to the exemption upon application to the Brookline Board of Assessors for that year as provided in section 2 of MGL chapter 60A for the procedure of an owner aggrieved by the excise assessed. An application for exemption may be made by such person; the person's spouse, if the motor vehicle is jointly owned and registered or leased in the names of the person and spouse; or, if the person is deceased, a surviving spouse, administrator, executor or trustee of the estate, will or trust, as the case may be.

SECTION 4. Emissions Reduction Fund. Notwithstanding the provisions of MGL section 53 of chapter 44 or any other general or special law to the contrary, the Town of Brookline~~,~~ shall establish a separate account to be known as the Emissions Reduction Fund of which the Town Treasurer shall be the custodian. The authority to approve expenditures from the Fund shall be limited to the Town Meeting, and the Town Treasurer shall pay expenditures in accordance with MGL chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the Commonwealth of Massachusetts or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The Town Treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the Commonwealth, banking companies incorporated under the laws of the Commonwealth that are members of the Federal Deposit Insurance Corporation~~,~~ or national bank. The Treasurer may also invest monies in the Fund in paid up shares and accounts of and in co-operative banks, in shares of savings and loan associations, or in shares of federal savings and loan associations doing business in the Commonwealth, or in the manner authorized by MGL chapter 44 section 54, and any income therefrom shall be credited to the Fund. The expenditure of the proportion of revenues from the Fund that are a result of this surcharge shall be limited to implementing the recommendations of the Brookline Zero Emissions Advisory Board for reducing transportation emissions and providing administrative and operating expenses to the board.

SECTION 5. Expenditures for emissions reductions

(a) The Brookline Zero Emissions Advisory board shall, from time to time, make recommendations to Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said board may include in its recommendation to Town Meeting a

recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 hereof to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may vote to approve such appropriations from the Emissions Reduction Fund established pursuant to section 1 hereof, in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein shall be deemed to constrain Brookline Town Meeting from appropriating such additional amounts as it deems appropriate to carry out the Board's recommendations from a source other than the Emissions Reduction Fund.

SECTION 6. This act shall take effect on the later of (1) July 1 of the year immediately following its passage and (2) the Attorney General's approval of a bylaw specifying the details of this policy, including the amount of the surcharge per thousand assessed dollars.

SECTION 7. Accountability. The Brookline Emissions Reduction Fund shall have a ceiling, initially set to $15,000,000 in inflation-adjusted 2022 dollars, for unallocated funds. If at the end of any fiscal year there are more dollars in the fund than the ceiling, excluding (1) any portion of funds already allocated by Town Meeting, (2) any portion of funds deposited within that fiscal year, and (3) any portion of funds provided by the Commonwealth rather than from local revenue, such excess shall be transferred to the Town's free cash. Town Meeting may modify the ceiling.

At any point more than five years after the effective date, Town Meeting may choose to terminate the Emissions Reduction Fund. If terminating the Fund, Town Meeting may transfer remaining funds to other funds or to free cash, and may choose whether to terminate individual programs generating revenue for the Fund or to redirect those programs to generate revenue for another purpose.

ARTICLE 29 ADVISORY COMMITTEE VOTES

Article Description	**Gasoline vehicle excise surcharge home rule petition**
AC recommendation	**13-9-2**
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	

Patty Correa	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	N
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	N
Pam Lodish	N
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	N
Lee Selwyn	N
Alok Somani	N

Carolyn Thall	Y
Christine Westphal	A
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Amended motion under Article 29 as marked up from the version published in the warrant. Additions are in **underlined bold** whereas deletions are in ~~strikethru~~.

VOTED: That the Town authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to charge, in addition to the excise tax on registered motor vehicles set forth in Chapter 60A, Section 1 of the Massachusetts General Laws, an excise tax on gasoline-powered vehicles; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition.

An Act authorizing the Town of Brookline to assess a surcharge upon gasoline-powered motor vehicles.

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. Definitions. The words "gasoline-powered motor vehicle," when used in this chapter, shall mean a motor vehicle capable of being powered, whether wholly or in combination with other power sources, by a distillate of petroleum or allied substance with suitable volatility and other characteristics to be used as a fuel for operating internal combustion engines, whether or not ~~it~~ **the fuel** is mixed with other materials.

SECTION 2. Surcharge; valuation. Notwithstanding the provisions of any general or special law to the contrary, the Board of Assessors of the Town of Brookline may assess a surcharge on motor vehicles to be added to the excise tax bill set forth in chapter 60A, section 1 of the **Massachusetts** General Laws. **The amount of the surcharge shall be determined by Town Meeting and** ~~Such surcharge shall be~~ valued at a rate not greater than twenty-five dollars per thousand of valuation of the vehicle. For the purpose of this surcharge, the value of each motor vehicle shall be as defined in MGL section 1 of chapter 60A. No surcharge shall be added under this chapter on any vehicle valued pursuant to MGL chapter 60A at less than thirty thousand dollars**, with such figure to be**

adjusted for changes in the Boston Consumer Price Index-Urban (CPI-U) after December, 2022. The surcharge shall be abated in equal proportion to any abatement granted pursuant to MGL chapter 60A, and shall otherwise be subject to all provisions of chapter 60A, including assessment, exemptions, abatement, collection, deferral, and remedies for nonpayment. The funds collected from this surcharge shall be deposited in the Emissions Reduction Fund established by Section 4**, below**.

SECTION 3. Exemption. The surcharge imposed by this chapter shall apply only to gasoline-powered motor vehicles**, including, unless expressly exempted by Town Meeting, plug-in hybrid electric vehicles**. A person who qualifies for any calendar year for exemption from the surcharge imposed by this chapter on a motor vehicle owned and registered or leased by such person shall be entitled to the exemption upon application to the Brookline Board of Assessors for that year as provided in section 2 of MGL chapter 60A for the procedure of an owner aggrieved by the excise assessed. An application for exemption may be made by such person; the person's spouse, if the motor vehicle is jointly owned and registered or leased in the names of the person and spouse; or, if the person is deceased, a surviving spouse, administrator, executor or trustee of the estate, will or trust, as the case may be.

SECTION 4. Emissions Reduction Fund. Notwithstanding the provisions of **MGL** section 53 of chapter 44 or any other general or special law to the contrary, the Town of Brookline~~,~~ shall establish a separate account to be known as the Emissions Reduction Fund of which the ~~t~~**T**own ~~t~~**T**reasurer shall be the custodian. The authority to approve expenditures from the Fund shall be limited to the Town Meeting, and the ~~t~~**T**own ~~t~~**T**reasurer shall pay ~~such expenses~~ **expenditures** in accordance with **MGL** chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the ~~c~~**C**ommonwealth **of Massachusetts** or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The **Town** ~~t~~**T**reasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the ~~c~~**C**ommonwealth, banking companies incorporated under the laws of the ~~c~~**C**ommonwealth that are members of the Federal Deposit Insurance Corporation~~,~~ or national bank~~s, or may~~**.** **The Treasurer may also** invest ~~the proceeds~~ **monies in the Fund** in paid up shares and accounts of and in co-operative banks ~~or~~**,** in shares of savings and loan associations**,** or in shares of federal savings and loan associations doing business in the ~~c~~**C**ommonwealth**,** or in the manner authorized by ~~section 54 of chapter 44~~ **MGL chapter 44 section 54**, and any income therefrom shall be credited to the ~~f~~**F**und. The expenditure of **the proportion of** revenues from the ~~f~~**F**und **that are a result of this surcharge** shall be limited to implementing the recommendations of the Brookline Zero Emissions Advisory Board for reducing transportation emissions and providing administrative and operating expenses to the board.

SECTION 5. **Expenditures for emissions reductions**

(a)The Brookline Zero Emissions Advisory board shall, from time to time, make recommendations to Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said board may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 hereof to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may vote to approve such appropriations from the Emissions Reduction Fund established pursuant to section 1 hereof, in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein shall be deemed to constrain Brookline Town Meeting from appropriating such additional amounts as it deems appropriate to carry out the Board's recommendations from a source other than the Emissions Reduction Fund.

SECTION 6. This act shall take effect on **the later of (1)** July 1 of the year immediately following its passage **and (2) the Attorney General's approval of a bylaw specifying the details of this policy, including the amount of the surcharge per thousand assessed dollars**.

SECTION 7. Accountability. The Brookline Emissions Reduction Fund shall have a ceiling, initially set to $15,000,000 in inflation-adjusted 2022 dollars, for unallocated funds. If at the end of any fiscal year there are more dollars in the fund than the ceiling, excluding (1) any portion of funds already allocated by Town Meeting, (2) any portion of funds deposited within that fiscal year, and (3) any portion of funds provided by the Commonwealth rather than from local revenue, such excess shall be transferred to the Town's free cash. Town Meeting may modify the ceiling.

At any point more than five years after the effective date, Town Meeting may choose to terminate the Emissions Reduction Fund. If terminating the Fund, Town Meeting may transfer remaining funds to other funds or to free cash, and may choose whether to terminate individual programs generating revenue for the Fund or to redirect those programs to generate revenue for another purpose.

MAIN MOTION OFFERED BY THE ADVISORY COMMITTEE (PETITIONERS CONCUR)

VOTED: That the Town authorize the Select Board to petition the Massachusetts General Court for special legislation, as set forth below, to charge, in addition to the excise tax on registered motor vehicles set forth in Chapter 60A, Section 1 of the Massachusetts General Laws, an excise tax on gasoline-powered vehicles; provided, however, that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition.

An Act authorizing the Town of Brookline to assess a surcharge upon gasoline-powered motor vehicles.

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. Definitions. The words "gasoline-powered motor vehicle," when used in this chapter, shall mean a motor vehicle capable of being powered, whether wholly or in combination with other power sources, by a distillate of petroleum or allied substance with suitable volatility and other characteristics to be used as a fuel for operating internal combustion engines, whether or not the fuel is mixed with other materials.

SECTION 2. Surcharge; valuation. Notwithstanding the provisions of any general or special law to the contrary, the Board of Assessors of the Town of Brookline may assess a surcharge on motor vehicles to be added to the excise tax bill set forth in chapter 60A, section 1 of the Massachusetts General Laws. The amount of the surcharge shall be determined by Town Meeting and valued at a rate not greater than twenty-five dollars per thousand of valuation of the vehicle. For the purpose of this surcharge, the value of each motor vehicle shall be as defined in MGL section 1 of chapter 60A. No surcharge shall be added under this chapter on any vehicle valued pursuant to MGL chapter 60A at less than thirty thousand dollars, with such figure to be adjusted for changes in the Boston Consumer Price Index-Urban (CPI-U) after December, 2022. The surcharge shall be abated in equal proportion to any abatement granted pursuant to MGL chapter 60A, and shall otherwise be subject to all provisions of chapter 60A, including assessment, exemptions, abatement, collection, deferral, and remedies for nonpayment. The funds collected from this surcharge shall be deposited in the Emissions Reduction Fund established by Section 4, below.

SECTION 3. Exemption. The surcharge imposed by this chapter shall apply only to gasoline-powered motor vehicles, including, unless expressly exempted by Town Meeting, plug-in hybrid electric vehicles. A person who qualifies for any calendar year for exemption from the surcharge imposed by this chapter on a motor vehicle owned and registered or leased by such person shall be entitled to the exemption upon application to the Brookline Board of Assessors for that year as provided in section 2 of MGL chapter 60A for the procedure of an owner aggrieved by the excise assessed. An application for exemption may be made by such person; the person's spouse, if the motor vehicle is jointly owned and registered or leased in the names of the person and spouse; or, if the

person is deceased, a surviving spouse, administrator, executor or trustee of the estate, will or trust, as the case may be.

SECTION 4. Emissions Reduction Fund. Notwithstanding the provisions of MGL section 53 of chapter 44 or any other general or special law to the contrary, the Town of Brookline~~,~~ shall establish a separate account to be known as the Emissions Reduction Fund of which the Town Treasurer shall be the custodian. The authority to approve expenditures from the Fund shall be limited to the Town Meeting, and the Town Treasurer shall pay expenditures in accordance with MGL chapter 41.

The following monies shall be deposited in the Emissions Reduction Fund: (a) all funds collected pursuant to local surcharges or bond proceeds in anticipation of revenue from such surcharges; (b) all funds received from the Commonwealth of Massachusetts or any other source for such purposes; and (c) proceeds from the disposition of a real property interest that was acquired with funds from the Emissions Reduction Fund. The Town Treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the Commonwealth, banking companies incorporated under the laws of the Commonwealth that are members of the Federal Deposit Insurance Corporation~~,~~ or national bank. The Treasurer may also invest monies in the Fund in paid up shares and accounts of and in co-operative banks, in shares of savings and loan associations, or in shares of federal savings and loan associations doing business in the Commonwealth, or in the manner authorized by MGL chapter 44 section 54, and any income therefrom shall be credited to the Fund. The expenditure of the proportion of revenues from the Fund that are a result of this surcharge shall be limited to implementing the recommendations of the Brookline Zero Emissions Advisory Board for reducing transportation emissions and providing administrative and operating expenses to the board.

SECTION 5. Expenditures for emissions reductions

(a)The Brookline Zero Emissions Advisory board shall, from time to time, make recommendations to Brookline Town Meeting to fund programs or activities to promote emissions reductions. Said board may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with emissions reduction but for which sufficient revenues are not then available in the Emissions Reduction Fund established pursuant to section 1 hereof to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with emissions reduction.

(b) After receiving such recommendations from the Brookline Zero Emissions Advisory Board, Town Meeting may vote to approve such appropriations from the Emissions Reduction Fund established pursuant to section 1 hereof, in an amount not to exceed the amounts recommended by the Board; provided, however, that nothing herein shall be deemed to constrain Brookline Town Meeting from appropriating such additional

amounts as it deems appropriate to carry out the Board's recommendations from a source other than the Emissions Reduction Fund.

SECTION 6. This act shall take effect on the later of (1) July 1 of the year immediately following its passage and (2) the Attorney General's approval of a bylaw specifying the details of this policy, including the amount of the surcharge per thousand assessed dollars.

SECTION 7. Accountability. The Brookline Emissions Reduction Fund shall have a ceiling, initially set to $15,000,000 in inflation-adjusted 2022 dollars, for unallocated funds. If at the end of any fiscal year there are more dollars in the fund than the ceiling, excluding (1) any portion of funds already allocated by Town Meeting, (2) any portion of funds deposited within that fiscal year, and (3) any portion of funds provided by the Commonwealth rather than from local revenue, such excess shall be transferred to the Town's free cash. Town Meeting may modify the ceiling.

At any point more than five years after the effective date, Town Meeting may choose to terminate the Emissions Reduction Fund. If terminating the Fund, Town Meeting may transfer remaining funds to other funds or to free cash, and may choose whether to terminate individual programs generating revenue for the Fund or to redirect those programs to generate revenue for another purpose.

ARTICLE 30

THIRTIETH ARTICLE

Submitted by: Arthur Conquest, TMM6

To See if The Town of Brookline will create a Commission for Black N' Brown residents

Whereas Black and Latino residents are members of a "Protected Class" in the Town of Brookline.

Whereas on 18 March 2022 from 11:00 until Noon Brookline High School African & Latino American Scholars organized a demonstration of 1250-1300 of their fellow students, the faculty, and administrators on Greenough Street between Davis Avenue and Tappan Street to protest the inappropriate behavior by the Head of the School, as well as several White Deans specifically towards Black students several days prior to their initiating the walkout and protests.

Whereas on 8 February 2022 an email was circulated to the Brookline community by the Office of Diversity, Inclusion and Community Relations (DICR), announcing the publication of the Disparity Report. It included the names and affiliations for members of the Disparity Report Working Group that oversaw the data collection and writing of the document. What painfully struck out almost immediately upon opening the first page was the absence of Blacks and Asians from the eight members who made up the Working Group which produced the Report, especially given the sponsoring agency was the DICR Committee?

Whereas a survey conducted by the Reimaging Police Task Force last year found that Black and Latinx residents were "significantly more likely to say they have had negative experiences with Brookline Police, and were 15 times more likely to worry about police brutality."

Whereas at the end of the 2020 School year five Black women abruptly left leadership positions in the Public Schools of Brookline. More disturbing was the deadening silence frotn the educational power structure about why these mysterious departures occurred.

Whereas there are fundamentally Two Brooklines. Just beneath the surface there exists one Brookline for a segment of the Black N Brown citizens, and then there is another Brookline for White citizens. The two Brooklines are fundamentally treated differently though it is "swept under the rug" and categorically and systematically ignored.

Whereas other "Protected Classes" such as Women, the Disabled, Indigenous People have their Commissions and Committees, Black N Brown residents do not, but should have.

Whereas there is a culture of White Supremacy in Brookline that is sophisticated and cunning which keeps the vast majority of Blacks, Browns and People of Color under the control, and domination that keeps them running in circles economically and politically.

Whereas for *Too* Long have others in the Brookline community done and spoken for Black N Brown residents. Black N Brown residents must speak up and do for themselves, politically, socially, and economically. This system of exploitation, intentional or not, must be dismantled and Black N Brown residents who are strong enough must be involved as change agents v. the handpicked accomodationists who continue to prop-up the system. We will not be saved as long as our strongest are kept at the bottom of the well.

Therefore, be it resolved that Town Meeting establish a Black N Brown Commission that would be independent of the constraints of Town Government to investigate, announce events, and disseminate events and activities, etc., to Black and Brown residents in Brookline.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

For too long have others in the Brookline community done and spoken for Black N Brown citizens, especially those trapped in the disadvantage class. Black N Brown residents from that class must speak up and do for themselves, politically, socially, and economically. There is a culture of White superiority in Brookline that is sophisticated and cunning which keeps far too many Blacks, Browns and People of Color under their control and domination, consigning them to continuously running in circles economically and politically. Other "Protected Classes," such as Women, the Disabled, and Indigenous People, have their Commissions and Committees, while Black N Brown residents do not, but should have. This system of exploitation, intentional or not, must be dismantled and Black N Brown residents who are strong enough must be involved as change agents against the handpicked accommodationists who continue to prop-up the evils of the system. We will not be saved as long as our strongest are kept at the bottom of the well.

Accordingly, this warrant article would establish a Black N Brown Commission that would be independent of the constraints of Town Government to investigate, announce events, and disseminate information about activities, employment opportunities, as well as other pertinent information to Black and Brown residents, especially those from the disadvantage class in Brookline.

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioner will not be making a motion under Article 30.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: NO RECOMMENDATION on Warrant Article 30.

Summary: Warrant Article 30 is a resolution that seeks the town to create a Commission for Black N' Brown residents of Brookline. During the Human Services Subcommittee public hearing and meeting on this article, Subcommittee members suggested that the petitioner consider bringing this as a Bylaw, perhaps modeled on the Bylaw of the Brookline Commission for Women. The petitioner also received revision suggestions from a number of other town entities, such as the Committee on Town Organization & Structure. After consideration, the petitioner informed the Moderator that he will not be moving Warrant Article 30 at the November Town Meeting and hopes to refile the article as a Bylaw at the Annual Town Meeting in May 2023.

Recommendation: Article 30 is therefore not being moved at the November Town Meeting. Accordingly, the Advisory Committee offers no recommendation.

XXX

ARTICLE 31

THIRTY-FIRST ARTICLE

Submitted by:

Submitted by: Bernard Greene, Martin Rosenthal, and Nancy Daly Cavanaugh

To see if the Town will amend the Town's General Bylaw Section 3.14 with the following:

ARTICLE 3.14

COMMISSION FOR DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This By-law hereby establishes the Commission for Diversity, Equity, Inclusion, and Community Relations ("Commission~~" or "CDICR~~") and the Office of Diversity, Equity, Inclusion, and Community Relations ~~("~~(the "Diversity Office~~" or "ODICR") .~~").

V~~aluing~~(A) Brookline Values.

Because the Town of Brookline values diversity, equity, and inclusion and amicable community relations based on those values in and for the Brookline community, the Commission, in coordination with the Diversity Office, ~~aims~~shall work 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 Town 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, accountability, 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 diversity, equity, and inclusion. The Town believes that diversity and inclusion based on equity 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 diversity and inclusion based on equity is, therefore, a critically important government interest of the Town.

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Inclusion ~~is defined as~~based on equity means actively pursuing goals of including, integrating, engaging, and welcoming into the community on an equitable basis 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~~whether they are a member of 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 both the word and the spirit of the foregoing.

(B) The Commission.

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 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~~voting members on the Commission, with a minimum of six.

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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, or non-residency in the Town, 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, JURISDICTION, AND RESPONSIBILITIES OF THE DIRECTOR ~~AND CHIEF DIVERSITY OFFICER~~

~~———~~

~~There shall be an Office of~~(A) The 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 ("~~ Office (the "Director~~"), and that person~~"). The Director shall also be professionally trained in matters of civil and human rights, community relations, and dispute resolution. The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. ~~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 have authority to bring matters directly to the Select Board, through the Chair of the Select Board if in the Director's professional judgement such matter needs the direct attention of the Select Board. If feasible, the Director shall consult with Town Counsel before taking a matter to the Select Board.

~~(B)~~ 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~~

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~~would most easily provide the Director any such assistance~~Bylaw giving the Commission responsibilities.

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~~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.~~

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The CDO shall serve in the role of ombudsperson(C) The Director's roles shall include acting as the Town's chief diversity officer and as an ombudsperson for Town employees or residents to carry out the duties below in Section 3.14.2(F) and (G) in accordance with Section 3.14.1(A). The Director's role generally shall be to help create the policies and practices necessary for the Town to further evolve into a community based on the values of diversity, equity, and inclusion. That role shall include (1) to provide a forum(s) for the harmonious resolution of complaints and disputes occurring in Brookline, (2) to investigate complaints brought to the Director and to devise a plan to resolve the complaints that are deemed to present plausibly valid issues for Town action or make recommendations to the appropriate Town authorities, (3) to find and exercise appropriate remedies for such plausibly valid complaints of discrimination or inappropriate or troublesome behavior occurring in Brookline and experienced by a resident or visitor to the Town and to provide means to address such complaints and disputes in a non-adversarial manner, (4) to guide residents and others to the appropriate adversarial forums when necessary or preferred to resolve their complaints or disputes, and (5) to address systemic issues in Town governance and operations, whether related to complaints or not, that appear to impede diversity, equity, and inclusion and good community relations.

(D) When preparing the Town's budget, there should be included a reasonable line item at an appropriate location in the operating budget to be used by the Director and Town Counsel to engage independent professional assistance, if necessary and appropriate, to carry out the Director's investigatory duties described below, to avoid *ad hoc* budget transfers to cover such costs and to make the costs of this function transparent. The Director shall consult with Town Counsel in identifying and engaging such professional assistance. In an appropriate case, the Director and Town Counsel may select a member of Town Counsel's office to serve as an independent fact finder. In addition, the Director's department budget shall also include line items in a sufficient amount to acquire resources and materials necessary to carry out the Director's dispute resolution and community and human relations responsibilities.

(E) The Director shall work with Town Counsel on matters that raise legal issues, such as enforcement of federal, state, or local civil rights laws or regulations, Open Meeting or Public Records laws, the legal authorities or duties of the Director or the Commission, or the engagement of independent investigators or fact finders.

(F) General Responsibilities and Powers.

(i) The Director shall use the staff and resources of the Diversity Office, as appropriate, to provide information ~~and~~, guidance, and dispute resolution services (including restorative justice) to all persons who ~~come in contact with the Town who feel~~believe that they have been discriminated against or treated unfairly ~~due to~~in the Town, for any reason, including (1) their membership in a Brookline Protected Class, ~~or~~(2) in relation to Fair Housing ~~or Contracting issues,~~ laws, (3) in connection with procurement or contracting with the Town, (4) in connection with interactions with businesses or institutions in the Town, or (5) in connection with their interactions with the Town and/or employees of the Town. The Director may, with the agreement of the parties, use the resources of the Diversity Office to resolve a complaint without further investigation. But, when necessary, the Director shall investigate complaints pursuant to Section 3.14.2(G)(iv)(d) or provide general information on the use of the services of other appropriate bodies, such as the Massachusetts Commission Against Discrimination ("MCAD"), the federal Equal Employment Opportunity Commission ("EEOC"), complaint procedures using the Police Civilian Complaint form, complaint procedures of the Human Resources Departments, or a Town employee complainant's rights under applicable collective bargaining agreements. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any legal proceedings. In an appropriate situation, the Director may also call upon the mediation or conflict resolution services of agencies such as the Community Relations Service of the U.S. Department of Justice ("CRS").

(ii) ~~The CDO shall be responsible,~~ To work with all Town departments, including the Public Schools of Brookline, community nonprofits, businesses, houses of worship, and individuals, including the elderly and youth, to facilitate good community relations, communication, and respectful human interactions between and among all persons.

(iii) With the advice and counsel of the Commission, Town Counsel, the Human Resources Director, ~~and~~ the Human Resources Board, ~~for~~ the ~~preparation~~Chief Procurement Officer, the Council on Aging, and ~~submission~~any other relevant Town department, the Director shall prepare and submit to the Select Board ~~of~~ a recommended diversity, equity, and inclusion statement and policy for the Town~~, including~~ ("DEI Policy") and periodically review and update the DEI Policy if necessary. The DEI Policy shall incorporate, by reference, existing Town policies, including the Policy Against Discrimination, Sexual Harassment and Retaliation and other Town policies related to equal employment opportunity and affirmative action, ~~and recommended implementation procedures. The diversity and inclusion policy shall address~~ procurement, the Americans with Disabilities Act, and other applicable policies. The DEI Policy shall also give guidance on recruitment, hiring, retention, training, and promotion of Town

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employees, and propose steps to make improvements to ensure a work environment that is friendly to diversity ~~and inclusion.~~, equity, and inclusion. The Director shall work with the Town Administrator, Town Counsel, and the Human Resources Office on the implementation of the DEI Policy.

(G) ~~The CDO shall respect the rights to privacy and confidentiality of all individuals to the fullest extent required by law. The CDO may~~Complaint Responsibilities.

(i) In general, the Director may receive complaints concerning allegations of discrimination or bias or inappropriate or hurtful actions or behavior or actions or behavior that disrupt amicable community relations. The Director may (1) receive complaints from complainants directly or through the Commission or (2) receive referrals of complaints from Town departments, the school department, the library, or the housing authority, when all parties agree and the parties and the agencies believe that the Director's training and resources can best provide resolution of complaints or disputes arising in those departments in a manner that is acceptable to both parties and that maintains the expectations of confidentiality of the parties. Complaints involving Town employees shall be handled pursuant to Section 3.14.2(G)(v). The Director, at any point, with the agreement of the parties, can resolve a complaint using the staff, skills, and resources of the Diversity Office.

(ii) The Director may receive complaints anonymously for the purpose of informally resolving the complaint with the Town Administrator, the Superintendent, a department head, the executive director of a Town agency, such as the library or housing authority, or the governing body of a non-Town entity.

(iii) The Director with the assistance of Town Counsel and the Commission shall develop official forms for filing complaints under this bylaw and any necessary rules and procedures for the receipt of such complaints and other details of the complaint processes under this bylaw.

(iv) Upon receipt of a complaint, the Director shall take the following actions:

a. If, after the Director's initial review, or after an investigation, or at any point in the process, the Director determines that the complaint does not, on its face, present a plausibly valid basis for action by the Town and gives the complainant written notice of that determination, the complainant may appeal to the Commission within 30 days of receiving such notice. The Commission shall handle such appeal as set forth in Section 3.14.3(B)(i).

1. If the Commission pursuant to Section 3.14.3(B)(i) sends a rejected complaint back to the Director for reconsideration, the Director shall consider the Commission's reasons and either engage an independent investigator who shall make its report to the Director and the Town Administrator or take one of the actions listed in Section 3.14.2(G)(ii)(d).
2. If after an investigation pursuant to Section 3.14.2(G)(ii)(d), the Director concludes that the complaint still does not present a valid basis for Town action, the Director shall report that conclusion to the Commission and the reasons for the conclusion, whereupon the

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complaint shall be deemed resolved for purposes of the complaint processes of the Commission and the Director, unless the Select Board, at the written request of the Commission, by majority vote of the Select Board, finds that the complaint does, in their opinion, present a plausibly valid issue for consideration by the Town.

b. If the Director determines that the complaint on its face raises plausibly valid issues but would be more appropriately handled by the MCAD, the EEOC, the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers, the Director shall provide the complainant with general information for filing a complaint with such agency. The Director shall also explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with filing a complaint at the MCAD or with other entities. In an appropriate situation, the Director may also call upon the services of the CRS.

c. If the Director determines that the complaint raises a plausibly valid issue for Town action but that the Director or the Town cannot fairly, effectively, or efficiently investigate the complaint, the Director shall work with Town Counsel to engage the services of an independent investigator to handle the complaint or take such other action as they deem to be appropriate.

d. If the Director determines that the complaint presents a plausibly valid issue for action by the Town and can be appropriately, effectively, and efficiently handled by the Director, the Director shall do the following:

    1. First, notify the Town Administrator and give the Town Administrator an opportunity to take steps to satisfy the complainant.
    2. Second, if the Town Administrator is unable to take any steps to satisfy the complainant or the complainant is not satisfied with the steps taken by the Town Administrator, the Director shall initiate an investigation of the complaint, including interviewing any witnesses in addition to the complainant and the alleged perpetrator of the behavior that is the subject of the complaint, if possible, examining and analyzing any documents or materials relevant to the complaint, and assessing the credibility of the parties, any witnesses, and any relevant documents or materials.
    3. Following the investigation, if the Director still believes that the complainant has presented an valid issue that can be addressed by the Town, the Director shall develop a proposed plan ("Resolution Plan") for resolution of the complaint and present it to the parties. The Resolution Plan shall include a resolution that the Director believes is effective and fair to all parties, including any of the following remedies or other appropriate remedies:
        A. Meeting with the subject of the complaint to attempt an informal resolution, including with Town departments to ~~mediate~~fix problems identified in the complaint
        B. Mediation

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C. Reconciliation
D. Education of the parties in ways to avoid future disputes~~/complaints and/or to refer such complainants~~
E. Restorative justice
F. Referral to the ~~Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission~~Brookline police department, other law enforcement agency, or other Town department with the power to impose fines or other penalties if the complaint relates to a violation of Town bylaw or state law
G. Referral to the services, including complaint procedures or educational, training, or community relations services offered by the MCAD, the EEOC, the CRS, the Office of Town Counsel, the Attorney General, or such other body as the ~~CDO~~Director deems appropriate. ~~The Director/CDO shall report on these incidents to the Commission in terms of~~ The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any filing of a complaint with the MCAD or other entities.

e. The Director shall periodically report to the Commission on the complaints received and the disposition thereof. Such reports shall identify issues and trends ~~but shall show full respect for~~or systemic problems of which the ~~rights to privacy~~Commission should be aware and ~~confidentiality of~~ that will enable the ~~individuals involved~~Commission to make recommendations to the ~~fullest extent required by law. In the event that~~ Select Board or propose appropriate Town regulation or legislation.
f. ~~If~~ a person ~~who comes in contact with the Town~~, except for employees of the Town~~,~~ (with respect to employees, see Section 3.14.2(G)(v)), chooses to bring a complaint to the Commission after seeking the services of the ~~CDO in said officer's role as an ombudsperson~~Director, the Director~~/CDO~~ may discuss the case in general terms with the Commission ~~(see Section 3.14.3(A)(v)).~~ for guidance, but only if there is no ongoing or threatened litigation of the issues in the complaint.

g. The CDO shall also The Director, after consulting with Town Counsel, shall advise complainants that they may need to seek legal advice to avoid

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running afoul of statutes of limitations, exhaustion of remedies, and other procedural hurdles that they must meet to preserve their rights in the MCAD or federal or state courts while pursuing their rights under the Town's complaint procedures.

(v) Town Employees. Except with respect to complaints against another Town employee, the Director shall serve as an ombudsperson for employees of the Town ~~if they~~who feel they have been discriminated against or treated unfairly ~~on the basis of~~in Brookline based on membership in a Brookline Protected Class~~.~~ or other reasons. The ~~CDO~~Director 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~~ their union representative, and/or such other body that the ~~CDO~~Director deems appropriate~~.~~ and with which the complainant agrees. 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~~ present, provided, however, doing so does not violate any person's rights to privacy or expectation of confidentiality, and further provided that there is no ongoing or threatened litigation. If an employee of the Town is accused of misconduct, including discrimination, or treating a complainant unfairly, the director shall direct the complaint to the Town's Human Resources Department or, in the case of a Town police officer, to the Police Complaint Procedure. The Human Resources Department can also on its own take up an allegation of misconduct by a Town employee.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

(A) To implement the Mission of the Commission ~~and the Office,~~ in accordance with Section 3.14.1(A) (Brookline Values), the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

(A) General Responsibilities.

~~(A)~~(i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the willingness and capacity of public and private institutions to respond to discrimination against individuals in the Town based on their membership in a Brookline Protected Class~~;~~.

~~(i) Enhance communications across and among the community to promote awareness, understanding and the value of cultural~~

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~~differences, and create common ground for efforts toward~~

~~public order and social justice;~~

~~(B)~~ (ii) ~~Work with the Select Board, the Town's Human Resources Office, the School Committee, and other Town departments, commissions, boards, and committees to develop~~increase their commitments ~~and meaningful steps to increase~~ to diversity, equity, and inclusion~~, and~~ – and to take appropriate steps to increase awareness of and sensitivity to such values and to civil and human rights issues in ~~all~~their departments ~~and agencies of Town government;~~.

(iii) Provide advice and counsel to the ~~CDO~~Director on the preparation of ~~a diversity~~the DEI Policy and ~~inclusion policy for recommendation to the Select Board, including equal employment opportunity~~ on the periodic updating of the DEI Policy by the Director, as described in Section 3.14.2(F)(iii)

~~(C)~~ (iv) Initiate educational programs to facilitate and ~~affirmative action procedures, or amendments or revisions thereto,~~inform the public of the foregoing and ~~make suggestions through the CDO to the Human Resources Director, the Human Resources Board,~~ the Commission's and the ~~School Committee on the~~Director's responsibilities with respect to complaints

~~implementation of the diversity and inclusion policy;~~

(v) Receive Complaints Against the Town, directly or through the CDO, Support the Director in carrying out the Director's role as outlined in Section 3.14.2(C)

(B) Complaint Responsibilities

(i) The Commission may receive complaints that were rejected by the Director and appealed to the Commission for reconsideration. The question before the Commission on appeal shall be whether the complaint presents a valid basis for consideration by the Town. Upon receiving the appeal and the original complaint, the Commission shall assign one or two of its members to review the complaint. The reviewing members shall review the Director's determination, review the original complaint, interview the complainant and any witnesses who consent (if necessary), and decide whether they agree with the Director's rejection. The reviewing members shall then present their written conclusions to the Commission in executive session. If the Commission, after taking into consideration the conclusions of the reviewing members, agrees with the Director, the matter shall be concluded. If the Commission does not agree with the Director, the Commission shall provide the Director with a written explanation of its

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reason for concluding that the complaint does present a plausibly valid basis for consideration by the Town, whereupon the reconsideration of the complaint by the Director shall be handled in accordance with Section 3.14.2(G)(a)(i)-(ii).

(ii) The Commission may receive complaints 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~~ or inappropriate or hurtful actions or behavior. Complaints against Town employees shall be handled solely by the Director (see Section 3.14.2~~), and after notifying~~(G)(v)). Upon receiving an appropriate complaint, the Commission shall take the following actions:

a. ~~First,~~ notify 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~~ and give the Town Administrator an opportunity to make corrections to satisfy the complainant.

b. Second, if the Town Administrator is unable to take any steps to satisfy the complainant or the complainant is not satisfied with the steps taken by the Town Administrator, the Commission or a working group of the Commission may (1) perform a summary review of the complaint, including, if necessary, an interview of the complainant and any witnesses and a review of any documents or materials pertinent to the complaint, (2) prepare a written report of its summary review, including a report on the impact on the complainant of the alleged behavior or the impact on the alleged perpetrator of the filing of the complaint, without stating any legal conclusions, and (3) within 90 days of the Commission's receipt of the complaint provide its report with recommendations to the Director and the Town Administrator, with a copy of the recommendations to the Select Board. The Commission's recommendations should include, as appropriate ~~within 90 days~~, the use of ~~receipt~~the dispute resolution resources and skills of the ~~complaint.~~ Director.

~~(D)~~ c. The Commission~~/CDO,~~ may ask the Director to, in addition or in the alternative, provide the complainant with general information on complainant's options to bring proceedings at the ~~Massachusetts Commission Against Discrimination~~MCAD or other appropriate federal, state, or local ~~agencies.~~agency, including the Brookline Police Department. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with filing a complaint with the MCAD or other entity. This By-law does not preclude any complainant from alternatively or additionally using other Town complaint procedures, such as the Police Department's Civilian Complaint Procedure or the Human Resources Office's procedures~~;~~.

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~~(ii) 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.~~

~~(iii) 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.~~

d. (vii) The Commission may receive a complaint anonymously for the purpose of resolving the complaint informally with the Director or the Town Administrator.

e. To protect all parties to a complaint and to avoid violation of any law or regulation concerning governmental operations, the Commission should work with Town Counsel when presented with a complaint.

(iii) The Commission may receive complaints against the public schools of Brookline, directly or through the Director concerning allegations of discrimination or bias or inappropriate or hurtful actions or behavior. The Commission may not accept a complaint by a student or against a student but may accept a complaint by a student's parent or guardian. Upon receiving a complaint against the public schools of Brookline, the Commission's roles shall be (i) to serve as a neutral knowledgeable body to which a complainant can bring their concerns, (ii) to provide guidance to the complainant as to the best way to address their concerns, (iii) to use the knowledge and credibility of the Commission to present concerns to the schools of which the schools may not be aware, and (iv) to perform any other role as may be agreed upon by the Director and the Superintendent.

(iv) The Commission shall be limited to the following actions:

a. Notifying the Superintendent and giving the Superintendent an opportunity to make corrections to satisfy the complainant.

b. If the complainant is not satisfied with the steps taken by the Superintendent, the Commission may request that the Director, provide the complainant with general information on complainant's options to bring proceedings at the MCAD or other appropriate federal, state, or local agency or bring an appropriate matter to the attention of the state Department of Elementary and Secondary Education. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any filing with the MCAD or other entity.

c. The Commission may also provide the complainant with information on complainant's options to ask the Superintendent to utilize the dispute resolution resources of the Diversity Office or an outside body.

d. The Commission may receive a complaint anonymously for the purpose of resolving the complaint informally with the Superintendent.

e. To protect all parties to a complaint and to avoid violation of any law or regulation concerning governmental operations or the rights of students or

educational personnel, including federal laws governing student privacy and regulations of the Department of Elementary and Secondary Education and the local regional office of the Office of Civil Rights within the U.S. Department of Education, the Commission should work with Town Counsel when presented with a complaint against the schools.

The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in ~~subsections (v), (vi) above,~~Section 3.14.3(B), provided that such publication contains public record information only and does not violate anyone's right to privacy or expectations of confidentiality, 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.

~~(iv) 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);~~

~~(v) 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;~~

~~(E)~~(v) 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~~Director, in such officer's role as ombudsperson, to facilitate changes that will reduce and eliminate violations of rights~~;~~.

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

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~~(xii) 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.~~

(vi) (B) Develop official forms for the filing of complaints under Section 3.14.3(B) and procedures for the receipt of such complaints and follow-up by the Commission to the extent not inconsistent with the procedures set forth in Section 3.14.3(B).

(vii) 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.

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

(ii) 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's needs.

~~(E)~~(iii) 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~~;~~.

~~(F)~~(iv) 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~~ in 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~~;~~.

~~(G)~~(v) 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~~;~~.

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~~(H)~~ (vi) 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) (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 toTo 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, equity, 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~~receives. If such complaints fall within the purview of the Superintendent of Schools, the Superintendent shall also immediately 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.

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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~~DEI 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~~the DEI 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~~2023, and at least every five years thereafter, the Commission shall review this ~~By-law~~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, 2024.

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

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The amendments~~, as indicated in strikethrough, bold and underlined,~~ to Bylaw Section 3.14 made by this Warrant Article, if adopted ~~on December 12, 2019,~~ by the fall Special Town Meeting, shall become effective ~~July~~January 1, ~~2022.~~2023.

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.

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or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

INTRODUCTION

This Warrant Article is designed to set up a reasonable and workable complaint process that (1) provides a forum to informally resolve relatively minor complaints, including rude behavior or casual isolated discriminatory acts that makes living together in a community difficult, (2) provides a means to assist complainants to take more serious complaints to the appropriate civil rights or law enforcement setting if they cannot be resolved by the Director or the Commission, and (3) recognizes that the Diversity Office and the

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Commission also have the general responsibility for assisting people to live harmoniously in our community so that relations among residents do not deteriorate and escalate minor inter-personal stressors into serious discriminatory incidents – this is similar, on a smaller scale, to the services offered to communities suffering from severe racial or other conflicts by the Community Relations Service of the U.S. Department of Justice. The Warrant Article also makes some slight improvements to other parts of the bylaw, such as adding equity to the mandate of the Commission in addition to "diversity, inclusion, and community relations."

The proposed changes in this Warrant Article are primarily focused on the complaint process. The failure of Warrant Articles 12 and 13 by the May 2022 Annual Town Meeting did not obviate the need for a reasonable and workable process for persons to file complaints regarding discrimination and other misconduct. This Warrant Article is being submitted to meet that need.

COMPLAINT PROCESSES

Currently complaints by residents can be filed (1) with the Diversity Office on the office's Brookline Discrimination Report Form on the Town's website, (2) with the Police Department's Civilian Complaint form on their webpage and the Civilian Feedback form also on the Police Department's webpage or (3) with the Human Resources Department's under the "Town Policy Against Discrimination, Sexual Harassment, and Retaliation." In addition, the Human Resources Department, on its own, can take up and handle a case of alleged misconduct by a Town employee.

Despite the multiple complaint procedures that we have in Brookline, the Petitioners believe that there are a group of minor complaints that are not adequately covered by the current complaint procedures. A priority for the Town is allegations of discrimination towards a "protected group" member. But there are also a wide variety of disputes between residents, visitors, and businesses, related to conduct that is not a proper subject of either criminal enforcement or other local enforcement tools. These disputes can be resolved by the procedures in this Warrant Article and will be important steps towards ensuring harmonious community relations. Those procedures include the use of skillful mediation or other dispute resolution tools, such as restorative justice or even a skillfully placed phone call, by our highly skilled Diversity Office Director or a highly trained staff member of the Diversity Office. This is consistent with the mission and goals of the Town expressed in Section 3.14.1(A) (Brookline Values) of this Warrant Article.

Another issue is that the availability of multiple complaint processes allows a complainant to choose among multiple procedures or to choose to use more than one procedure. While this serves to increase the likelihood that persons who experience or perceive discrimination may feel more comfortable when filing their complaints, it also risks overlapping and duplicative investigations and inconsistent or conflicting findings and recommendations. Under this Warrant Article, the Director is in a position to minimize this problem.

Under this Warrant Article, complaints can be filed with the Director who has primary investigatory responsibility for resolving complaints, using the Discrimination Report

Form or other means or with the Commission, which has limited responsibility for reporting complaints to the Director, the Town Administrator, the Select Board, or, in the case of complaints involving the Public Schools of Brookline, to the Superintendent. The Director is solely responsible for complaints involving Town employees and will refer, as appropriate, to either (a) the Police Complaint process, for which the Director is now (by the 2020-2021 Police Reform Committee Report) a complainants' Liaison, or (b) the Human Resources Department, which administers the "Town Policy Against Discrimination, Sexual Harassment, and Retaliation." The Director can also engage the services of an independent investigator or guide complainant, if complainant wishes, to the services of the MA Commission Against Discrimination or another federal or state body, provided there is no ongoing or threatened litigation**.** For complaints against, by, or between Town employees, the initial inquiry would be whether the matter is covered by the grievance processes in the relevant union contract, which may overlap with the procedures in the Human Resources Department.

For complaints against or between School Department employees, the School Department administers its own policy pursuant to federal and state law. With respect to School Department employees, the role of the Director and the Commission is limited to making them aware of issues and directing complainants to the appropriate School Department systems.

ROLE OF THE DIRECTOR, THE COMMISSION, AND THE DIVERSITY OFFICE

This Warrant Article establishes the Director and the Diversity Office as the primary complaint forum, as summarized above, and encourages the Town to provide that office with the funding necessary to engage outside investigators when necessary and to enhance the Diversity Office's resources available to resolve complaints and provide the many other services that the Diversity Office currently, and under this Warrant Article will provide. The types of complaints that the Director would handle include those that were proposed to be covered in Warrant Articles 12 and 13 of the May 2022 Annual Town Meeting: employment, public accommodations, housing, policing, education, and provision of services, health care, or credit, etc. These would be handled by the expertise of the Director and the Diversity Office, including referrals to outside agencies with enforcement powers if necessary.

Currently, the Director is highly trained in matters of dispute resolution and has a highly trained staff for assistance with mediation and problem solving. The Director performs an investigation using these skills and resources and, where appropriate, reaches a conclusion as to whether discrimination or other proscribed behavior occurred. The Director would also, as the Director does now, address complaints regarding civil rights laws that don't rise to the level of discrimination but may reflect ignorance of responsibilities, inadvertence, or lack of resources to address problems. Examples would be Americans with Disabilities Act complaints concerning inadequate access or obstructed or limited access to public or private buildings.

The Commission is primarily a fact gathering body to assist complainants to articulate their complaints and identify the appropriate forum to resolve them. The Commission gathers information, including the complaint, the response of the alleged perpetrator, statements of

witnesses, statements as to the impact of the alleged behavior on the complainant and the impact of the filing of the complaint on the alleged perpetrator. The Commission does not determine whether discrimination or other proscribed behavior occurred. The Commission also serves as a second set of eyes for complaints that the Director determines does not present an issue that can properly be taken up by the Town or for a complaint of which the Complainant wants a separate review. Ultimately, the director has the final say on whether a complaint presents a valid issue for action by the Town, unless the matter is taken up by an independent fact finder or the Select Board. The Petitioners also hope that this Warrant Article inspires the Commission to develop gravitas, knowledge, and credibility to educate and encourage other Town entities to address complaints and other matters in a manner consistent with the Brookline Values statement in Section 3.14.1(A) of this Warrant Article.

EVOLUTION OF THE COMPLAINT PROCESS

This Warrant Article is another step in the evolution of the diversity Bylaw from the original 2014 Warrant Article written by the "Selectmen's Diversity, Inclusion, and Affirmative Action Committee" ("DIAA Committee") that established the Diversity, Inclusion, and Community Relations Commission and the Diversity Office and legislation the preceded the 2014 Warrant Article. DIAA Committee member Marty Rosenthal predicted that the bylaw would be a "living by-law" that would evolve over time and "soon be improved by all our usual sausage making process." That evolution is summarized as follows:

> 1970: The original Human Rights/Youth Resources Commission was formed in 1970. It arose out of the turmoil of the 1960s and a recommendation of the "National Advisory Commission on Civil Disorders" (the "Kerner Commission"). The Kerner Commission was established by President Lyndon B. Johnson in 1967 (Executive Order 11365) to investigate the causes of urban disturbances that occurred in the Summer of 1967. The Kerner Commission was tasked to come up with recommendations on how to right the wrongs of the past and bring the nation out of the period of urban unrest. Among its recommendations was that municipalities across the nation create human rights commissions to deal concertedly with the range of racial and ethnic problems that had caused turmoil. In Brookline a committee was established that resulted in a report containing a draft of what became the Human Relations-Youth Resources by-law.
>
> 2013: In 2013 the Town Administrator sought to improve the effectiveness of the Commission. In submitting Warrant Article 9 of the 2013 Annual Town Meeting, it was the intent of the Town Administrator to reorganize the staffing and jurisdiction of the Human Relations/Youth Resources Department to support human relations and youth services programming more effectively and to coordinate related human service functions of the Town. Warrant Article 9 and a related Warrant Article 10 were primarily concerned with equal employment opportunity and affirmative action. Warrant Article 9, however, did address complaints in Section 2.14.3 (General Duties of the Commission) subsection (g):
>
> > (g) Initiate, receive, secure the investigation of and seek the satisfactory adjustment of complaints charging discrimination, or failure to take, or delay in taking appropriate action, or abuse of authority in connection

therewith by any Town agency, Town official or employee which may be brought to the Commission's attention.

2014: In 2014 the current version of Bylaw 3.14, as subsequently amended, was adopted. In that bylaw the Chief Diversity Officer served as an ombudsperson and handled any complaints by residents or employees. A complaint by a resident could also be sent to the Commission by the Chief Diversity Officer and reviewed by the Commission without an investigation or a determination of facts. The Commission could present their summary to the Town Administrator to act on.

2019: In 2019 Warrant Article 24 was introduced to increase the authority of the Commission to handle complaints. In that Warrant Article, the Commission would investigate complaints and interview witnesses and prepare written findings and recommend action to the Select Board and others within 90 days. These complaints could be against the Town or the schools. Because of concerns that the proposal imposed substantial burdens and potential liability on the volunteer members of the Commission, the effective date of Warrant Article 24 was set for July 1, 2022, with the expectation that the Commission would come up with an improved Warrant Article without the problems perceived to exist in Warrant Article 24. The alternative proposed by the Commission was not voted by the May 2022 Annual Town Meeting and consequently Warrant Article 24 became effective and is incorporated into the current Bylaw 3.14.

Spring 2022:

Warrant Article 12 and 13 submitted to the spring 2022 Annual Town Meeting, among other things, established a complaint committee, separate from the Commission, charged with investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). These complaints could 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, the Bylaw would apply to students as complainants, and to faculty and staff of the School Department to the extent permitted by State and federal law. The Complaint Committee would be comprised of seven members, only one of whom must be a member of the Commission. The Committee would investigate complaints with 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 would be summoned in the same manner and be paid the same fees as witnesses in civil cases before the courts. Town departments and agencies would be expected to cooperate.

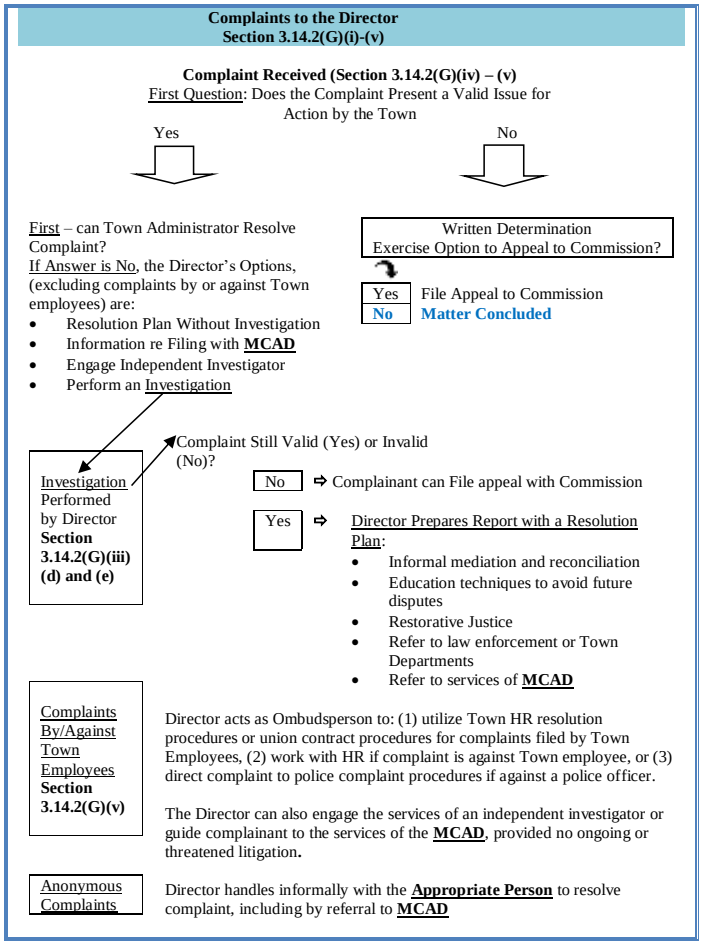
Under the proposal, If the Committee found that a respondent has engaged in any violation of this Bylaw, the Committee could seek relief within 30 days of the Committee's report, through one or more of the following actions: (a) If the respondent is an employee, agent or official of the Town or the Town itself, the Committee could 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 Committee could 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 the proposal the Committee could (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 could 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 next step in this evolution is proposed to be this Warrant Article, as described above.

DIAGRAM OF THE COMPLAINT PROCESS

THE DIRECTOR



THE COMMISSION

Complaints Found by the Director to have No Valid Basis – Appealed to the Commission
Sections 3.14.2(G)(iv)(a) & 3.14.3(B)(i)

Complainant Appeals to Commission

1. Review Group of the Commission Reviews and Presents Report and Conclusions to Commission
2. Commission Reviews Report

Agrees With Director ⇨ **Matter Concluded**

Disagrees With Director → **The Director**
⇨Engages Independent Investigator
OR
⇨Does Investigation and Resolution Plan

Complaints Filed with the Commission
Section 3.14.3(B)(ii) – (vi)

Complaints to the Commission

Versus Town, Agencies, Officials

First Notify Town Administrator to Resolve

If Satisfied: ⇨ **Matter Concluded**

If Not Satisfied → Then

The Commission:

- Reviews the complaint and relevant statements of witnesses and the alleged perpetrator and relevant materials
  Within 90 Days –
- Write report & Recommendations
- Copy Director and the **Appropriate Person** for follow up action

OR
Request that the Director Give Complainant Information re **MCAD**

Versus Schools (not by or against students)

The Commission may only take the following actions:

- Notify Superintendent so Superintendent can resolve,
- Request that the Director provide general information on **MCAD** proceedings or training to complainant
- Suggest that the Superintendent utilize dispute resolution resources of Director
- Take other steps agreed to by Superintendent and Director

Anonymous Complaints to Commission → ⇨ Commission works with the **Appropriate Person** to Resolve Complaint, including by referral to **MCAD**

Appropriate Person Shall be deemed to mean the Town Administrator or the head of an independent agency, such as Schools Superintendent, Library Director, Executive Director Brookline Housing Authority

MCAD Shall also be deemed to include, as appropriate, the MA Commission Against Discrimination, the federal Equal Employment Opportunity Commission, the Community Relations Service of the U.S. Department of Justice, or other federal or state civil rights or law enforcement bodies.

SELECT BOARD'S RECOMMENDATION

A report and recommendation will be included in the Supplement.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation will be included in the Supplement.

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ARTICLE 31

COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE REPORT AND RECOMMENDATION

RECOMMENDATION

CTOS calls the attention of Town Meeting to the fact that there are essentially two competing views of the way that complaints of discrimination should be handled by the Town under By-Law Article 3.14, the article establishing the Commission on Diversity, Inclusion and Community Relations ("CDICR"). Warrant Article 31 ("WA31") takes the position that the Town can more effectively address allegations of discrimination through investigation, mediation and conciliation by professional staff rather than through an adjudicatory, punitive process dependent on volunteers. It also takes the position that complaints should be routed to a single Town or School department, rather than following multiple competing and potentially conflicting paths.

CTOS recognizes that some Town Meeting Members may believe that the current version of By-Law Article 3.14, which assigns investigatory and fact-finding responsibilities to volunteer CDICR members, is adequate, despite the statements of CDICR members that they do not have the background to discharge those responsibilities. Others may believe that the Town should create an adversarial and punitive quasi-judicial process as proposed in Articles 12 and 13 at the last (Spring 2022) Town Meeting. If so, these Town Meeting Members would vote No Action on WA31. However, for reasons noted below, CTOS recommends the organization and structure created by WA31 to address issues of discrimination in the Town.

Therefore, CTOS, by a 6-0 vote, recommends:

FAVORABLE ACTION on WA 31 in the form voted by the Advisory Committee on November 3, 2022, with an amendment more broadly ensuring the protection of privacy rights.[1]

SUMMARY

At the Spring 2022 Annual Town Meeting, members of CDICR proposed (in Warrant Articles 12 and 13) a quasi-judicial and punitive process. A new Complaint Committee

[1] Thus, CTOS recommends that Section 3.14.2(G)(v)(g) beginning on line 258 of the November 3, 2022 AC committee version and referring to the privacy rights of Town Employees be renumbered as Section 3.14.2(G)(vi) and begin on line 258 as follows:
(vi) Confidentiality. To the extent allowed by applicable law or legal process, the Director and the Commission shall hold all matters in confidence and shall respect the privacy rights or expectations of privacy of all individuals. The Director may, however, discuss complaints in general terms, without revealing a complainant's identity or identifying details, to inform the Commission about the general problems or issues that are presented by a complaint or a category of Complaints.

within CDICR would conduct adjudicatory proceedings and would have the power to compel testimony by subpoena and to impose $300 per day fines. As a result of concerns regarding this punitive approach, including its questionable legality, the proposal, by a vote of 153-96-4, was returned to CDICR for further consideration. At meetings held on June 15, 2022 and other dates, CDICR members indicated their intent to bring essentially the same proposal back to Town Meeting in the Spring of 2023, perhaps accompanied by a companion Home Rule Petition to expressly allow the imposition of the $300 per day fines.

Warrant Articles 12 and 13 would have replaced the version of Article 3.14 that is now in effect. That version, created by a 2019 Warrant Article sponsored by Town Meeting Member Arthur Wellington Conquest III, placed the responsibility for investigation and fact-finding on the members of CDICR. CDICR members, however, have said they were not able to effectively carry out those responsibilities. Town Counsel offered to utilize his office for investigations, but members of CDICR have stated that would present a conflict of interest. Potential regulations implementing the current By-Law that would include such investigations by the Office of Town Counsel as well as other provisions have not been drafted, much less implemented.

Warrant Article 31 offers an alternative method for dealing with complaints of discrimination under By-Law Article 3.14. WA31 emphasizes investigations of complaints of discrimination, followed by mediation and conciliation, spearheaded by a trained professional, the Director/Chief Diversity Officer (the "Director" or "CDO") of the Office of Diversity, Inclusion and Community Relations ("ODICR"). Further, it directs complaints involving Town and School employees to established processes, rather than engrafting a further quasi-judicial process on such complaints.

WA31 seeks to address several issues.

First, it avoids the inequitable impacts inherent in the punitive approach of Spring 2022 Warrant Articles 12 and 13. Because of State constitutional limitations, the $300 per day fines under those Articles could at most be imposed only against small, locally licensed businesses, rather than against major corporations engaging in widespread discrimination, such as banks with discriminatory mortgage lending practices, medical institutions providing inequitable access to health care, or realty companies discriminating in sales or rental policies. Similarly, because of the complexity and expense intrinsic to State procedural processes, subpoenas would most likely be imposed only on individual residents and small businesses.

Second, by giving responsibility for investigating and addressing complaints of discrimination to full-time, paid individuals with professional training, WA31 prudently seeks to address the pitfalls of assigning such tasks to a newly created volunteer Complaint Committee and CDICR. As a matter of history, there has been CDICR inaction on complaints and acknowledgement by CDICR members of their inability to deal with the complaint process. At the present time, CDICR has had difficulties attracting members, assembling a quorum, and finding individuals willing to take on leadership roles –

problems that could only be exacerbated by expecting to find even more volunteers to take on quasi-judicial roles.

Third, WA 31 seeks to address the potential for problems to emerge if multiple entities are addressing the same complaint, particularly with regard to complaints by and against Town and School employees. By explicitly assigning specific types of claims to specific bodies, WA31 avoids duplicative forums that would undercut existing processes and create parallel proceedings with the potential for conflicts in testimony and outcomes.

Fourth, the punitive process that is the focus of Warrant Articles 12 and 13 would not make injured parties whole. The $300 per day fines go to the Town – not to the injured party. The mediation and conciliation process that is the centerpiece of WA31 would include the potential for restitution, and WA31 explicitly calls for the involvement of other bodies, if they are needed, such as the Massachusetts Commission Against Discrimination ("MCAD") which, albeit slow in processing complaints, has the authority to make injured parties whole.

THE 2014 AND 2019 VERSIONS

Original 2014 By-Law. As originally drafted in 2014, By-Law Article 3.14 gave CDICR the authority ("may") to present summaries of complaints and issues of concern – without conducting any investigation -- to the Town Administrator and Select Board in the case of complaints against the Town or its officials or employees, or to the School Superintendent and/or the School Committee in the case of complaints of discrimination made against the Public Schools. In the case of other discrimination complaints (i.e., those not directed against the Town or Schools), CDICR was to conduct a "preliminary review of the facts" and was given the authority "in its discretion" to provide information about options to proceed with the MCAD and similar agencies, to refer the complaint to the Director or another mediator, or to present results of the preliminary review of the alleged facts to the Town Administrator and/or Select Board for action. There was, in short, no by-law requirement that complaints of discrimination actually be investigated, no time limits, and no requirement that action actually be taken with regard to such complaints.

2019 Conquest Amendment. In response to inaction by CDICR on complaints, Town Meeting Member Arthur Conquest brought Warrant Article 24 to the November 2019 Special Town Meeting. This proposal amended By-Law Article 3.14 to require CDICR to investigate complaints of discrimination or bias against the Town, to prepare written findings, and to recommend appropriate action to the Select Board, Library Trustees or Moderator within 90 days of receipt of the complaint. Similar provisions applied to complaints against the Public Schools or its employees or officials, with the recommendation being made to the Superintendent and/or School Committee. The 2014 provision regarding other (non-Town, non-School) complaints was not revised.

CDICR members responded 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." CDICR

nonetheless recommended favorable action on the Conquest Amendment with an effective date of July 1, 2021 (1½ years later), to "apply pressure and create a sense of urgency" while allowing time for a further amendment to By-Law 3.14 or for the appointment of new CDICR members. That effective date was later extended to July 1, 2022. That date has come and gone without passage of a revised By-Law. Thus, the By-Law as passed in 2019 is the version of Article 3.14 that is now in effect, despite the statements of CDICR members that they cannot effectively administer it.

THE QUASI-JUDICIAL, PUNITIVE APPROACH – ARTICLES 12 & 13 IN MAY 2022

At the Spring 2022 Annual Town Meeting, CDICR presented a substantial amendment to By-Law 3.14. Warrant Articles 12 and 13 would have created a new "Complaint Committee" (CC) within CDICR and given that committee the power to hold quasi-judicial hearings, to compel the testimony of witnesses by subpoena and to levy $300 per day fines. As noted, Town Meeting referred that approach back to CDICR for reconsideration, but CDICR has taken the position that it will resubmit the articles in the future without substantive changes. While CTOS recognizes that some Town Meeting Members may favor the punitive approach of Articles 12 and 13, that approach raises several issues that are discussed below.

The Inequitable Application of Fines and Subpoenas

When Articles 12 and 13 came before Town Meeting in the Spring of 2022, Town Counsel noted that there was a State constitutional limitation on the Town's ability to enact the contemplated punitive process. See CTOS Report and Recommendation, at pp. 251-270: https://www.brooklinema.gov/DocumentCenter/View/32721/Combined-Reports-May-2022-Annual-Town-Meeting-with-supplements-060722

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." Worcester's investigation of discrimination complaints was permitted **where the only remedies were mediation and recommendations to the City Manager,** the types of remedies contemplated by Article 31. Bloom v. Worcester, 363 Mass. 136 (1973). The Supreme Judicial Court concluded that such processes were permissible under the Home Rule Amendment because the Worcester ordinance simply employed "moral suasion." 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 which sought to limit rents and impose fines, finding that the "police" power to, for example, protect against injury from fire or badly lighted passageways did not justify rent control or related fines.

The potential use of the $300 per day fine is thus sharply constrained by the Home Rule Amendment – if, indeed, fines are to be permitted at all. Town Counsel has noted that Brookline might be able to argue that 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.[2]

What was clear to Town Counsel and to CTOS was that because there is no municipal licensing involved, fines could **not** be applied to areas such as landlord-tenant relations, health care, private employment, private education, the extension of credit, and the advertising and sale of property.

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 by 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.

Some members of CDICR now suggest that these issues could be addressed by a Home Rule Petition, but the passage of such a petition is uncertain and the approach of filing a petition is rejected by other CDICR members. At bottom, the "punitive" approach provides a recipe for inequitable application and expensive and burdensome litigation down the road, with the largest and worst potential offenders having both the resources and the incentives to successfully challenge any fines the Town might try to impose. A small 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, a challenge would require costly and burdensome litigation. Given the dictates of the Home Rule Amendment, retaining the $300 per day fine would be inherently inequitable in practice.

Similarly, 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, would also likely be subject to inequitable application. Under State procedures, a subpoena could not be enforced without a Select Board decision authorizing Town Counsel to file a court action under G.L. c.233, §10, followed by such litigation, followed by a decision by a Justice of the Supreme Judicial Court or a Superior Court judge to enforce the subpoena. This complex process would allow large deep-pocketed entities to "lawyer up," refuse to comply with subpoenas, and compel enforcement litigation. Individuals and small local businesses, on the other hand, even if aware of their right to

[2] Proponents of Articles 12 and 13 argued to $300 per day fines were necessary "to change behavior," to "obtain cooperation," and as a "deterrent." As noted in text, such fines might not be legally permissible even against businesses holding licenses from the Town. However, WA31 allows the Director to refer complaints to the Select Board. For businesses licensed by the Town, the power to revoke a license to do business (which, for example, the Select Board has recently exercised) is an extremely effective tool.

challenge subpoenas, would again be forced either to comply or to face burdensome litigation costs.

Complications with Volunteers instead of Trained Professionals

WA31 assigns the front-line responsibility for investigations and conciliation to trained, professional, full-time staff under the direction of the Director, who is at the present time a trained professional with more than 30 years of experience in human services and public health delivery and management. CTOS views this as a prudent approach. Indeed, Town Meeting passed the Conquest Amendment in 2019 in response to complaints that CDICR was not promptly and effectively addressing complaints. At that time, CDICR members acknowledged that they do not have the background to carry out the investigatory and adjudicative functions they have been assigned by the version of Article 3.14 that was put into place in 2019 and that is now in effect. Furthermore, Articles 12 and 13 would require the appointment of an additional new Complaint Committee with up to 7 members, with adjudicatory hearings, including subpoena power, to be conducted before 3 members of that Complaint Committee. While the proposals in Articles 12 and 13 for a full-blown adjudicative process within CDICR were ambitious and well-intentioned, the difficulties CDICR is having to attract members, assemble quorums, and find leadership raise serious questions about whether it is realistic to expect a yet-to-be-created volunteer board, requiring even more members, to take on challenging quasi-judicial roles.

Duplicative and Competing Forums

Article 31 explicitly refers complaints involving Town employees to the Town's Human Relations Department pursuant to the existing *Policy Against Discrimination, Sexual Harassment, and Retaliation* and also to Town Counsel in the case of threatened litigation or complaints of discrimination against a Town employee by a non-employee. Complaints against a civilian or sworn member of the Police Department are referred to the existing Police Complaint Process. In parallel fashion, complaints against an employee of the Public Schools of Brookline (PSB) are referred to PSB's existing Human Resources Office.

Articles 12 and 13, on the other hand, would have created a process where the newly created Complaint Committee's quasi-judicial process would be engrafted onto the established complaint processes and could be pursued in parallel or sequentially, undermining those existing processes and creating the potential for disparate outcomes within Town processes. That quasi-judicial process would depend on part-time volunteers in Town who might be close to issues and have formed opinions they could not realistically put aside.

Warrant Article 31, on the other hand, would seek to have disputes addressed through mediation and conciliation and through existing Town processes. If those steps were not appropriate or successful in resolving a complaint, adjudicatory proceedings would still be available, but they would be conducted by outside professionals (e.g., the EEOC or MCAD) who were trained, full-time, and not subject to suggestions they may have prejudged issues.

Meaningful Relief

Finally, the central approach in WA31 for complaints that do not involve Town or School employees is mediation and conciliation conducted by a trained professional, a process that can provide relief to an injured party. In contrast, while Articles 12 and 13 could in theory allow both parties to agree to mediation, those articles focus on employing an adversarial process that can ultimately lead to $300 per day fines. The problem is that the $300 per day fines would go to the Town, not to remedy any injury. Any meaningful relief would then still have to come from the MCAD or another outside agency, which again calls into question the wisdom of trying to create a separate quasi-judicial process within the Town.

CONCLUSION

CDICR members have voiced the intention of bringing the substance of Articles 12 and 13 back to Town Meeting, thus creating a new quasi-judicial body with the power to issue subpoenas and levy fines, but not to compensate injured parties. Should that concept be brought back to Town Meeting and fail again, and should Warrant Article 31 not pass, the Town would be left with the existing By-Law Article 3.14, placing on CDICR investigatory and fact-finding responsibilities that CDICR members, who are all volunteers, have acknowledged they cannot discharge.

Warrant Article 31 reflects the view that the Town's resources would be better directed to efforts to resolve existing issues through mediation rather than adversarial proceedings; that professionally trained and experienced staff rather than volunteers should handle issues of alleged discrimination; that complaints that cannot be resolved through a process of conciliation should be resolved by professionally staffed bodies with the actual authority to make injured parties whole; and that the potential for conflict with existing Town and School processes should be avoided. Article 31 avoids issues that would otherwise be created by the current By-Law and by the approach inherent in Articles 12 and 13.

ARTICLE 31

ADDITIONAL PETITIONER EXPLANATION

3.14.1
Brookline Values Statement

(A) The Values Statement is an aspirational statement of the type of Town we want to become. Thus, it defines the nature of the complaint process. Brookline Values has two parts: (1) Diversity, Equity, and Inclusion and (2) Community Relations. Brookline Values includes civility and kindness in how we treat our neighbors and how the Town treats its residents and visitors even when we must hold them accountable for things that result in complaints.

3.14.2 – The Director

(A) The Director is a highly trained professional in community relations, civil and human rights, and dispute resolution. The Director is primarily responsible for the Complaint process.

(C) Director is responsible for (1) building the resources and skills of the Diversity Office, (2) investigating complaints, (3) finding and exercising appropriate non-adversarial remedies, where possible, (4) assisting complainants to take Complaints that cannot be handled by the Director to an adversarial setting, and (5) addressing systemic issues.

(F)(iv) A useful paragraph for incidents and disputes that may impede harmonious community relations but not necessarily pursuant to a Complaint and not necessarily discrimination as initially presented. Allows Town Administrator to engage the Director and avoid ignoring issues that are important and that the Director can helpfully address before they escalate.

(G) The Complaint Process
The Director will receive Complaints. The initial question is jurisdictional: Does it involve a Town Employee? If yes, the Director does not get involved – *see* 3.14.2(G)(v).

Complaint Steps:

First, is the Complaint Plausibly Valid?

- The Director decides and lets any appeal process to the Commission by complainant or respondent run its course.
    - If the Complaint is found after this process to be not Plausibly Valid, that is the end.
    - If the Complaint is found after this process to be Plausibly Valid, then –

Second, if the Complaint is Plausibly Valid, is it better handled in an adversarial process such as MCAD, EEOC, MA Attorney General's Office, the Brookline Police Department, or other agencies?

- If Yes, the Director gives complainant guidance to take the Complaint to that agency.
- If No, then –

Third, is there a reason the Director cannot handle the Complaint?

- If Yes, the Director works with Town Counsel to engage an independent fact finder.
- If No, then –

Fourth, the Director consults with the Town Administrator to determine whether there is a simple and quick resolution that the Town can provide.

- If Yes, the Town Administrator resolves the Complaint with the appropriate Town Department
- If No, then –

Fifth, the Director does an investigation and a further determination of whether the Complaint is Plausibly Valid.

- If No, i.e., the Complaint is found to be not Plausibly Valid, that is the end.
- If Yes, i.e., the Complaint is found to be Plausibly Valid, then –

Sixth, the Director does a Resolution Plan that can be presented to the Complainant & Respondent and

- If accepted, the Director implements the Resolution Plan.
- If Not accepted, the Complaint cannot be resolved by the Director and the complainant's options are an adversarial forum to which the Director can refer them.

3.13.3 – The Commission
Mission of the Commission: Support Brookline Values

(A) General Responsibilities: Supporting Brookline Values.

(B) Complaint Responsibilities

(i) Receive appeals from determination of Plausible Validity by complainants or respondents

(ii) Receive Complaints from complainants

(a) First question is jurisdictional: Does it involve a Complaint alleging discrimination against the Town or its agencies? If yes, the Commission has no role and refers the Complaint to the Director and Town Counsel.

(b) Second question is also jurisdictional: Does it involve a Town Employee. If yes, the Commission has no role – *see* 3.14.2(G)(v)

(c) Other Complaints:

1. The Commission notifies the Director
2. If the Commission believes it can add value, with the concurrence of the Director, it can do a summary review of the Complaint and write a report based on interviews of the complainant, respondent, any witnesses, and any documents. The Report should have unique perspectives or information that the Director can use and recommendations to the Director with a copy to the Select Board and produced within 90 days.
3. The Commission can also ask the Director to provide the complainant with information on taking the Complaint to an adversarial forum.

(d) Anonymous Complaints: The Commission works confidentially with the Town Administrator or the Director to resolve an anonymous Complaint, including by referral to MCAD or another agency.

* * *

(f) Schools: Complaints involving the school are outside the jurisdiction of the Commission. But with the concurrence of the Director and the Superintendent, the Commission can play a role.

1. A complainant may be more comfortable bringing their Complaint to the Commission.
2. Provide the complainant with guidance as to how to address its Complaint.
3. Convey information or a unique perspective to the schools regarding the Complaint of which the schools may be unaware.
4. Any other role the Director and Superintendent may assign to the Commission.

(iii) Log in Complaints – monitor trends and convey to Director and the public what it is seeing and work with the Director to reduce or eliminate violations of rights.

(C) Additional ways the Commission carries out its mission

ARTICLE 31

PETITIONER MOTION

FOURTH REVISED DRAFT

MOVED: To amend the Town's General Bylaw Section 3.14 with the following (additions underlined and deletions struck):

ARTICLE 3.14
COMMISSION FOR DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS AND OFFICE OF DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This ~~By-law~~Bylaw hereby establishes the Commission for Diversity, Equity, Inclusion, and Community Relations ("Commission") and the Office of Diversity, Equity, Inclusion, and Community Relations (the "Diversity Office").

(A) Brookline Values.

Because the Town of Brookline values diversity, equity, and inclusion and amicable community relations based on those values in and for the Brookline community, the Commission, in coordination with the Diversity Office, shall work to support a welcoming environment by modeling and encouraging civility, kindness, cooperation, tolerance, and respect among and by all persons~~, including Town 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, accountability, 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 diversity, equity, and inclusion. The Town believes that diversity and inclusion based on equity 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 diversity and inclusion based on equity is, therefore, a critically important government interest of the Town.

Inclusion based on equity means actively pursuing goals of including, integrating, engaging, and welcoming into the community on an equitable basis all persons, residents or non-residents, 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 whether they are a member of a Brookline Protected Class; (2) the substance of community is the recognition of human rights principles as applicable to all persons; (3) justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons; and (4) the commitment of the Town to these principles requires vigorous affirmative steps to carry out both the word and the spirit of the foregoing.

(B) The Commission.

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 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 appoint the Chair of the Commission and select ~~one~~a member of ~~its members~~the Select Board to serve *ex officio* as a nonvoting member of the Commission. A quorum of the Commission shall consist of a majority of the voting 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~~Bylaw. All Commissioners shall serve without compensation.

In the event of discontinuance of the service of a Commissioner due to death, resignation, or non-residency in the Town, 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.

(C) Definitions.

(i) "Complaint" shall mean a written or oral allegation of an act of Discrimination or made to the Director or other Complaint recipient listed in rules or procedures issued pursuant to Section 3.14.2(G)(iii).

(ii) "Discrimination" shall mean invidious adverse differential treatment or impact based on membership in a Brookline Protected Class or violation of rights under federal, state, or local laws that prohibit discrimination.

(iii) "Plausibly Valid" shall mean a Complaint that presents a plausibly valid basis for action by the Town because it (a) alleges a significant harm to the complainant, (b) has a physical nexus with the Town of Brookline, (c) relates to a matter that is within the legal authority of a municipal government to address, (d) is not exclusively within the authority of another governmental or non-governmental body, and (e) is subject to this Bylaw and within the authority of the Director to manage.

(iv) "Town Employee" shall have the meaning given to "public employee" by General Laws, Ch. 258, §1.

SECTION 3.14.2 APPOINTMENT~~, ROLES, JURISDICTION,~~ AND RESPONSIBILITIES OF THE DIRECTOR

(A) The Diversity Office shall be led by a professional in the field of human relations, who shall be the Director of the Diversity Office (the "Director"). The Director shall also be professionally trained in matters of civil and human rights, community relations, and dispute resolution. The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. 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 have authority to bring matters directly to the Select Board, through the Chair of the Select Board if in the

Director's professional judgement such matter needs the direct attention of the Select Board. If feasible, the Director shall consult with Town Counsel before taking a matter to the Select Board.

(B) The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this ~~By-law~~Bylaw or any other Bylaw giving the Commission responsibilities.

(C) The Director's ~~roles~~responsibilities shall include ~~acting~~serving as the Town's chief diversity officer ~~and as an ombudsperson for Town employees or residents~~ to carry out the duties below in Section 3.14.2(F) and (G) and the duties previously assigned to the Commission by the former Sections 3.14.3(A)(v) and (vii) in accordance with Section 3.14.1(A). The ~~Director's role generally~~Director shall ~~be to help~~carry out these responsibilities with the goal of helping to create the policies and practices necessary for the Town to further evolve into a community based on the values of diversity, equity, and inclusion~~. That role~~ , and to help ensure that all residents and visitors enjoy the benefits of those values. To carry out those responsibilities, the Director shall ~~include~~ (1) ~~to provide a forum(s) for~~ develop in the Diversity Office the skills and resources required to facilitate the harmonious resolution of ~~complaints and disputes~~incidents and Complaints arising from events occurring in Brookline, (2) ~~to~~ investigate ~~complaints brought to the Director and to~~ Complaints, determine whether they are Plausibly Valid, and devise ~~a plan to resolve the complaints that are deemed to present plausibly valid issues for Town action~~Resolution Plans for Plausibly Valid Complaints or ~~make recommendations~~ recommend solutions to the appropriate Town authorities, (3) ~~to~~ find and exercise appropriate remedies for such ~~plausibly valid complaints of discrimination or inappropriate or troublesome behavior occurring in Brookline and experienced by a resident or visitor to the Town and to provide~~ Plausibly Valid Complaints and provide a means to address such ~~complaints and disputes~~Complaints in a non-adversarial manner, where possible, (4) ~~to~~ guide residents and others to the appropriate adversarial forums when necessary or preferred to resolve their ~~complaints or disputes~~Complaints, and (5) ~~to~~ address systemic issues in Town governance and operations, whether related to ~~complaints~~Complaints or not, that appear to impede diversity, equity, and inclusion and ~~good~~a harmoniously functioning community ~~relations~~.

(D) When preparing the Town's budget, there should be included a reasonable line item at an appropriate location in the operating budget to be used by the Director and Town Counsel to engage independent professional assistance, if necessary and appropriate, to carry out the Director's investigatory duties described below~~, to avoid *ad hoc* budget transfers to cover such costs and to make the costs of this function transparent.~~. The Director shall consult with Town Counsel in identifying and engaging such professional assistance. In an appropriate case, the Director and Town Counsel may select a member of Town Counsel's office to serve as an independent fact finder. In addition, the Director's department budget shall also include line items in a sufficient amount to acquire resources and materials necessary to carry out the Director's dispute resolution and community and human relations responsibilities.

(E) The Director shall work with Town Counsel on matters that raise legal issues, such as enforcement of federal, state, or local civil rights laws or regulations, Open Meeting or Public Records laws, the legal authorities or duties of the Director or the Commission, or the engagement of independent investigators or fact finders.

(F) General Responsibilities and Powers.

~~I.~~(i) The Director shall use the staff and resources of the Diversity Office, as appropriate, to provide information, guidance, and dispute resolution services (including restorative justice) to all persons who ~~believe that they have been discriminated against or treated unfairly in the Town, for any reason, including (1) their membership in a Brookline Protected Class, (2) in relation to Fair Housing laws, (3) in connection with procurement or contracting with the Town, (4) in connection with interactions with businesses or~~

~~institutions in the Town, or (5) in connection with their interactions with the Town and/or employees of the Town.~~allege that they have been subjected to Discrimination and whose Complaints are within the authority of the Director. The Director may, with the agreement of the parties, use the resources of the Diversity Office to resolve a ~~complaint~~Complaint without further investigation. But, when necessary, the Director shall investigate ~~complaints~~Complaints pursuant to Section 3.14.2(G)(iv)(d) or provide general information on the use of the services of other appropriate bodies, such as the Massachusetts Commission Against Discrimination ("MCAD"), the federal Equal Employment Opportunity Commission ("EEOC"), ~~complaint procedures using the Police Civilian Complaint form, complaint procedures of the Human Resources Departments, or a Town employee complainant's rights under applicable collective bargaining agreements.~~the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers or the power to impose penalties. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide any further legal advice or express an opinion, before an investigation, as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any legal proceedings. In an appropriate situation, the Director may also ~~call upon~~assist a complainant to seek the mediation or conflict resolution services of agencies such as the Community Relations Service of the U.S. Department of Justice ("CRS").

~~II.~~(ii) ~~To~~The Director shall work with all Town departments and offices, including the Public Schools of Brookline, independent bodies, such as the Housing Authority and Library, community nonprofits, businesses, houses of worship, and individuals, including the elderly and youth, to facilitate good community relations, communication, and respectful human interactions between and among all persons.

~~III.~~(iii) With the advice and counsel of the Commission, Town Counsel, the ~~Human Resources~~H.R. Director, the Human Resources Board, the Chief Procurement Officer, the Council on Aging, and any other relevant Town department, the Director shall prepare and submit to the Select Board a recommended diversity, equity, and inclusion statement and policy for the Town ("DEI Policy") and periodically review and update the DEI Policy if necessary. The DEI Policy shall incorporate, by reference, existing or newly promulgated Town policies, including the Policy Against Discrimination, Sexual Harassment and Retaliation and other Town policies related to equal employment opportunity and affirmative action, procurement, the Americans with Disabilities Act, and other applicable policies. The DEI Policy shall also give guidance on recruitment, hiring, retention, training, and promotion of Town ~~employees~~Employees, and propose steps to make improvements to ensure a work environment that is friendly to diversity, equity, and inclusion. The Director shall work with the Town Administrator, Town Counsel, and ~~the Human Resources Office~~H.R. on the implementation of the DEI Policy.

(iv) At the request of the Town Administrator, the Director shall use the resources of the Diversity Office, or assist other Town Departments and offices, to resolve incidents and disputes occurring in the Town that risk impeding harmonious community relations.

~~35.)~~(G) Complaint Responsibilities.

~~-~~(i) In general, the Director ~~may~~ shall be the primary office to receive ~~complaints~~Complaints concerning allegations of ~~discrimination or bias or inappropriate or hurtful actions or behavior or actions or behavior that disrupt amicable community relations.~~Discrimination. The Director may ~~(1)~~ receive ~~complaints~~such Complaints from

complainants directly or through the Commission ~~or (2) receive referrals of complaints from~~. If the Commission or another Town ~~departments, the school department, the library~~official or office, other than H.R., Town Counsel, or the ~~housing authority, when all parties agree and~~ Police Department, receives a Complaint, they shall forward it to the ~~parties and the agencies believe that the Director's training and resources can best provide resolution of complaints or disputes arising in those departments in a manner that is acceptable to both parties and that maintains the expectations of confidentiality of the parties.~~Director. Complaints involving Town ~~employees~~Employees or Town Employees of the schools shall be handled by the Director pursuant to Section 3.14.2(G)(v). ~~The Director, at any point, with the agreement of the parties, can resolve a complaint using the staff, skills, and resources of the Diversity Office.~~

~~-~~(ii) The Director may receive ~~complaints~~Complaints anonymously for the purpose of informally resolving the ~~complaint~~Complaint with the Town Administrator, the Superintendent, a department head, the ~~executive~~ director of a Town related agency, such as the ~~library~~Library or ~~housing authority~~Housing Authority, or the governing body of a non-Town entity.

~~-~~(iii) The Director with the assistance of Town Counsel and the Commission shall develop official forms for filing ~~complaints~~Complaints under this ~~bylaw~~Bylaw and any necessary rules ~~and~~or procedures for the receipt of such ~~complaints~~Complaints, which may include availability of oral Complaints, statutes of limitations not included in this Bylaw, guidance to Town departments as to how to handle complaints that inadvertently are presented to them, and other details of the ~~complaint processes~~Complaint process under this ~~bylaw.~~Bylaw.

~~-~~(iv) Upon receipt of a ~~complaint~~Complaint, the Director shall first determine whether it is a Plausibly Valid complaint and then take the following actions:

~~o~~a. If, ~~after~~upon the Director's initial review, or after an investigation, or at any point in the process, the Director determines that the ~~complaint does~~Complaint is not, on its face, ~~present a plausibly valid basis for action by the Town~~Plausibly Valid and gives the complainant written notice of that determination, the complainant may appeal to the Commission within 30 days of receiving such notice. ~~The~~If the Director finds that a Complaint is Plausibly Valid and gives the respondent written notice of that determination, the respondent may also appeal to the Commission within 30 days of receiving such notice. In either event, the Commission shall handle such appeal as set forth in Section 3.14.3(B)(i).

~~▪~~1. If the Commission pursuant to Section 3.14.3(B)(i) sends a ~~rejected complaint~~Complaint back to the Director for reconsideration, the Director shall consider the Commission's reasons and either engage an independent investigator who shall make its report to the Director and the Town Administrator or take one of the actions listed in Section 3.14.2(G)(ii)(d).

~~▪~~2. If after an investigation pursuant to Section 3.14.2(G)(~~ii~~iv)(d), the Director concludes that ~~the complaint still does not present a valid basis for Town action~~its determination was correct, the Director shall report that conclusion to the Commission and the reasons for the conclusion, whereupon the ~~complaint~~Complaint shall be deemed resolved for purposes of ~~the complaint processes of the Commission and the Director~~this Bylaw, unless the Select Board, at the written request of the Commission, by

majority vote of the Select Board, ~~finds that the complaint does, in their opinion, present a plausibly valid issue for consideration by the Town~~determines that the Complaint is, in their opinion, either Plausibly Valid, in which case the Director shall treat the Complaint in accordance with Section 3.14.2(G)(iv)(b), (c), or (d), or not Plausibly Valid, in which case the Complaint shall be deemed resolved for purposes of this Bylaw.

~~o~~b. If the Director determines that the ~~complaint~~Complaint on its face ~~raises plausibly valid issues~~is Plausibly Valid but would be more appropriately handled by the MCAD, the EEOC, the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers, the Director shall provide the complainant with general information for filing a ~~complaint with such agency. The Director shall also explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with filing a complaint at the MCAD or with other entities.~~Complaint with such agency. In an appropriate situation, the Director may also call upon the services of the CRS.

~~o~~c. If the Director determines that the ~~complaint raises a plausibly valid issue for Town action~~Complaint is Plausibly Valid but that the Director or the Town cannot fairly, effectively, or efficiently investigate the ~~complaint~~Complaint, the Director shall work with Town Counsel to engage the services of an independent investigator to handle the ~~complaint~~Complaint or take such other action as they deem to be appropriate.

~~o~~d. If the Director determines that the ~~complaint~~Complaint presents a ~~plausibly valid~~Plausibly Valid issue for action by the Town and can be appropriately, effectively, and efficiently handled by the Director, the Director shall do the following:

- 1. First, notify the Town Administrator and if the Complaint involves a minor matter that is easily corrected by the Town Administrator, give the Town Administrator an opportunity to ~~take steps to satisfy the complainant~~do so.
- 2. Second, ~~if the Town Administrator is unable to take any steps to satisfy the complainant or the complainant is not satisfied with the steps taken by the Town Administrator, the Director shall~~ initiate an investigation of the ~~complaint~~Complaint, including interviewing any witnesses in addition to the complainant and the ~~alleged perpetrator of the behavior that is the subject of the complaint~~respondent, if possible, and examining and analyzing any relevant documents or materials ~~relevant to the complaint, and assessing the credibility of the~~ provided by the parties~~, any witnesses, and any relevant documents or materials.~~.
- 3. Following the investigation, if the Director still believes that the ~~complainant has presented an valid issue that can be addressed by the Town~~Complaint is Plausibly Valid, the Director shall develop a ~~proposed~~written plan ("Resolution Plan") for resolution of the ~~complaint~~Complaint and present it to the parties for their consideration. The

Resolution Plan shall include a resolution that the Director believes is effective and fair to all parties, including any of the following remedies or other appropriate remedies:

- A. Meeting with the ~~subject of~~complainant and the ~~complaint~~respondent to attempt an informal resolution, including with Town departments, to ~~fix~~correct problems identified in the ~~complaint~~Complaint
- B. Mediation
- C. Reconciliation
- D. Education of the parties in ways to avoid future disputes
- E. Restorative justice
- F. Referral to the Brookline police department, other law enforcement agency, or other Town department, including the Select Board, with the power to impose fines or other penalties if the ~~complaint~~Complaint relates to a violation of Town ~~bylaw~~Bylaw or state law
- G. Referral to the services, including ~~complaint~~Complaint procedures or educational, training, or community relations services offered by the MCAD, the EEOC, the CRS, the Office of Town Counsel, the Attorney General, or such other body as the Director deems appropriate. ~~The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any filing of a complaint with the MCAD or other entities.~~

e. The Director shall complete and submit to the parties the written Resolution Plan within forty-five (45) days after receiving the Complaint. If the Director needs additional time, the Director shall notify the complainant and the Commission that a longer time is needed to adequately complete this process and provide an estimate of the additional time needed.

~~e~~f. The Director shall periodically report to the Commission on the ~~complaints~~Complaints received and the disposition thereof. Such reports shall identify issues and trends or systemic problems of which the Commission should be aware and that will enable the Commission to make recommendations to the Select Board or propose appropriate Town regulation or legislation.

~~f~~g. If a person, except for ~~employees of the~~ Town Employees (with respect to ~~employees~~Town Employees, see Section 3.14.2(G)(v)), chooses to ~~bring~~present a ~~complaint~~Complaint to the Commission after seeking the services of the Director, the Director may discuss the case in general terms with the Commission for guidance, but only if there is no ongoing or threatened litigation of the issues in the ~~complaint.~~ Complaint. The Commission's sole role with respect to such complaints shall be as described in Section 3.14.3(B).

~~g~~h. The Director, after consulting with Town Counsel, shall advise complainants that they may need to seek legal advice to avoid running afoul of statutes of limitations, exhaustion

of remedies, and other procedural hurdles that they must meet to preserve their rights in the MCAD or federal or state courts while pursuing their rights under the Town's ~~complaint~~Complaint procedures.

(v) Town Employees. ~~Except with respect to complaints against~~ If the Director, the Commission, or any other Town office or official is presented with a Complaint involving Town Employees, such Complaints shall be handled as follows:

a. Town Employee versus Town Employee. (i) Complaints by Town Employees involving allegations of Discrimination by another Town ~~employee, the Director shall serve as an ombudsperson for employees of the Town who feel they have been discriminated~~Employee or the Town, shall immediately be referred to H.R. in accordance with the Town's *Policy Against Discrimination, Sexual Harassment, and Retaliation*. (ii) Complaints by Town Employees involving allegations of misconduct or mistreatment, but not alleging Discrimination, by another Town Employee or the Town shall be referred to H.R. The Director may assist H.R. in the mediation of such allegations of misconduct or mistreatment but with the guidance of Town Counsel. (iii) All allegations of Discrimination or misconduct or mistreatment shall be handled in a manner that is fully consistent with applicable collective bargaining agreements.

b. Resident or Non-Resident versus Town Employee. Complaints against a Town Employee that involve ongoing or threatened litigation shall be referred to Town Counsel. Complaints against ~~or treated unfairly in Brookline~~a Town Employee that allege Discrimination shall be referred to H.R. and Town Counsel. Complaints against a Town Employee by a resident or non-resident of the Town involving misconduct or mistreatment shall be referred to H.R. or, in the case of a civilian or sworn Town Employee of the Police Department, to the Police Complaint Process.

c. Town Employee versus a Resident or Non-Resident. A Town Employee who has a Complaint against another person who is not a Town Employee irrespective of whether based on said Town Employee's membership in a ~~Brookline~~ Protected Class ~~or other reasons.~~shall be handled by the Director. The Director ~~may attempt to mediate~~shall develop and implement a Resolution Plan for such ~~disputes or~~complaints.

d. Schools. If the Director receives a Complaint involving a Town Employee of the Schools Department, the Director shall refer ~~such employees~~it to the schools' Human Resources Office, ~~their union representative, and/or such~~ unless the Complaint involves a Town Employee and a school Town Employee, in which case it shall be referred to H.R.

e. Police Internal Procedures. The Police Chief, with respect to civilian or sworn Town Employees of the Police Department, shall not be precluded from using applicable internal police procedures, including the procedures of the Internal Affairs Office, consistent with applicable collective bargaining agreements, to resolve allegations of misconduct or mistreatment by a Town Employee in the Police Department, provided that H.R. shall be made aware of the use of such processes.

f. Timely Investigations. Any Complaints referred to H.R. shall be Investigated in accordance with the *Policy Against Discrimination, Sexual Harassment, and Retaliation* or other ~~body that~~applicable policy governing Town Employees. Both parties to a Complaint shall be entitled to a timely completion of the Investigatory Process, a failure of which shall entitle the party to submit a request to the Town Administrator and/or the Select Board for a quick resolution of such failure.

~~-~~g. Confidentiality. To the extent allowed by applicable law or legal process, the Director ~~deems appropriate and with which the complainant agrees. The Director shall~~ shall hold all ~~such~~ Town ~~employee~~Employee matters in confidence and shall respect the privacy rights or expectations of ~~any~~privacy of such individuals ~~but~~ . The Director may, however, discuss ~~with the Commission,~~ complaints in general terms, ~~the~~ without revealing a complainant's identity or identifying details, to inform the Commission about the general problems or issues that ~~such individual cases present, provided, however, doing so does not violate any person's rights to privacy or expectation of confidentiality, and further provided that there is no ongoing or threatened litigation. If an employee of the Town is accused of misconduct, including discrimination, or treating a complainant unfairly, the director shall direct the~~are presented by a complaint ~~to the Town's Human Resources Department or, in the case of a Town police officer, to the Police Complaint Procedure. The Human Resources Department can also on its own take up an allegation of misconduct by a Town employee~~or a category of Complaints.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

To implement the Mission of the Commission in accordance with Section 3.14.1(A) (Brookline Values), the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

~~•~~(A) General Responsibilities.

~~1.~~(i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the willingness and capacity of public and private institutions to respond to ~~discrimination~~Discrimination against individuals in the Town based on their membership in a Brookline Protected Class.

~~2.~~(ii) Work with the Select Board, ~~the Town's Human Resources Office,~~H.R., the schools and the School Committee, and other Town departments, commissions, boards, and committees to increase their commitments to diversity, equity, and inclusion and to take appropriate steps to increase awareness of and sensitivity to such values and to civil and human rights issues in their departments.

~~3.~~(iii) Provide advice and counsel to the Director on the preparation of the DEI Policy and on the periodic updating of the DEI Policy by the Director, as described in Section 3.14.2(F)(iii~~)~~).

~~4.~~(iv) Initiate educational programs to facilitate and inform the public of the foregoing and the Commission's and the Director's responsibilities with respect to ~~complaints~~Complaints.

(v) Develop initiatives, including educational programs, and at all times work to facilitate harmonious community relations among residents and visitors to the Town of Brookline.

~~5.~~(vi) Support the Director in carrying out the Director's role ~~as outlined in Section 3.14.2(C)~~, including by offering constructive alternative perspectives or suggestions regarding the work of the Director when appropriate.

~~•~~(B) Complaint Responsibilities

~~1.~~(i) The Commission may receive ~~complaints~~Complaints within the limits of its authority under this Bylaw that were ~~rejected~~investigated by the Director and appealed by either party to the Commission for reconsideration. The question before the Commission on appeal shall be whether ~~the complaint presents a valid basis for consideration by the Town.~~, based

solely on the Director's written file, the Director's determination was correct . Upon receiving the appeal and ~~the original complaint~~said file, the Commission ~~shall~~may assign one or two of its members to review the ~~complaint~~Complaint. The reviewing members shall review the Director's determination, review the original ~~complaint~~Complaint, interview the complainant and/or the respondent and any witnesses who consent (if necessary), and decide whether they agree with the Director's ~~rejection~~determination. The reviewing members shall then present their written conclusions to the Commission in executive session. If the Commission, after taking into consideration the conclusions of the reviewing members, agrees with the Director, the matter shall be concluded. If the Commission does not agree with the Director, the Commission shall provide the Director with a written explanation of its reason for concluding that the ~~complaint does present a plausibly valid basis for consideration by the Town~~Complaint is Plausibly Valid or not Plausibly Valid, whereupon the reconsideration of the ~~complaint~~Complaint by the Director shall be handled in accordance with Section 3.14.2(G)(iv)(a)(~~i) (ii~~1) and (2).

(ii) The Commission may receive Complaints from complainants. Such complaints shall be handled as follows:

a. Complaints against the Town~~, or~~ its agencies~~, or officials~~ concerning allegations of ~~discrimination or bias or inappropriate or hurtful actions or behavior. Complaints against Town employees~~Discrimination shall be referred to the Director and Town Counsel.

b. Complaints involving Town Employees, including Town Employees of the schools shall be handled solely ~~by the Director (see~~ in accordance with Section 3.14.2(G)(v~~)). Upon receiving an appropriate complaint, the~~).

~~2.~~c. Other complaints may be handled by the Commission ~~shall take the following actions~~as follows:

~~a.~~i. First, ~~notify the Town Administrator and give~~the Commission shall refer the ~~Town Administrator an opportunity to make corrections~~Complaint to ~~satisfy~~ the ~~complainant~~Director.

~~b.~~ii. Second, if the ~~Town Administrator is unable~~Commission believes that it can provide unique and useful information or a broader perspective to ~~take any steps to satisfy~~ the ~~complainant or~~Director, the ~~complainant is not satisfied with the steps taken by~~ Commission shall notify the Director and if the ~~Town Administrator~~Director agrees, the Commission or a working group of the Commission may (1) perform a summary review of the ~~complaint~~Complaint, including, if necessary, an interview of the complainant and/or the respondent and any witnesses and a review of any documents or materials pertinent to the complaint, (2) prepare a written report of its summary review, including ~~a report on~~ the alleged impact on the complainant of the alleged behavior or the alleged impact on the ~~alleged perpetrator of the filing of the complaint~~respondent, without stating any legal conclusions, and any unique and useful information or perspective that it believes would assist the Director or other Town office in handling the Complaint, and (3) within 90 days of the Commission's receipt of the ~~complaint~~Complaint provide its report with any recommendations to the Director and the Town Administrator, with a copy of the recommendations to the Select Board. The

Commission's recommendations should include, as appropriate, the use of the dispute resolution resources and skills of the Director.

~~c.~~iii. ~~The~~Third, the Commission may ask the Director to~~, in addition or in the alternative,~~ provide the complainant with general information on complainant's options to bring proceedings at the MCAD or other appropriate federal, state, or local agency, including the Brookline Police Department. ~~The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with filing a complaint with the MCAD or other entity. This By-law does not preclude any complainant from alternatively or additionally using other Town complaint procedures, such as the Police Department's Civilian Complaint Procedure or the Human Resources Office's procedures.~~

d. The Commission may receive a ~~complaint~~Complaint anonymously for the purpose of resolving the ~~complaint~~Complaint informally with the Director or the Town Administrator.

e. To protect all parties to a ~~complaint~~Complaint and to avoid violation of any law or regulation concerning governmental operations, the Commission should ~~work~~consult with Town Counsel when presented with a ~~complaint~~Complaint.

~~3.~~f. ~~The Commission may receive complaints against~~At the ~~public~~ request of a complainant and with the concurrence of the Superintendent, the Commission may handle a Complaint, except Complaints of Discrimination, involving the schools ~~of Brookline, directly or through the Director concerning allegations of discrimination or bias or inappropriate or hurtful actions or behavior. The Commission may not accept a complaint~~ by ~~a student or against a student but may accept a complaint by a student's parent or guardian. Upon receiving a complaint against the public schools of Brookline, the Commission's roles shall be~~: (i) ~~to serve~~serving as a neutral and knowledgeable body to which a complainant can bring their concerns, (ii) ~~to provide~~ providing guidance to the complainant as to the best way to address their concerns, (iii) ~~to use~~using the knowledge and credibility of the Commission to present concerns, information, or research to the schools of which the schools may not be aware, and (iv) ~~to perform~~performing any other role as may be agreed upon by the Director and the Superintendent. The Commission shall have no role with respect to a Complaint by a minor student or against a minor student unless the Complaint is by a minor student's parent or guardian.

~~(i) The Commission shall be limited to the following actions:~~

~~a. Notifying the Superintendent and giving the Superintendent an opportunity to make corrections to satisfy the complainant.~~

~~b. If the complainant is not satisfied with the steps taken by the Superintendent, the Commission may request that the Director, provide~~

~~the complainant with general information on complainant's options to bring proceedings at the MCAD or other appropriate federal, state, or local agency or bring an appropriate matter to the attention of the state Department of Elementary and Secondary Education. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide legal advice or express an opinion as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any filing with the MCAD or other entity.~~

~~c. The Commission may also provide the complainant with information on complainant's options to ask the Superintendent to utilize the dispute resolution resources of the Diversity Office or an outside body.~~

~~d. The Commission may receive a complaint anonymously for the purpose of resolving the complaint informally with the Superintendent.~~

~~a.~~g. To protect all parties to a ~~complaint~~Complaint and to avoid violation of any law or regulation concerning governmental operations or the rights of students or educational personnel, including federal laws governing student privacy and regulations of the Department of Elementary and Secondary Education and the local regional office of the Office of Civil Rights within the U.S. Department of Education, the Commission should work with Town Counsel when presented with a ~~complaint against~~Complaint involving the schools.

~~4.~~(iii) The Commission shall develop, to the extent ~~permissible~~permitted by law, a log for the ~~complaints~~Complaints referred to in Section 3.14.3(B), provided that such publication contains public record information only and does not violate anyone's right to privacy or expectations of confidentiality, and the Commission shall compile and maintain statistical records regarding the nature of ~~complaints~~Complaints, types of incidents, number and types of ~~complaints~~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~~Bylaw. With respect to any complaints or patterns of ~~complaints~~Complaints involving the civil or human rights of any persons, work with the Director~~, in such officer's role as ombudsperson,~~ to facilitate changes that will reduce and eliminate violations of rights.

~~(ii) Develop official forms for the filing of complaints under Section 3.14.3(B) and procedures for the receipt of such complaints and follow-up by the Commission to the extent not inconsistent with the procedures set forth in Section 3.14.3(B).~~

~~5.~~(iv) 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~~or as described in Bylaw 5.5.

(C) To carry out the foregoing responsibilities, the Commission is authorized and encouraged to work with community organizations with diverse viewpoints and missions, government and nonprofit agencies, educational institutions, persons with relevant and diverse expertise, and others to:

~~1.~~(i) Institute and assist in the development of (a) educational and training programs to further community relations ~~and~~, civil discourse, and mutual respect, especially by and among Town Employees, and resident volunteers, (b) a welcoming community environment for residents, non-residents, and persons who are members of a Brookline Protected Class, (c) understanding and

respect among all ~~persons in the Town, including~~residents, non-residents, and Town ~~employees~~Employees.

~~2.~~(ii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity, equity, and inclusion, and encourage public and private agencies to respond to those youth's needs.

~~1.~~(iii) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity, equity, and inclusion, eliminate ~~discrimination~~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~~Town Employees of all departments and agencies within the Town.

~~2.~~(iv) 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 in 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.

~~3.~~(v) 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.

~~4.~~(vi) 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~~Bylaws.

(D) 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

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, equity, 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 receives. If such complaints fall within the purview of the Superintendent of Schools, the Superintendent shall also immediately be notified.~~ All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning ~~such complaints~~any 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 H.R. 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, and the Trustees of the Brookline Housing Authority detailing its activities and any research or information gathering related to its areas of responsibility or expertise and the results thereof. This report shall include (i) a review of the implementation of the DEI 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 H.R. Director ~~of Human Resources~~, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the implementation and achievement of the Commission's Goals and the DEI 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~~August 1, ~~2023~~2024, and at least every five years thereafter, the Commission shall review this Bylaw and any other related Town ~~by-laws~~Bylaws, in consultation with other pertinent ~~departments, and~~departmentsand 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~~proposed changes ~~no~~and present those changes as Warrant Articles to Town Meeting at the fall Special Town Meeting or later ~~than February 1, 2024~~if necessary.

SECTION 3.14.8 EFFECTIVE DATE

The amendments to Bylaw Section 3.14 made by this Warrant Article, if adopted by the fall 2022 Special Town Meeting, shall become effective January 1, 2023.

SECTION 3.14.8 SEVERABILITY

The provisions of this ~~By-law~~Bylaw 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 APPLICATION OF THIS ~~BY-LAW~~ BYLAW

Should any remedies in this ~~By-law~~Bylaw 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.~~22122~~

ARTICLE 31

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 31 as amended by a vote of 20 in favor, none opposed, with 2 abstentions.

Executive Summary	The absence of Favorable Action by the May 2022 Annual Town Meeting on Warrant Articles 12[1] and 13[2] did not obviate the need for a reasonable and workable complaint process regarding discrimination, to replace the current bylaw. Article 31 is submitted by petitioners Greene, Rosenthal and Daly Cavanaugh to meet that need. 1 - "Amend Article 3.14 of the Town's General By-Laws to revise the discrimination complaint process," submitted by Sandy Batchelder on behalf of the CDICR, with Mariah Nobrega and Deborah Brown. 2 - "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," submitted by Sandy Batchelder on behalf of the Diversity Commission, with Mariah Nobrega and Deborah Brown.
Voting Yes will...	Amend Bylaw Article 3.14 to reverse the complaint process authority of the Commission on Diversity, Inclusion and Community Relations (the "Diversity Commission," or the "Commission") and the related Office (the "Diversity Office," or the "Office"), established by vote of Town Meeting in 2019[3], and which became effective in 2022. Complaints involving Town or School employees would no longer be investigated by the Diversity Commission or the Diversity Office. 3 - 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," sponsored by Arthur Wellington Conquest III.
Voting No will...	Maintain the current authority of the Diversity Commission to investigate and reach conclusions on complaints alleging discrimination, including those involving School and Town employees.
Financial impact	There are no apparent direct financial implications.

Legal implications	The proposed bylaw amendment would eliminate potentially duplicative complaint investigations and findings. Complaints involving Town employees would be reviewed and investigated, as currently is the case, by Human Resources; complaints involving School employees would be reviewed and investigated, as currently is the case, by the Schools' Human Resources office; and, in the case of complaints involving police officers, additionally by the police complaint procedure. They would not, at the same time or sequentially, be reviewed or investigated by the Diversity Commission or the Diversity Office.

Introduction — including a brief history of Bylaw Article 3.14

Bylaw Article 3.14 was established in its current form (but for the 2019 amendment) by vote of Town Meeting in 2014[1]. Passage of the Bylaw established a newly formulated Diversity Commission and related Office, replacing the Human Relations/Youth Services Commission ("HR/YSC"). Under the Bylaw as passed in 2014, the Commission and the Office had (unlike the HR/YSC) no authority to investigate complaints of discrimination and issue findings. (Note: At Town Meeting in 2014, no one could recall a case where the HE/YSC had ever investigated a discrimination case or issued a finding.)

[1] Article 10, "Amendment to Article 3.14 of the Town's By-Laws -- revocation of the current 'Division of Human Relations – Youth Resources' and creation of a new 'Diversity, Inclusion and Community Relations Commission and Department,' submitted by the Selectmen's [sic] Diversity, Inclusion, and Affirmative Action Committee.

In 2019, Bylaw Article 3.14 was amended by vote of Town Meeting (despite flaws[2] which were well-articulated at the time) to give the Diversity Commission and/or the Office authority to "investigate complaints of discrimination within the town, prepare written findings, and recommend appropriate action." The 2019 amendment passed Town Meeting with a one-year effectiveness delay, later amended to two years, with the understanding that the Diversity Commission would propose a viable discrimination complaint procedure amendment before the 2019 amendment went into effect.

The Diversity Commission's proposal, the work of a committee appointed by the Diversity Commission, came to Town Meeting in May 2022, as Warrant Article 12. The proposal included a number of contentious provisions, among them the granting of subpoena power and the authority to impose fines, to an appointed complaint committee established pursuant to the proposed amended bylaw.[3] Article 12 also included detailed complaint procedure processes. After considerable debate, and consistent with the recommendations of the Advisory Committee, Select Board, and CTOS, the subject

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[2] "[Diversity Commission] members also expressed the view that they did not have the necessary background to effectively carry out the proposed changes." (11/99 Combined Reports, page 24-8); "The Select Board is concerned that asking volunteer town residents to serve in this capacity would open [Diversity Commission] members up to liability and also provide a contradiction by asking members to be both advocate and investigator." "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 cautions that were articulated in 2014 about giving a volunteer commission quasi-legal powers remain valid." (11/99 Combined Reports, Supplement No. 1, page 1); "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." (Supplement No. 2, Page 2); "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." (Supplement No. 2, Page 3); "Some members [of the School Committee] expressed concern about the Warrant Article's applicability to children in the schools." (Supplement No. 3, Page 1);

[3] "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.' (Combined Reports, Page 12-16); "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." (Combined Reports, Page 12-18); "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." (Combined Reports, Supplement No. 2, Page 2); "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." (Supplement No. 2, Page 4);

matter of Article 12 was referred back to the Diversity Commission for further review and revision. Shortly thereafter, the 2019 amendment (still with its well-articulated flaws) went into effect. Essentially, Town Meeting voted to allow the time-delayed, flawed, 2019 amendment to take effect, rather than adopt the 2022 Diversity Commission proposal.

Following referral, the Diversity Commission stated that it would simply resubmit the 2022 article to a future Town Meeting, and more particularly, the May 2023 Annual Town Meeting, which would allow for better marketing of the article and perhaps (following the 2023 town election) a more favorable Town Meeting. Learning of the intent of the Commission to simply resubmit its proposal without substantial, if any, change, petitioners decided to propose a bylaw amendment they felt would correct the perceived flaws in the current bylaw (i.e., Bylaw Article 3.14 as amended by Town Meeting in 2019).

Petitioners argue that a clear, viable process for resolving complaints of discrimination is needed. Prior to the 2019 amendment to Bylaw Article 3.14 (adopted with known flaws, and which only recently went into effect) we had such a process with respect to Town/School employees. CDICR's proposed "fix," was rejected by Town Meeting last May and they are not expected to offer any new prospective. Petitioners brought Article 31 in order to reverse the flawed provisions of the 2019 amendment, while at the same time, enhance the ability for the Diversity Office to resolve issues not involving Town/School employees.

Discussion

The Advisory Committee considered the unanimous (5-0) recommendation of No Action of the Advisory Committee Ad Hoc Subcommittee charged with reviewing Article 31, and, in particular, the following:

(i) Testimony by members of the Diversity Commission that stressed the lack of "teeth" in the Bylaw amendment proposed by Article 31, in particular, subpoena power and the authority to impose fines.

(ii) The broad framework of the Article 31 petitioners' proposed changes, i.e., limiting the authority of the Diversity Commission and the Diversity Office to investigate complaints, and in particular with respect to complaints involving Town or School employees, while at the same time;

(iii) Expanding the scope of the Diversity Commission's and (more significantly) the Office's authority to investigate non-discrimination complaints consistent with the Office's community relations role.

The Advisory Committee agreed that multiple, and duplicative pathways for the review of discrimination complaints were problematical, in no small part because of the large number of employees subject to collective bargaining, and because of the inherent legal exposure to the Town of potentially having conflicting testimony and conflicting findings in the same case. Further, the Advisory Committee was in favor of limiting the authority of the Diversity Commission and the Office, but concluded that a modest and restricted expansion of authority, specifically related to serious incidents or conflicts that disturb peaceful community relations, and exercised at the request or with the approval of the Town Administrator, were within the charter of the Commission and the Office, and, accordingly, are an appropriate provision of Bylaw Article 3.14.

The Article underwent several changes in the interest of clarification or to otherwise better define the role of the Diversity Office in addressing non-employee complaints. The basic framework and objective of the Article remains unchanged.

Conclusion

Most significantly, Article 31, as amended, would eliminate current potentially duplicative complaint investigations and findings. Complaints involving Town employees would be reviewed and investigated, as currently is the case, by Human Resources, by the Schools, or, in the case of complaints involving police officers, through the police complaint procedure. Those reviews would be exclusive to the reviewing body, avoiding the pitfalls of multiple, parallel or sequential investigations and findings.

Separately, the Town currently has no designated authority to receive complaints related to community tensions. With "community relations" fundamental to the charter of the Commission and the Office, and with the skills necessary to help resolve issues causing or related to community disruption resident in the Office, granting such authority in cases deemed significant to the wellbeing of the town and its residents, is considered by the Advisory Committee to be both appropriate and necessary.

Regarding the objections of the Diversity Commission (which is recommending No Action on Article 31, *despite not having seen the Advisory Committee's amended motion),* Town Meeting referred their last proposal back to them in order to resolve well-articulated flaws. Given their stated intent to bring essentially the same proposal back to Town Meeting in May 2023, despite the will of Town Meeting to the contrary, the Advisory Committee sees little reason for Town Meeting to not act on Article 31, as amended, now.

Meeting Recording: https://brooklinema.zoomgov.com/rec/share/49RHsUe6oT-jAdS4gam46X4RH3cLKcAMC730vfIGkAQuFuICUG450xHXJWuD2KDZ.MEGFIoZm2kh95535

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 31, as amended, by a vote of 20-0-2. A clean version of the amended motion is shown below. Following the vote summary table we include an appendix indicating the differences between the amended motion and the current bylaw.

Amended Motion under Article 31

VOTED: That the Town amend the Town's General Bylaw Section 3.14 with the following:

ARTICLE 3.14
COMMISSION FOR DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS
AND
OFFICE OF DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE
This Bylaw hereby establishes the Commission for Diversity, Equity, Inclusion, and Community Relations ("Commission") and the Office of Diversity, Equity, Inclusion, and Community Relations (the "Diversity Office").

(A) Brookline Values.
Because the Town of Brookline values diversity, equity, and inclusion and amicable community relations based on those values in and for the Brookline community, the Commission, in coordination with the Diversity Office, shall work to support a welcoming environment by modeling and encouraging civility, kindness, cooperation, tolerance, and respect among and by all persons, and by advancing, promoting, and advocating for the human and civil rights of all through education, awareness, outreach, accountability, and advocacy.
The Commission and the Town shall strive for a community characterized by the values of diversity, equity, and inclusion. The Town believes that diversity and inclusion based on equity will provide opportunities and incentives

to all to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, including town government; and that diversity and inclusion based on equity is, therefore, a critically important government interest of the Town.

Inclusion based on equity means actively pursuing goals of including, integrating, engaging, and welcoming into the community on an equitable basis all persons, residents or non-residents, 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 whether they are a member of a Brookline Protected Class; (2) the substance of community is the recognition of human rights principles as applicable to all persons; (3) justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons; and (4) the commitment of the Town to these principles requires vigorous affirmative steps to carry out both the word and the spirit of the foregoing.

(B) The Commission.

The Commission shall consist of fifteen (15) residents, who shall be called Commissioners. Commissioners shall be appointed by the Select Board and 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 appoint the Chair of the Commission and select a member of the Select Board to serve *ex officio* as a nonvoting member of the Commission. A quorum of the Commission shall consist of a majority of the voting 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 Bylaw. All Commissioners shall serve without compensation.

In the event of discontinuance of the service of a Commissioner due to death, resignation, or non-residency in the Town, 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.

(C) Definitions.

(i) "Complaint" shall mean a written or oral allegation of an act of Discrimination or made to the Director or other Complaint recipient listed in rules or procedures issued pursuant to Section 3.14.2(G)(iii).

(ii) "Discrimination" shall mean invidious adverse differential treatment or impact based on membership

in a Brookline Protected Class or violation of rights under federal, state, or local laws that prohibit discrimination.

(iii) "Plausibly Valid" shall mean a Complaint that presents a plausibly valid basis for action by the Town because it (a) alleges a significant harm to the complainant, (b) has a physical nexus with the Town of Brookline, (c) relates to a matter that is within the legal authority of a municipal government to address, (d) is not exclusively within the authority of another governmental or non-governmental body, and (e) is subject to this Bylaw and within the authority of the Director to manage.

(iv) "Town Employee" shall have the meaning given to "public employee" by General Laws, Ch. 258, §1,

SECTION 3.14.2 APPOINTMENT AND RESPONSIBILITIES OF THE DIRECTOR

(A) The Diversity Office shall be led by a professional in the field of human relations, who shall be the Director of the Diversity Office (the "Director"). The Director shall also be professionally trained in matters of civil and human rights, community relations, and dispute resolution. The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. 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 have authority to bring matters directly to the Select Board, through the Chair of the Select Board if in the Director's professional judgement such matter needs the direct attention of the Select Board. If feasible, the Director shall consult with Town Counsel before taking a matter to the Select Board.

(B) The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this Bylaw or any other Bylaw giving the Commission responsibilities.

(C) The Director's responsibilities shall include serving as the Town's chief diversity officer to carry out the duties below in Section 3.14.2(F) and (G) and the duties previously assigned to the Commission by the former Sections 3.14.3(A)(v) and (vii) in accordance with Section 3.14.1(A). The Director shall carry out these responsibilities with the goal of helping to create the policies and practices necessary for the Town to further evolve into a community based on the values of diversity, equity, and inclusion, and to help ensure that all residents and visitors enjoy the benefits of those values. To carry out those responsibilities, the Director shall (1) develop in the Diversity Office the skills and resources required to facilitate the harmonious resolution of incidents and Complaints arising from events occurring in Brookline, (2) investigate Complaints, determine whether they are Plausibly Valid, and devise Resolution Plans for Plausibly Valid Complaints or recommend solutions to the appropriate Town authorities, (3) find and exercise appropriate remedies for such Plausibly Valid Complaints and provide a means to address such Complaints in a non-adversarial manner, where possible, (4) guide residents and others to the appropriate adversarial forums when necessary or preferred to resolve their Complaints, and (5) address systemic issues in Town governance and operations, whether related to Complaints or not, that appear to impede diversity, equity, and inclusion and a harmoniously functioning community.

(D) When preparing the Town's budget, there should be included a reasonable line item at an appropriate location in the operating budget to be used by the Director and Town Counsel to engage independent professional assistance, if necessary and appropriate, to carry out the Director's investigatory duties described below. The Director shall consult with Town Counsel in identifying and engaging such professional assistance. In an appropriate case, the Director and Town Counsel may select a member of Town Counsel's office to serve as an independent fact finder. In addition, the Director's department budget shall also include line items in a sufficient amount to acquire resources and materials necessary to carry out the

Director's dispute resolution and community and human relations responsibilities.

(E) The Director shall work with Town Counsel on matters that raise legal issues, such as enforcement of federal, state, or local civil rights laws or regulations, Open Meeting or Public Records laws, the legal authorities or duties of the Director or the Commission, or the engagement of independent investigators or fact finders.

(F) General Responsibilities and Powers.

(i) The Director shall use the staff and resources of the Diversity Office, as appropriate, to provide information, guidance, and dispute resolution services (including restorative justice) to all persons who allege that they have been subjected to Discrimination and whose Complaints are within the authority of the Director. The Director may, with the agreement of the parties, use the resources of the Diversity Office to resolve a Complaint without further investigation. But, when necessary, the Director shall investigate Complaints pursuant to Section 3.14.2(G)(iv)(d) or provide general information on the use of the services of other appropriate bodies, such as the Massachusetts Commission Against Discrimination ("MCAD"), the federal Equal Employment Opportunity Commission ("EEOC"), the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers or the power to impose penalties. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide any further legal advice or express an opinion, before an investigation, as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any legal proceedings. In an appropriate situation, the Director may also assist a complainant to seek the mediation or conflict resolution services of agencies such as the Community Relations Service of the U.S. Department of Justice ("CRS").

(ii) The Director shall work with all Town departments and offices, including the Public Schools of Brookline, independent bodies, such as the Housing Authority and

Library, community nonprofits, businesses, houses of worship, and individuals, including the elderly and youth, to facilitate good community relations, communication, and respectful human interactions between and among all persons.

(iii) With the advice and counsel of the Commission, Town Counsel, the H.R. Director, the Human Resources Board, the Chief Procurement Officer, the Council on Aging, and any other relevant Town department, the Director shall prepare and submit to the Select Board a recommended diversity, equity, and inclusion statement and policy for the Town ("DEI Policy") and periodically review and update the DEI Policy if necessary. The DEI Policy shall incorporate, by reference, existing or newly promulgated Town policies, including the Policy Against Discrimination, Sexual Harassment and Retaliation and other Town policies related to equal employment opportunity and affirmative action, procurement, the Americans with Disabilities Act, and other applicable policies. The DEI Policy shall also give guidance on recruitment, hiring, retention, training, and promotion of Town Employees, and propose steps to make improvements to ensure a work environment that is friendly to diversity, equity, and inclusion. The Director shall work with the Town Administrator, Town Counsel, and H.R. on the implementation of the DEI Policy.

(iv) At the request of the Town Administrator, the Director shall use the resources of the Diversity Office, or assist other Town Departments and offices, to resolve incidents and disputes occurring in the Town that risk impeding harmonious community relations.

(G) Complaint Responsibilities.

(i) In general, the Director shall be the primary office to receive Complaints concerning allegations of Discrimination. The Director may receive such Complaints from complainants directly or through the Commission. If the Commission or another Town official or office, other than H.R., Town Counsel, or the Police Department, receives a Complaint, they shall

forward it to the Director. Complaints involving Town Employees or Town Employees of the schools shall be handled by the Director pursuant to Section 3.14.2(G)(v).

(ii) The Director may receive Complaints anonymously for the purpose of informally resolving the Complaint with the Town Administrator, the Superintendent, a department head, the director of a Town related agency, such as the Library or Housing Authority, or the governing body of a non-Town entity.

(iii) The Director with the assistance of Town Counsel and the Commission shall develop official forms for filing Complaints under this Bylaw and any necessary rules or procedures for the receipt of such Complaints, which may include availability of oral Complaints, statutes of limitations not included in this Bylaw, guidance to Town departments as to how to handle complaints that inadvertently are presented to them, and other details of the Complaint process under this Bylaw.

(iv) Upon receipt of a Complaint, the Director shall first determine whether it is a Plausibly Valid complaint and then take the following actions:

a. If, upon the Director's initial review, or after an investigation, or at any point in the process, the Director determines that the Complaint is not, on its face, Plausibly Valid and gives the complainant written notice of that determination, the complainant may appeal to the Commission within 30 days of receiving such notice. If the Director finds that a Complaint is Plausibly Valid and gives the respondent written notice of that determination, the respondent may also appeal to the Commission within 30 days of receiving such notice. In either event, the Commission shall handle such appeal as set forth in Section 3.14.3(B)(i).

    1. If the Commission pursuant to Section 3.14.3(B)(i) sends a Complaint back to the Director for reconsideration, the Director shall consider the Commission's reasons and either engage an independent investigator

who shall make its report to the Director and the Town Administrator or take one of the actions listed in Section 3.14.2(G)(ii)(d).

2. If after an investigation pursuant to Section 3.14.2(G)(iv)(d), the Director concludes that its determination was correct, the Director shall report that conclusion to the Commission and the reasons for the conclusion, whereupon the Complaint shall be deemed resolved for purposes of this Bylaw, unless the Select Board, at the written request of the Commission, by majority vote of the Select Board, determines that the Complaint is, in their opinion, either Plausibly Valid, in which case the Director shall treat the Complaint in accordance with Section 3.14.2(G)(iv)(b), (c), or (d), or not Plausibly Valid, in which case the Complaint shall be deemed resolved for purposes of this Bylaw.

b. If the Director determines that the Complaint on its face is Plausibly Valid but would be more appropriately handled by the MCAD, the EEOC, the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers, the Director shall provide the complainant with general information for filing a Complaint with such agency. In an appropriate situation, the Director may also call upon the services of the CRS.
c. If the Director determines that the Complaint is Plausibly Valid but that the Director or the Town cannot fairly, effectively, or efficiently investigate the Complaint, the Director shall work with Town Counsel to engage the services of an independent investigator to handle the Complaint or take such other action as they deem to be appropriate.

d. If the Director determines that the Complaint presents a Plausibly Valid issue for action by the Town and can be appropriately, effectively, and efficiently handled by the Director, the Director shall do the following:
    1. First, notify the Town Administrator and if the Complaint involves a minor matter that is easily corrected by the Town Administrator, give the Town Administrator an opportunity to do so.
    2. Second, initiate an investigation of the Complaint, including interviewing any witnesses in addition to the complainant and the respondent, if possible, and examining and analyzing any relevant documents or materials provided by the parties.
    3. Following the investigation, if the Director still believes that the Complaint is Plausibly Valid, the Director shall develop a written plan ("Resolution Plan") for resolution of the Complaint and present it to the parties for their consideration. The Resolution Plan shall include a resolution that the Director believes is effective and fair to all parties, including any of the following remedies or other appropriate remedies:
        A. Meeting with the complainant and the respondent to attempt an informal resolution, including with Town departments, to correct problems identified in the Complaint
        B. Mediation
        C. Reconciliation
        D. Education of the parties in ways to avoid future disputes
        E. Restorative justice
        F. Referral to the Brookline police department, other law enforcement agency, or other Town department,

including the Select Board, with the power to impose fines or other penalties if the Complaint relates to a violation of Town Bylaw or state law

G. Referral to the services, including Complaint procedures or educational, training, or community relations services offered by the MCAD, the EEOC, the CRS, the Office of Town Counsel, the Attorney General, or such other body as the Director deems appropriate.

e. The Director shall complete and submit to the parties the written Resolution Plan within forty-five (45) days after receiving the Complaint. If the Director needs additional time, the Director shall notify the complainant and the Commission that a longer time is needed to adequately complete this process and provide an estimate of the additional time needed.
f. The Director shall periodically report to the Commission on the Complaints received and the disposition thereof. Such reports shall identify issues and trends or systemic problems of which the Commission should be aware and that will enable the Commission to make recommendations to the Select Board or propose appropriate Town regulation or legislation.
g. If a person, except for Town Employees (with respect to Town Employees, see Section 3.14.2(G)(v)), chooses to present a Complaint to the Commission after seeking the services of the Director, the Director may discuss the case in general terms with the Commission for guidance, but only if there is no ongoing or threatened litigation of the issues in the Complaint. The Commission's sole role with respect to such complaints shall be as described in Section 3.14.3(B).
h. The Director, after consulting with Town Counsel, shall advise complainants that they may need to

seek legal advice to avoid running afoul of statutes of limitations, exhaustion of remedies, and other procedural hurdles that they must meet to preserve their rights in the MCAD or federal or state courts while pursuing their rights under the Town's Complaint procedures.

(v) Town Employees. If the Director, the Commission, or any other Town office or official is presented with a Complaint involving Town Employees, such Complaints shall be handled as follows:

a. Town Employee versus Town Employee. (i) Complaints by Town Employees involving allegations of Discrimination by another Town Employee or the Town, shall immediately be referred to H.R. in accordance with the Town's *Policy Against Discrimination, Sexual Harassment, and Retaliation*. (ii) Complaints by Town Employees involving allegations of misconduct or mistreatment, but not alleging Discrimination, by another Town Employee or the Town shall be referred to H.R. The Director may assist H.R. in the mediation of such allegations of misconduct or mistreatment but with the guidance of Town Counsel. (iii) All allegations of Discrimination or misconduct or mistreatment shall be handled in a manner that is fully consistent with applicable collective bargaining agreements.

b. Resident or Non-Resident versus Town Employee. Complaints against a Town Employee that involve ongoing or threatened litigation shall be referred to Town Counsel. Complaints against a Town Employee that allege Discrimination shall be referred to H.R. and Town Counsel. Complaints against a Town Employee by a resident or non-resident of the Town involving misconduct or mistreatment shall be referred to H.R. or, in the case of a civilian or sworn Town Employee of the Police Department, to the Police Complaint Process.

c. Town Employee versus a Resident or Non-Resident. A Town Employee who has a Complaint against

another person who is not a Town Employee irrespective of whether based on said Town Employee's membership in a Protected Class shall be handled by the Director. The Director shall develop and implement a Resolution Plan for such complaints.

d. Schools. If the Director receives a Complaint involving a Town Employee of the Schools Department, the Director shall refer it to the schools' Human Resources Office, unless the Complaint involves a Town Employee and a school Town Employee, in which case it shall be referred to H.R.
e. Police Internal Procedures. The Police Chief, with respect to civilian or sworn Town Employees of the Police Department, shall not be precluded from using applicable internal police procedures, including the procedures of the Internal Affairs Office, consistent with applicable collective bargaining agreements, to resolve allegations of misconduct or mistreatment by a Town Employee in the Police Department, provided that H.R. shall be made aware of the use of such processes.
f. Timely Investigations. Any Complaints referred to H.R. shall be Investigated in accordance with the *Policy Against Discrimination, Sexual Harassment, and Retaliation* or other applicable policy governing Town Employees. Both parties to a Complaint shall be entitled to a timely completion of the Investigatory Process, a failure of which shall entitle the party to submit a request to the Town Administrator and/or the Select Board for a quick resolution of such failure.
g. Confidentiality. To the extent allowed by applicable law or legal process, the Director shall hold all Town Employee matters in confidence and shall respect the privacy rights or expectations of privacy of such individuals. The Director may, however, discuss complaints in general terms, without revealing a complainant's

identity or identifying details, to inform the Commission about the general problems or issues that are presented by a complaint or a category of Complaints.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

To implement the Mission of the Commission in accordance with Section 3.14.1(A) (Brookline Values), the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

(A) General Responsibilities.

(i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the willingness and 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) Work with the Select Board, H.R., the schools and the School Committee, and other Town departments, commissions, boards, and committees to increase their commitments to diversity, equity, and inclusion and to take appropriate steps to increase awareness of and sensitivity to such values and to civil and human rights issues in their departments.

(iii) Provide advice and counsel to the Director on the preparation of the DEI Policy and on the periodic updating of the DEI Policy by the Director, as described in Section 3.14.2(F)(iii).

(iv) Initiate educational programs to facilitate and inform the public of the foregoing and the Commission's and the Director's responsibilities with respect to Complaints.

(v) Develop initiatives, including educational programs, and at all times work to facilitate harmonious community relations among residents and visitors to the Town of Brookline.

(vi) Support the Director in carrying out the Director's role, including by offering constructive alternative perspectives or suggestions regarding the work of the Director when appropriate.

(B) Complaint Responsibilities

(i) The Commission may receive Complaints within the limits of its authority under this Bylaw that were investigated by the Director and appealed by either party to the Commission for reconsideration. The question before the Commission on appeal shall be whether, based solely on the Director's written file, the Director's determination was correct . Upon receiving the appeal and said file, the Commission may assign one or two of its members to review the Complaint. The reviewing members shall review the Director's determination, review the original Complaint, interview the complainant and/or the respondent and any witnesses who consent (if necessary), and decide whether they agree with the Director's determination. The reviewing members shall then present their written conclusions to the Commission in executive session. If the Commission, after taking into consideration the conclusions of the reviewing members, agrees with the Director, the matter shall be concluded. If the Commission does not agree with the Director, the Commission shall provide the Director with a written explanation of its reason for concluding that the Complaint is Plausibly Valid or not Plausibly Valid, whereupon the reconsideration of the Complaint by the Director shall be handled in accordance with Section 3.14.2(G)(iv)(a)(1) and (2).

(ii) The Commission may receive Complaints from complainants. Such complaints shall be handled as follows:

a. Complaints against the Town or its agencies concerning allegations of Discrimination shall be referred to the Director and Town Counsel.
b. Complaints involving Town Employees, including Town Employees of the schools shall be handled solely in accordance with Section 3.14.2(G)(v).
c. Other complaints may be handled by the Commission as follows:
    i. First, the Commission shall refer the Complaint to the Director.
    ii. Second, if the Commission believes that it can provide unique and useful information or

a broader perspective to the Director, the Commission shall notify the Director and if the Director agrees, the Commission or a working group of the Commission may (1) perform a summary review of the Complaint, including, if necessary, an interview of the complainant and/or the respondent and any witnesses and a review of any documents or materials pertinent to the complaint, (2) prepare a written report of its summary review, including the alleged impact on the complainant of the alleged behavior or the alleged impact on the respondent, without stating any legal conclusions, and any unique and useful information or perspective that it believes would assist the Director or other Town office in handling the Complaint, and (3) within 90 days of the Commission's receipt of the Complaint provide its report with any recommendations to the Director and the Town Administrator, with a copy of the recommendations to the Select Board. The Commission's recommendations should include, as appropriate, the use of the dispute resolution resources and skills of the Director.

iii. Third, the Commission may ask the Director to provide the complainant with general information on complainant's options to bring proceedings at the MCAD or other appropriate federal, state, or local agency, including the Brookline Police Department.

d. The Commission may receive a Complaint anonymously for the purpose of resolving the Complaint informally with the Director or the Town Administrator.

e. To protect all parties to a Complaint and to avoid violation of any law or regulation concerning governmental operations, the

Commission should consult with Town Counsel when presented with a Complaint.

f. At the request of a complainant and with the concurrence of the Superintendent, the Commission may handle a Complaint, except Complaints of Discrimination, involving the schools by: (i) serving as a neutral and knowledgeable body to which a complainant can bring their concerns, (ii) providing guidance to the complainant as to the best way to address their concerns, (iii) using the knowledge and credibility of the Commission to present concerns, information, or research to the schools of which the schools may not be aware, and (iv) performing any other role as may be agreed upon by the Director and the Superintendent. The Commission shall have no role with respect to a Complaint by a minor student or against a minor student unless the Complaint is by a minor student's parent or guardian.

g. To protect all parties to a Complaint and to avoid violation of any law or regulation concerning governmental operations or the rights of students or educational personnel, including federal laws governing student privacy and regulations of the Department of Elementary and Secondary Education and the local regional office of the Office of Civil Rights within the U.S. Department of Education, the Commission should work with Town Counsel when presented with a Complaint involving the schools.

(iii) The Commission shall develop, to the extent permitted by law, a log for the Complaints referred to in Section 3.14.3(B), provided that such publication contains public record information only and does not violate anyone's right to privacy or expectations of confidentiality, 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 Bylaw. With respect to any complaints or patterns of Complaints involving the civil or human rights of any persons, work with the Director to facilitate changes that will reduce and eliminate violations of rights.

(iv) 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, or as described in Bylaw 5.5.

(C) To carry out the foregoing responsibilities, the Commission is authorized and encouraged to work with community organizations with diverse viewpoints and missions, government and nonprofit agencies, educational institutions, persons with relevant and diverse expertise, and others to:

(i) Institute and assist in the development of (a) educational and training programs to further community relations, civil discourse, and mutual respect, especially by and among Town Employees, and resident volunteers, (b) a welcoming community environment for residents, non-residents, and persons who are members of a Brookline Protected Class, (c) understanding and respect among all residents, non-residents, and Town Employees.

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

(iii) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity, equity, 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 Town Employees of all departments and agencies within the Town.

(iv) 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 in 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.

(v) 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.

(vi) 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.

(D) 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

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, equity, 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
All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning any 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 H.R. Director 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, the Board of Library Trustees, and the Trustees of the Brookline Housing Authority detailing its activities and any research or information gathering related to its areas of responsibility or expertise and the results thereof. This report shall include (i) a review of the implementation of the DEI 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 H.R. Director, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the implementation and achievement of the Commission's Goals and the DEI 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 August 1, 2024, and at least every five years thereafter, the Commission shall review this Bylaw and any other related Town Bylaws, in consultation with other pertinent departments and propose changes, if necessary. The Commission shall prepare a written report summarizing its review and proposed changes and present those changes as Warrant Articles to Town Meeting at the fall Special Town Meeting or later if necessary.

SECTION 3.14.8 EFFECTIVE DATE
The amendments to Bylaw Section 3.14 made by this Warrant Article, if adopted by the fall 2022 Special Town Meeting, shall become effective January 1, 2023.

SECTION 3.14.8 SEVERABILITY
The provisions of this Bylaw 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 APPLICATION OF THIS BYLAW

Should any remedies in this Bylaw 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 31 ADVISORY COMMITTEE VOTES

Article Description	**Amend Article 3.14 of the By-Laws to revise discrimination complaint**
AC recommendation (Favorable action unless indicated)	**20-0-2**
Ben Birnbaum	Y
Harry Bohrs	A
Cliff Brown	Y
Patty Correa	A
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y

Markus Penzel	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Amended article with redlines against the current bylaw.

ARTICLE 3.14
COMMISSION FOR DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS
AND
OFFICE OF DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This ~~By-law~~Bylaw hereby establishes the Commission for Diversity, Equity, Inclusion, and Community Relations ("Commission~~" or "CDICR~~") and the Office of Diversity,

Equity, Inclusion, and Community Relations ~~("~~(the "Diversity Office~~" or "ODICR").~~").

~~Valuing~~ (A) Brookline Values.
Because the Town of Brookline values diversity, equity, and inclusion and amicable community relations based on those values in and for the Brookline community, the Commission, in coordination with the Diversity Office, ~~aims~~shall work to support a welcoming environment by modeling and encouraging civility, kindness, 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, accountability, 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 diversity, equity, and inclusion. The Town believes that diversity and inclusion based on equity 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 diversity and inclusion based on equity is, therefore, a critically important government interest of the Town.

Inclusion ~~is defined as~~based on equity means actively pursuing goals of including, integrating, engaging, and welcoming into the community on an equitable basis all persons ~~who come in contact with the Town~~, residents or non-residents, 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~~whether they are a member of 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 both the word and the spirit of the foregoing.

(B) The Commission.

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 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 appoint the Chair of the Commission and select ~~one~~a member of ~~its members~~the Select Board to serve *ex officio* as a nonvoting member of the Commission. A quorum of the Commission shall consist of a majority of the ~~serving~~voting 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~~Bylaw. All Commissioners shall serve without compensation.

In the event of discontinuance of the service of a Commissioner due to death ~~or~~, resignation, or non-residency in the Town, 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.–

(C) Definitions.

(i) "Complaint" shall mean a written or oral allegation of an act of Discrimination or made to the Director or other Complaint recipient listed in rules or procedures issued pursuant to Section 3.14.2(G)(iii).

(ii) "Discrimination" shall mean invidious adverse differential treatment or impact based on membership in a Brookline Protected Class or violation of rights

under federal, state, or local laws that prohibit discrimination.

(iii) "Plausibly Valid" shall mean a Complaint that presents a plausibly valid basis for action by the Town because it (a) alleges a significant harm to the complainant, (b) has a physical nexus with the Town of Brookline, (c) relates to a matter that is within the legal authority of a municipal government to address, (d) is not exclusively within the authority of another governmental or non-governmental body, and (e) is subject to this Bylaw and within the authority of the Director to manage.

(iv) "Town Employee" shall have the meaning given to "public employee" by General Laws, Ch. 258, §1,

SECTION 3.14.2 ~~——~~APPOINTMENT~~, ROLES~~ AND RESPONSIBILITIES OF THE DIRECTOR ~~AND CHIEF DIVERSITY OFFICER~~

~~There shall be an Office of~~ (A) The 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~~ Office (the "Director"). The Director shall also be professionally trained in matters of civil and human rights, community relations, and dispute resolution. The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. ~~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 have authority to bring matters directly to the Select Board, through the Chair of the Select Board if in the Director's professional judgement such matter needs the direct attention of the Select Board. If feasible, the Director shall consult with Town Counsel before taking a matter to the Select Board.

(B) The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this ~~By-law~~Bylaw or any other ~~By-law~~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.~~

(C) The Director's responsibilities shall include serving as the Town's chief diversity officer to carry out the duties below in Section 3.14.2(F) and (G) and the duties previously assigned to the Commission by the former Sections 3.14.3(A)(v) and (vii) in accordance with Section 3.14.1(A). The Director shall carry out these responsibilities with the goal of helping to create the policies and practices necessary for the Town to further evolve into a community based on the values of diversity, equity, and inclusion, and to help ensure that all residents and visitors enjoy the benefits of those values. To carry out those responsibilities, the Director shall (1) develop in the Diversity Office the skills and resources required to facilitate the harmonious resolution of incidents and Complaints arising from events occurring in Brookline, (2) investigate Complaints, determine whether they are Plausibly Valid, and devise Resolution Plans for Plausibly Valid Complaints or recommend solutions to the appropriate Town authorities, (3) find and exercise appropriate remedies for such Plausibly Valid Complaints and provide a means to address such Complaints in a non-adversarial manner, where possible, (4) guide residents and others to the appropriate adversarial forums when necessary or preferred to resolve their Complaints, and (5) address systemic issues in Town governance and operations, whether related to Complaints or not, that appear to impede diversity, equity, and inclusion and a harmoniously functioning community.

(D) When preparing the Town's budget, there should be included a reasonable line item at an appropriate location in the operating budget to be used by the Director and Town Counsel to engage independent professional assistance, if necessary and appropriate, to carry out the Director's investigatory duties described below. The Director shall consult with Town Counsel in identifying and engaging such professional assistance. In an appropriate case, the Director and Town Counsel may select a member of Town

Counsel's office to serve as an independent fact finder. In addition, the Director's department budget shall also include line items in a sufficient amount to acquire resources and materials necessary to carry out the Director's dispute resolution and community and human relations responsibilities.

(E) The Director shall work with Town Counsel on matters that raise legal issues, such as enforcement of federal, state, or local civil rights laws or regulations, Open Meeting or Public Records laws, the legal authorities or duties of the Director or the Commission, or the engagement of independent investigators or fact finders.

(F) General Responsibilities and Powers.

(i) The Director shall use the staff and resources of the Diversity Office, as appropriate, to provide information, guidance, and dispute resolution services (including restorative justice) to all persons who allege that they have been subjected to Discrimination and whose Complaints are within the authority of the Director. The Director may, with the agreement of the parties, use the resources of the Diversity Office to resolve a Complaint without further investigation. But, when necessary, the Director shall investigate Complaints pursuant to Section 3.14.2(G)(iv)(d) or provide general information on the use of the services of other appropriate bodies, such as the Massachusetts Commission Against Discrimination ("MCAD"), the federal Equal Employment Opportunity Commission ("EEOC"), the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers or the power to impose penalties. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide any further legal advice or express an opinion, before an investigation, as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any legal proceedings. In an appropriate situation, the Director may also assist a complainant to seek the mediation or conflict resolution services of agencies such as the Community

Relations Service of the U.S. Department of Justice ("CRS").

(ii) The Director shall work with all Town departments and offices, including the Public Schools of Brookline, independent bodies, such as the Housing Authority and Library, community nonprofits, businesses, houses of worship, and individuals, including the elderly and youth, to facilitate good community relations, communication, and respectful human interactions between and among all persons.

(iii) With the advice and counsel of the Commission, Town Counsel, the H.R. Director, the Human Resources Board, the Chief Procurement Officer, the Council on Aging, and any other relevant Town department, the Director shall prepare and submit to the Select Board a recommended diversity, equity, and inclusion statement and policy for the Town ("DEI Policy") and periodically review and update the DEI Policy if necessary. The DEI Policy shall incorporate, by reference, existing or newly promulgated Town policies, including the Policy Against Discrimination, Sexual Harassment and Retaliation and other Town policies related to equal employment opportunity and affirmative action, procurement, the Americans with Disabilities Act, and other applicable policies. The DEI Policy shall also give guidance on recruitment, hiring, retention, training, and promotion of Town Employees, and propose steps to make improvements to ensure a work environment that is friendly to diversity, equity, and inclusion. The Director shall work with the Town Administrator, Town Counsel, and H.R. on the implementation of the DEI Policy.

(iv) At the request of the Town Administrator, the Director shall use the resources of the Diversity Office, or assist other Town Departments and offices, to resolve incidents and disputes occurring in the Town that risk impeding harmonious community relations.

(G) Complaint Responsibilities.

(i) In general, the Director shall be the primary office to receive Complaints concerning allegations of

Discrimination. The Director may receive such Complaints from complainants directly or through the Commission. If the Commission or another Town official or office, other than H.R., Town Counsel, or the Police Department, receives a Complaint, they shall forward it to the Director. Complaints involving Town Employees or Town Employees of the schools shall be handled by the Director pursuant to Section 3.14.2(G)(v).

(ii) The Director may receive Complaints anonymously for the purpose of informally resolving the Complaint with the Town Administrator, the Superintendent, a department head, the director of a Town related agency, such as the Library or Housing Authority, or the governing body of a non-Town entity.

(iii) The Director with the assistance of Town Counsel and the Commission shall develop official forms for filing Complaints under this Bylaw and any necessary rules or procedures for the receipt of such Complaints, which may include availability of oral Complaints, statutes of limitations not included in this Bylaw, guidance to Town departments as to how to handle complaints that inadvertently are presented to them, and other details of the Complaint process under this Bylaw.

(iv) Upon receipt of a Complaint, the Director shall first determine whether it is a Plausibly Valid complaint and then take the following actions:

a. If, upon the Director's initial review, or after an investigation, or at any point in the process, the Director determines that the Complaint is not, on its face, Plausibly Valid and gives the complainant written notice of that determination, the complainant may appeal to the Commission within 30 days of receiving such notice. If the Director finds that a Complaint is Plausibly Valid and gives the respondent written notice of that determination, the respondent may also appeal to the Commission within 30 days of receiving such notice. In either event, the Commission shall handle such appeal as set forth in Section 3.14.3(B)(i).

1. If the Commission pursuant to Section 3.14.3(B)(i) sends a Complaint back to the Director for reconsideration, the Director shall consider the Commission's reasons and either engage an independent investigator who shall make its report to the Director and the Town Administrator or take one of the actions listed in Section 3.14.2(G)(ii)(d).
2. If after an investigation pursuant to Section 3.14.2(G)(iv)(d), the Director concludes that its determination was correct, the Director shall report that conclusion to the Commission and the reasons for the conclusion, whereupon the Complaint shall be deemed resolved for purposes of this Bylaw, unless the Select Board, at the written request of the Commission, by majority vote of the Select Board, determines that the Complaint is, in their opinion, either Plausibly Valid, in which case the Director shall treat the Complaint in accordance with Section 3.14.2(G)(iv)(b), (c), or (d), or not Plausibly Valid, in which case the Complaint shall be deemed resolved for purposes of this Bylaw.

b. If the Director determines that the Complaint on its face is Plausibly Valid but would be more appropriately handled by the MCAD, the EEOC, the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers, the Director shall provide the complainant with general information for filing a Complaint with such agency. In an appropriate situation, the Director may also call upon the services of the CRS.
c. If the Director determines that the Complaint is Plausibly Valid but that the Director or the Town cannot fairly, effectively, or efficiently investigate the Complaint, the Director shall

work with Town Counsel to engage the services of an independent investigator to handle the Complaint or take such other action as they deem to be appropriate.

d. If the Director determines that the Complaint presents a Plausibly Valid issue for action by the Town and can be appropriately, effectively, and efficiently handled by the Director, the Director shall do the following:
    1. First, notify the Town Administrator and if the Complaint involves a minor matter that is easily corrected by the Town Administrator, give the Town Administrator an opportunity to do so.
    2. Second, initiate an investigation of the Complaint, including interviewing any witnesses in addition to the complainant and the respondent, if possible, and examining and analyzing any relevant documents or materials provided by the parties.
    3. Following the investigation, if the Director still believes that the Complaint is Plausibly Valid, the Director shall develop a written plan ("Resolution Plan") for resolution of the Complaint and present it to the parties for their consideration. The Resolution Plan shall include a resolution that the Director believes is effective and fair to all parties, including any of the following remedies or other appropriate remedies:
        A. Meeting with the complainant and the respondent to attempt an informal resolution, including with Town departments, to correct problems identified in the Complaint
        B. Mediation
        C. Reconciliation
        D. Education of the parties in ways to avoid future disputes

E. Restorative justice
F. Referral to the Brookline police department, other law enforcement agency, or other Town department, including the Select Board, with the power to impose fines or other penalties if the Complaint relates to a violation of Town Bylaw or state law
G. Referral to the services, including Complaint procedures or educational, training, or community relations services offered by the MCAD, the EEOC, the CRS, the Office of Town Counsel, the Attorney General, or such other body as the Director deems appropriate.

e. The Director shall complete and submit to the parties the written Resolution Plan within forty-five (45) days after receiving the Complaint. If the Director needs additional time, the Director shall notify the complainant and the Commission that a longer time is needed to adequately complete this process and provide an estimate of the additional time needed.
f. The Director shall periodically report to the Commission on the Complaints received and the disposition thereof. Such reports shall identify issues and trends or systemic problems of which the Commission should be aware and that will enable the Commission to make recommendations to the Select Board or propose appropriate Town regulation or legislation.
g. If a person, except for Town Employees (with respect to Town Employees, see Section 3.14.2(G)(v)), chooses to present a Complaint to the Commission after seeking the services of the Director, the Director may discuss the case in general terms with the Commission for guidance, but only if there is no ongoing or threatened litigation of the issues in the Complaint. The Commission's sole role with respect to such

complaints shall be as described in Section 3.14.3(B).

h. The Director, after consulting with Town Counsel, shall advise complainants that they may need to seek legal advice to avoid running afoul of statutes of limitations, exhaustion of remedies, and other procedural hurdles that they must meet to preserve their rights in the MCAD or federal or state courts while pursuing their rights under the Town's Complaint procedures.

(v) Town Employees. If the Director, the Commission, or any other Town office or official is presented with a Complaint involving Town Employees, such Complaints shall be handled as follows:

a. Town Employee versus Town Employee. (i) Complaints by Town Employees involving allegations of Discrimination by another Town Employee or the Town, shall immediately be referred to H.R. in accordance with the Town's *Policy Against Discrimination, Sexual Harassment, and Retaliation*. (ii) Complaints by Town Employees involving allegations of misconduct or mistreatment, but not alleging Discrimination, by another Town Employee or the Town shall be referred to H.R. The Director may assist H.R. in the mediation of such allegations of misconduct or mistreatment but with the guidance of Town Counsel. (iii) All allegations of Discrimination or misconduct or mistreatment shall be handled in a manner that is fully consistent with applicable collective bargaining agreements.

b. Resident or Non-Resident versus Town Employee. Complaints against a Town Employee that involve ongoing or threatened litigation shall be referred to Town Counsel. Complaints against a Town Employee that allege Discrimination shall be referred to H.R. and Town Counsel. Complaints against a Town Employee by a resident or non-resident of the Town involving misconduct or mistreatment shall be referred to H.R. or, in the case of a civilian or sworn Town Employee of the

Police Department, to the Police Complaint Process.

c. Town Employee versus a Resident or Non-Resident. A Town Employee who has a Complaint against another person who is not a Town Employee irrespective of whether based on said Town Employee's membership in a Protected Class shall be handled by the Director. The Director shall develop and implement a Resolution Plan for such complaints.

d. Schools. If the Director receives a Complaint involving a Town Employee of the Schools Department, the Director shall refer it to the schools' Human Resources Office, unless the Complaint involves a Town Employee and a school Town Employee, in which case it shall be referred to H.R.

e. Police Internal Procedures. The Police Chief, with respect to civilian or sworn Town Employees of the Police Department, shall not be precluded from using applicable internal police procedures, including the procedures of the Internal Affairs Office, consistent with applicable collective bargaining agreements, to resolve allegations of misconduct or mistreatment by a Town Employee in the Police Department, provided that H.R. shall be made aware of the use of such processes.

f. Timely Investigations. Any Complaints referred to H.R. shall be Investigated in accordance with the *Policy Against Discrimination, Sexual Harassment, and Retaliation* or other applicable policy governing Town Employees. Both parties to a Complaint shall be entitled to a timely completion of the Investigatory Process, a failure of which shall entitle the party to submit a request to the Town Administrator and/or the Select Board for a quick resolution of such failure.

g. Confidentiality. To the extent allowed by applicable law or legal process, the Director shall hold all Town Employee matters in

confidence and shall respect the privacy rights or expectations of privacy of such individuals. The Director may, however, discuss complaints in general terms, without revealing a complainant's identity or identifying details, to inform the Commission about the general problems or issues that are presented by a complaint or a category of Complaints.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

~~(A)~~ To implement the Mission of the Commission ~~and the Office,~~ in accordance with Section 3.14.1(A) (Brookline Values), the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

(E)

(A) General Responsibilities.

(i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the willingness and capacity of public and private institutions to respond to ~~discrimination~~Discrimination against individuals in the Town based on their membership in a Brookline Protected Class~~;~~.

(v)

(i) ~~Enhance communications across and among the community to promote awareness, understanding and the value of cultural differences, and create common ground for efforts toward~~

(i) ~~public order and social justice;~~

(ii)

(ii) Work with the Select Board, ~~the Town's Human Resources Office,~~ H.R., the schools and the School Committee, and other Town departments, commissions, boards, and committees to ~~develop~~increase their commitments ~~and meaningful~~ to diversity, equity, and inclusion and to take appropriate steps to increase

~~diversity and inclusion, and~~ awareness of and sensitivity to ~~such values and to~~ civil and human rights ~~issues in all~~their departments ~~and agencies of Town government;~~.

(iii)

(iv) Provide advice and counsel to the ~~CDO~~Director on the preparation of ~~a diversity and inclusion policy for recommendation to the Select Board~~the DEI Policy and on the periodic updating of the DEI Policy by the Director, as described in Section 3.14.2(F)(iii).

(v) Initiate educational programs to facilitate and inform the public of the foregoing and the Commission's and the Director's responsibilities with respect to Complaints.

(vi) Develop initiatives, including ~~equal employment opportunity~~educational programs, and at all times work to facilitate harmonious community relations among residents and ~~affirmative action procedures,~~visitors to the Town of Brookline.

(vii) Support the Director in carrying out the Director's role, including by offering constructive alternative perspectives or ~~amendments or revisions thereto, and make~~ suggestions ~~through~~regarding the ~~CDO to~~work of the ~~Human Resources~~ Director~~, the Human Resources Board, and the School Committee on the~~ when appropriate.

(B) ~~implementation of the diversity and inclusion policy;~~

(C)

(B) ~~Receive Complaints Against the Town, directly or through the CDO,~~Complaint Responsibilities

(i) The Commission may receive Complaints within the limits of its authority under this Bylaw that were investigated by the Director and appealed by either party to the Commission for reconsideration. The question before the Commission on appeal shall be whether, based solely on the Director's written file, the Director's determination was correct. Upon receiving the appeal and said file, the Commission may

assign one or two of its members to review the Complaint. The reviewing members shall review the Director's determination, review the original Complaint, interview the complainant and/or the respondent and any witnesses who consent (if necessary), and decide whether they agree with the Director's determination. The reviewing members shall then present their written conclusions to the Commission in executive session. If the Commission, after taking into consideration the conclusions of the reviewing members, agrees with the Director, the matter shall be concluded. If the Commission does not agree with the Director, the Commission shall provide the Director with a written explanation of its reason for concluding that the Complaint is Plausibly Valid or not Plausibly Valid, whereupon the reconsideration of the Complaint by the Director shall be handled in accordance with Section 3.14.2(G)(iv)(a)(1) and (2).

(ii) The Commission may receive Complaints from complainants. Such complaints shall be handled as follows:

a. Complaints against the Town~~,~~ or its ~~employees,~~ agencies~~, or officials~~ concerning allegations of ~~discrimination or bias from all persons who come in contact with the~~ Discrimination shall be referred to the Director and Town Counsel.

b. Complaints involving Town~~, except~~ Employees, including Town ~~employees (see~~Employees of the schools shall be handled solely in accordance with Section 3.14.2~~),~~(G)(v).

c. Other complaints may be handled by the Commission as follows:

i. First, the Commission shall refer the Complaint to the Director.

ii. Second, if the Commission believes that it can provide unique and ~~after notifying~~useful information or a broader perspective to the Director, the Commission shall notify the Director and if the Director agrees, the Commission or a working group of the Commission may (1) perform a summary review

of the Complaint, including, if necessary, an interview of the complainant and/or the respondent and any witnesses and a review of any documents or materials pertinent to the complaint, (2) prepare a written report of its summary review, including the alleged impact on the complainant of the alleged behavior or the alleged impact on the respondent, without stating any legal conclusions, and any unique and useful information or perspective that it believes would assist the Director or other Town office in handling the Complaint, and (3) within 90 days of the Commission's receipt of the Complaint provide its report with any recommendations to the Director and the Town Administrator, with a copy of the ~~Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action~~recommendations to the Select Board~~, Library Trustees or Moderator~~. The Commission's recommendations should include, as appropriate ~~within 90 days of receipt~~, the use of the dispute resolution resources and skills of the ~~complaint. The~~Director.

iii. Third, the Commission~~/CDO,~~ may ~~in addition~~ask the Director to provide the complainant with general information on complainant's options to bring proceedings at the ~~Massachusetts Commission Against Discrimination~~ MCAD 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;~~agency, including the Brookline Police Department.

(ii)

(ii) ~~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.~~

(ii)

(iii) ~~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.~~

(iii)

(iv)

d. ~~(vii)~~ The Commission may receive a Complaint anonymously for the purpose of resolving the Complaint informally with the Director or the Town Administrator.
e. To protect all parties to a Complaint and to avoid violation of any law or regulation concerning governmental operations, the Commission should consult with Town Counsel when presented with a Complaint.
f. At the request of a complainant and with the concurrence of the Superintendent, the Commission may handle a Complaint, except Complaints of Discrimination, involving the schools by: (i) serving as a neutral and knowledgeable body to which a complainant can bring their concerns, (ii) providing guidance to the complainant as to the best way to address their concerns, (iii) using the knowledge and credibility of the Commission to present concerns, information, or research to the schools of which the schools may not be aware, and (iv) performing any other role as may be agreed upon by the Director and the Superintendent. The Commission shall have no role with respect to a Complaint by a minor student or against a minor student unless the Complaint is by a minor student's parent or guardian.
g. To protect all parties to a Complaint and to avoid violation of any law or regulation concerning governmental operations or the rights of students or educational personnel, including

federal laws governing student privacy and regulations of the Department of Elementary and Secondary Education and the local regional office of the Office of Civil Rights within the U.S. Department of Education, the Commission should work with Town Counsel when presented with a Complaint involving the schools.

(iii) The Commission shall develop, to the extent ~~permissible~~permitted by law, a log for the ~~complaints~~Complaints referred to in ~~subsections (v), (vi) above,~~Section 3.14.3(B), provided that such publication contains public record information only and does not violate anyone's right to privacy or expectations of confidentiality, and the Commission shall compile and maintain statistical records regarding the nature of ~~complaints~~Complaints, types of incidents, number and types of ~~complaints~~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.~~Bylaw. With respect to any complaints or patterns of Complaints involving the civil or human rights of any persons, work with the Director to facilitate changes that will reduce and eliminate violations of rights.

(iv)

~~(iv) 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);~~

(iv)

(iv) 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~~Bylaw in relation to its Fair Housing responsibilities, ~~as~~

~~authorized by law, under By-law~~or as described in Bylaw 5.5~~;~~.

(v)

(v) ~~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;~~

(E)

(C) To carry out the foregoing responsibilities, the Commission is authorized and encouraged to work with community organizations with diverse viewpoints and missions, government and nonprofit agencies, educational institutions, persons with relevant and diverse expertise, and others to:

(i) Institute and assist in the development of (a) educational and training programs to further community relations~~ and~~, civil discourse, and mutual respect, especially by and among Town Employees, and resident volunteers, (b) a welcoming community environment for residents, non-residents, and persons who are members of a Brookline Protected Class, (c) understanding and respect among all ~~persons in the~~residents, non-residents, and Town~~, including Town employees;~~ Employees.

(ii)

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

(i)

(ii) ~~(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:~~

(iii)

(iii) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity, equity, and inclusion, eliminate ~~discrimination~~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~~Town Employees of all departments and agencies within the Town~~;~~.

(iv)

(v) 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~~in 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~~;~~.

(vi)

(vii) 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~~;~~.

(viii)

(ix) 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.~~Bylaws.

(D)

(D) ~~(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~~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, equity, 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~~any 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 H.R. 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, and the Trustees of the Brookline Housing Authority detailing its activities and any research or information gathering related to its areas of responsibility or expertise and the results thereof. This report shall include (i) a review of the implementation of the ~~diversity and inclusion policy~~DEI 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 H.R. 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~~the DEI 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~~August 1, ~~2019~~2024, and at least every five years thereafter, the Commission shall review this ~~By-law~~Bylaw and any other related Town ~~by-laws~~Bylaws, in consultation with other pertinent ~~departments, and~~ departmentsand propose changes, if necessary~~, by preparation of appropriate~~. The Commission shall prepare a written report summarizing its review and proposed changes and present those changes as Warrant Articles ~~for consideration by~~to Town Meeting~~.~~ at the fall Special Town Meeting or later if necessary.

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

The amendments~~, as indicated in strikethrough, bold and underlined,~~ to Bylaw Section 3.14 made by this Warrant Article, if adopted ~~on December 12, 2019,~~by the fall 2022

Special Town Meeting, shall become effective ~~July~~January 1, ~~2022.~~2023.

SECTION 3.14.8 ~~———~~SEVERABILITY

The provisions of this ~~By-law~~Bylaw 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~~BYLAW

Should any remedies in this ~~By-law~~Bylaw 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 31

MOTION TO REFER THE SUBJECT MATTER OF ARTICLE 31 TO THE COMMISSION FOR DIVERSITY, INCLUSION, & COMMUNITY RELATIONS OFFERED BY ALEC LEBOVITZ, TMM8, AND ROBERT LEPSON, TMM9

Be it moved that Warrant Article 31 be referred as follows:

> VOTED:
> To refer the subject matter of Article 31 to the Commission for Diversity, Inclusion, and Community Relations (CDICR) and the Complaint Process Committee thereof for further study and consideration, and to allow for resubmission to the Spring 2023 Annual Town Meeting.

ARTICLE 31

PETITIONER MOTION – CLEAN

Submitted by: Bernard Greene, Martin Rosenthal, and Nancy Daly Cavanaugh
To see if the Town will amend the Town's General Bylaw Section 3.14 with the following:

ARTICLE 3.14
COMMISSION FOR DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS
AND
OFFICE OF DIVERSITY, EQUITY, INCLUSION, AND COMMUNITY RELATIONS

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE
This Bylaw hereby establishes the Commission for Diversity, Equity, Inclusion, and Community Relations ("Commission") and the Office of Diversity, Equity, Inclusion, and Community Relations (the "Diversity Office").

(A) Brookline Values.
Because the Town of Brookline values diversity, equity, and inclusion and amicable community relations based on those values in and for the Brookline community, the Commission, in coordination with the Diversity Office, shall work to support a welcoming environment by modeling and encouraging civility, kindness, cooperation, tolerance, and respect among and by all persons, and by advancing, promoting, and advocating for the human and civil rights of all through education, awareness, outreach, accountability, and advocacy.
The Commission and the Town shall strive for a community characterized by the values of diversity, equity, and inclusion. The Town believes that diversity and inclusion based on equity will provide opportunities and incentives to all to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, including town government; and that diversity and inclusion based on equity is, therefore, a critically important government interest of the Town.
Inclusion based on equity means actively pursuing goals of including, integrating, engaging, and welcoming into the community on an equitable basis all persons, residents or non-residents, 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 whether they are a member of a Brookline Protected Class; (2) the substance of community is the recognition of human rights principles as applicable to all persons; (3) justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons; and (4) the commitment of the Town to these principles requires vigorous affirmative steps to carry out both the word and the spirit of the foregoing.
(B) The Commission.
The Commission shall consist of fifteen (15) residents, who shall be called Commissioners. Commissioners shall be appointed by the Select Board and 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 appoint the Chair of the Commission and select a member of the Select Board to serve *ex officio* as a nonvoting member of the Commission. A quorum of the Commission shall consist of a majority of the voting 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 Bylaw. All Commissioners shall serve without compensation.

In the event of discontinuance of the service of a Commissioner due to death, resignation, or non-residency in the Town, 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.

(C) Definitions.

(i) "Complaint" shall mean a written or oral allegation of an act of Discrimination or made to the Director or other Complaint recipient listed in rules or procedures issued pursuant to Section 3.14.2(G)(iii).

(ii) "Discrimination" shall mean invidious adverse differential treatment or impact based on membership in a Brookline Protected Class or violation of rights under federal, state, or local laws that prohibit discrimination.

(iii) "Plausibly Valid" shall mean a Complaint that presents a plausibly valid basis for action by the Town because it (a) alleges a significant harm to the complainant, (b) has a physical nexus with the Town of Brookline, (c) relates to a matter that is within the legal authority of a municipal government to address, (d) is not exclusively within the authority of another governmental or non-governmental body, and (e) is subject to this Bylaw and within the authority of the Director to manage.

(iv) "Town Employee" shall have the meaning given to "public employee" by General Laws, Ch. 258, §1,

SECTION 3.14.2 APPOINTMENT AND RESPONSIBILITIES OF THE DIRECTOR

(A) The Diversity Office shall be led by a professional in the field of human relations, who shall be the Director of the Diversity Office (the "Director"). The Director shall also be professionally trained in matters of civil and human rights, community relations, and dispute resolution. The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. 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 have authority to bring matters directly to the Select Board, through the Chair of the Select Board if in the Director's professional judgement such matter needs the direct attention of the Select Board. If feasible, the Director shall consult with Town Counsel before taking a matter to the Select Board.

(B) The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this Bylaw or any other Bylaw giving the Commission responsibilities.

(C) The Director's responsibilities shall include serving as the Town's chief diversity officer to carry out the duties below in Section 3.14.2(F) and (G) and the duties previously assigned to the Commission by the former Sections 3.14.3(A)(v) and (vii) in accordance with Section 3.14.1(A). The Director shall carry out these responsibilities with the goal of helping to create the policies and practices necessary for the Town to further evolve into a community based on the values of diversity, equity, and inclusion, and to help ensure that all residents and visitors enjoy the benefits of those values. To carry out those responsibilities, the

Director shall (1) develop in the Diversity Office the skills and resources required to facilitate the harmonious resolution of incidents and Complaints arising from events occurring in Brookline, (2) investigate Complaints, determine whether they are Plausibly Valid, and devise Resolution Plans for Plausibly Valid Complaints or recommend solutions to the appropriate Town authorities, (3) find and exercise appropriate remedies for such Plausibly Valid Complaints and provide a means to address such Complaints in a non-adversarial manner, where possible, (4) guide residents and others to the appropriate adversarial forums when necessary or preferred to resolve their Complaints, and (5) address systemic issues in Town governance and operations, whether related to Complaints or not, that appear to impede diversity, equity, and inclusion and a harmoniously functioning community.

(D) When preparing the Town's budget, there should be included a reasonable line item at an appropriate location in the operating budget to be used by the Director and Town Counsel to engage independent professional assistance, if necessary and appropriate, to carry out the Director's investigatory duties described below. The Director shall consult with Town Counsel in identifying and engaging such professional assistance. In an appropriate case, the Director and Town Counsel may select a member of Town Counsel's office to serve as an independent fact finder. In addition, the Director's department budget shall also include line items in a sufficient amount to acquire resources and materials necessary to carry out the Director's dispute resolution and community and human relations responsibilities.

(E) The Director shall work with Town Counsel on matters that raise legal issues, such as enforcement of federal, state, or local civil rights laws or regulations, Open Meeting or Public Records laws, the legal authorities or duties of the Director or the Commission, or the engagement of independent investigators or fact finders.

(F) General Responsibilities and Powers.

(i) The Director shall use the staff and resources of the Diversity Office, as appropriate, to provide information, guidance, and dispute resolution services (including restorative justice) to all persons who allege that they have been subjected to Discrimination and whose Complaints are within the authority of the Director. The Director may, with the agreement of the parties, use the resources of the Diversity Office to resolve a Complaint without further investigation. But, when necessary, the Director shall investigate Complaints pursuant to Section 3.14.2(G)(iv)(d) or provide general information on the use of the services of other appropriate bodies, such as the Massachusetts Commission Against Discrimination ("MCAD"), the federal Equal Employment Opportunity Commission ("EEOC"), the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers or the power to impose penalties. The Director shall explain to the complainant that neither the Director nor Town Counsel can provide any further legal advice or express an opinion, before an investigation, as to the merits of complainant's case and that the complainant may need their own legal counsel to assist with any legal proceedings. In an appropriate situation, the Director may also assist a complainant to seek the mediation or conflict resolution services of agencies such as the Community Relations Service of the U.S. Department of Justice ("CRS").

(ii) The Director shall work with all Town departments and offices, including the Public Schools of Brookline, independent bodies, such as the Housing Authority and Library, community nonprofits, businesses, houses of worship, and individuals, including the elderly and youth, to facilitate good community relations, communication, and respectful human interactions between and among all persons.

(iii) With the advice and counsel of the Commission, Town Counsel, the H.R. Director, the Human Resources Board, the Chief Procurement Officer, the Council on Aging, and any other relevant Town department, the Director shall prepare and submit to the Select Board a recommended diversity, equity, and inclusion statement and policy for the Town ("DEI Policy") and periodically review and update the DEI Policy if necessary. The DEI Policy shall incorporate, by reference, existing or newly promulgated Town policies, including the Policy Against Discrimination, Sexual Harassment and Retaliation and other Town policies related to equal employment opportunity and affirmative action, procurement, the Americans with Disabilities Act, and other applicable policies. The DEI Policy shall also give guidance on recruitment, hiring, retention, training, and

promotion of Town Employees, and propose steps to make improvements to ensure a work environment that is friendly to diversity, equity, and inclusion. The Director shall work with the Town Administrator, Town Counsel, and H.R. on the implementation of the DEI Policy.

(iv) At the request of the Town Administrator, the Director shall use the resources of the Diversity Office, or assist other Town Departments and offices, to resolve incidents and disputes occurring in the Town that risk impeding harmonious community relations.

(G) Complaint Responsibilities.

(i) In general, the Director shall be the primary office to receive Complaints concerning allegations of Discrimination. The Director may receive such Complaints from complainants directly or through the Commission. If the Commission or another Town official or office, other than H.R., Town Counsel, or the Police Department, receives a Complaint, they shall forward it to the Director. Complaints involving Town Employees or Town Employees of the schools shall be handled by the Director pursuant to Section 3.14.2(G)(v).

(ii) The Director may receive Complaints anonymously for the purpose of informally resolving the Complaint with the Town Administrator, the Superintendent, a department head, the director of a Town related agency, such as the Library or Housing Authority, or the governing body of a non-Town entity.

(iii) The Director with the assistance of Town Counsel and the Commission shall develop official forms for filing Complaints under this Bylaw and any necessary rules or procedures for the receipt of such Complaints, which may include availability of oral Complaints, statutes of limitations not included in this Bylaw, guidance to Town departments as to how to handle complaints that inadvertently are presented to them, and other details of the Complaint process under this Bylaw.

(iv) Upon receipt of a Complaint, the Director shall first determine whether it is a Plausibly Valid complaint and then take the following actions:

a. If, upon the Director's initial review, or after an investigation, or at any point in the process, the Director determines that the Complaint is not, on its face, Plausibly Valid and gives the complainant written notice of that determination, the complainant may appeal to the Commission within 30 days of receiving such notice. If the Director finds that a Complaint is Plausibly Valid and gives the respondent written notice of that determination, the respondent may also appeal to the Commission within 30 days of receiving such notice. In either event, the Commission shall handle such appeal as set forth in Section 3.14.3(B)(i).

1. If the Commission pursuant to Section 3.14.3(B)(i) sends a Complaint back to the Director for reconsideration, the Director shall consider the Commission's reasons and either engage an independent investigator who shall make its report to the Director and the Town Administrator or take one of the actions listed in Section 3.14.2(G)(ii)(d).
2. If after an investigation pursuant to Section 3.14.2(G)(iv)(d), the Director concludes that its determination was correct, the Director shall report that conclusion to the Commission and the reasons for the conclusion, whereupon the Complaint shall be deemed resolved for purposes of this Bylaw, unless the Select Board, at the written request of the Commission, by majority vote of the Select Board, determines that the Complaint is, in their opinion, either Plausibly Valid, in which case the Director shall treat the Complaint in accordance with Section 3.14.2(G)(iv)(b), (c), or (d), or not Plausibly Valid, in which case the Complaint shall be deemed resolved for purposes of this Bylaw.

b. If the Director determines that the Complaint on its face is Plausibly Valid but would be more appropriately handled by the MCAD, the EEOC, the Massachusetts Attorney General's Office, or some other agency with investigatory and prosecutorial powers, the

Director shall provide the complainant with general information for filing a Complaint with such agency. In an appropriate situation, the Director may also call upon the services of the CRS.

c. If the Director determines that the Complaint is Plausibly Valid but that the Director or the Town cannot fairly, effectively, or efficiently investigate the Complaint, the Director shall work with Town Counsel to engage the services of an independent investigator to handle the Complaint or take such other action as they deem to be appropriate.
d. If the Director determines that the Complaint presents a Plausibly Valid issue for action by the Town and can be appropriately, effectively, and efficiently handled by the Director, the Director shall do the following:
    1. First, notify the Town Administrator and if the Complaint involves a minor matter that is easily corrected by the Town Administrator, give the Town Administrator an opportunity to do so.
    2. Second, initiate an investigation of the Complaint, including interviewing any witnesses in addition to the complainant and the respondent, if possible, and examining and analyzing any relevant documents or materials provided by the parties.
    3. Following the investigation, if the Director still believes that the Complaint is Plausibly Valid, the Director shall develop a written plan ("Resolution Plan") for resolution of the Complaint and present it to the parties for their consideration. The Resolution Plan shall include a resolution that the Director believes is effective and fair to all parties, including any of the following remedies or other appropriate remedies:
        A. Meeting with the complainant and the respondent to attempt an informal resolution, including with Town departments, to correct problems identified in the Complaint
        B. Mediation
        C. Reconciliation
        D. Education of the parties in ways to avoid future disputes
        E. Restorative justice
        F. Referral to the Brookline police department, other law enforcement agency, or other Town department, including the Select Board, with the power to impose fines or other penalties if the Complaint relates to a violation of Town Bylaw or state law
        G. Referral to the services, including Complaint procedures or educational, training, or community relations services offered by the MCAD, the EEOC, the CRS, the Office of Town Counsel, the Attorney General, or such other body as the Director deems appropriate.

e. The Director shall complete and submit to the parties the written Resolution Plan within forty-five (45) days after receiving the Complaint. If the Director needs additional time, the Director shall notify the complainant and the Commission that a longer time is needed to adequately complete this process and provide an estimate of the additional time needed.
f. The Director shall periodically report to the Commission on the Complaints received and the disposition thereof. Such reports shall identify issues and trends or systemic problems of which the Commission should be aware and that will enable the Commission to make recommendations to the Select Board or propose appropriate Town regulation or legislation.

g. If a person, except for Town Employees (with respect to Town Employees, see Section 3.14.2(G)(v)), chooses to present a Complaint to the Commission after seeking the services of the Director, the Director may discuss the case in general terms with the Commission for guidance, but only if there is no ongoing or threatened litigation of the issues in the Complaint. The Commission's sole role with respect to such complaints shall be as described in Section 3.14.3(B).

h. The Director, after consulting with Town Counsel, shall advise complainants that they may need to seek legal advice to avoid running afoul of statutes of limitations, exhaustion of remedies, and other procedural hurdles that they must meet to preserve their rights in the MCAD or federal or state courts while pursuing their rights under the Town's Complaint procedures.

(v) Town Employees. If the Director, the Commission, or any other Town office or official is presented with a Complaint involving Town Employees, such Complaints shall be handled as follows:

a. Town Employee versus Town Employee. (i) Complaints by Town Employees involving allegations of Discrimination by another Town Employee or the Town, shall immediately be referred to H.R. in accordance with the Town's *Policy Against Discrimination, Sexual Harassment, and Retaliation*. (ii) Complaints by Town Employees involving allegations of misconduct or mistreatment, but not alleging Discrimination, by another Town Employee or the Town shall be referred to H.R. The Director may assist H.R. in the mediation of such allegations of misconduct or mistreatment but with the guidance of Town Counsel. (iii) All allegations of Discrimination or misconduct or mistreatment shall be handled in a manner that is fully consistent with applicable collective bargaining agreements.

b. Resident or Non-Resident versus Town Employee. Complaints against a Town Employee that involve ongoing or threatened litigation shall be referred to Town Counsel. Complaints against a Town Employee that allege Discrimination shall be referred to H.R. and Town Counsel. Complaints against a Town Employee by a resident or non-resident of the Town involving misconduct or mistreatment shall be referred to H.R. or, in the case of a civilian or sworn Town Employee of the Police Department, to the Police Complaint Process.

c. Town Employee versus a Resident or Non-Resident. A Town Employee who has a Complaint against another person who is not a Town Employee irrespective of whether based on said Town Employee's membership in a Protected Class shall be handled by the Director. The Director shall develop and implement a Resolution Plan for such complaints.

d. Schools. If the Director receives a Complaint involving a Town Employee of the Schools Department, the Director shall refer it to the schools' Human Resources Office, unless the Complaint involves a Town Employee and a school Town Employee, in which case it shall be referred to H.R.

e. Police Internal Procedures. The Police Chief, with respect to civilian or sworn Town Employees of the Police Department, shall not be precluded from using applicable internal police procedures, including the procedures of the Internal Affairs Office, consistent with applicable collective bargaining agreements, to resolve allegations of misconduct or mistreatment by a Town Employee in the Police Department, provided that H.R. shall be made aware of the use of such processes.

f. Timely Investigations. Any Complaints referred to H.R. shall be Investigated in accordance with the *Policy Against Discrimination, Sexual Harassment, and Retaliation*

or other applicable policy governing Town Employees. Both parties to a Complaint shall be entitled to a timely completion of the Investigatory Process, a failure of which shall entitle the party to submit a request to the Town Administrator and/or the Select Board for a quick resolution of such failure.

g. Confidentiality. To the extent allowed by applicable law or legal process, the Director shall hold all Town Employee matters in confidence and shall respect the privacy rights or expectations of privacy of such individuals. The Director may, however, discuss complaints in general terms, without revealing a complainant's identity or identifying details, to inform the Commission about the general problems or issues that are presented by a complaint or a category of Complaints.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

To implement the Mission of the Commission in accordance with Section 3.14.1(A) (Brookline Values), the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

(A) General Responsibilities.

(i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the willingness and 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) Work with the Select Board, H.R., the schools and the School Committee, and other Town departments, commissions, boards, and committees to increase their commitments to diversity, equity, and inclusion and to take appropriate steps to increase awareness of and sensitivity to such values and to civil and human rights issues in their departments.

(iii) Provide advice and counsel to the Director on the preparation of the DEI Policy and on the periodic updating of the DEI Policy by the Director, as described in Section 3.14.2(F)(iii).

(iv) Initiate educational programs to facilitate and inform the public of the foregoing and the Commission's and the Director's responsibilities with respect to Complaints.

(v) Develop initiatives, including educational programs, and at all times work to facilitate harmonious community relations among residents and visitors to the Town of Brookline.

(vi) Support the Director in carrying out the Director's role, including by offering constructive alternative perspectives or suggestions regarding the work of the Director when appropriate.

(B) Complaint Responsibilities

(i) The Commission may receive Complaints within the limits of its authority under this Bylaw that were investigated by the Director and appealed by either party to the Commission for reconsideration. The question before the Commission on appeal shall be whether, based solely on the Director's written file, the Director's determination was correct . Upon receiving the appeal and said file, the Commission may assign one or two of its members to review the Complaint. The reviewing members shall review the Director's determination, review the original Complaint, interview the complainant and/or the respondent and any witnesses who consent (if necessary), and decide whether they agree with the Director's determination. The reviewing members shall then present their written conclusions to the Commission in executive session. If the Commission, after taking into consideration the conclusions of the reviewing members, agrees with the Director, the matter shall be concluded. If the Commission does not agree with the Director, the Commission shall provide the Director with a written explanation of its reason for concluding that the Complaint is Plausibly Valid or not Plausibly Valid, whereupon the reconsideration of the Complaint by the Director shall be handled in accordance with Section 3.14.2(G)(iv)(a)(1) and (2).

(ii) The Commission may receive Complaints from complainants. Such complaints shall be handled as follows:

a. Complaints against the Town or its agencies concerning allegations of Discrimination shall be referred to the Director and Town Counsel.
b. Complaints involving Town Employees, including Town Employees of the schools shall be handled solely in accordance with Section 3.14.2(G)(v).
c. Other complaints may be handled by the Commission as follows:
    i. First, the Commission shall refer the Complaint to the Director.
    ii. Second, if the Commission believes that it can provide unique and useful information or a broader perspective to the Director, the Commission shall notify the Director and if the Director agrees, the Commission or a working group of the Commission may (1) perform a summary review of the Complaint, including, if necessary, an interview of the complainant and/or the respondent and any witnesses and a review of any documents or materials pertinent to the complaint, (2) prepare a written report of its summary review, including the alleged impact on the complainant of the alleged behavior or the alleged impact on the respondent, without stating any legal conclusions, and any unique and useful information or perspective that it believes would assist the Director or other Town office in handling the Complaint, and (3) within 90 days of the Commission's receipt of the Complaint provide its report with any recommendations to the Director and the Town Administrator, with a copy of the recommendations to the Select Board. The Commission's recommendations should include, as appropriate, the use of the dispute resolution resources and skills of the Director.
    iii. Third, the Commission may ask the Director to provide the complainant with general information on complainant's options to bring proceedings at the MCAD or other appropriate federal, state, or local agency, including the Brookline Police Department.
d. The Commission may receive a Complaint anonymously for the purpose of resolving the Complaint informally with the Director or the Town Administrator.
e. To protect all parties to a Complaint and to avoid violation of any law or regulation concerning governmental operations, the Commission should consult with Town Counsel when presented with a Complaint.
f. At the request of a complainant and with the concurrence of the Superintendent, the Commission may handle a Complaint, except Complaints of Discrimination, involving the schools by: (i) serving as a neutral and knowledgeable body to which a complainant can bring their concerns, (ii) providing guidance to the complainant as to the best way to address their concerns, (iii) using the knowledge and credibility of the Commission to present concerns, information, or research to the schools of which the schools may not be aware, and (iv) performing any other role as may be agreed upon by the Director and the Superintendent. The Commission shall have no role with respect to a Complaint by a minor student or against a minor student unless the Complaint is by a minor student's parent or guardian.
g. To protect all parties to a Complaint and to avoid violation of any law or regulation concerning governmental operations or the rights of students or educational personnel, including federal laws governing student privacy and regulations of the Department of Elementary and Secondary Education and the local regional office of the Office of Civil Rights within the U.S. Department of Education, the Commission should work with Town Counsel when presented with a Complaint involving the schools.

(iii) The Commission shall develop, to the extent permitted by law, a log for the Complaints referred to in Section 3.14.3(B), provided that such publication contains public record information only and does not violate anyone's right to privacy or expectations of confidentiality, 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 Bylaw. With respect to any complaints or patterns of Complaints involving the civil or human rights of any persons, work with the Director to facilitate changes that will reduce and eliminate violations of rights.

(iv) 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, or as described in Bylaw 5.5.

(C) To carry out the foregoing responsibilities, the Commission is authorized and encouraged to work with community organizations with diverse viewpoints and missions, government and nonprofit agencies, educational institutions, persons with relevant and diverse expertise, and others to:

(i) Institute and assist in the development of (a) educational and training programs to further community relations, civil discourse, and mutual respect, especially by and among Town Employees, and resident volunteers, (b) a welcoming community environment for residents, non-residents, and persons who are members of a Brookline Protected Class, (c) understanding and respect among all residents, non-residents, and Town Employees.

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

(iii) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity, equity, 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 Town Employees of all departments and agencies within the Town.

(iv) 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 in 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.

(v) 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.

(vi) 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.

(D) 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

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, equity, 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
All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning any 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 H.R. Director 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, the Board of Library Trustees, and the Trustees of the Brookline Housing Authority detailing its activities and any research or information gathering related to its areas of responsibility or expertise and the results thereof. This report shall include (i) a review of the implementation of the DEI 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 H.R. Director, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the implementation and achievement of the Commission's Goals and the DEI 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 August 1, 2024, and at least every five years thereafter, the Commission shall review this Bylaw and any other related Town Bylaws, in consultation with other pertinent departments and propose changes, if necessary. The Commission shall prepare a written report summarizing its review and proposed changes and present those changes as Warrant Articles to Town Meeting at the fall Special Town Meeting or later if necessary.

SECTION 3.14.8 EFFECTIVE DATE
The amendments to Bylaw Section 3.14 made by this Warrant Article, if adopted by the fall 2022 Special Town Meeting, shall become effective January 1, 2023.

SECTION 3.14.8 SEVERABILITY
The provisions of this Bylaw 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 APPLICATION OF THIS BYLAW
Should any remedies in this Bylaw 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.

Or Act on anything relative thereto.

ARTICLE 31

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 31 is a petition that seeks to substantially re-write Section 3.14 of the Town's Bylaws, which concern the Commission and Office of Diversity, Inclusion, and Community Relations ("CDICR" and "ODICR," respectively). The article's petitioners (who include Select Board Member Bernard Greene) provided a summary of its key changes in Supplement No. 2 for the article in the Combined Reports. The Advisory Committee voted to recommend revised language on November 3, 2022, and it was this language the Select Board considered.

The largest proposed change to Section 3.14 in Article 31 gives ODICR's director authority to hear and attempt to resolve complaints brought to the office or CDICR regarding matters unrelated to Town employees that may not otherwise rise to the level of necessitating an adversarial proceeding in another forum. CDICR, which now has the authority to hear complaints, would instead hear appeals from an ODICR decisions finding a complaint to lack "plausible validity." Its role in hearing initial complaints would be limited to writing a report concerning a complaint addressed to CDICR if ODICR's director concurs. It could also, with the concurrence of the ODICR director the Superintendent, "play a role" in assessing complaints related to School District matters.

The Select Board expressed general support for the work of CDICR and ODICR. It noted that CDICR had been working with diminished capacity in recent times, which some members felt necessitated the changes proposed by Article 31. Some Select Board members expressed concern that ODICR's limited staff and split mission between investigations and community conciliation could render the new proposal unworkable in practice. Others felt the roles could be harmonized and that the revised bylaw would provide an outlet that does not currently exist in Town for providing mediation with an aim toward restorative justice for residents. Feeling that both supporters and opponents of the article's proposed revisions raised salient points, two Select Board members abstained from voting favorable action.

With the above discussion, at their meeting on November 17, 2022, and following a prior public hearing on the matter, the Select Board voted 2-1-2 to recommend FAVORABLE ACTION be taken on Warrant Article 31 in the form voted by the Advisory Committee on November 3, 2022.

ROLL CALL VOTE:

Aye:	No:	Abstain:
Greene	Aschkenasy	Hamilton
VanScoyoc		Sandman

ARTICLE 32

THIRTY-SECOND ARTICLE

Submitted by: Jonathan Davis, TMM17, Bruce Levin, TMM17, Jonathan Margolis, TMM7,

To see if the Town will amend the Town General By-Laws by amending Article 8 by adding Section 8.40 immediately following the conclusion of Section 8.39, as follows.

8.40.1 As used in this section 8.40 the term "Hotel" means a hotel as defined in the Zoning By-Law section 2.08(5). The term "Hotel" also means a limited service hotel as defined in the Zoning By-Law section 2.12(1). As used in this section 8.40 the term "sex trafficking" means commercial sex induced by force, fraud and/or coercion.

8.40.2 The Innholder licensee of a Hotel shall provide each of its Employees as hereafter defined with training to identify signs of possible sex trafficking in the Hotel and to appropriately respond when such signs are observed. As used in this subsection 8.40.2 an Employee means (a) any employee of the Innholder licensee who works for the licensee at least 16 hours in any week provided that such employee's principal work-site is the Hotel for which the license is issued, and provided further that such employee's principal responsibilities involve physical presence with Hotel guests and/or physical presence in Hotel guest rooms, (b) any employee of the Innholder licensee who works for the licensee, regardless of the number of hours worked and regardless of the principal work-site, who manages or assists in the management of the Hotel for which the license is issued, (c) any employee of a third party that provides workers who, if the worker were employed by the Innholder licensee, would be described in (a), above, and (d) any individual who is an independent contractor who works for the Innholder licensee who, if the individual were employed by the licensee, would be described in (a), above. Training may be at a cost or at no cost to the licensee and shall be provided by a reputable anti-human trafficking entity, whether an agency of the government of the Commonwealth of Massachusetts or of the government of the United States, a not-for-profit organization, or a for profit entity (including, by way of example and not as a limitation, a national hotel brand) – provided however, that in any case, the Police Department approves of the training agency, organization or entity and the training program. Training shall not be at any cost, expense, or reduction in wages or other compensation to any Employee. In the case of an Innholder license applicant who, at the time of the application, already holds an in-force Innholder license for the same Hotel which in-force license was issued after enactment of this section 8.40, the applicant shall provide the Police Department with a true and complete list of all Employees as hereabove defined who received the approved training since the issue of the in-force Innholder license, the identity of the approved training agency, organization or entity, and the date or dates of such training, and, also, a true and complete list of all Employees as hereabove defined who did not receive the approved training since the issue of the in-force license. In the discretion of the Chief of Police or the Chief of Police's nominee the Police Department may investigate the accuracy of the aforementioned list and shall report concerns about inaccuracies in the list, and/or concerns about insufficient

Employee training, to the applicant and also to the Select Board and/or to any other Innholder licensing authority.

8.40.3 Each Innholder licensee for a Hotel shall cause anti-sex trafficking notices to be prominently posted and continually maintained in the Hotel at all front desks, at the entrances to all common rooms where guests may purchase and consume food and/or drink, within all elevator cabs, at the entrances to all common lavatories, and at the entrances to all staircases. The notices may be such as are provided by an anti-human trafficking agency, organization or entity that the Police Department approves for the training of Hotel Employees as provided in subsection 8.40.2. The Police Department may create and require posting and continual maintenance of notices of its own design, Innholder licensees to not bear any cost of design but the licensees to bear all costs of reproduction, posting and maintenance. The Police Department may, at all reasonable times when the Hotel is open for business, enter the Hotel to examine the posting and maintenance of anti- sex trafficking notices and shall report concerns about insufficient posting and maintenance to the Innholder licensee and also to the Select Board and/or to any other Innholder licensing authority.

8.40.4(a) As used in this subsection 8.40.4 the term "Occupancy Period" or "OP" means a room that the Hotel permits the same registered Hotel guest to occupy for a period that includes five or more consecutive nights during which period no Employee has entered the room for one hundred or more consecutive hours to provide any service the Hotel generally offers in rooms because the registered Hotel guest or another occupant has refused or otherwise prohibited entry. If the Hotel does not generally offer any service in rooms during the OP except upon the request of an occupant the absence of any request for service shall be considered a refusal or other prohibition of entry.

(b) In the case of an Innholder license applicant who, at the time of the application, already holds an in-force Innholder license for the same Hotel which in-force license was issued after enactment of this section 8.40 the applicant shall provide the Police Department with a true and complete report (hereafter "OP Report") that lists all rooms since the issue of the in-force license that the Hotel has permitted a registered Hotel guest to occupy for an Occupancy Period, the dates of each Occupancy Period, the number of consecutive hours for which Employee entry was denied or prohibited, and describes the method of denying or prohibiting entry (for example, by "do not disturb" signs, by email, by telephone call to the front desk, by not requesting service in the room if service can only be obtained by request, or any other method), and the actions, if any, of Employees with respect to each such room during the Occupancy Period. In the discretion of the Chief of Police or the Chief of Police's nominee the Police Department may investigate the accuracy of the OP Report and shall report concerns about inaccuracies of the OP Report and/or concerns about facilitating sex-trafficking to the applicant and to the Select Board and/or to any other Innholder licensing authority

8.40.5 This section 8.40 shall take effect with respect to a Hotel upon enactment – except, however, that 8.40.2 and 8.40.4(b) shall take effect upon the issuance of an Innholder license for the Hotel after enactment.

8.40.6(a) No provision of this By-Law shall apply where prohibited or preempted by state or federal law.

(b) If any provision of this By-Law, or the application thereof to any person or circumstances, is declared invalid, that invalidity shall not affect other provisions or applications of this By-Law which can be given effect without the invalid provisions or application, and to this end the provisions of this By-Law are severable.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Human trafficking in hotels, most often sex trafficking, is an international problem, and the United States is not immune. The U.S. Department of Homeland Security has an initiative to counter sex trafficking in the hotel industry (called "Blue Campaign"), as do the American Hotel and Lodging Association, several non-profits (e.g. ECPAT (End Child Prostitution and Trafficking)-USA, and the Polaris Project), and some hotel chains.

Several brochures about the problem, and combatting it, are attached.

States (including Massachusetts) have criminal laws against sex trafficking and also have civil laws that permit victims to recover monetary damages. The Massachusetts Attorney General's office has a human trafficking division where suspected human trafficking can be reported.

Nevertheless, sex trafficking in hotels often goes unnoticed and not prosecuted, commonly because hotel staff and management are unaware of the signs of possible sex trafficking.

In 2019 a developer proposed a limited service extended stay hotel in Brookline with over 100 rooms that, when originally proposed, would have allowed electronic entry without staff present at night, daytime staff limited to between one and three persons, housekeeping staff prohibited from entering rooms unless requested by guests, a virtual offsite concierge, and staff contact with guests to be minimized. (There was also no mention of training staff to recognize signs of sex trafficking.)

Under the Article an Innholder licensee for a hotel must provide training for certain workers at the hotel in identifying signs of sex trafficking and responding appropriately to the signs. The Police Department must approve entities performing training and the training programs. Where an applicant for an Innholder license already holds an Innholder license for the same hotel and the existing license was issued after enactment of the Article (in other words, where the applicant is seeking renewal of a license issued after enactment of the Article), the applicant must report to the Police Department the workers required to be trained during the existing license period who were trained, and the workers required to be trained who were not; the Police Department may investigate the report, and the Police Department must report its concerns about the accuracy of the report and the extent of training to both the licensee and to the Select Board. It is then up to the Select Board to determine what, if anything, to do with this information from the Police Department in

considering the application for renewal of the existing Innholder license. In effect, an Innholder's license renewal is at risk if the Innholder licensee does not comply with the Article. Because the required reporting to the Police Department can only occur when a licensee already holds a license that was issued after the Article was enacted and the licensee is essentially applying for renewal of the existing license the licensee has a year before applying for renewal to provide the required training and to acquire the information needed to make the required report to the Police Department.

The Article requires hotels to prominently post and maintain anti-sex trafficking notices. The Police Department must approve the notices, and the Police Department may create its own notices hotels must post and maintain. The Police Department may enter hotels at reasonable times during hotel business hours to examine posting and maintenance of required notices and must report concerns about insufficient posting and maintenance to the Innholder licensee and to the Select Board. In the case of this requirement, Police Department reporting is not dependent on whether the existing Innholder license was issued after the enactment of the Article or whether the existing Innholder is applying for license renewal because posting and maintaining notices should not take a year to learn and it can be quickly performed and deficiencies can be quickly remedied – and it is hoped that the notices, by themselves, may have a deterrent effect.

The Article requires that the holder of an Innholder license issued after enactment of the Article report to the Police Department rooms permitted to a registered guest for a period of five or more consecutive nights during which period the registered guest or other occupants denied hotel workers entry for at least one hundred consecutive hours, an explanation of the way the denial was made, and also actions (if any) hotel employees took with respect to the room during the period of denial. (One hundred consecutive hours is more than four full days, but a denial period may be longer). The Police Department may investigate the report, and the Police Department must report its concerns about the accuracy of the report and about what the report may imply as to facilitating sex trafficking to both the licensee and to the Select Board. It is up to the Select Board to determine what, if anything, to do with this information from the Police Department in considering the application for renewal of the existing Innholder license. Because the required reporting to the Police Department can only occur when an Innholder licensee already holds a license that was issued after the Article was enacted and the licensee is essentially applying for renewal of the existing license the licensee has a year before applying for renewal to start paying attention to information that will be needed for the report.

These requirements are intended to try to prevent sex trafficking, and inform would-be traffickers and their customers (some of whom may be Brookline residents) that hotels in Brookline are not places to do business.

To petitioners' knowledge there is no similar law in Massachusetts - either at the state level or the municipal level. Presently, 192/H2540, which addresses hotel staff training and anti-human trafficking signage, has been reported to the Massachusetts House Ways & Means Committee. A previous bill in the 2019-2020 legislative session was not enacted. For a survey by state and municipality of anti-sex trafficking laws with respect to the hospitality industry see: ECPAT-USA – Unpacking Human Trafficking vol. 4 (See,

https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/624b15373d60d55930cd1932/1649087805782/Unpacking+Human+Trafficking+Vol+4.2022.pdf).
It should be mentioned that several large hotel chains have begun staff training. (See, https://news.marriott.com/news/2021/07/28/marriott-international-launches-enhanced-human-trafficking-awareness-training ; https://ir.hilton.com/~/media/Files/H/Hilton-Worldwide-IR-V3/committee-composition/slavery-and-trafficking-statement-2017.pdf)

SELECT BOARD'S RECOMMENDATION

The Select Board was informed that the petitioner will not be making a motion under Article 32.

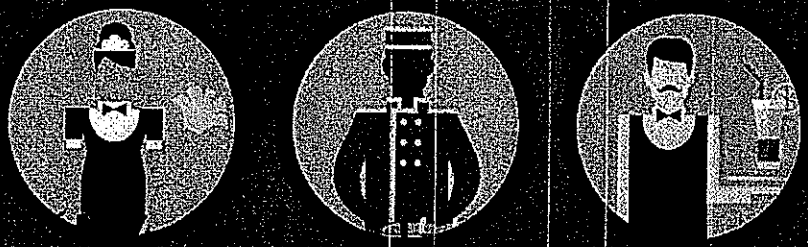
ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee is not making a motion on this article.

XXX

BLUE CAMPAIGN

One Voice. One Mission. End Human Trafficking.®



HOSPITALITY

TOOLKIT

Who We Are

The Blue Campaign is the unified voice for the U.S. Department of Homeland Security's (DHS) efforts to combat human trafficking. Working with law enforcement, government, and non-governmental and private organizations, the Blue Campaign strives to protect the basic right of freedom and bring those who exploit human lives to justice.

What's Inside?

This **toolkit** offers tips and resources that can help you inform and educate your employees about human trafficking.

It includes **posters** of human trafficking warning signs for four groups of employee:

- Hotel and Motel Staff
- Housekeeping, Maintenance and Room Staff
- Concierge, Bellman, Front Desk, Security and Valet Staff
- Food and Beverage Staff

These posters can be displayed in common areas of your business where employees congregate (such as staff break, laundry and maintenance rooms).

BLUE CAMPAIGN
One Voice. One Mission. End Human Trafficking.®

What is Human Trafficking?

Human trafficking is modern-day slavery and involves the use of force, fraud or coercion to obtain labor or commercial sex. Every year, millions of men, women and children are trafficked in countries around the world, including the United States.

There are different types of human trafficking:

- **Sex Trafficking**
  Victims of sex trafficking are manipulated or forced to engage in sex acts for someone else's commercial gain. Sex trafficking is not prostitution.

  Anyone under the age of 18 engaging in commercial sex is considered to be a victim of human trafficking. **No exceptions.**

- **Forced Labor**
  Victims of forced labor are compelled to work for little or no pay, often manufacturing or growing the products we use and consume every day.

- **Domestic Servitude**
  Victims of domestic servitude are forced to work in isolation and are hidden in plain sight as nannies, housekeepers or domestic help.

Human trafficking and the hospitality industry

Traffickers often take advantage of the privacy and anonymity offered by the hospitality industry. They can operate discreetly because staff and guests may not know the signs of human trafficking.

You may have employees who are victims of forced labor. If a third party applied for a position on behalf of an individual or if employees are not receiving their own paychecks, these could be signs of human trafficking.

Hotels and motels are also major locations where traffickers force sex trafficking victims to provide commercial sex to paying customers. Victims may be forced to stay at a hotel or motel where customers come to them, or they are required to go to rooms rented out by the customers.

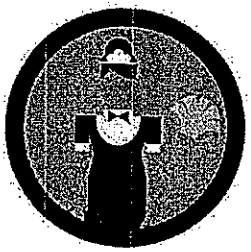
What actions can I take at my business to help stop human trafficking?

You play a significant role in helping to stop this terrible crime by:

- Knowing the signs of human trafficking.
- Designing a plan of action to respond to reports of human trafficking in your business.
- Partnering with agencies that provide services to victims of human trafficking. In the case of lodging, consider offering vouchers to victims. Immediate housing for victims plays a vital role in beginning a victim's healing process.
- Providing employee training to help them understand and identify signs of human trafficking.
- Distributing and posting the fact sheets in this kit to your employees.

Information on additional resources, literature, materials, and training offered by the Blue Campaign can be found at www.dhs.gov/bluecampaign.

BLUE CAMPAIGN
One Voice. One Mission. End Human Trafficking.



SIGNS OF HUMAN TRAFFICKING

For **Housekeeping, Maintenance,** and **Room Service** Staff

Housekeeping, maintenance, and room service staff typically have the most access to guest rooms where signs of human trafficking may be apparent. By being conscious of human trafficking indicators, you can help identify possible human trafficking activities and victims.

GENERAL INDICATORS

- "Do Not Disturb" sign used constantly.
- Requests room or housekeeping services (additional towels, new linens, etc.), but denies hotel/motel staff entry into room.
- Refusal of cleaning services for multiple days.
- Excessive amounts of cash in a room.
- Smell of bodily fluids and musk.
- Presence of multiple computers, cell phones, pagers, credit card swipes, or other technology.
- The same person reserving multiple rooms.
- Individuals leaving room infrequently, not at all, or at odd hours.
- Children's items or clothing are present but no child registered with the room.
- Individuals loitering in hallways or appearing to monitor the area.
- Excessive amounts of alcohol or illegal drugs in rooms.
- Evidence of pornography.
- Minors left alone in room for long periods of time.
- Excessive number of people staying in a room.
- Extended stay with few or no personal possessions.
- Provocative clothing and shoes.
- Constant flow of men into a room at all hours.
- Excessive amounts of sex paraphernalia in rooms (condoms, lubricant, lotion, etc.).
- Rooms stocked with merchandise, luggage, mail packages, and purses/wallets with different names.

Each indicator alone may not necessarily mean a person is being trafficked.

WHAT TO DO IF YOU SUSPECT HUMAN TRAFFICKING

- Do not at any time attempt to confront a suspected trafficker directly or alert a victim to your suspicions.
- Call 9-1-1 for emergency situations—threats of violence, physical assault, emergency medical needs, etc.
- Follow your corporate protocol, such as by notifying management and security.
- Call 1-866-DHS-2-ICE (1-866-347-2423) to report suspicious criminal activity to federal law enforcement. Highly trained specialists take reports from both the public and law enforcement agencies. Submit a tip at www.ice.gov/tips.
- To get help from the National Human Trafficking Resource Center (NHTRC), call 1-888-373-7888 or text HELP or INFO to BeFree (233733).

BLUE CAMPAIGN
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SIGNS OF HUMAN TRAFFICKING

For **Concierge, Bellman, Front Desk, Security,** and **Valet** Staff

Concierge, bellman, front desk, security, and valet staff are typically the first to see guests when they enter the hotel. When checking in or requesting hotel amenities, a guest may exhibit behavior indicating human trafficking.

GENERAL INDICATORS

- Patrons checking into room appear distressed or injured.
- The same person reserving multiple rooms.
- Few or no personal items when checking in.
- Room paid for with cash or pre-loaded credit card.
- Excessive use of hotel computers for adult oriented or sexually explicit websites.
- Patrons not forthcoming about full names, home address or vehicle information when registering.
- Minor taking on adult roles or behaving older than actual age (paying bills, requesting services).
- Patron appears with a minor that he or she did not come with originally.
- Rentals of pornography when children are staying in the room.
- Individuals dropped off at the hotel or visit repeatedly over a period of time.
- Individuals leaving room infrequently, not at all, or at odd hours.
- Minor with a patron late night or during school hours (and not on vacation).
- Individuals checking into room have no identification.
- Room is rented hourly, less than a day, or for long-term stay that does not appear normal.
- Patrons request information or access to adult services or sex industry.
- Room rented has fewer beds than patrons.
- Individuals selling items to or begging from patrons or staff.
- Individuals enter/exit through the side or rear entrances, instead of the lobby.
- Car in parking lot regularly parked backward, so the license plate is not visible.

Each indicator alone may not necessarily mean a person is being trafficked.

WHAT TO DO IF YOU SUSPECT HUMAN TRAFFICKING

- Do not at any time attempt to confront a suspected trafficker directly or alert a victim to your suspicions.
- Call 9-1-1 for emergency situations—threats of violence, physical assault, emergency medical needs, etc.
- Follow your corporate protocol, such as by notifying management and security.
- Call 1-866-DHS-2-ICE (1-866-347-2423) to report suspicious criminal activity to federal law enforcement. Highly trained specialists take reports from both the public and law enforcement agencies. Submit a tip at www.ice.gov/tips.
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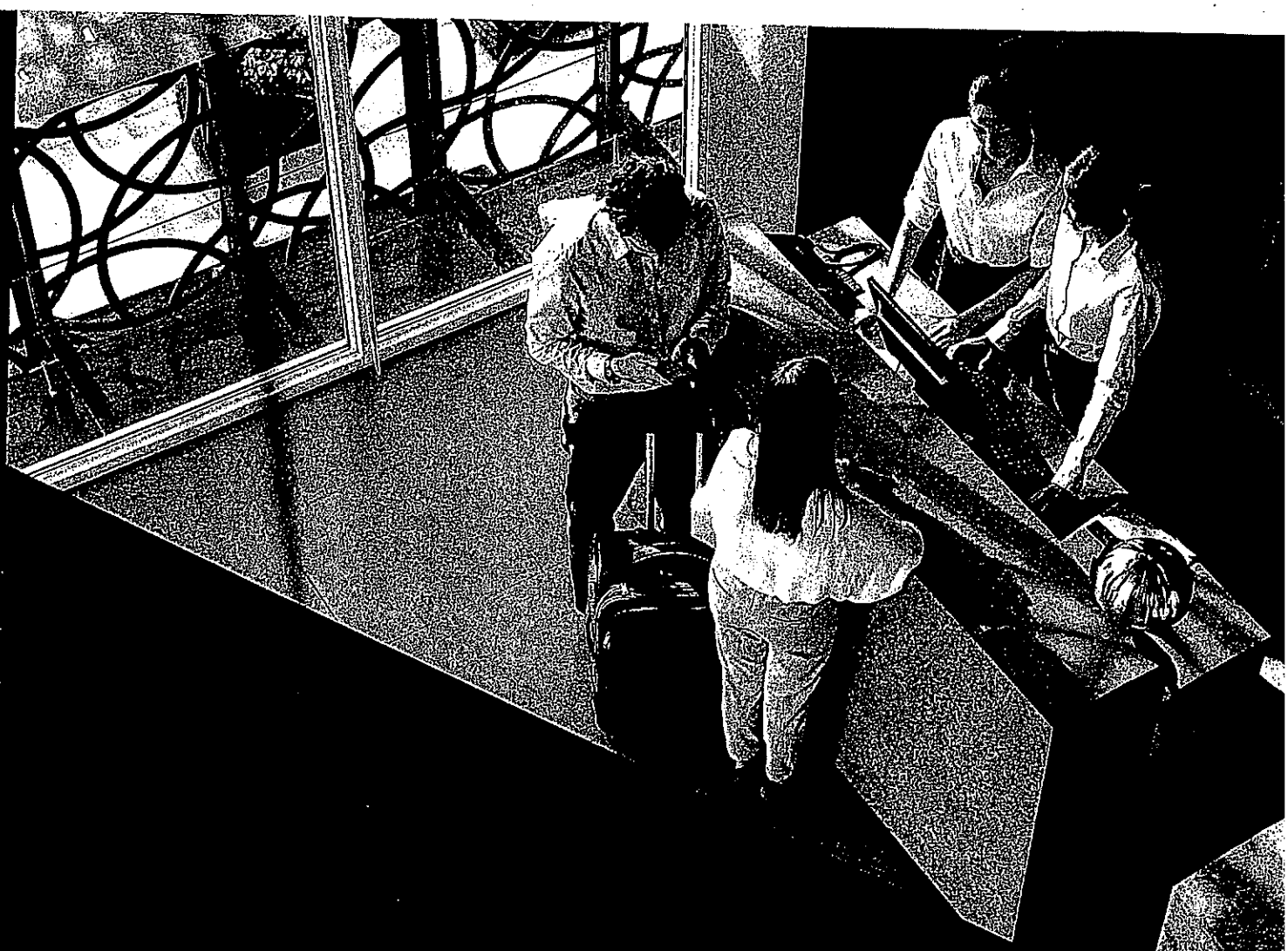

NO ROOM FOR TRAFFICKING

AN AHLA CAMPAIGN

No Room For Trafficking Member Resource Guide

AHLA

AMERICAN HOTEL & LODGING ASSOCIATION

ARTICLE 33

THIRTY-THIRD ARTICLE

Submitted by: Nathan Shpritz

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

1) Revise Table 4.07 – Table of Use Regulations, Accessory Use 57, Accessory Uses Column striking out the words "or the keeping of bees" as shown struck out in the complete paragraph:

57. The keeping of horses, cows, goats, or other similar animals, other than pigs, or the keeping of poultry, pigeons, rabbits, or other similar birds or animals~~, or the keeping of bees,~~ provided that no stable or enclosure for any animal may be less than 100 feet from any existing residence building on other premises in any district, or any obvious residence building site on other premises in an S, SC, T, F or M District; and provided that no stable or enclosure for more than four animals may be less than 100 feet from any premises occupied by a church, school, playground, library, or building of a public or eleemosynary institution, except where that distance is intersected by a street at least 60 feet wide; and further provided that no stable or enclosure in a S, SC, T, F or M District may be less than 100 feet from a street, nor contain more than 25 animals on the premises, and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline.

2) Add to Table 4.07 – Table of Use Regulations, Accessory Use 57A the following:

Accessory Uses:
57A. The keeping of bees, provided that no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street; and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline. No beehive shall be placed upon a lot nor retained on a lot without a current permit provided by the Director of Public Health of the Town of Brookline.
This new Accessory Use will be permitted in every zoning district.

Accessory Uses	Residence						Business		Ind.
	S	SC	T	F	M	L	G	O	I
57. The keeping of horses, cows, goats, or other similar animals, other than pigs, or the keeping of poultry, pigeons, rabbits, or other similar birds or animals~~, or the keeping of bees,~~ provided that no stable or enclosure for any animal may be less than 100 feet from any existing residence building on other premises in any district, or any obvious residence building site on other premises in an S, SC, T, F or M District; and provided that no stable or enclosure for more than four animals may be less than 100 feet from any premises occupied by a church, school, playground, library, or building of a public or eleemosynary institution, except where that distance is intersected by a street at least 60 feet wide; and further provided that no stable or enclosure in a S, SC, T, F or M District may be less than 100 feet from a street, nor contain more than 25 animals on the premises, and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Accessory Uses	Residence						Business		Ind.
	S	SC	T	F	M	L	G	O	I
57A. The keeping of bees, provided that no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street; and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline. No beehive shall be placed upon a lot nor retained on a lot without a current permit provided by the Director of Public Health of the Town of Brookline.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Or act on anything else thereto.

PETITIONER'S ARTICLE DESCRIPTION

Our neighboring communities of Boston, Cambridge and Somerville have implemented new policies to support and encourage urban agriculture among their residents and businesses. The keeping of bees and hens were included in all three municipal's policies. Chickens should be discussed at greater length, but honeybees are an immediately supportable and positive addition to our local environment. Foraging from one to five miles from their hives, they pollinate flowers, fruits and vegetables, and would likely improve all of our gardening efforts.

The current zoning bylaw creates a building based restrictive zoning hurdle to overcome for resident beekeepers. There are few residential zoning districts in Brookline where 100 feet of distance exists between any part of one person's yard and a neighboring home. With the demise of the Brookline Tab, it can cost approximately $1000 to comply with the requirement publish the date of a ZBA hearing. Following ZBA approval, the current bylaw provides for the Director of the Department of Public Health to approve any resident application to place a beehive upon their property. This is where the oversight belongs. The proper administration of beekeeping licenses should reside entirely within the Department of Public Health where no more work would be required than is required today to review an application.

Town of Brookline Requirements
For the Keeping of Animals and Bee's

Town of Brookline Public Health Department and Building Department (zoning regulations) have regulations and standards for the Keeping of Animals and Bee's in the town. These standards are designed to address Health, Safety and adopted Community Standard in the community. Applications in residential areas of the town have specific concerns.

- Applications are obtained from the Public Health Department
- Applications requires sign off from Building Department (form provided by Health Department)
    - Application includes Plot Plan (to scale)
    - Pest Management Plan
    - Manure Management Plan
    - Emergency Disaster Plan
    - Building Department Approval
    - Zoning Board Approval (if applicable)
    - Abutter Notifications – for Public Hearing (completed by Health Department)
    - Any Additional Requirements for Specific Species (Poultry, Bees, Pigeons, Horses, Swine etc.)
    - Permit Application Fee (fee rate pending)

Examples of conditions established for permit issuance:
Chickens:

- Limit of 12 chickens (no roosters).
- An enclosed pod and pen for chickens must be constructed as outlined in submitted plans. Penned area may be chicken wire. The Penned area must be covered over the top. Chickens will be restricted to the pod and enclosed pen at all times.
- Feeding of birds shall occur only in the pod and pen. Manure must be cleaned up regularly and composted in an approved composting environment or otherwise disposed of in a sanitary manner. If disposed of offsite department must approve of location.
- Maintain good hygiene practices after contact with chickens.
- Report sick chickens to Brookline Health Department (617-730-2300) and Massachusetts Department of Food and Agriculture Division of Animal Health (617-626-1792) immediately. Report any animal attacks on chickens to Brookline Health Department.
- The pest control management plan must be submitted as a permit condition.

- As part of the Keeping of Animals permit the Health Department will perform routine, unannounced inspections to ensure compliance with these permit conditions.

Bees:

- The beehive structure must comply with all applicable zoning bylaw requirements.
- Parcel is limited to 2 beehives. Bees must be maintained in moveable-frame hives situated at least 4 inches off the ground to allow ventilation, limit pests, and reduce bottom entrance obstructions. The entrance of the beehive must be oriented to face the opposite direction of the nearest abutting property.
- Only non-aggressive honeybee (Apis Mellifera) species are permitted.
- A constant and adequate water source must be provided on site at all times. The water source should be drained and refilled periodically to prevent mosquito larvae growth and nuisance conditions.
- In the event of nuisance complaints regarding low flight paths of bees through abutting properties, the property owner is advised to install a reasonable physical structure to influence the bees to take a higher flight path as they enter and exit the beehives.
- Hives must be registered with Massachusetts Department of Agricultural Resources. Beekeeping operations must comply with all applicable regulations, inspections, and permitting standards as required by state law.
- The primary beekeeper must demonstrate to the Director of Public Health completion of a beekeeper training course with the Norfolk County Beekeeping Association or another training resource approved by the Director. Membership and active participation with the Norfolk County Beekeeping Association is recommended.
- If the property owner also serves as the primary beekeeper, an equally qualified beekeeper must be designated to maintain hive operations and respond to all nuisance complaints and other emergencies during any periods of extended absence or vacation by the property owner.
- An operations and emergency plan must be submitted to the Director that describes in detail:
    a. Physical set-up and location of hives.
    b. Routine hive maintenance and integrated pest management (IPM) procedures.
    c. Corrective actions to be taken under potential nuisance conditions resulting from aggressive or objectionable bee behavior.
    d. Planned response to possible acute damage to hive and swarm suppression measures. Contact information for qualified personnel to be contacted to assist during swarming and emergency scenarios must be included.
- The Brookline Health Department may reasonably conduct unannounced inspections of beekeeping facilities to ensure compliance with the aforementioned conditions and respond to any nuisance complaints.
- Must be willing to comply with any future regulations promulgated by the town of Brookline as they relate to the keeping of bees.
- It is recommended that the applicant update their homeowner's insurance policy to cover beekeeping activities.

PLANNING BOARD REPORT AND RECOMMENDATION

This zoning warrant article submitted by citizen petition would separate out the keeping of bees from the keeping of the other animals listed in the Table of Uses, Use #57, and put bees into its own use category, Use #57A.

The animals in Use 57 -- horses, cows, goats or other similar animals, other than pigs, or poultry pigeons, and bees -- are allowed in all zoning districts, except that a 100' setback from residences, churches, playgrounds, etc., and streets, must be observed. If these setbacks are not met, the applicant must apply for and obtain a special permit. If granted, the Director of Public Health must also approve the number of animals and the location of the enclosures and issue a permit. In most residential districts, it would be difficult to meet a100'setback, and applicants must seek a special permit to reduce the required setback, incurring a time delay and an expense for legal advertisements for the Zoning Board of Appeals. This cost has jumped from $21 in the TAB, to over $1,000 in the Globe, since print advertising is no longer possible in the TAB.

In the proposed change, the setback for a hive would be reduced to a minimum of 20' from a window, door or opening and 6' from a lot line, and the hive could not be visible from the street. As in the current Zoning By-Law, if setbacks are not met, a special permit would be required, as well as a permit from the Director of Public Health. The Health Department already has specific guidelines for bees that applicants must meet. Further, notices are sent to direct abutters by the Health Department before it issues a permit.

On October 12, 2022, a joint public hearing of the Zoning By-Law Committee and the Planning Board was held. The Petitioner presented his rationale for why these changes should be made. The foremost being that there are few residential lots in Brookline where meeting a 100' setback to a lot line is possible. He explained that Boston, Cambridge and Somerville have all implemented new policies to support and encourage urban agriculture. He also went over the extensive guidelines that the Health Department has concerning bees, including only allowing honey bees. He believes that the Health Department is the right entity to regulate the keeping of hives.
Zoning By-Law Committee members had opinions varying from wanting stricter Health Department guidelines promulgated before the zoning is changed to stating that guidelines should not be overly prescriptive, since having more bees is good for the environment.

Planning Board members compared this proposal to the minimal number of cases involving the keeping of chickens, and felt that this change to the Zoning By-Law was not going to result in a lot of new applications. Members felt that the existing Health Department regulations seemed adequate; that the Health Director could amend these regulations as needed; and that no new issues would be created. A motion to refer to the Advisory Committee on Public Health was made but did not pass. The Planning Board then made a motion for Favorable Action, which received a majority of votes from the Zoning By-Law committee as well.

The Planning Board recommends Favorable Action on Art. XXXIII. The roll call vote went as follows: Heikin – aye, Zarrillo – aye, Hamlin– aye, Brue – aye, Chipimo – aye, and Hines – aye. (Hiller – not present.)

SELECT BOARD'S RECOMMENDATION

This citizen petition zoning warrant article would make it easier for residents to keep beehives by making the setbacks in the Zoning By-Law less stringent. Beekeepers would still need to meet some setbacks but would not have to locate hives 100' from a property line, which is almost impossible in most zoning districts. However, bee keepers would still have to meet some setbacks -- 20' from a window, door or opening and 6' from a lot line -- and comply with Health Department guidelines for bees and obtain a permit from the Health Department. This proposed warrant article would allow separating the keeping of bees from the other animals listed in Use 57 of the Zoning By-Law, such as chickens and horses, into a new use category, Use 57A, which would apply only to bees.

At the Select Board hearing on October 18, 2022, the citizen petitioner explained that many other Massachusetts municipalities, including Cambridge, Boston and Somerville, have new policies to allow keeping of bees in order to promote urban agriculture. He then described the comprehensive guidelines that the Brookline Health Department already has, as well as its policy to notify abutters of requested beekeeping permits.

After discussion of the article, Select Board members expressed their support of the article and its goal to allow more beekeeping in Town. The Board cited the ecological value of having more bees to help pollinate flowers. This article, they felt, would reduce both the time and cost for being granted permission to keep bees. The Select Board was convinced that the Health Department, which is able to revise bee keeping regulations when necessary, would be the right entity to regulate beekeeping.

Therefore, a unanimous Select Board voted to recommend Favorable Action on Article 33 as amended by the petitioner and approved by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 33 by a vote of 21-3 with 2 abstentions.

Executive Summary	Warrant Article 33 will make it easier to obtain Town permits for beekeeping in residential neighborhoods by separating it from other animal husbandry accessory uses in the Zoning By-Law. The proposed change would reduce the required distance for beehives from 100 feet from any existing residence on other premises to a distance of "no less than 20 feet from any window, door, or other opening in any structure on any other lot". Additional requirements include that beehives be six feet or more away from any lot line, not visible from the street, and have a current permit issued by the Director of the Department of Public Health.
Voting Yes will...	Enable Brookline residents with smaller properties, i.e., most residents, to consider and apply for beekeeping permits.
Voting No will...	Make no changes in the distance requirement for approving beehives.
Financial impact	There is no anticipated financial impact on the Town, which is already engaged in the permitting of beehives. An increase in the number of beekeepers in town will call on Department of Public Health staff resources for additional oversight, but the Public Health Director does not estimate any additional financial impact.
Legal implications	There are no legal implications, except that the Warrant would make it explicit in the Zoning By-Laws that, once the distance requirement has been met, the beekeeper must comply with other requirements of the Health Department to secure a permit, including, but not limited to, requirements as to number, location, and size of special structures and enclosures.

Discussion

Zoning By-Law **Table 4.07 – Table of Use Regulations** includes bees in Accessory Use 57 and treats them the same as horses, cows, goats, and a number of other farm animals. Article 33 proposes removing "the keeping of bees" from Use 57 and creates a new Use 57A exclusively relating to beekeeping. Under Use 57 "no stable or enclosure for any animal may be less than 100 feet from any existing residence building on other premises".

Use 57A would reduce the distance to "no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street". Use 57A also makes clear that beekeeping is subject to the oversight and regulation by the Director of Public Health, and requires a current permit issued by the Director of Public Health.

The purpose of the Warrant Article is to encourage beekeeping because bees, of course, produce honey, and they are critical for pollinating the plants in our ecosystem: our gardens, wildlife habitat, and fruit and vegetable crops. Bees forage from one to five miles from their hives, so that individual beehives provide benefits for a broad area. The reduction in distance requirements is consistent with recent changes in beekeeping regulation in Somerville, Cambridge, Watertown and Boston

Brookline currently regulates beekeeping through the Department of Public Health. Two documents titled "Town of Brookline Requirements of the Keeping of Animals and Bees" and "Residential – Permit for keeping of bees" are attached to this report. Some of the Health Department's requirements for issuance of a beekeeping permit are the submission of a site plan, notice to property abutters, a limit of two beehives on each site, a constant water source, and completion of a beekeeper training course. Beekeeping permits are required to be renewed annually.

According to Director of Public Health Sigalle Reiss, "the proposed warrant article and zoning changes would not change the Department's procedures and would not have a negative impact on the Department's operations."

The Advisory Committee discussion included suggestions that the Health Department's regulations might be revisited and improved, and that the Massachusetts Beekeepers Association Best Management Practices is a valuable resource and reference that could inform that work. The Director was open to this suggestion, while unsure of the schedule for undertaking this because of many other pressing concerns.

The Advisory Committee's amended version of Use 57A has been accepted by the petitioner, and reads as follows:

57A. The keeping of bees (species *Apis Mellifera*), provided that no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street; and subject to such requirements as may be imposed by the Director of Public Health of the Town of Brookline, including, but not limited to, requirements as to number, location, and size of special structures and enclosures. No beehive shall be placed upon a lot nor retained on a lot without a current permit provided by the Director of Public Health of the Town of Brookline.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/_8WNk9bOaxi17vCM7NCoHKEYZJlGuZAKbdW5JA9PWQyEHZnbPdlFbougbW3TpQKwjTt5Lx3lySDSgFTS.WY5C-SDnFHBtntL9?continueMode=true

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 33, as amended, by a vote of 21-3-2.

ARTICLE 33 ADVISORY COMMITTEE VOTES

Article Description	**Amend Zoning By-Law on Beekeeping**
AC recommendation (Favorable Action unless indicated)	**21-3-2**
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
Patty Correa	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	N
Neil Gordon	Y
Susan Granoff	A
Kelly Hardebeck	Y
Amy Hummel	
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	Y

David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	N
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

NO ROOM FOR TRAFFICKING MEMBER RESOURCE GUIDE

The American Hotel and Lodging Association's (AHLA) No Room for Trafficking campaign builds on long-standing efforts to raise awareness around human trafficking prevention, identify best practices and provide educational resources, and train employees on ways they can play a role in preventing human trafficking.

Combatting human trafficking requires commitment and engagement by the entire hotel industry. This resource guide outlines several available tools and resources to train your employees to comply with applicable state laws. The resource guide also provides opportunities for you to take action and join us in raising awareness about human trafficking prevention.

The No Room for Trafficking campaign seeks to bring the hotel industry together to further build upon our unified efforts through four key goals:

1. Elevate: Raise issue awareness by fostering an ongoing and up-to-date understanding of human trafficking indicators through increased education, resources and training for all hotel employees.
2. Assess: Conduct ongoing reviews and updates of protocols, procedures and technologies to confirm training effectiveness and employee vigilance.
3. Educate: Develop strategic intervention and disruption strategies that equip hotel employees with innovative tools to work alongside partners and law enforcement to identify and report suspected trafficking situations.
4. Support: Further our partnerships with leading national human trafficking prevention and law enforcement organizations to establish industry standards and support human trafficking survivors.

NO ROOM FOR TRAFFICKING
AN AHLA CAMPAIGN

As part of the hotel industry's continued efforts to end human trafficking, AHLA launched the No Room for Trafficking campaign to expand on current training and efforts to educate employees on the signs and indicators of human trafficking.

For additional information, please visit AHLA.com/NoRoomForTrafficking

Town of Brookline Requirements
For the Keeping of Animals and Bee's

Town of Brookline Public Health Department and Building Department (zoning regulations) have regulations and standards for the Keeping of Animals and Bee's in the town. These standards are designed to address Health, Safety and adopted Community Standard in the community. Applications in residential areas of the town have specific concerns.

- Applications are obtained from the Public Health Department
- Applications requires sign off from Building Department (form provided by Health Department)
    - Application includes Plot Plan (to scale)
    - Pest Management Plan
    - Manure Management Plan
    - Emergency Disaster Plan
    - Building Department Approval
    - Zoning Board Approval (if applicable)
    - Abutter Notifications – for Public Hearing (completed by Health Department)
    - Any Additional Requirements for Specific Species (Poultry, Bees, Pigeons, Horses, Swine etc)
    - Permit Application Fee (fee rate pending)

Examples of conditions established for permit issuance:

Chickens:

- Limit of 12 chickens. (no roosters).
- An enclosed pod and pen for chickens must be constructed as outlined in submitted plans. Penned area may be chicken wire. The Penned area must be covered over the top. Chickens will be restricted to the pod and enclosed pen at all times.
- Feeding of birds shall occur only in the pod and pen. Manure must be cleaned up regularly and composted in an approved composting environment or otherwise disposed of in a sanitary manner. If disposed of offsite department must approve of location.
- Maintain good hygiene practices after contact with chickens.
- Report sick chickens to Brookline Health Department (617-730-2300) and Massachusetts Department of Food and Agriculture Division of Animal Health (617-626-1792) immediately. Report any animal attacks on chickens to Brookline Health Department.
- The pest control management plan must be submitted as a permit condition.
- As part of the Keeping of Animals permit the Health Department will perform routine, unannounced inspections to ensure compliance with these permit conditions.

Bees:

- The beehive structure must comply with all applicable zoning bylaw requirements.
- Parcel is limited to 2 beehives. Bees must be maintained in moveable-frame hives situated at least 4 inches off the ground to allow ventilation, limit pests, and reduce bottom entrance obstructions. The entrance of the beehive must be oriented to face the opposite direction of the nearest abutting property.
- Only non-aggressive honeybee (*Apis Mellifera*) species are permitted.
- A constant and adequate water source must be provided on site at all times. The water source should be drained and refilled periodically to prevent mosquito larvae growth and nuisance conditions.
- In the event of nuisance complaints regarding low flight paths of bees through abutting properties, the property owner is advised to install a reasonable physical structure to influence the bees to take a higher flight path as they enter and exit the beehives.
- Hives must be registered with Massachusetts Department of Agricultural Resources. Beekeeping operations must comply with all applicable regulations, inspections, and permitting standards as required by state law.
- The primary beekeeper must demonstrate to the Director of Public Health completion of a beekeeper training course with the Norfolk County Beekeeping Association or another training resource approved by the Director. Membership and active participation with the Norfolk County Beekeeping Association is recommended.
- If the property owner also serves as the primary beekeeper, an equally qualified beekeeper must be designated to maintain hive operations and respond to all nuisance complaints and other emergencies during any periods of extended absence or vacation by the property owner.
- An operations and emergency plan must be submitted to the Director that describes in detail:
    a. Physical set-up and location of hives.
    b. Routine hive maintenance and integrated pest management (IPM) procedures.
    c. Corrective actions to be taken under potential nuisance conditions resulting from aggressive or objectionable bee behavior.
    d. Planned response to possible acute damage to hive and swarm suppression measures. Contact information for qualified personnel to be contacted to assist during swarming and emergency scenarios must be included.
- The Brookline Health Department may reasonably conduct unannounced inspections of beekeeping facilities to ensure compliance with the aforementioned conditions and respond to any nuisance complaints.
- Must be willing to comply with any future regulations promulgated by the town of Brookline as they relate to the keeping of bees.
- It is recommended that the applicant update their homeowner's insurance policy to cover beekeeping activities.

Paid:_____
Check #:_____
Inspector Approval:_____
Chief:_____

TOWN OF BROOKLINE
DEPARTMENT OF PUBLIC HEALTH

Division of Environmental Health
11 Pierce Street, Brookline, Massachusetts, 02445
Telephone: (617) 730-2300 Facsimile: (617) 730-2296
Website: www.brooklinema.gov/health

RESIDENTIAL - PERMIT FOR KEEPING OF BEES

REQUEST PERMIT (Honeybees) **New: $60 Renewal: $25**

Only non-aggressive honeybee (Apis Mellifera) are permitted

Name of Applicant: _____

Name of Primary Beekeeper (if different): _____

Address: _____

Telephone: _____ Office/Cell: _____

E-mail: _____

Numbers of Hives: _____

Location of the Premises Where Bee Hives are to be Kept:

_____

_____

Beekeeper Experience / Certificates:

_____

_____

Name of Backup Beekeeper: _____

Source of Bees: _____

I, _____, have read and understand the contents and requirements of this application packet and agree to the provisions in the Brookline Keeping of Animals Regulation.

Date: _____

******It is recommended that new applicants begin at the Zoning Department – form attached******

Please include the following documents to complete the application:

- Building Department Approval _____
- Brookline Department of Public Health Requirements
    - Emergency Disaster Plan _____
    - Plans for Swarm Suppression _____
    - Set-up and Hive Structure _____
    - Hive Maintenance Procedures _____
    - Pest Control Procedures _____
    - Abbutter Notification (completed by Health Dept) _____
    - Permit Application Fee _____
- Zoning Board Approval _____

<u>Examples of Conditions Established for Permit Issuance</u>

Bees:

- The beehive structure must comply with all applicable zoning bylaw requirements.
- Bees must be maintained in moveable-frame hives situated at least 4 inches off the ground to allow ventilation, limit pests, and reduce bottom entrance obstructions. The entrance of the beehive must be oriented to face the opposite direction of the nearest abutting property.
- A constant and adequate water source must be provided on site at all times. The water source should be drained and refilled periodically to prevent mosquito larvae growth and nuisance conditions.
- In the event of nuisance complaints regarding low flight paths of bees through abutting properties, the property owner is advised to install a reasonable physical structure to influence the bees to take a higher flight path as they enter and exit the beehives.
- Hives must be registered with Massachusetts Department of Agricultural Resources. Beekeeping operations must comply with all applicable regulations, inspections, and permitting standards as required by state law.
- The primary beekeeper must demonstrate to the Director of Public Health completion of a beekeeper training course with the Norfolk County Beekeeping Association or another approved training resource. Membership and active participation with the Norfolk County Beekeeping Association is recommended.
- A qualified beekeeper with appropriate training/certificate must be designated to maintain hive operations and respond to all nuisance complaints and other emergencies.
- An operation and emergency plan must be submitted to the Director that describes in detail:
    a. Physical set-up and location of hives.
    b. Routine hive maintenance and integrated pest management (IPM) procedures.
    c. Corrective actions to be taken under potential nuisance conditions resulting from aggressive or objectionable bee behavior.
    d. Planned response to possible acute damage to hive and swarm suppression measures. Contact information for qualified personnel to be contacted to assist during swarming and emergency scenarios must be included.
- The Brookline Department of Public Health may reasonably conduct unannounced inspections of beekeeping facilities to ensure compliance with the aforementioned conditions and respond to any nuisance complaints.

- It is recommended that the applicant update their homeowner's insurance policy to cover beekeeping activities.

Please contact the Inspector of Animals at 617-730-2300 for questions/guidance.

ARTICLE 33

AMENDMENT TO THE PETITIONER MOTION
OFFERED BY PETTIONER NATHAN SHPRITZ, TMM 16
(Original motion in boldface; changes in blue, deletions in double strikethrough)

MOVED: That the Town Revise Table 4.07 – Table of Use Regulations, Accessory Use 57, Accessory Uses Column striking out the words "or the keeping of bees" as shown struck out in the complete paragraph:

57. The keeping of horses, cows, goats, or other similar animals, other than pigs, or the keeping of poultry, pigeons, rabbits, or other similar birds or animals~~, or the keeping of bees,~~ provided that no stable or enclosure for any animal may be less than 100 feet from any existing residence building on other premises in any district, or any obvious residence building site on other premises in an S, SC, T, F or M District; and provided that no stable or enclosure for more than four animals may be less than 100 feet from any premises occupied by a church, school, playground, library, or building of a public or eleemosynary institution, except where that distance is intersected by a street at least 60 feet wide; and further provided that no stable or enclosure in a S, SC, T, F or M District may be less than 100 feet from a street, nor contain more than 25 animals on the premises, and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline.

1) Add to Table 4.07 – Table of Use Regulations, Accessory Use 57A the following:

Accessory Uses:

57A. The keeping of bees (species *Apis Mellifera*), provided that no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street; and subject to such requirements as may be imposed by the Director of Public Health of the Town of Brookline, including but not limited to, ~~restrictions~~ requirements as to number~~, and as to~~ location, and size of special structures and enclosures~~. as may be imposed by the Director of Public Health of the Town of Brookline.~~ No beehive shall be placed upon a lot nor retained on a lot without a current permit provided by the Director of Public Health of the Town of Brookline.

This new Accessory Use will be permitted in every zoning district.

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
57. The keeping of horses, cows, goats, or other similar animals, other than pigs, or the keeping of poultry, pigeons, rabbits, or other similar birds or animals~~, or the keeping of bees,~~ provided that no stable or enclosure for any animal may be less than 100 feet from any existing residence building on other premises in any district, or any obvious residence building site on other premises in an S, SC, T, F or M District; and provided that no stable or enclosure for more than four animals may be less than 100 feet from any premises occupied by a church, school, playground, library, or building of a public or eleemosynary institution, except where that distance is intersected by a street at least 60 feet wide; and further provided that no stable or enclosure in a S, SC, T, F or M District may be less than 100 feet from a street, nor contain more than 25 animals on the premises, and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
57A. The keeping of bees (species *Apis Mellifera*), provided that no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street; and subject to such requirements as may be imposed by the Director of Public Health of the Town of Brookline, including but not limited to, ~~restrictions~~ requirements as to number~~, and as to~~ location, and size of special structures and enclosures~~, as may be imposed by the Director of Public Health of the Town of Brookline.~~ No beehive shall be placed upon a lot nor retained on a lot without a current permit provided by the Director of Public Health of the Town of Brookline.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Or act on anything else thereto.

For review purposes, this is the clean version of the changes from current Accessory Use 57 with single striketrhoughs marking deletions.

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
57. The keeping of horses, cows, goats, or other similar animals, other than pigs, or the keeping of poultry, pigeons, rabbits, or other similar birds or animals~~, or the keeping of bees,~~ provided that no stable or enclosure for any animal may be less than 100 feet from any existing residence building on other premises in any district, or any obvious residence building site on other premises in an S, SC, T, F or M District; and provided that no stable or enclosure for more than four animals may be less than 100 feet from any premises occupied by a church, school, playground, library, or building of a public or eleemosynary institution, except where that distance is intersected by a street at least 60 feet wide; and further provided that no stable or enclosure in a S, SC, T, F or M District may be less than 100 feet from a street, nor contain more than 25 animals on the premises, and subject to such restrictions as to number, and as to location and size of special structures and enclosures, as may be imposed by the Director of Public Health of the Town of Brookline.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
57A. The keeping of bees (species *Apis Mellifera*), provided that no hive may be less than 20 feet from any window, door, or other opening in any structure on any other lot; and further provided that no hive be within six feet of any lot line or placed in a location visible from the street; and subject to such requirements as may be imposed by the Director of Public Health of the Town of Brookline, including but not limited to, requirements as to number location, and size of special structures and enclosures. No beehive shall be placed upon a lot nor retained on a lot without a current permit provided by the Director of Public Health of the Town of Brookline.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

ARTICLE 34

THIRTY-FOURTH ARTICLE

Submitted by: Marissa Vogt (TMM-6) and Mike Toffel (TMM-8)

To see if the Town will amend the Town's General By-Laws, Section 2.1, Town Meetings, by adding the following:

> Section 2.1.16 Ethics
>
> Town Meeting Members shall abstain from voting on any warrant article in which they or an immediate family member have a financial interest otherwise than in common with the residents of the Town in general. For purposes of this section, "immediate family member" shall be defined as the Town Meeting Member and their spouse, children, parents, and siblings. The term "financial interest" shall be interpreted to have the same meaning as the term is used in MGL Chs 268A and 268B. Notification of such abstention shall, if possible, be given to the Town Clerk in writing before the Town Meeting session in which the article is considered. The Moderator shall inform and periodically remind Town Meeting Members of the requirements of this section. Failure of one or more Town Meeting Members to comply with the provisions of this section shall not affect the validity of any vote or action taken by Town Meeting.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Summary	These warrant articles seek to add to the Town bylaws two clauses about financial interest associated with warrant articles and Town Meeting deliberations and voting. One article requires all speakers at Town Meeting to disclose any financial interest they or their immediate family members have with the article they are speaking about. The other article requires Town Meeting Members to abstain from any votes on articles when they or their immediate family member have a financial interest.
Voting YES will …	Speaking Article: Require disclosure by anyone

	speaking at Town Meeting upon a matter in which they or their immediate family member have a financial interest otherwise than in common with the residents of the Town in general. Voting Article: Require that a Town Meeting Member abstain from voting on an article in which they have a financial interest otherwise than in common with the residents of the Town in general.
Voting NO will …	Maintain the status quo.
Estimated financial impact on the Town of Brookline	None
Conflicts of Interest	None

1. Overview

The goal of these warrant articles is to encode in the Town's bylaws two measures to address potential conflicts of interest at Town Meeting by requiring disclosure and abstentions. One article would require that all speakers at Town Meeting, including but not limited to Town Meeting Members, begin their remarks by disclosing any financial interests otherwise than in common with the residents of the Town in general that they or their immediate family members have with the article being discussed. The other article would require that Town Meeting Members (TMMs) abstain from voting on matters where they or their immediate family members have a financial interest otherwise than in common with the residents of the Town in general.

2. Why does Town Meeting need these articles?

Massachusetts' state Conflict of Interest law[1], MGL Ch. 268A, prohibits many elected and appointed individuals from acting on matters in which they or their family members have a financial interest. The law applies to Select Board members and many other individuals involved in Brookline Town government who are designated as "special municipal employees", including members of many boards, commissions, and committees. However, the law does not apply to representative TMMs.

The Massachusetts Conflict of Interest law is important because it ensures that actions undertaken by many elected or appointed Town employees and volunteers are in the public interest. The fact that the state law does not apply to representative TMMs means that a TMM could be legally allowed to use their position to advocate and vote for budget

[1] For more information see https://www.mass.gov/learn-more-about-the-conflict-of-interest-law and https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter268A

amendments and other warrant articles from which they would personally financially benefit, and without even being required to disclose their financial interests.

To remedy this, we are proposing two warrant articles that would impose requirements on those speaking at Town Meeting and on Brookline's representative TMMs. These are in line with what the state law requires of other elected positions in Brookline's Town government, and are based on bylaw language from other Towns, which have passed scrutiny from the Attorney General's office.

Town Meeting routinely considers topics in which a TMM or their immediate family could have a financial interest that is not readily apparent to their fellow TMMs. Some recent examples of where this could have occurred include:

- Proposed zoning changes, such as areas like the Waldo-Durgin district (spring 2019) or Newbury College (spring 2020), where a TMM might have owned property in or abutting the rezoned area
- Short-Term Rental warrant articles in spring 2021, where a TMM might have operated an AirBNB unbeknownst to their fellow TMMs
- Select Board and School Committee members stipends warrant articles (fall 2019 & 2020), where a TMM or an immediate family member might have been a Select Board or School Committee member

3. Why Brookline's Current Approach is Inadequate

Brookline's General Bylaws[2] state that "(a)ll Town Meeting Members shall … complete the on-line Conflict of Interest Law training provided by the State Ethics Commission" or "may attend an educational training seminar hosted by the Office of Town Counsel", despite the fact that the state law does not apply to TMMs. However, the bylaws do not contain any further Conflict of Interest or ethics requirements for TMMs.

The 2022 edition of the Brookline Town Meeting Handbook[3] states that TMMs are exempt from the state Conflict of Interest laws and continues, noting on page 25:

> *"However, as a principle of ethics, prior to addressing Town Meeting, speakers* ***should*** *disclose any material economic interest that they or any member of their immediate families or any close business associates have in the matter under consideration. Similarly, any speaker who is employed in any capacity, such as attorney, architect, or broker, by another party interested in an article under discussion should disclose that relationship before speaking. Any Town Meeting Member who is party to a potential conflict of interest* ***should*** *consider voluntarily abstaining from voting on the article in question. The Moderator will on request announce any such abstention before or after the vote on the main motion under the article."* (emphasis added)

[2] General By-Laws, Part II, Legislative, Article 2.1, Town Meetings, Section 2.1.14, Mandatory Educational Training for Town Meeting Members

[3] https://www.brooklinema.gov/DocumentCenter/View/21868/Town-Meeting-Handbook--2021-Edition

There are two problems with this approach. First, the language is weak – the Handbook simply *suggests* that a TMM "should" disclose a conflict or "should consider voluntarily abstaining" from voting but because these statements are in the Handbook and not our bylaws, they are mere suggestions and not legal requirements. Second, because these guidelines are written in the Handbook by the Moderator, they could be removed or modified at any time at the sole discretion of the Moderator.

4. If enacted, what would these warrant articles require?

One article would add to the Town bylaws a requirement that any speaker addressing Town Meeting, including but not limited to Town Meeting Members, disclose whether they or their immediate family have a financial interest before speaking on the issue during Town Meeting. Importantly, this would not prevent such individuals from speaking.

The other article would add to the Town bylaws a provision that would require TMMs to abstain from voting on an article in which they or their family have a substantial financial interest.

Both articles refer to MGL Chs 268A and 268B, the Massachusetts Conflict of Interest law and a law about financial disclosures by public officials, respectively, in defining the term "financial interest". MGL Ch 268A does not define the term "financial interest" but the State Ethics Commission provides many examples in its training materials of how the term has been interpreted in the past (see for example https://www.mass.gov/service-details/self-dealing-financial-interests-and-the-rule-of-necessity-for-municipal-employees-conflict-of-interest-law-primer).

As with the Town bylaw requirement that TMMs undergo Conflict of Interest Law training, these new bylaw provisions do not provide for any enforcement mechanism or penalty. The intent is not to penalize or shame TMMs who may have limited experience with Conflict of Interest policies. That said, accountability would fall to voters, who may choose to consider adherence to these bylaws when deciding which Town Meeting Member candidates to elect or reelect. Finally, both proposed bylaw changes include a phrase that will ensure the validity of Town Meeting actions even if the proposed requirements for speaking and voting are violated.

5. Lessons from other towns

Several other Massachusetts towns with a representative Town Meeting have passed bylaws regarding TMM conflicts of interest. Our proposed bylaws are modeled on the bylaws of the towns of Burlington, Lexington, and Belmont, and Plymouth's Town Charter. Some towns include some type of conflict of interest statements in their bylaws while others address the issue through other means.

Burlington's Town bylaws require TMMs to disclose conflicts of interest when speaking (Burlington Town Bylaws, Article II, 6.0 Ethics[4]) and states that TMMs shall consider abstaining from voting when they have a financial interest:

> *"A Town Meeting Member is required, prior to addressing Town Meeting, to disclose his or her financial interest or the financial interest of an immediate family member, in connection with any warrant article or budget item that is before Town Meeting for consideration. For the purposes of this section, an immediate family member shall include the Town Meeting Member and his or her spouse, and their parents, children, brothers and sisters. A financial interest is defined as any money, thing of value, or economic benefit conferred on or received by the Town Meeting Member or their immediate family. In addition, a Town Meeting Member is required, prior to addressing Town Meeting, to disclose whether the Town Meeting Member or members of his or her immediate family are employed by the Town in a position that may be affected by the motion before Town Meeting, or whether they serve on any board or committee of the Town, including ad hoc committees, that have duties or responsibilities over the subject matter before Town Meeting. Provided, however, that any Town Meeting Member who has a financial interest as set forth in this section shall consider a voluntary abstention from voting on the warrant article or budget item in question. Notification of such abstention shall, if possible, be given to the Moderator in writing before the session in which the article is considered, but at least before debate on the article."*

We note also that a Belmont Town bylaw states that TMMs shall disclose a conflict of interest when speaking at their Town Meeting (Belmont Town Bylaws, 30-115 part D[5]):

> *"Every person desiring to speak shall first be recognized by the Moderator and shall stand while speaking unless the Moderator shall otherwise direct. A Town Meeting Member who speaks upon any matter in which the speaker or his or her immediate family has a direct financial interest shall first disclose such interest to the Meeting. The words "direct financial interest" shall include, but not be limited to, employment as attorney or consultant with respect to the matter."*

Additionally, Plymouth's Town Charter[6] contains a "Conflict of Interest" section that includes the following:

> *"Notwithstanding any general or special law to the contrary, no representative town meeting member shall vote on any town meeting article in which an immediate family member, or any business or organization in which the representative town meeting member serves as an officer, director, partner, or employee, or has a financial interest."*

[4] https://www.burlington.org/ArchiveCenter/ViewFile/Item/444

[5] https://ecode360.com/27111320

[6] https://www.plymouth-ma.gov/sites/g/files/vyhlif3691/f/uploads/town_charter_in_effect_on_june_162020_3.pdf

Finally, our proposed bylaws we have included the phrase "otherwise than in common with the residents of the Town in general" based on a Lexington Town bylaw that deals with conflicts of interest of Town officers and other officials (Lexington Town General Bylaws, Part 1, 48-1[7]) that states:

> *"No town officer or member of any board, department, committee, commission, authority or trusteeship shall in behalf of the town, approve, make or join in the making of any contract, bargain or agreement in, through or by which he has either directly or indirectly any financial or pecuniary interest otherwise than in common with the citizens of the Town in general."*

6. Conclusion

In summary, the proposed bylaw changes will impose requirements on representative Town Meeting Members that are in line with what the state conflict of interest law currently requires of other elected positions in Brookline's Town government. Specifically, the bylaw changes will require that Town Meeting Members disclose a conflict of interest before speaking at Town Meeting and abstain from voting on issues in which they have a financial interest. The proposed language was inspired by similar bylaws in other Massachusetts towns.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation on Article 34.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends NO ACTION on Warrant Article 34 by a vote of 3-19 with 1 abstention.

A duly noticed public hearing was held, as was a full Advisory Committee meeting, each attended by the petitioners who made comments and answered questions.

[7] https://ecode360.com/10534982

Executive Summary	This article would create a new bylaw requiring Town Meeting Members to abstain from voting when they or an immediate family member have a financial interest in a Warrant Article or Town Meeting vote. The petitioners use the phrase "unless such financial interest is shared with a substantial segment of the population of the Town or a Town precinct", and reference MGL Chpts 268A and 268B Conflict of Interest Laws to define "financial interest". The petitioners modeled this after other towns with representative Town Meeting. Framingham, as city, has a similar regulation. https://www.mass.gov/service-details/self-dealing-financial-interests-and-the-rule-of-necessity-for-municipal-employees-conflict-of-interest-law-primer The Committee found MGL 268 A and B to be vague with regard to what qualifies as a financial interest (some things are more apparent than others), noted that existing bylaws have not been legally tested (though have been approved by the Attorney General), pointed out that the Commonwealth specifically exempts Town Meeting Members from provisions of 268A that apply to other municipal officers and employees (this article would go beyond existing State law), and presented many "what if?" situations. The Committee, while very sympathetic to the intent, strongly recommends No Action. The petitioners' main motion is slightly different than as originally submitted, in that it now does away with any penalty provision.
Voting Yes will...	… require Town Meeting Members to abstain from voting at Town Meeting when they or an immediate family member have a "financial interest".
Voting No will...	… permit Town Meeting Members to abstain from voting at Town Meeting on issues in which they or family members have a "financial interest" – **at their discretion**, rather than as a legislated requirement. No change from current practice.
Financial impact	This would likely be complaint driven with no significant cost. There is no associated penalty.
Legal implications	Current bylaws in other municipalities have not been tested as far as we know. However, such bylaws have been approved by the Attorney General, and Town Counsel believes such a bylaw is within Town Meeting's purview to enact.

Introduction
The petitioners feel there is a need to ensure Town Meeting Members (TMM) do not self-deal in regards to issues before Town Meeting. This article, along with the accompanying WA 35 (declaration of conflict of interest), would require TMMs to announce a financial interest and refrain from voting. Petitioners feel that a TMM should not be in a position to financially benefit from a vote at Town Meeting; this extends to direct family members as well. While this issue is covered in the Town Meeting Handbook, it is in the context of "should", rather than "shall". A bylaw, they believe, is more serious and transparent to the public. They also note that our Town Meeting Handbook advises TMM's to recuse themselves from voting where there is such a conflict.

Discussion
TMMs are elected "voters" and not special municipal employees; TMMs hold a unique position under State Law. Their votes represent not only their view, but also their constituents' and those who voted for them. Prohibiting their votes, by extension, may disenfranchise or disadvantage others in their precinct and community members generally.

The definitions/examples of "financial interests" are vague in MGL 268 A and B. If one lives in a proposed LHD, must one abstain because it could be construed to benefit their home value? What if you live in a proposed overlay district? Or just next to it? What about any betterment project (streets, sidewalks, trees, parks)? What if a family member is a DPW worker or a teacher? The list can go on. The petitioners insert the phrase "…shared with a substantial segment of the population…", but that is still somewhat ill-defined and, importantly, contestable.

We recently had a situation where a TMM attorney advanced zoning legislation that favored a neighbor. The attorney was very forthright in pointing out that "conflict", but was also philosophically supportive of the change for various reasons – independent of any other relationship. Should they have to abstain? This article does not extend to friends, cousins, neighbors, colleagues. And, it assumes we know the business, completely, of our family members.

We have also taken up leaf blowers, hearing from a TMM landscaper in the process. Should their vote be silenced because it potentially affects their industry? We all come to Town Meeting with vested interests. We all represent others who have interests. Should a citizen be prohibited from voting on an issue that may potentially affect them financially? And if so, where do we draw the lines? What if the motivation is a quality of life issue?

As proposed, this legislation is more restrictive than State law, and prohibits voters (TMMs) from voting on things that are not adequately defined. What if people live in or adjacent to a proposed LHD? Should TMM's have been required to refrain from voting on St. Aidan's Development articles? The degree to which the petitioners' qualifying language permits or prohibits a vote may not always be clearly discernable.

Some things may appear black and white; but many more are varied shades of gray. The article as worded, and even State Law, does not define these lines well. Perhaps that degree of flexible specificity is too much to hope for in fairly crafting prescriptive legislation.

The Committee is supportive of TMM's (or others) divulging conflicts prior to addressing Town Meeting or voting. We are not convinced that the remedy being offered in this article has a corresponding ailment. There is concern, as well, that this risks being wielded maliciously or disruptively. What may be offered in the spirit of "good governance" may simply sow the seeds of animus.

For these reasons, the Advisory Committee is not convinced that the potential benefits outweigh the potential for greater harm.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/qJ9fGm1TLLIBRiuUIP9LadCUPCfNnATOHM8vfCpdFq0fVC993_sbLrL_X4BnozTNfmLqNCbAnH2wnrwe.MTxxayrlCtFJ5IeS?continueMode=true

Recommendation
The Advisory Committee recommends NO ACTION on Warrant Article 34 as presented by the petitioners, by a vote of 3-19-1. The full text of the amended petitioner motion that was ultimately defeated follows.

MOVED: that the Town adopt the following amendment of General By-Laws by adding the following to a new section 2.1.16:

SECTION 2.1. TOWN MEETINGS Section 2.1.16 Ethics Town Meeting Members shall abstain from voting on any warrant article in which they or an immediate family member have a financial interest, unless such financial interest is shared with a substantial segment of the population of the Town or a Town precinct.

For purposes of this section, "immediate family member" shall be defined as the Town Meeting Member and their spouse, and their children, parents, and siblings, and "financial interest" shall be interpreted to have the same meaning as the phrase is used in MGL Chs 268A and 268B. Notification of such abstention shall, if possible, be given to the Town Clerk in writing before the Town Meeting session in which the article is considered.

The Moderator shall inform and periodically remind Town Meeting Members of the requirements of this section.

Failure of any Town Meeting Members or the Moderator to comply with the provisions of this section shall not affect the validity of any vote or action taken by Town Meeting, and such violations shall not be subject to prosecution nor financial penalty.

ARTICLE 34 ADVISORY COMMITTEE VOTES

Article Description	**Require abstentions from TMMs with a financial interest in a warrant article**
AC recommendation	**NO ACTION 3-19-1**
Ben Birnbaum	Y
Harry Bohrs	N
Cliff Brown	
Patty Correa	
John Doggett	N
Katherine Florio	N
Harry Friedman	N
David-Marc Goldstein	N
Neil Gordon	N
Susan Granoff	N
Kelly Hardebeck	N
Amy Hummel	N
Anita Johnson	N
Alisa Jonas	Y
Janice Kahn	N
Carol Levin	
Pam Lodish	N
Joslin Murphy	N
Donelle O'Neal, Sr.	A
Linda Olson Pehlke	N

Markus Penzel	N
David Pollak	
Stephen Reeders	Y
Carlos Ridruejo	
Lee Selwyn	N
Alok Somani	N
Carolyn Thall	N
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 34

MOTION OFFERED BY THE PETITIONERS

VOTED that the Town adopt the following amendment of General By-Laws by adding the following to a new section 2.1.16:

SECTION 2.1. TOWN MEETINGS

Section 2.1.16 Ethics

Town Meeting Members shall abstain from voting on any warrant article in which they or an immediate family member have a financial interest, unless such financial interest is shared with a substantial segment of the population of the Town or a Town precinct. Nothing in this section shall prohibit a Town Meeting Member from voting on the overall budget appropriation for a department, business, or organization despite the inclusion of a line item in which they have a financial interest**.**

For purposes of this section, "immediate family member" shall be defined as the spouse, children, parents, and siblings of the Town Meeting Member, and the terms "financial interest" and "substantial segment of the population" shall be interpreted to have the same meaning as they are used in MGL Chs 268A and 268B.

Notification of such abstention shall, if possible, be given to the Town Clerk in writing before the Town Meeting session in which the article is considered. The Moderator shall inform and periodically remind Town Meeting Members of the requirements of this section.

Failure of any Town Meeting Members or the Moderator to comply with the provisions of this section shall not affect the validity of any vote or action taken by Town Meeting, and such violations shall not be subject to prosecution or financial penalty.

Petitioner's supplemental explanation – WA 34 & 35 (Town Meeting Financial Interest):

The petitioner motions under WA 34 (voting abstentions) and WA 35 (disclosures prior to speaking at TM) incorporate helpful feedback from the Advisory Committee and Town Counsel's office. In particular, we clarified the circumstances that would require a Town Meeting Member to abstain from voting or an individual to disclose a financial interest before speaking, and narrowed the scope of when such disclosures or abstention would be

required. In doing so, both articles now more heavily rely on language from state conflict of interest laws, which applies to elected and appointed municipal employees, and from a bylaw that Framingham passed when it was a Town. Specifically, the petitioner motions have incorporated the following changes:

- The petitioner motions narrow the circumstances when TMMs would be required to abstain from voting (article 34) or when any speaker at TM would be required to disclose their financial interests (article 35). Specifically, these actions would not be required if the "financial interest is shared with a substantial segment of the population of the Town or a Town precinct". The phrase "shared with a substantial segment of the population" is copied directly from MGL 268A s.19[1], the part of the state conflict of interest law that concerns municipal employees including the Select Board and members of appointed boards and commissions. In both articles, the motions specify that the phrase "substantial segment of the population" shall have the same meaning as it is used in state law, which is 10 percent of the population. In its EC-COI-92-34 opinion[2], the State Ethics Commission held that 10 percent of the population of a town constituted a "substantial segment of the [Town's] population", and this 10 percent standard has been used in later State Ethics Commission opinions (e.g. EC-COI-93-20[3]) and in guidance offered to members of "Board of Selectmen" across the state.[4]

- The "substantial segment of the population" exemptions in the petitioner motions are, in fact, more lax than the bylaw Framingham passed and the state law. Whereas Framingham and MGL treatment of financial interests allow exemptions if it such interests are shared by a "substantial segment of the population of the Town" or "of the municipality," the petitioner motions also exempt circumstances when the individual's financial interest is shared by a substantial segment of a precinct. Thus, for example, if an individual's financial interest is shared by 15% of a precinct but only 5% of the Town, they would be exempt from the proposed bylaws' requirement that they abstain (article 34) or disclose (article 35).

- The motion under WA 34 (voting abstentions) now specifies that a Town Meeting Member can vote on (is not required to abstain) from an omnibus budget motion or an overall department budget even if they have a financial interest in a specific line item. The language we added is copied (with slight editing) from a Town Meeting conflict of interest by-law that Framingham passed in 2016[5] before it became a city.

[1] https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter268A/Section19
[2] https://www.mass.gov/opinion/ec-coi-92-34
[3] https://www.mass.gov/opinion/ec-coi-93-20
[4] https://www.mass.gov/service-details/board-of-selectmen-members-explanation-of-the-conflict-of-interest-law
[5] See Article 37 on page 21 at https://webapps.framinghamma.gov/WebLink/DocView.aspx?id=603772

- Finally, the petitioner motions now include language clarifying that violation of either bylaw "shall not be subject to prosecution or financial penalty."

Together, these changes more closely align our proposed bylaws with Massachusetts state ethics laws in MGL 268A and 268B. While these state laws are not prescriptive as to what constitutes a financial interest, they provide the basis for several other resources that can help Town Meeting Members understand their obligations under our proposed by-laws, including legal opinions[6] issued by the State Ethics Commission, the training that Town Meeting Members are required to complete pursuant to Section 2.1.14 of our General Bylaws, and consultation with our Town Counsel's office.

We continue to believe that these fundamental ethics rules belong in our bylaws to make them more formal, visible, and binding than either a resolution or mere guidance in the Town Meeting Handbook.

[6] https://www.mass.gov/service-details/state-ethics-commission-public-legal-opinions

ARTICLE 35

THIRTY-FIFTH ARTICLE

Submitted by: Marissa Vogt (TMM-6) and Mike Toffel (TMM-8)

To see if the Town will amend the Town's General By-Laws, Section 2.1.11, Town Meeting Procedure, by adding the following:

> Anyone who speaks at Town Meeting, including but not limited to Town Meeting Members, upon any matter in which the speaker or their immediate family has a financial interest otherwise than in common with the residents of the Town in general is required to begin their remarks by first disclosing such interest to the Meeting. For purposes of this section, the speaker's "immediate family member" shall be defined as their spouse, children, parents, and siblings. The term "financial interest" shall be interpreted to have the same meaning as the term is used in MGL Chs 268A and 268B. The Moderator shall inform and periodically remind Town Meeting Members and other speakers at Town Meeting of the requirements of this section. Failure of anyone who speaks at Town Meeting to comply with the provisions of this section shall not affect the validity of any vote or action taken by Town Meeting.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Please see the explanation under Article 34.

SELECT BOARD'S RECOMMENDATION

The Select Board will not be making a recommendation on Article 35.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 36 by a vote of 16-2 with 5 abstentions.

A duly noticed public hearing was held, as was a full Advisory Committee meeting, each attended by the petitioners who made comments and answered questions.

Executive Summary	WA 35 is a correlated article to WA 34. WA 35 requires a *proclamation* before addressing Town Meeting, as opposed to WA 34's *abstention*. This article would create a new bylaw requiring Town Meeting Members (TMM), and anyone else speaking before Town Meeting, to proclaim any potential conflict before voting at Town Meeting when they or a direct family member have a financial interest in a Warrant Article or Town Meeting vote. The petitioners use the phrase "unless such financial interest is shared with a substantial segment of the population of the Town or a Town precinct", and reference MGL Chpts 268A and 268B Conflict of Interest Laws to define "financial interest". https://www.mass.gov/service-details/self-dealing-financial-interests-and-the-rule-of-necessity-for-municipal-employees-conflict-of-interest-law-primer As with WA 34, the Committee found MGL 268 A and B to be vague in regard to what constitutes a financial interest. The Commonwealth specifically exempts TMMs from provisions of 268A that apply to other municipal officers and the petitioners' qualifying phrase is a bit grey. Nonetheless, the Committee is very sympathetic to the intent of this article and noted that our own Town Meeting Handbook advises this. It was felt that as a bylaw it would be taken more seriously and demonstrate that seriousness to the public at large; acknowledging potential conflicts without requiring abstention from voting. It serves as a good "truth in labelling" initiative, without the risk of disenfranchising anyone. It also quite publicly adheres to the spirit of transparency. Some members felt this to be unnecessary and could be accomplished by a reminder around disclosure by the Moderator at the beginning of each Town Meeting. There were also concerns of innocent mistakes possibly becoming games of "gotcha". For the most part, members felt this is good practice and reasonably fits into our bylaws. As with Article 34, this Article 35 does not have a penalty provision. In that regard this has the insistency of a bylaw (which is what is proposed), but with the bite of an admonition.

Voting Yes will...	… require TMMs and all others speaking before Town Meeting to announce a potential "financial interest" of themselves or an immediate family member.
Voting No will...	… permit TMMs to announce any conflict before voting at Town Meeting on issues in which they or family members have a "financial interest" – **at their discretion**, rather than as a legislated requirement. No change from current practice. Would not impose such a requirement on other speakers.
Financial impact	This would likely be complaint driven with no significant cost. There is no penalty provision.
Legal implications	None known.

Introduction
The petitioners feel there is a need to ensure TMMs and others do not self-deal with regards to issues before Town Meeting and are up front about any potential financial interests. This article, along with the accompanying WA 34 (abstention from voting), would require announcing a financial interest prior to speaking at Town Meeting. Petitioners feel that TMMs and others should not be in a position to financially benefit from a vote at Town Meeting. This extends to immediate family members as well. While this issue is covered in the Town Meeting Handbook, it is in the context of "should", rather than "shall". A bylaw is more serious and transparent to the public. Petitioners note that we already maintain this is something we should do in the Town Meeting Handbook, so if we are in fact serious about it – let's be serious about it.

Discussion
TMMs are elected "voters" and not special municipal employees. TMMs hold a unique position under State Law. WA 35 would not prohibit voting by TMMs, but would only require anyone speaking before Town Meeting to announce a potential financial conflict prior to addressing the body.

This will allow TMMs and others to be more aware of potential financial conflicts and calibrate their responses accordingly. This will not impede anyone's ability to vote. WA35 simply requires people to be open and transparent prior to speaking, as both a courtesy and a requirement under this bylaw.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/qJ9fGm1TLLIBRiuUIP9LadCUPCfNnATOHM8vfCpdFq0fVC993_sbLrL_X4BnozTNfmLqNCbAnH2wnrwe.MTxxayrlCtFJ5IeS?continueMode=true

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 35 as presented by the petitioners, by a vote of 16-2-5. The full text of the resolution follows.

VOTED: that the Town adopt the following amendment of the General Bylaws by adding the following to section 2.1.11:

SECTION 2.1. TOWN MEETINGS SECTION 2.1.11 TOWN MEETING PROCEDURE
Anyone who speaks at Town Meeting, including but not limited to Town Meeting Members, upon any matter in which the speaker and/or their immediate family has a financial interest shall begin their remarks by disclosing such interest, unless such financial interest is shared with a substantial segment of the population of the Town or a Town precinct.

For purposes of this section, "immediate family member" shall be defined as the speaker and their spouse, and their children, parents, and siblings, and "financial interest" shall be interpreted to have the same meaning as the phrase is used in MGL Chs 268A and 268B.

The Moderator shall inform and periodically remind Town Meeting Members and other speakers at Town Meeting of the requirements of this section.

Failure of anyone who speaks at Town Meeting, or of the Moderator, to comply with the provisions of this section shall not affect the validity of any vote or action taken by Town Meeting, and such violations shall not be subject to prosecution nor financial penalty.

ARTICLE 35 ADVISORY COMMITTEE VOTES

Article Description	**Requirement to Announce Financial Interest When Speaking Before Town Meeting**
AC recommendation (Favorable Action unless indicated)	**16-2-5**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
Patty Correa	
John Doggett	Y
Katherine Florio	Y
Harry Friedman	N

David-Marc Goldstein	A
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	N
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	A
Janice Kahn	Y
Carol Levin	
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	A
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	
Stephen Reeders	Y
Carlos Ridruejo	
Lee Selwyn	A
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	A
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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ARTICLE 35

MOTION OFFERED BY THE PETITIONERS

VOTED that the Town adopt the following amendment of the General Bylaws by adding the following to section 2.1.11:

SECTION 2.1. TOWN MEETINGS

SECTION 2.1.11 TOWN MEETING PROCEDURE

Anyone who speaks at Town Meeting, including but not limited to Town Meeting Members, upon any matter in which the speaker and/or their immediate family has a financial interest shall begin their remarks by disclosing such interest, unless such financial interest is shared with a substantial segment of the population of the Town or a Town precinct.

For purposes of this section, the speaker's "immediate family member" shall be defined as their spouse, children, parents, and siblings, and the terms "financial interest" and "substantial segment of the population" shall be interpreted to have the same meaning as they are used in MGL Chapters 268A and 268B.

The Moderator shall inform and periodically remind Town Meeting Members and other speakers at Town Meeting of the requirements of this section.

Failure of anyone who speaks at Town Meeting or of the Moderator to comply with the provisions of this section shall not affect the validity of any vote or action taken by Town Meeting, and such violations shall not be subject to prosecution or financial penalty.

ARTICLE 36

THIRTY-SIXTH ARTICLE

Submitted by: Alec Lebovitz (TMM-8) and Mike Toffel (TMM 8)

To see if the Town will adopt the following Resolution:

WHEREAS the Town of Brookline continues to face a "structural deficit," meaning its projected expenditures exceed its projected revenues.

WHEREAS a structural deficit can be addressed by reducing expenses and/or by increasing revenues.

WHEREAS increasing revenues can result from new economic development ("new growth"), increased fees, operating overrides, and more resources derived from Payments In Lieu of Tax (PILOT) paid by tax-exempt property owners.

WHEREAS the February 2020 Final Report of the Brookline Fiscal Advisory Committee (BFAC), convened by the Select Board, issued many recommendations to address the structural deficit including expanding PILOT revenues by "Designing and implementing an enhanced PILOT program to increase these payments, and the execution of tax-certainty agreements, such as the one entered into with Children's Hospital for One Brookline Place."[1]

WHEREAS the Town of Brookline's Payment In Lieu of Tax (PILOT) Policy was adopted by the Select Board in 2007 and was most recently revised in 2011, more than a decade ago, and significant PILOT reform has been implemented in other municipalities, including Boston.

WHEREAS other municipalities' PILOT programs more comprehensively consider how an exempt property is used and the value of any community benefits generated by the property's usage in negotiating PILOT agreements.

WHEREAS the BFAC Moderator's Committee, which Town Meeting created to update Town Meeting on the progress (or lack thereof) on the various public bodies' deliberations of BFAC's recommendations, reported on March 23, 2022 that "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.

WHEREAS no action has been taken to undertake a PILOT Financial Improvement Plan, no action has been taken to more comprehensively investigate whether more revenue could be generated from PILOTS, no effort has been undertaken to do a strategic or

[1] The Brookline Fiscal Advisory Committee (BFAC) final report and presentations are available at https://www.brooklinema.gov/2242/Important-BFAC-Documents

comprehensive review of Brookline's relationships with tax-exempt institutions in terms of the services and community benefits Brookline residents receive and the BFAC recommendation that called for annual disclosures of each PILOT payment has not been adopted."[2]

NOW, THEREFORE, BE IT RESOLVED that Town Meeting directs the Moderator to appoint a committee to (1) review the PILOT policies of Brookline and several other towns to identify best practices, (2) suggest improvements to Brookline's PILOT policies that could be adopted by the Select Board (as policy) or by Town Meeting (as bylaw), and (3) any related topics the Moderator deems appropriate or helpful. The committee shall deliver written reports to Town Meeting Members, the Select Board, the Advisory Committee, and the School Committee by August 1, 2023, timing that precedes by several weeks the date when the Warrant will likely open in anticipation of the Fall 2023 Special Town Meeting.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Please refer to whereas clauses.

SELECT BOARD'S RECOMMENDATION

A report and recommendation under Article 36 will be included in the Supplement.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 36, as amended, by a vote of 20-3 with no abstentions.

Executive Summary	Warrant Article 36 is a resolution that proposes the creation of a Moderator's committee to review the Town's PILOT policies and suggest improvements. Said committee would report to the Select Board, Advisory Committee and Town Meeting by August 1, 2023 – early enough to prepare possible warrant articles for Special Town Meeting in the fall. The goal of the article is to encourage the Town to actively and effectively pursue PILOTS and in doing so, increase Town revenue.

[2] BFAC Moderator Committee reports are available at https://www.brooklinema.gov/1978/Moderators-Committee---Brookline-Fiscal-

Voting Yes will...	Encourages the Town Moderator to create a sub-committee charged with evaluating the current PILOT policy, ways to invigorate and expand the Town's PILOT program, and report findings and make recommendations no later than August 1, 2023
Voting No will...	If the article fails, in all likelihood the Town will continue as it has, with the Director of Finance free and encouraged to follow the established PILOT policy and pursue negotiations (new and existing) with non-religious tax-exempt entities.
Financial impact	The costs are low to nothing, though the proposed Moderator's committee may require staff time and resources in the course of its work. While there may be costs that flow from the work of the Moderator's committee those potential costs are not currently measurable.
Legal implications	None identified.

Introduction

Warrant articles 14 and 36 dovetail in-so-far-as they both relate to payment in lieu of taxes (PILOTS), which are voluntary, negotiated payments made by institutions which have been deemed by the state legislature to be tax exempt because of their non-profit status. These institutions include but are not limited to universities, private schools, religious institutions, and non-profit hospitals. These institutions benefit from Town services and all the community has to offer.

Brookline has been a leader with its PILOT program, benefitting from the experience of a past Finance Director who, prior to coming to Brookline, had negotiated PILOTs and created best practices training for the state as early as 1993. Brookline first adopted a PILOT program in 2007 recognizing that meaningful negotiations between some tax-exempt entities in Town would be fair and beneficial. A citizen study committee, commissioned in 2008 in anticipation of the 2010 override, reviewed the Town's PILOT policy then. And the Town last revisited and amended the PILOT policy in 2011. The policy is available on the Town website.

Warrant article 36, the subject of this report, asks for creation of a Moderator's committee to study and pursue means of increasing PILOT in Brookline, reporting findings and recommendations by August 1, 2023.

Relevant Links

- *Brookline's PILOT policy*

Abbreviated Background of PILOTs in Brookline

The current PILOT policy reflects past negotiations and community sentiment that the Town not pursue PILOTs with religious institutions, and that larger, secular institutions participating in initial discussions wanted assurances that all institutions, regardless of size or purpose, be treated equally, or they would not enter into PILOT agreements at all. As a result, when formulating current policy, the Town chose not to use the term religious for a separate designation of PILOTS. It also determined the proper level of payment and lieu of tax would be twenty five percent of the assessed value of tax-exempt entities' property or properties; the calculation was based on the cost of services (police, fire, DPW maintenance and snow removal etc.) the entities benefit from.

Currently Boston University and Children's Hospital have entered into PILOTs with Brookline. Notably, some tax-exempt properties come in and out of tax-exempt status depending on their use. For example, if a building or a portion of a building is used for educational or administrative purposes, it is exempt. If it is later used as commercial space, it is not. Consider also that some tax-exempt entities are in Town owned buildings, like the auto museum. Those entities are generally given the option to pay rent rather than enter into a PILOT.

Unlike Boston, Newton and surrounding communities, Brookline's practice has been to enter into contracts with PILOT participants in order to ensure the fruits of the negotiations bear out. These contracts are usually re-negotiated every four to five years. Without a contract, PILOTs are more difficult if not impossible to enforce if the tax-exempt entity fails to pay as promised; the Interim Director of Finance provided an example of a large institution doing just that in a neighboring city.

event or agreements with private schools for use of their playing fields) are not considered PILOT agreements and do not impact the Town's revenue stream; however, in-kind services and existing agreements the Town currently enjoys may be impacted by future PILOT agreements. The balance and potential loss or limits to current benefits the Town now enjoys with some non-profits requires careful consideration.

Discussion
The Advisory Committee unanimously supports warrant article 36 as amended, agreeing with the petitioners that efforts to re-energize the PILOT program with the help of a Moderator's committee is a worthwhile pursuit.

The discussion around WA36 focused on the tone of the article, and whether or not a Select Board committee rather than a Moderator's committee might be a better option.

Brookline has been a leader regarding PILOTs and has a sound PILOT policy, yet the tone in the article suggests otherwise. Petitioner's subsequent modifications to WHEREAS clause eight addressed the committee's most pressing concerns regarding this issue.

Additionally, in WHEREAS clause seven in the article as originally written, refers to statements the Town Administrator made without acknowledging that we have a new Town Administrator. Such language could create confusion and lead to misunderstanding

and misappropriation of perspective. Although that language was a quote pulled from the Moderator's committee reporting on the progress of BFAC recommendations, the committee amended the wording to increase clarity.

Finally, in the RESOLVED clause, the committee voted to change the wording to "ask" rather than "direct" the Moderator to appoint a committee, which seemed more civil and appropriate.

As to the question of whether or not a Select Board committee might be preferable to a Moderator's committee, the petitioners noted that the BFAC report suggested a review of PILOTs but the Select Board had not taken action. It is worth noting that the Select Board appointed BFAC members and was under no obligation to accept any or all of their recommendations. Regardless, no one offered any compelling reason why a Select Board committee might be a better avenue to achieve the intended goal.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/Dgysi4pqu5IViLc6roqdij__JBr8moxMTkBKhOV2TEswuNRhQLgyxawPKFBhuH5sjTe_QbzIhjZDG-Wc.LWdgF0K-u3FEK0D-?continueMode=true

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 36, as amended, by a vote of 20-3 with no abstentions. The amended motion follows.

VOTED: That the Town adopt the following Resolution:

WHEREAS the Town of Brookline continues to face a "structural deficit," meaning its projected expenditures exceed its projected revenues.

WHEREAS a structural deficit can be addressed by reducing expenses and/or by increasing revenues.

WHEREAS increasing revenues can result from new economic development ("new growth"), increased fees, operating overrides, and more resources derived from Payments In Lieu of Tax (PILOT) paid by tax-exempt property owners.

WHEREAS the February 2020 Final Report of the Brookline Fiscal Advisory Committee (BFAC), convened by the Select Board, issued many recommendations to address the structural deficit including expanding PILOT revenues by "Designing and implementing an enhanced PILOT program to increase these payments, and the execution of tax-certainty agreements, such as the one entered into with Children's Hospital for One Brookline Place."

WHEREAS the Town of Brookline's Payment In Lieu of Tax (PILOT) Policy was adopted by the Select Board in 2007 and was most recently revised in 2011, more than a decade ago, and significant PILOT reform has been implemented in other municipalities, including Boston.

WHEREAS other municipalities' PILOT programs more comprehensively consider how an exempt property is used and the value of any community benefits generated by the property's usage in negotiating PILOT agreements.

WHEREAS the BFAC Moderator's Committee, which Town Meeting created to update Town Meeting on the progress (or lack thereof) on the various public bodies' deliberations of BFAC's recommendations, reported on March 23, 2022 that "The **[former]** 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."

WHEREAS **Town staff continue to implement Brookline's existing PILOT policy**, limited action has been taken to **conduct** a strategic review **of the policy, a review** of Brookline's relationships with tax-exempt institutions in terms of the services and community benefits Brookline residents receive **has not been conducted since 2011,** and the BFAC recommendation that called for annual disclosures of PILOT payments has not been adopted.

NOW, THEREFORE, BE IT RESOLVED that Town Meeting **asks** the Moderator to appoint a committee to (1) review the PILOT policies of Brookline and several other towns to identify best practices, (2) suggest improvements to Brookline's PILOT policies that could be adopted by the Select Board (as policy) or by Town Meeting (as bylaw), and (3) any related topics the Moderator deems appropriate or helpful. The committee shall deliver written reports to Town Meeting Members, the Select Board, the Advisory Committee, and the School Committee by August 1, 2023, timing that precedes by several weeks the date when the Warrant will likely open in anticipation of the Fall 2023 Special Town Meeting.

ARTICLE 36 ADVISORY COMMITTEE VOTES

Article Description	**Require annual reporting on the Town's PILOT program**
AC recommendation (Favorable Action unless indicated)	**20-3-0**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	N
Patty Correa	
John Doggett	Y
Katherine Florio	Y

Harry Friedman	N
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	
Alok Somani	N
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 36

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

At the Select Board meeting on 11/15 the Select Board discussed Article 36. The Board received a recommendation from the new Finance Director on this article. The Finance Director did not recommend support of this article because of concerns with the language in part (3) of the resolution. There was concern that the language that reads "any related topics the Moderator deems appropriate or helpful," could lead to mission creep with committee members encroaching on staff or Select Board authority.

A unanimous Board voted NO ACTION on the motion offered under Article 36.

ARTICLE 37

THIRTY-SEVENTH ARTICLE

Submitted by: Lee Selwyn

To see if the Town will adopt the following resolution:

WHEREAS, M.G.L. c. 71, Section 34 states, in part, that: "Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, *provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town*. In acting on appropriations for educational costs, *the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. … The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation*. (emphasis supplied); and

WHEREAS, the Town Administrator Act, Chapter 270, Acts of 1985 Section 2(f) (as amended), states that the Town Administrator is responsible for the "formulation of the annual financial plan, including detailed projections of all revenues and expenditures;" and

WHEREAS, Article 2.2, Section 2.2.5 of the Town's General Bylaws states that "The Advisory Committee shall submit a budget at the annual town meeting. It may examine the books and records of any board, committee or officer of the town so far as permitted by law;" and

WHEREAS, the annual operating budget of the Brookline School Department has since FY15 been increasing at an annual rate that is nearly double that of all other Town departments combined; and

WHEREAS, Town Meeting has a responsibility to assure that this pattern of School Department budget growth is justified and, even more important, that the forced limitations and reductions in other departmental budgets do not unduly impair their ability to meet their service obligations to the Town; and

WHEREAS, It is critical that decisions as to the prioritization of Town resources across all Town Departments and functions be subject to review and approval by Town Meeting, and not be effectively preempted by the largely unchecked budget demands put forth by the School Department.

NOW THEREFORE, BE IT RESOLVED:

That Town Meeting requests the Advisory Committee, acting in its capacity as the Town's Finance Committee, to develop a detailed scope of a Budget Review of the School Department to be undertaken by an outside consultant subject to oversight by the Advisory Committee, and that in doing so, the Advisory Committee shall:

(1) develop a scope of work for the consultant;
(2) prepare and submit to Town Meeting a proposed budget for the School Department Budget Review that will be presented to and considered by Town Meeting in May 2023 for inclusion in the FY24 budget;
(3) prepare an RFP for the School Department Budget Review;
(4) based upon responses to the RFP, select a consultant for this assignment; and
(5) oversee the Budget Review with the objective of applying the consultant's recommendations in time for the development of the FY25 School Department budget.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Warrant Article is a resolution that would call for a detailed review of the Brookline School Department budget and budgetary practices and priorities to ensure that these conform to M.G.L. c. 71 and other applicable statutory requirements. M.G.L. c. 71, Section 34, states:

"Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, *provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town*. In acting on appropriations for educational costs, the city or *town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations*. The superintendent of schools in any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. *The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations. The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation*. (Emphasis supplied.)

The Town Administrator Act, Chapter 270, Acts of 1985 Section 2(f) (as amended), states that the Town Administrator is responsible for the "formulation of the annual financial plan, including detailed projections of all revenues and expenditures."

Pursuant to Article 2.2 Section 2.2.5 of the Town's General By-laws, "The Advisory Committee shall submit a budget at the annual town meeting. It may examine the books and records of any board, committee or officer of the town so far as permitted by law."

Thus, Town Meeting, and not the School Committee or School Department, has the sole authority and responsibility to review, modify, and ultimately to approve all components of the Town's operating and capital budgets and other related financial decisions. Under relevant legislation, the proposed annual budget is prepared by the Town Administrator and staff, then provided to the Advisory Committee where its details are examined and, in some cases, modified, and ultimately presented at the Annual Town Meeting for approval by Town Meeting. Subject to procedures established by the Moderator, individual Town Meeting Members may offer motions to modify specific elements of the proposed budget, which motions are then also subject to Town Meeting approval.

The Town Administrator and staff, at the highest level, confer with individual department heads and other senior department staff and, based thereon, recommend allocations of total Town revenues among the various Town departments. Below these Department-level allocations, the Town Administrator's budget recommendation also includes line-item allocations within individual Departmental budgets. The Advisory Committee's review similarly involves a line-item level examination of the proposed operating expenditures with input from individual Department heads and senior staff. The AC's recommendations may involve downward or upward adjustments to the individual line-item amounts and to overall Department level allocations.

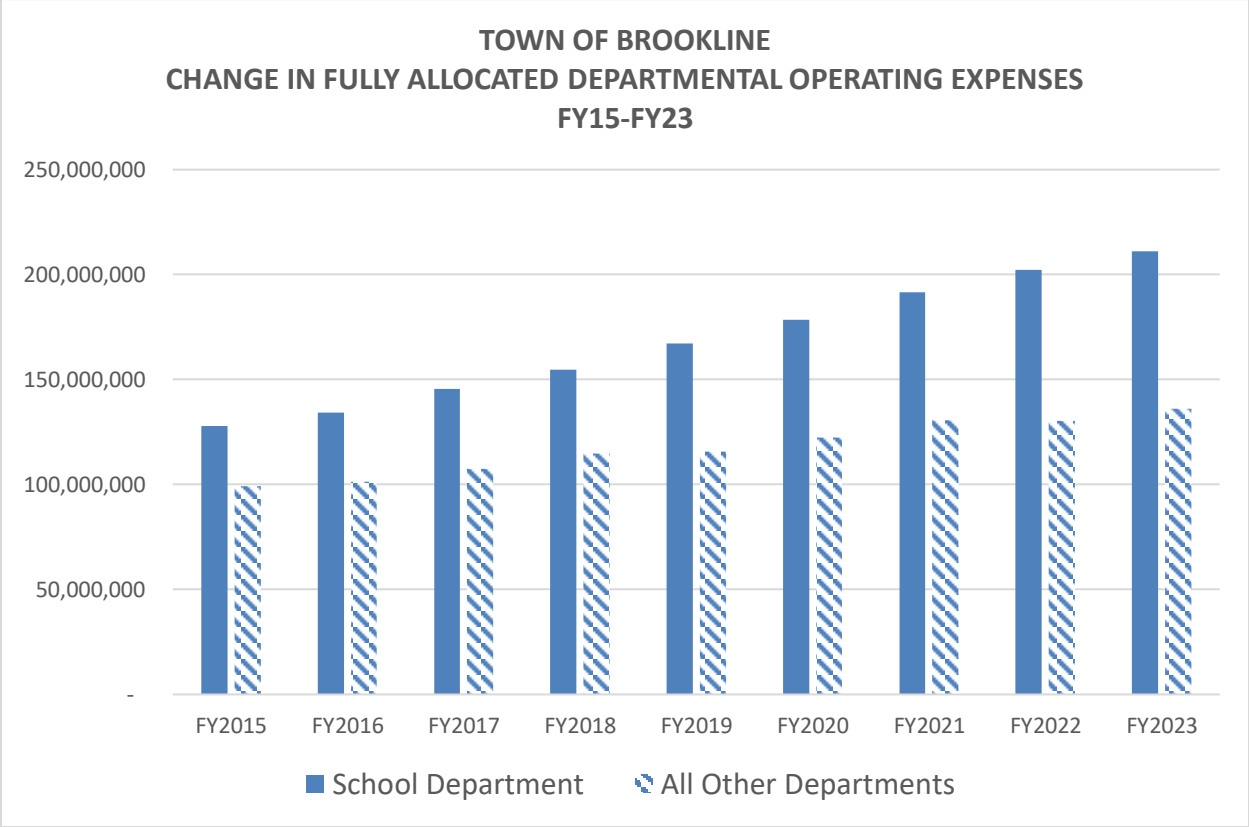
In the case of the School Department budget, however, the process is considerably different. As noted above, approval of the total School Department budget, like all other Departmental budgets, lies unambiguously within the purview and scope of the Town's legislative body -- Town Meeting. However, the allocation of individual expenditures within the School Department budget is the sole responsibility of the School Committee, not Town Meeting. But it is Town Meeting, not the School Department, that is authorized to determine the total School Department allocation.

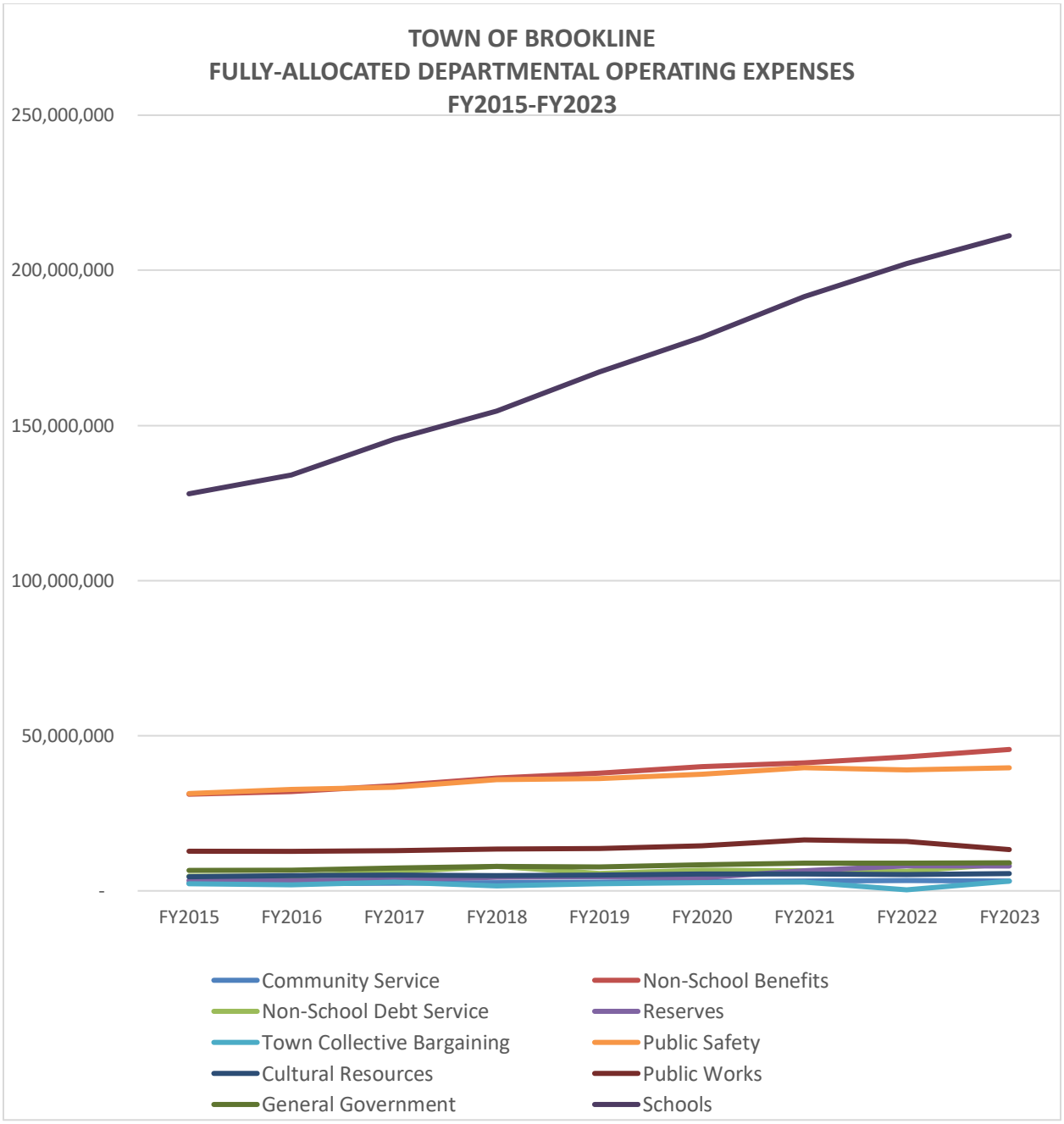
The Brookline School Department's budget has been increasing at a far greater rate than that of all other Town Departments, and has been afforded an ever-increasing share of total Town operating revenues.

In addition to supporting the Town's public schools, the Town also provides a broad array of public services to its residents and businesses. These include Public Safety (police and fire), Public Works (street maintenance, snow plowing, trash collection, water and sewer), Public Health, Veterans services, Parks and Recreation, among others. Creating a budget for the Town involves making trade-offs among potentially competing needs for the Town's limited financial and other resources. Such inter-functional tradeoffs are a central part of the overall budget process. Put differently, as the Schools demand and receive an ever-increasing proportion of the Town's total operating budget, that much less is then available, in the aggregate, for the Town's Public Safety Departments, for necessary Public Works, for Public Health services, , and for all other non-School Town functions.

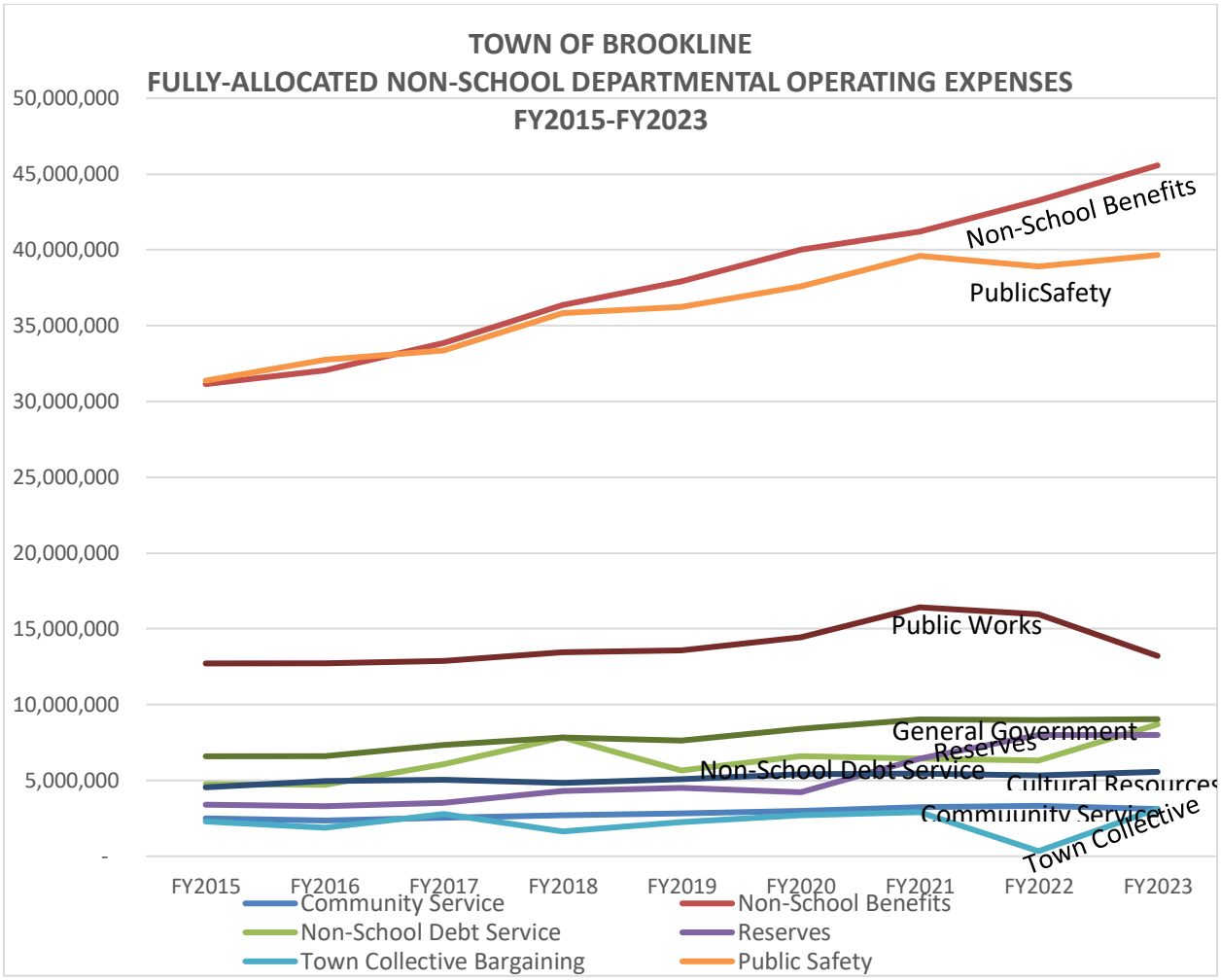
Since FY15, the Public Schools of Brookline's (PSB) share of the total Town operating budget has risen steadily, from 56.3% in FY15 to 60.8% in FY23. The following chart compares the growth in PSB and Non-PSB Town budgeted amounts over the FY2015 through FY2023 periods, and shows how the Schools' funding growth has far exceeded the funds available to all other Town Departments and services:

The Figure below provides department-level expenditure growth over this same FY2015 to FY 2023 period. School Department spending has far outpaced that of all other departments.





The next chart below provides the same data, but without the School Department component, and thus highlights how the individual non-School Town departments have been forced to make do with year-over-year budget increases that have in almost all instances been far less than the growth in the overall Town budget and revenues and, in fact, have often failed even to keep pace with year-over-year inflation:



PSB fully-allocated operating expenses, as estimated from the Town Budget documents increased 65.0%, from $127.98-million in FY15 to $211.17-million in FY23. Compare this change to the increases for all other (non-School) Town departments which, combined, experienced increases of only 36.9% over that same period:

CHANGE IN SCHOOL AND NON-SCHOOL FULLY-ALLOCATED DEPARTMENT COSTS FY15- FY23		
YEAR	SCHOOL DEPARTMENT	ALL OTHER DEPARTMENTS
FY15	127,986,490	99,342,977
FY16	134,115,723	101,352,831
FY17	145,553,938	107,396,569
FY18	154,683,018	114,799,592
FY10	167,226,192	115,728,448
FY20	178,393,117	122,438,446
FY21	191,581,948	130,726,506
FY22	202,226,071	130,382,598
FY23	211,173,407	136,027,680
Pct Change FY15-FY23	**65.0%**	**36.9%**
Source: Estimates based upon fully-allocated percentages of total operating expenses as provided in annual Town Financial Plans		

The following table illustrates these budget amounts at the individual department level:

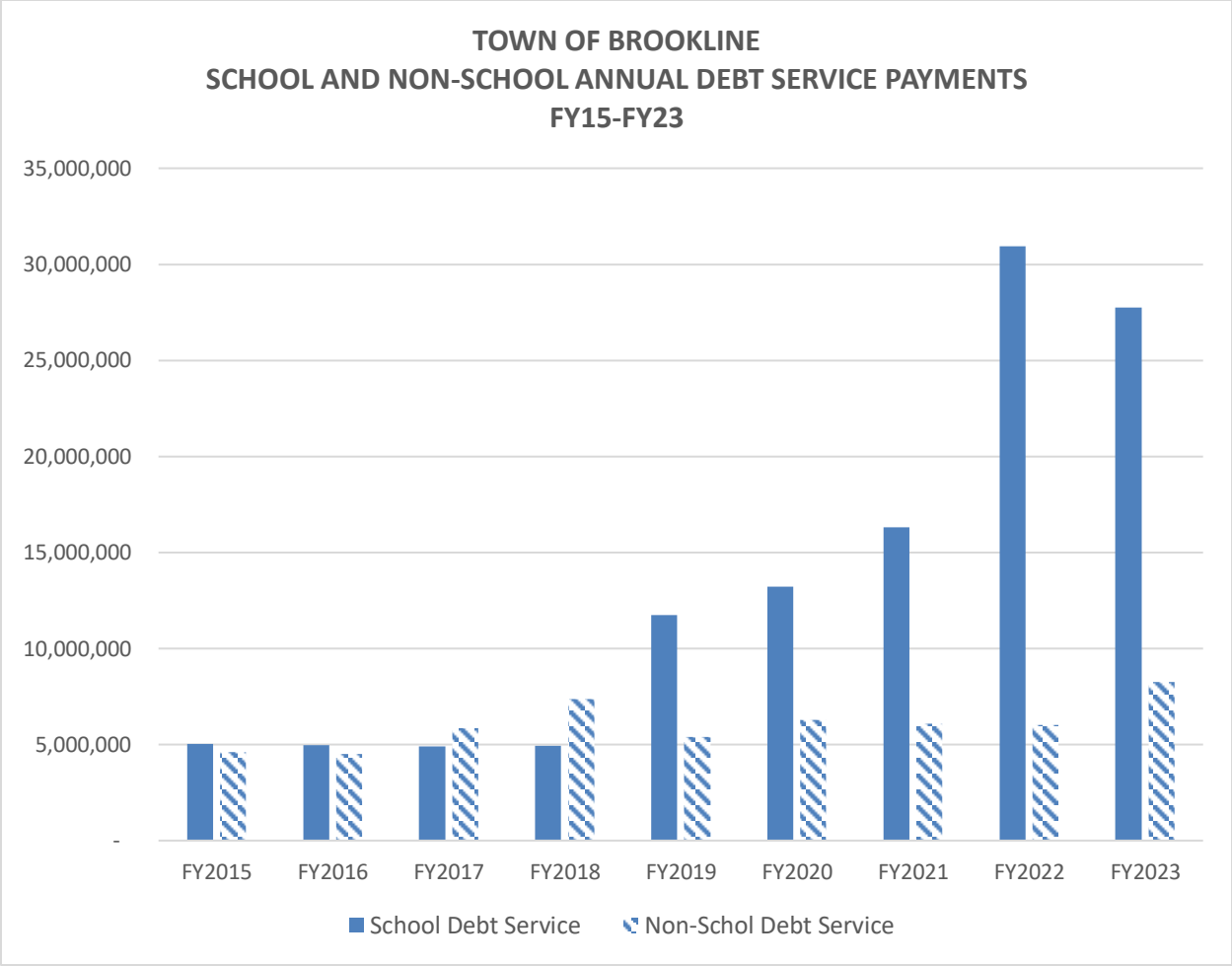
CHANGE IN FULLY-ALLOCATED DEPARTMENT COSTS FY15- FY23					
DEPARTMENT	FY2015	FY2016	FY2017	FY2018	FY2019
Community Service	2,500,624	2,357,043	2,526,978	2,694,826	2,829,546
Non-School Benefits	31,144,137	32,055,779	33,861,506	36,380,152	37,915,922
Non-School Debt Service	4,773,919	4,714,085	6,064,747	7,814,996	5,659,093
Reserves	3,409,942	3,299,860	3,537,769	4,311,722	4,527,274
Town Collective Bargaining	2,273,295	1,885,634	2,779,676	1,616,896	2,263,637
Public Safety	31,371,466	32,762,892	33,356,111	35,841,187	36,218,194
Cultural Resources	4,546,589	4,949,789	5,053,956	4,850,687	5,093,184
Public Works	12,730,450	12,728,030	12,887,588	13,474,131	13,581,823
General Government	6,592,555	6,599,719	7,328,236	7,814,996	7,639,775
Schools	127,986,490	134,115,723	145,553,938	154,683,018	167,226,192
TOTAL NON-SCHOOL	**99,342,977**	**101,352,831**	**107,396,569**	**114,799,592**	**115,728,448**
TOTAL OPERATING BUDGET	**227,329,467**	**235,468,555**	**252,950,507**	**269,482,610**	**282,954,640**
SCHOOL AS PECT OF TOTAL	**56.3%**	**57.0%**	**57.5%**	**57.4%**	**59.1%**
DEPARTMENT	FY2020	FY2021	FY2022	FY2023	PCT CHANGE FY15-FY23
Community Service	3,008,316	3,219,865	3,326,087	3,131,072	25.2%
Non-School Benefits	40,010,598	41,214,268	43,239,127	45,574,491	46.3%
Non-School Debt Service	6,618,294	6,439,729	6,319,565	8,697,422	82.2%
Reserves	4,211,642	6,439,729	7,982,608	8,001,628	134.7%
Town Collective Bargaining	2,707,484	2,897,878	332,609	3,131,072	37.7%
Public Safety	37,603,945	39,604,336	38,915,214	39,660,244	26.4%
Cultural Resources	5,414,968	5,473,770	5,321,739	5,566,350	22.4%
Public Works	14,439,915	16,421,310	15,965,216	13,220,081	3.8%
General Government	8,423,284	9,015,621	8,980,434	9,045,319	37.2%
Schools	178,393,117	191,581,948	202,226,071	211,173,407	65.0%
TOTAL NON-SCHOOL	**122,438,446**	**130,726,506**	**130,382,598**	**136,027,680**	**36.9%**
TOTAL OPERATING BUDGET	**300,831,563**	**322,308,454**	**332,608,669**	**347,201,087**	**52.7%**
SCHOOL AS PECT OF TOTAL	**59.3%**	**59.4%**	**60.8%**	**60.8%**	
Source: Estimates based upon fully-allocated percentages of total operating expenses as provided in annual Town Financial Plans					

The Town of Brookline employs a budgetary process in which certain costs that can be directly associated with individual departments (e.g., employee pension and health benefits costs) are nonetheless excluded from the reported departmental budgets and are instead subject to an "allocation" much later in the process.[1] For example, for FY20, the School Department budget as shown in the Town's Financial Plan is $117,235,691. However, the School Department is required to report its total costs to the Massachusetts State Department of Elementary and Secondary Education ("DESE") that include these additional cost categories. The DESE amount for FY20 (the most recent year for which DESE data is available) is shown as $162,641,415, nearly 39% more than the amount shown in the Town's FY20 Financial Plan. Adding to the confusion, the Town's FY20 Financial Plan provides a chart showing the "Fully Allocated FY20 General Fund Operating Budget," suggesting that 59.1% of the FY20 Operating Budget of $285,487,527, or $178,393,117, is associated with Brookline Schools.

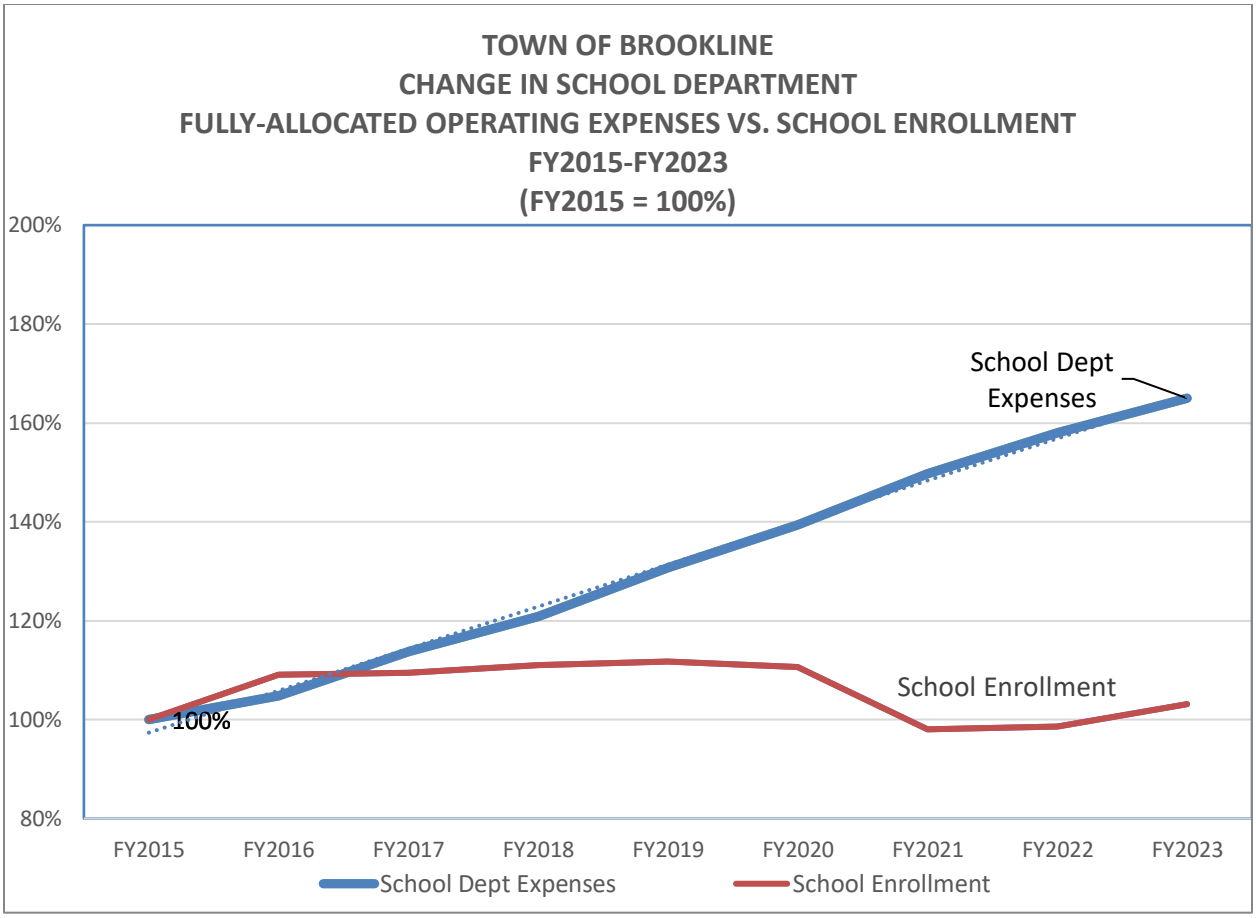
This confusing method of reporting of School Department costs in the Town's Annual Financial Plan, and its inconsistency with the cost figures that are required to be reported to DESE, further contribute to the difficulties created by the preemptive allocations to the School Department.

One key element of the extraordinary growth in School Department expenditures has been the tremendous jump in annual debt service payments (interest plus principal repayment) resulting from the string of debt exclusion overrides that were required to fund major school construction projects from Ridley and Runkle to the High School and Driscoll:

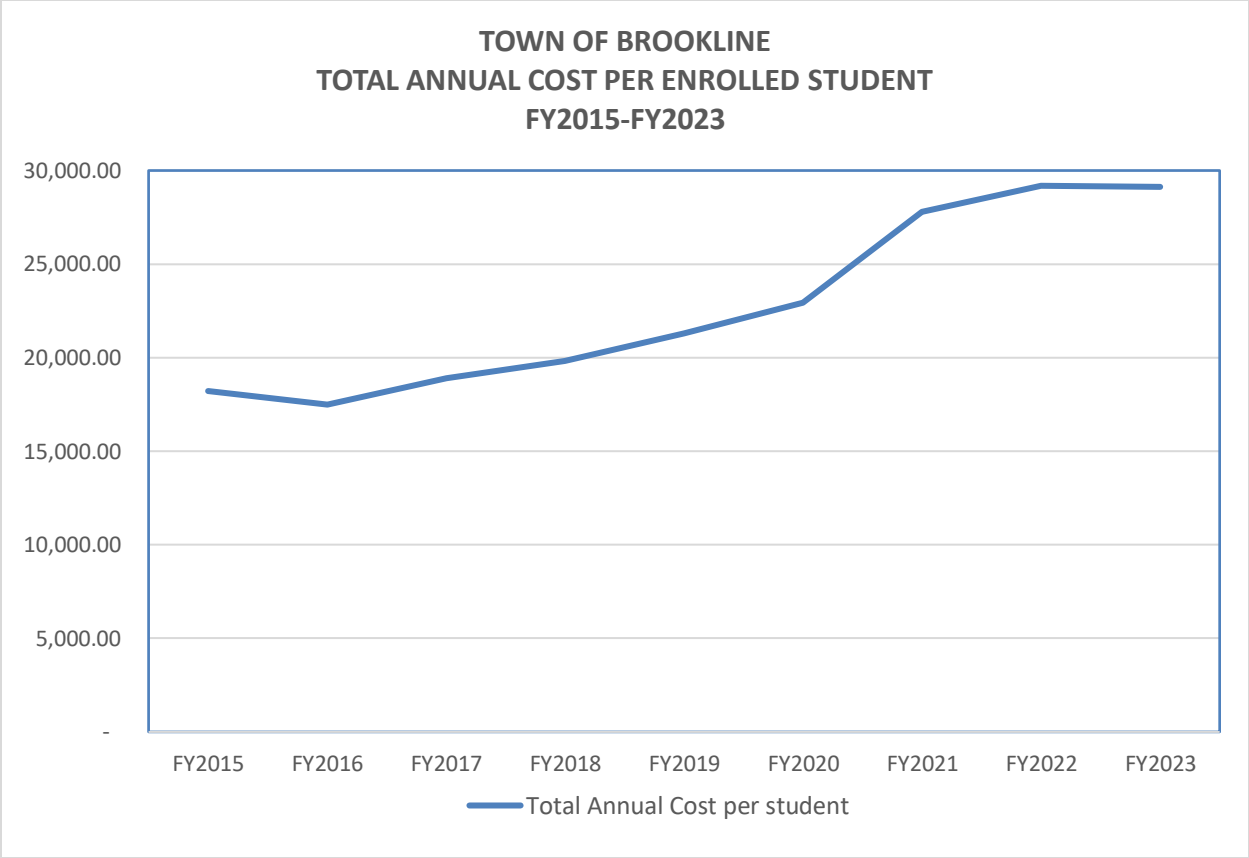
[1]This budgeting process is a serious departure from standard cost accounting practice. Costs that can be directly associated with a specific functional area should be directly assigned to that function, not flowed indirectly through some type of often arbitrary "allocation." Such "allocations" are appropriate only where the cost cannot be directly associated with a specific function, for example, the cost of the Town Administrator's office. But costs such as pensions and health benefits can be directly assigned to the function whose personnel they benefit. Costs of such centralized functions as Human Resources can be directly assigned based upon headcounts. Costs such as the legal department can be directly assigned based upon time records. And so on. Brookline does this in some cases, but not in others. It is notable that the State Department of Elementary and Secondary Education (DESE) mandates cost reporting that is not consistent with the method used by the Town to identify School Department costs.



The School Department has long sought to justify its voracious appetite for massive budget increases on the basis of the high enrollment growth that it had been experiencing. However, projections of growth that were presented by the School Department to the 2014-15 Override Study Committee largely failed to materialize. In fact, Brookline Public School enrollment had remained largely unchanged over the 2015-16 to 2019-20 school years and, of even greater significance, enrollment experienced a precipitous 11.4% drop in the 2020-21 school year. This sharp drop in enrollment was attributed mainly to the effect of COVID-19 as many parents withdrew their children from public schools in favor of private schools that offered more robust remote and in-person learning environments. Enrollment increased slightly in the 2021-22 school year, and additional small increases are being projected by the PSB for 2022-23, but there is no expectation that enrollment will return to pre-COVID levels anytime soon. Notably, however, enrollment growth or, more accurately, the lack thereof, after 2015 cannot explain the persistently large year-to-year increases in the PSB's budget demands. Moreover, starting in 2020-21, when enrollment began to fall, the level of School spending continued to rise:



The large drop in enrollment, together with the escalating total cost of the Brookline Schools, has resulted in a huge jump in the total cost per student over the FY2015 to FY2023 period:



Based upon the School Department's FY2023 enrollment and budget projections, the total (fully-allocated) cost per student in the Brookline Public Schools will reach $29,143 for the 2022-23 school year, up some 60.1% over the corresponding $18,206 FY15 level.

Conclusion

Town Meeting has a responsibility to assure that this pattern to School budget growth is justified and, even more important, that the forced limitations and reductions in other departmental budgets does not unduly impair their ability to meet their service obligations to the Town. It is critical that decisions as to the prioritization of Town resources across all Town Departments and functions be subject to review and approval by Town Meeting, and not be effectively preempted by the largely unchecked budget demands put forth by the Schools.

This Warrant Article would call on the Advisory Committee, acting in its capacity as the Town's Finance Committee, to develop a detailed scope of a School Department budget review that would be undertaken by an outside consultant and be subject to oversight by the Advisory Committee. The Advisory Committee would be asked to develop a scope of work for the consultant, submit a proposed budget for the undertaking to be considered by Town Meeting in May 2023 for inclusion in the FY24 budget, prepare an RFP, select a consultant, and oversee the Budget Review with the objective of applying the consultant's recommendations in time for the development of the FY25 School Department budget.

SCHOOL COMMITTEE STATEMENT

On October 13, 2022, the School Committee voted UNANIMOUSLY 7-0-0 to recommend that Town Meeting vote no action on WA37. Voting in favor were Mr. Pearlman, Dr. Liu, Ms. Charlupski, Dr. Ehrenberg, Ms. Federspiel, Ms. Gorer, and Ms. Nobrega.

A position statement will follow with the Supplemental Reports.

SELECT BOARD'S RECOMMENDATION

The Select Board is not making a recommendation on Article 37.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation on Article 37 will be included in the Supplement.

XXX

ARTICLE 37

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 37 by a vote of 22 in favor, 4 opposed, and one abstention.

Executive Summary	Article 37 asks Town Meeting to request the Advisory Committee (AC) to develop a scope of work for a budget review of the School Department by an outside consultant. Since FY 15, both the voted and the fully allocated budgets for The Public Schools of Brookline (PSB) have increased significantly faster than the budget for other town departments. The petitioners believe a management audit of school spending is overdue and would enable the Advisory Committee and Town Meeting to better understand why this is happening. With this information, the Advisory Committee and subsequently Town Meeting would be better able to evaluate how the town might allocate revenues between the town and the schools. The Advisory Committee is required by Massachusetts's General Law to present the budget to Town Meeting. To accomplish this, the AC reviews and analyzes budget requests from individual departments and holds hearings where the members of the AC and the public can ask questions of department heads.
Voting Yes will...	Have the Advisory Committee develop a proposed scope of work for a consultant and create a proposed budget for a budget review of the school department. Such budget (currently estimated to range from $200,000 to $500,000) would be presented to the May 2023 Town Meeting for inclusion in the FY24 budget. If approved and included in the FY24 budget, the Advisory Committee would retain and oversee the consultant and could incorporate any recommendations into the Advisory Committee's review of the proposed FY25 School Department budget.
Voting No will...	No change

Financial impact	The proposed budget review is estimated to range from $200,000 to $500,000 and would be funded from the FY24 budget.
Legal implications	None

Introduction
It is the Advisory Committee's role to present the town's budget to Town Meeting. It is Town Meeting's role to approve, as presented or as amended, the town's budget, including the amount of money allocated to the PSB. It is the School Committee's role to determine school policies and decide how resources allocated to the PSB are spent. As discussed below, the AC's role in the development of the school budget is different, and more limited, than its role in the development of the budget for town departments. Nevertheless, it is the role of the Advisory Committee, in consultation with the Town Administrator, to present a budget to Town Meeting that ensures that both the schools and the town departments are adequately funded. The petitioners believe this audit is required so that the Advisory Committee can properly fulfill its oversight role.

Budget Development Process: The petitioners note that the town budget is prepared by the Town Administrator in consultation with the department heads. The Advisory Committee has a subcommittee meet with each department head to discuss and evaluate departmental budget requests. This process provides the AC with a deep understanding of the issues facing each department. It allows the AC to thoroughly comprehend budgetary requests and to modify them if appropriate. Because the School Committee oversees the budget process of the schools, the Advisory Committee does not have first-hand understanding of what is and is not funded in the school budget. This is because the AC does not have the ability to do as "deep a dive" with the School Department since no subcommittee of the AC meets with the heads of the individual functional groups who present their budget requests to the Superintendent, a process that would be analogous to the one used with the town.

Since FY 15, both the voted and fully allocated budgets for the PSB have been escalating at a rate substantially greater than other town departments. Through the Town-School Partnership, the PSB has obtained a somewhat larger share of annual marginal increases in net town revenues than what a strict adherence to the TSP formula would have suggested ,as well as significant sums via operating overrides. The town's recent debt exclusion votes have also been used primarily to raise money to fund the construction and/or renovation of school facilities.

The growth in operating expenses for the schools has contributed to a reduction in resources for some departments. As a result, some town departments are not able to compete with wages offered by other municipalities. Unfilled vacancies have, in some departments, required overtime and third-party contractors to meet day to day operating needs. Other departments have had to reduce already thin staffing to meet their budgets. The general inability to fill positions necessarily means that departments cannot provide the depth of service that town residents ask of them.

The School Department historically has attributed the need for increased spending to several factors including the 35% increase in the student population from 2006 to 2014, growth that continued through 2016 but which then began to level off and then, with the onset of the pandemic, dramatically decreased. The student population has yet to recover to anything near pre-pandemic levels and there are no indications that it will do so in the near future. The PSB has also noted the impact of its contractual wage agreements with the Brookline Educators Union on its budget. Teachers and some other school employees covered by union contracts receive cost of living increases as well as raises and pay increases tied to "steps and lanes". Because personnel expenses comprise more than 80% of the school budget, combined these increases cause those costs to grow at a rate greater than the rate of growth in the town's revenue.

This so-called "structural deficit" is an issue that the town and Town Meeting have been aware of for many years. Because the town must produce a balanced budget every year, the gap between revenue increases and expense increases for the PSB has been met via a combination of operating overrides (in 2015 and 2018) and, as noted above, larger shares of marginal increases in net revenue allocated to the schools via the Town-School Partnership (TSP). Because the TSP has operated on a "you get it, you keep it" basis, to date there has been no reallocation of funds. Further, despite the sustained downward shift in enrollment, the School Department operating budget has continued to rise. The department has primarily used one-time funds from state and federal sources to bridge gaps and maintain spending levels. Implementation of operating efficiencies to help address shortfalls have been relatively limited. The department has also prioritized year-over-year operating expenses over long-term maintenance, which became an issue during the FY23 budgeting process for the Building Department.

It is important to consider that there are factors beyond this structural imbalance which may be contributing to the continued increase in spending, including but not limited to the mandated requirements embodied in the cost of special education and the impact of the pandemic on the learning environment (physical and pedagogical).

The PSB is not the only department in town that has contractual wage increases requiring more than what has historically been a 2% cost of living adjustment. For example, both the Police Department and the Fire Department have wage structures that include growth beyond a cost-of-living increase.

The petitioners believe the proposed budget review would enable the Advisory Committee and Town Meeting to better understand why school spending is increasing at a higher rate than spending by town departments. Such a review could provide independent confirmation that the PSB budget is well managed or it could result in recommendations that the Advisory Committee could use to offer concrete and actionable recommendations to Town Meeting and the School Department to slow the rate of increase in school costs. The study could also provide information that might be useful in determining how funds should be allocated between the town and the schools.

It should be noted that the School Department is in the process of retaining a consultant to review aspects of its operating procedures. Both the School Committee and the Advisory Committee agree that the proposed initiatives by the School Department and by the Advisory Committee are different in scope and timing.

Discussion

There was essentially unanimous agreement, at both the subcommittee hearing and the full AC meeting, that the sort of study suggested by the petitioners represents a management best practice. Indeed, as was pointed out, the Brookline Fiscal Advisory Committee specifically recommended similar periodic management reviews for the town and the schools. Because of this broad consensus, the discussion around the article was primarily, though not solely, focused on whether a consultant, retained and managed by the AC, would be a better way to proceed or whether the AC should seek to work with the schools. The following summarizes the arguments and comments made regarding these positions:

AC Controlled Process: The Advisory Committee has legal responsibility for the budget and the authority to examine the books and records of boards, committees and officers. Most committee members feel that having this responsibility means the AC should be the party to retain and manage a consultant. This approach is viewed as the best way to ensure a study is as independent and objective as possible. Several members expressed that while the PSB produces a very comprehensive budget book, they nevertheless feel the PSB's decision making process is a "black hole". Some members believe the perceived opaqueness of the PSB budget sometimes engenders a lack of trust in the PSB and that an independent review could provide a level of comfort, regardless of its conclusions, that other approaches might not produce.

Some committee members questioned what the petitioners expected a consultant to do. They wondered how the proposed study could provide actionable insight into the question of resource allocation between the town and the PSB if there was not a process that examined the town side of the equation. Other committee members pointed out that the AC has discussed getting involved earlier in the town's budget process, allowing the AC to provide feedback as the budget is being created. An ad hoc subcommittee of the AC has begun to meet with stakeholders and expects to propose new processes for the Advisory Committee to consider in the coming months.

The concern was raised that the study might be designed and used solely for the purpose of furthering an agenda to justify a reallocation of resources from the schools to the town. This view held that while many colleagues raised the idea of collaboration and "one town", that the article itself did not embrace that philosophy. This opinion was refuted by others who indicated that while they were supportive of the article, they would not be if they felt the study were going to be used in such a manner.

Collaborative Process: Those advocating for a collaborative process felt the proposed article offered a unique opportunity for the AC to work with the PSB. The reasoning was that the design of such a study would be best informed taking the input of both the AC and the PSB, each of which would bring different insights on important matters for a consultant to evaluate. Given the stated concern about lack of transparency and even mistrust of the PSB, it struck some that working jointly could help alleviate some of those issues, not just for this study but for general cooperation in the future.

While this scenario was acknowledged as being attractive, some members expressed that, in their opinion, the PSB seemed to only be willing to "be informed" by the ideas of the AC as it (the PSB) moved forward with its own study. Other members reiterated the arguments noted above and stated the need for the AC to be the body retaining the consultant in order to have an evaluation that could be viewed as truly independent.

Ultimately, the Advisory Committee concluded, by a considerable margin, that engaging with a consultive process as proposed by this Warrant Article is a worthwhile endeavor and worth the projected costs.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/share/cqiHffhWtkjmLsul7Mdmf3lBQnNKtnFfX4pxYVmCUE08_rkhuA60gCciedJHHNfU.Y7tA3cThhMjkAISE

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 37 by a vote of 21-4 with 1 abstention.
ARTICLE 37 ADVISORY COMMITTEE VOTES

Article Description	**Resolution regarding a budget review for the School Department**
AC recommendation	**21-4-1**
Ben Birnbaum	Y
Harry Bohrs	

Cliff Brown	N
Patty Correa	A
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	N
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	N
Stephen Reeders	Y
Carlos Ridruejo	
Lee Selwyn	Y
Alok Somani	N

Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 37

AMENDMENT TO THE PETITIONER'S MOTION OFFERED BY TMMS CAROLYN THALL, P16, DAN SALTZMAN, P06; NEIL GORDON, P01; JOSLIN MURPHY, P16; JOHN DOGGETT, P13; and PETITIONER LEE SELWYN, P13

MOVED: To amend Article 37 as follows (proposed addition appearing in underline, below):

To see if the Town will adopt the following resolution:

WHEREAS, M.G.L. c. 71, Section 34 states, in part, that: "Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, *provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town*. In acting on appropriations for educational costs, *the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. … The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation*. (emphasis supplied); and

WHEREAS, the Town Administrator Act, Chapter 270, Acts of 1985 Section 2(f) (as amended), states that the Town Administrator is responsible for the "formulation of the annual financial plan, including detailed projections of all revenues and expenditures;" and

WHEREAS, Article 2.2, Section 2.2.5 of the Town's General Bylaws states that "The Advisory Committee shall submit a budget at the annual town meeting. It may examine the books and records of any board, committee or officer of the town so far as permitted by law;" and

WHEREAS, the annual operating budget of the Brookline School Department has since FY15 been increasing at an annual rate that is nearly double that of all other Town departments combined; and

WHEREAS, Town Meeting has a responsibility to assure that this pattern of School Department budget growth is justified and, even more important, that the forced limitations and reductions in other departmental budgets do not unduly impair their ability to meet their service obligations to the Town; and

WHEREAS, It is critical that decisions as to the prioritization of Town resources across all Town Departments and functions be subject to review and approval by Town Meeting, and not be

effectively preempted by the largely unchecked budget demands put forth by the School Department.

NOW THEREFORE, BE IT RESOLVED: That Town Meeting requests the Advisory Committee, acting in its capacity as the Town's Finance Committee, in consultation with the School Committee or its designee, to develop a detailed scope of a Budget Review of the School Department to be undertaken by an outside consultant subject to oversight by the Advisory Committee, and that in doing so, the Advisory Committee shall: (1) develop a scope of work for the consultant; (2) prepare and submit to Town Meeting a proposed budget for the School Department Budget Review that will be presented to and considered by Town Meeting in May 2023 for inclusion in the FY24 budget; (3) prepare an RFP for the School Department Budget Review; (4) based upon responses to the RFP, select a consultant for this assignment; and (5) oversee the Budget Review with the objective of applying the consultant's recommendations in time for the development of the FY25 School Department budget.

ARTICLE 38

THIRTY-EIGHTH ARTICLE

Submitted by: Chi Chi Wu, Town Meeting Member Pct.7; Chris Chanyasulkit, Library Trustee; Ashley Eng, Town Meeting Member Pct.9; Paul Hsieh, Town Meeting Member Pct. 4; Christina Kovach, Town Meeting Member Pct. 8; Susan Park, Town Meeting Member Pct.17; Rita Shon-Baker, Town Meeting Member Pct.7; Aone Wang, Town Meeting Member Pct.8, and the Brookline Asian American Family Network

WHEREAS Asian American & Pacific Islanders (AAPI) residents constitute the largest community of color in the Town of Brookline. According to the 2020 Census, over 12,000 of Brookline residents identify as AAPI, which is 19% of the Town's population or 1 in 5 residents;

WHEREAS AAPI residents have made numerous contributions to the civic, business, and social life of Brookline;

WHEREAS on October 23, 1992, Congress passed and the President signed a Public Law 102-150 proclaiming the month of May to be AAPI Heritage Month;

WHEREAS the needs of the AAPI community are often overlooked because of the Model Minority Myth;

WHEREAS Office of Diversity, Inclusion and Community Relations (ODICR), in conjunction with the Brookline Asian American Family Network (BAAFN), has sponsored and sponsored an AAPI Heritage Month celebration since 2016;

WHEREAS the Town of Brookline sponsors an Annual Town-wide Commemoration of Dr. Rev. Martin Luther King, Jr. as a result of a Resolution passed by Town Meeting on May 25, 2010; and

WHEREAS Town Meeting passed a Resolution on November 15, 2017 to commemorate the second Monday of October as Indigenous Peoples Day and to establish a Committee to organize an annual commemoration.

NOW, THEREFORE, BE IT RESOLVED THAT TOWN MEETING URGES:

1. The Select Board to proclaim the month of May as Asian American & Pacific Islander Heritage Month in Brookline in recognition of Brookline's AAPI community and its contributions;

2. The Select Board to establish an Annual Town-wide Celebration of AAPI Heritage Month during the month of May, to be organized by ODICR in conjunction with a Brookline-based AAPI organization. In the event there is no willing Brookline-based

AAPI organization to co-sponsor the event, an AAPI Heritage Month Celebration Committee shall be established with the assistance of ODICR;

3. The Select Board ensure there is adequate funding for the annual AAPI Heritage Month Celebration;

4. The people of Brookline celebrate the month of May as AAPI Heritage month, including by attending the annual Celebration and by learning more about the history, culture, and lives of their AAPI neighbors, classmates, and friends;

and

5. The Public Schools of Brookline observe AAPI Heritage Month by organizing activities in celebration of the month and providing instruction on the history and culture of the AAPI community.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Nearly one in five Brookline residents identify as AAPI, according to data from the 2020 Census as reported by the Donohue Institute at the University of Massachusetts. See U.Mass Donohue Institute, Census 2020 Data for Massachusetts: Municipal Summaries from the Census 2020 PL-94 Redistricting Data, found at this link (scroll to ""Brookline"; reporting 12,124 out of 63,131 residents identify as "Asian alone"). AAPI residents have made tremendous contributions to Brookline's civic, business, and cultural life, including notable writers (Mai Kim Le, Joon Lee); musicians (Lucia Lin); businesspeople (Laurea Sen, Raj Dhanda); scientists (Dr. Frederick Pei Li, Dr. John Fan), academics (Dr. Min Hyoung Song, Andrew Leong) and activists (Stephanie Fan, Michael Liu).

Yet the AAPI community is often overlooked in Brookline. This is in part the result of the Model Minority Myth, which wrongly portrays all AAPIs are well-educated and well-off and thus have no needs requiring attention. The AAPI community certainly has needs requiring attention. Anecdotally the staff of the Brookline Food Pantry have estimated that an astounding 50% of its clients are AAPI. Fourteen percent of Brookline Housing Authority residents are AAPI. Nationally, a 2018 report by Asian Americans/Pacific Islanders in Philanthropy found that of every $100 awarded by foundations in the United States, a mere ***20 cents*** was designated for AAPI communities.

It's time for this Town to officially recognize the many contributions as well as the needs of its AAPI residents. This Town proudly celebrates Martin Luther King Day and Indigenous People's Day as a result of Resolutions passed by Town Meeting. AAPI Heritage Month is celebrated as a result of volunteer efforts by BAAFN, with the support of ODICR. BAAFN organizes an annual Essay Contest and holds an awards event in May that also includes a celebration of AAPI Heritage Month.

This Resolution would elevate the annual AAPI Heritage Month Celebration as an official event sponsored by the Town. BAAFN can continue to organize the annual celebration in conjunction with ODICR in the near future, but this Resolution ensures that it will continue to be held regardless of any one organization's ability to support it.

SCHOOL COMMITTEE STATEMENT

On October 13, 2022, the School Committee voted UNANIMOUSLY 7-0-0 to recommend passage of WA28. Voting in favor were Mr. Pearlman, Dr. Liu, Ms. Charlupski, Dr. Ehrenberg, Ms. Federspiel, Ms. Gorer, and Ms. Nobrega.

The School Committee supports elevating the annual AAPI Heritage Month Celebration as an official event to be sponsored by the town. In recent years, the Public Schools of Brookline added Lunar New Year as an official school holiday. Organizing activities in the schools, including instruction on the history and culture of the AAPI community both during AAPI Heritage Month and beyond, represents a natural extension of the PSB's efforts toward recognizing the AAPI community's manifold contributions.

SELECT BOARD'S RECOMMENDATION

The Select Board is not making a recommendation on Article 38.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 38 by a vote of 21-0 with 0 abstentions.

Executive Summary	This resolution asks that the Select Board officially proclaim the month of May in Brookline as "Asian American & Pacific Islander Heritage Month." Both the federal government (since 1992) and Massachusetts (since 2018) officially designate May as AAPI Heritage Month. It seeks an official annual Celebration event, organized with the help of the Office of Diversity, Inclusion, and Community Relations (ODICR) in conjunction with either a Brookline-based AAPI organization willing to co-sponsor the event or, if no such co-sponsor were available, a committee established by the Select Board with the assistance of ODICR. Currently, and since 2016, ODICR, in conjunction with the Brookline Asian American Family Network (BAAFN), has had a staff member help to organize an annual May AAPI Heritage Month celebration in Brookline. The costs of the celebration until now have been funded primarily by donations to BAAFN and grant money. This resolution would elevate the Town's current annual AAPI Heritage Month celebration as an official event formally sponsored by the Town. and would ensure its continued occurrence if BAAFN ceased to exist. This resolution would also ask the Select Board to ensure adequate funding for the event.
Voting Yes will...	Make the Town's current annual May celebration of AAPI Heritage Month an official, Town-sponsored event, with Town funding. It will also be a sign of recognition and respect to Brookline's 12,000+ AAPI residents who comprise over 19% of Brookline's entire population.
Voting No will...	Have no immediate impact on current celebration – BAAFN and ODICR will continue to organize annual unofficial Brookline AAPI Month celebration, and its source of funding will continue to be donations to BAAFN and grant money with some town funding. However, it will be seen as a sign of disrespect for Brookline's largest community of color and nearly one-fifth of its population.
Financial impact	According to ODICR, if this resolution were enacted, the Town would earmark $1,000 annually towards the Official AAPI Month celebration.
Legal implications	None

Introduction
WA 38 asks that the Select Board to:
(1) officially proclaim the month of May in Brookline as "Asian American & Pacific Islander Heritage Month" in recognition of Brookline's AAPI community, and

(2) establish an annual townwide celebration event during the month of May that would be organized with the help of ODICR in conjunction with either a Brookline-based AAPI organization willing to co-sponsor the event or, if no such co-sponsor were available, a committee established by the Select Board with the assistance of ODICR. It further seeks that

(3) the Select Board ensure that there is adequate funding for this event and that

(4) the public schools of Brookline organize activities in celebration of this month and provide instruction on the history and culture of Brookline's AAPI community.

Evaluation Methodology/Research
In 1992, the federal government enacted Public Law 102-450, which proclaimed the month of May to be Asian American Pacific Islander Heritage Month.

In 2018, the Massachusetts State Legislature enacted, and Governor Baker signed, similar legislation for Massachusetts declaring May to be Asian American Pacific Islander Heritage Month in Massachusetts.

The petitioners of WA 38 now ask that Brookline join with our federal and state governments in officially designating May as Asian American Pacific Islander Month in the Town of Brookline.

Brookline residents identifying as AAPI comprise 19 % of Brookline's population, according to data from the 2020 Census as reported by the Donohue Institute at the University of Massachusetts, which makes it, by far, the largest community of color in Brookline.

Discussion
All Subcommittee members voiced support for this resolution. The Office of Diversity, Inclusion and Community Relations enthusiastically support this resolution. Subcommittee members suggested minor corrections for scrivener's errors, which the petitioners agreed to.

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 38 as amended by a vote of 21-0 with 0 abstentions. The full text of the amended resolution follows.

VOTED: That the Town adopt the following resolution.

WHEREAS Asian American & Pacific Islanders (AAPI) residents constitute the largest community of color in the Town of Brookline. According to the 2020 Census, over

12,000 of Brookline residents identify as AAPI, which is 19% of the Town's population or 1 in 5 residents;

WHEREAS AAPI residents have made numerous contributions to the civic, business, and social life of Brookline;

WHEREAS on October 23, 1992, Congress passed and the President signed a Public Law 102-450 proclaiming the month of May to be AAPI Heritage Month;

WHEREAS the needs of the AAPI community are often overlooked because of the Model Minority Myth;

WHEREAS Office of Diversity, Inclusion and Community Relations (ODICR), in conjunction with the Brookline Asian American Family Network (BAAFN), has sponsored an AAPI Heritage Month celebration since 2016;

WHEREAS the Town of Brookline sponsors an Annual Town-wide Commemoration of Dr. Rev. Martin Luther King, Jr. as a result of a Resolution passed by Town Meeting on May 25, 2010; and

WHEREAS Town Meeting passed a Resolution on November 15, 2017 to commemorate the second Monday of October as Indigenous Peoples Day and to establish a Committee to organize an annual commemoration.

NOW, THEREFORE, BE IT RESOLVED THAT TOWN MEETING URGES:

1. The Select Board to proclaim the month of May as Asian American & Pacific Islander Heritage Month in Brookline in recognition of Brookline's AAPI community and its contributions;

2. The Select Board to establish an Annual Town-wide Celebration of AAPI Heritage Month during the month of May, to be organized by ODICR in conjunction with a Brookline-based AAPI organization. In the event there is no willing Brookline-based AAPI organization to co-sponsor the event, an AAPI Heritage Month Celebration Committee shall be established with the assistance of ODICR;

3. The Select Board ensure there is adequate funding for the annual AAPI Heritage Month Celebration;

4. The people of Brookline celebrate the month of May as AAPI Heritage month, including by attending the annual Celebration and by learning more about the history, culture, and lives of their AAPI neighbors, classmates, and friends;

and

5. The Public Schools of Brookline observe AAPI Heritage Month by organizing activities in celebration of the month and providing instruction on the history and culture of the AAPI community.

ARTICLE 10 ADVISORY COMMITTEE VOTES

Article Description	**Celebration of Asian American and Pacific Islander Heritage Month**
AC recommendation (Favorable Action unless indicated)	**21-0-0**
Ben Birnbaum	
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y

Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	
Alok Somani	
Carolyn Thall	Y
Christine Westphal	
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 39

THIRTY-NINETH ARTICLE

Submitted by: Leonard Wholey TMM11, Jennifer Goldsmith TMM11, Cher Duffield TMM10, Julie Jette TMM16, Wendy Friedman TMM5, Anthony Ishak TMM1

To see if the Town will adopt the following Resolution:

WHEREAS Town Meeting is responsible for approving the operating budget of the Golf Enterprise Fund, which fund includes costs associated with the golf course, a practice putting green, driving range, a pro shop and restaurant, as well as several community events such as movie night on the range, the Harvest Festival, and snow sport recreation; and

WHEREAS 124.6 acres of Putterham Meadows were originally purchased by the town in 1899-1901 for playground purposes; and

WHEREAS Putterham Meadows was a bird sanctuary for seven years before the opening of the municipal golf course in 1933; and

WHEREAS Putterham Meadows offered a bridle path that was built in 1907 and covered many acres of land; and

WHEREAS Brookline's June 2021 Urban Forest Climate Resiliency Master Plan Report has a goal of planting 900 trees per year for the next 10 years; and

WHEREAS Brookline has identified, through the work of many commissions and task forces, a large number of recreation-based priorities for which there is not adequate space; and

WHEREAS the use of the golf course was defined at a time when the school population was far smaller (260 Brookline High School seniors in 1929), the number of athletes and actual team sports was far smaller with five sports for boys, three for girls, with only varsity teams. There are now nearly 50 sports with freshman, JV and Varsity levels, and numerous youth sports leagues, through the Recreation department and other organizations; and

WHEREAS the town is engaged in a debate about the use of artificial turf on athletic fields, with many supporting turf fields because the town lacks a sufficient number of grass playing fields, and at least one vote on turf fields will be taken at this Special Town Meeting; and

WHEREAS a multi-use path around the perimeter of Putterham Meadows could improve the connectivity of Brookline's Green Routes Bicycle Network; and

WHEREAS many Brookline residents would like an outdoor pool, additional pickleball courts, and multiple outdoor space uses to be considered; and

WHEREAS Brookline's two community gardens occupy minimal space and have a long waiting list; and

WHEREAS Brookline does not use pesticides or herbicides on its fields, the Robert T. Lynch Municipal Golf Course does use pesticides and herbicides; and

WHEREAS the 120 acres of the Robert T. Lynch Municipal Golf Course covers 22% of Brookline's 557 acres of open space and 2.7% of all of Brookline; and

WHEREAS Brookline residents accounted for only 8.2% of golf rounds (2,556) at the Robert T. Lynch Municipal Golf Course in FY21 v. 91.8% of rounds played by non-residents (28,619); and

WHEREAS there are 30 other golf courses (9 of which are 9 holes) open to the public within 30 miles of the Robert T. Lynch Municipal Golf Course; and

WHEREAS the Golf Course Landscape Master Plan Design Review Committee is currently creating a site wide plan; and

WHEREAS the Preliminary Master Plan has not included the Park and Recreation Commission's original intention of considering a 9-hole course; and

WHEREAS the Golf Course Enterprise Fund has a FY21 year-end unreserved fund balance of $773,829; and

WHEREAS Town Meeting in the 2022 Annual Town Meeting approved a Golf Enterprise Fund budget of $2,580,460 of which $475K is from retained earnings to support Master Plan work; and

NOW THEREFORE BE IT RESOLVED THAT: Town Meeting urges the Parks and Recreation Commission to:

(1) Broaden the scope of the Golf Course Landscape Master Plan to consider what other uses are feasible within the 120 acres, taking into account the wants expressed in the Parks, Recreation and Open Space 2019 Strategic Master Plan Survey. The plan should include at least one option with a 9 hole golf course. The plan should include potential uses such as a perimeter path, wetland restoration, Miyawaki forest, tree nursery, community gardens, playing fields, tennis/pickleball courts, a community pool, a fenced in dog park, and/or other recreational needs identified and expressed by the Parks and Recreation Commission.

(2) Use a portion of either the $475K Master Plan funds or the Golf Course Enterprise Fund year-end unreserved fund balance to pay for the updated Plan.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Town Meeting

Since Town Meeting is responsible for approving the operating budget of the Golf Enterprise Fund, this warrant article proposes an approach to Town Meeting contributing to the process of considering land use of 120 acres of Putterham Meadows. Brookline Recreation Department Director Leigh Jackson stated "there has been some public pressure recently around the golf course and whether it should be a golf course or not." She stated that from a staff perspective, "it is fair and open for discussion in terms of the politics and town meeting and it's not for the staff to determine that it's a golf course." She stated that "we just really see it as a beautiful incredible asset to the Community," and "we are making the best use of it as a golf course that we can, while also putting into plan opening up more to the Community." [1]

Previous Uses of Putterham Meadows

On January 26, 1924 - roughly 10 years before the Brookline municipal golf course was launched - the Brookline Chronicle noted in an article about a proposed golf course "[the land] was acquired for the purpose of providing a large recreation centre [sic] when that part of the town was developed;" and a golf course was not specified. [2]

Putterham Meadows as "a tract of meadows and swamps, woods, a brook and a marshy pond" once served as a bird sanctuary in which "a large variety of species should be found there" (noted the Boston Globe in 1926). [3] In 1929, the president of the club objected to the creation of a town golf course stating "We have the interest that every nature lover feels in a beautiful tract of largely unspoiled woods, and more specifically we are interested because for several years we have been maintaining a bird sanctuary there and we should be very sorry to be obliged for any reason to abandon it." [4]

Putterham Meadows once had a bridle path. "Through its many acres runs a tortuous bridle-path, wide enough for horse and man to walk without fear or risk of collision. Up hill and down, through thick forest and past blooming meadow land it goes, leaving the civilized and macadamized atmosphere of Hammond Street on one end and merging again into the limit of cultivation on Newton Street on the other." [5] According to the Brookline GreenSpace Alliance, "This path ran for about a mile from Hammond Street to the intersection of Newton and South Streets, roughly following the modern property line between the town land and The Country Club." [6]

Massachusetts Article 97

The land currently used as the Robert T. Lynch Golf Course is protected from development or alternate use by Massachusetts Article 97. But, a range of recreational or conservation options is possible within Article 97. Article 97 states "the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic,

historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."

Brookline's Outdoor Recreation Needs

Brookline residents in the Parks, Recreation and Open Space 2019 Strategic Master Plan Survey ranked the following facilities/services as most important to their household: 1. Parks and playgrounds 2. Trails and pathways 3. Nature sanctuaries 4. Athletic fields, with the Municipal 18-hole Golf Course ranked as the 21st highest priority out of 21. [7]

The Brookline Urban Forest Climate Resiliency Master Plan Report from June 2021 "recommends that Brookline strive to achieve a Town-wide canopy goal of 49.1% coverage over the coming decade which will require the planting of 900 trees on public and private land each year for the next 10 years" and that "Several Town properties did show loss of canopy from 2014 to 2020 including… Putterham Meadows Golf Course (Tree clearing for driving range construction)." [8]

The Park and Recreation Commission, with whom Director of Parks and Open Space Alexandra Vecchio and Director of Recreation Leigh Jackson were in agreement, noted "Currently, Brookline has a deficit of athletic fields. An increased inventory of athletic field space is required to meet the specific athletic and fitness needs of the community. The athletic fields in Brookline see nearly 30,000 hours of regular scheduled use over the course of a given year, not including additional usage by the Green Dog off-leash program, or walk-in, casual usage. Many groups are turned away each year and permit requests are denied due to lack of athletic field space." [9]

Town Meeting passed Warrant Article 31 in November 2019 by an almost unanimous margin of 191-YES, 1 NO, which requested that the Town of Brookline resolve to "Prioritize safe, space-efficient, and energy-efficient movement of people and goods over the movement and parking of private vehicles when designing and improving our public ways, with particular focus on high-traffic routes, connectivity and directness." [10] The northern end of the Robert T. Lynch Municipal Golf Course is less than a mile from the Chestnut Hill T stop. A multi-use path around the perimeter of the golf course could improve a micro-mobility user's commute between the Baker School and the Brookline High School significantly.

Town Meeting overwhelmingly passed Warrant Article 30, a "Resolution calling for a preliminary study of options for locating a public outdoor swimming facility for Brookline residents" in the 2019 Annual Town Meeting and in 2018 there were 82,000 user days at the Evelyn Kirrane Aquatics Center; and thus far no location for the outdoor pool has been chosen. [11], [12]

Pickleball is the fastest growing sport in the U.S. [13] Brookline currently has 17 courts with a plan to add 10 more. [14] In 1931 the Putterham Community Improvement Association did not know about pickleball at the time, but they did ask for tennis courts at Putterham Meadows as part of the new golf course development. [15]

The Lawton Park Community Garden (23 beds, 0.1 acres) has approximately 65 people on its waiting list and the Community Gardens at Larz Anderson (103 beds, 1.7 acres) has a 2 year waiting list. [16]

Robert T. Lynch Municipal Golf Course

In a memorandum in response to Warrant Articles 23 and 24 from the Spring 2022 Town Meeting, Alexandra Vecchio, Director of Parks and Open Space and Erin Chute Gallentine, Commissioner of Public Works state on page 5 that "For many years, the town has not used pesticides or herbicides in treatments of our fields." [17] The Robert T. Lynch Municipal Golf Course is not subject to this policy. [18] It is common for golf courses to use these treatments. [30]

If 22% of Brookline's open space was no longer treated as space open to the public, then the current 8.8 acres per 1000 residents would fall even shorter of the standard of 10 acres per 1000 residents. [19]

The Robert T. Lynch Municipal Golf Course overflows into approximately 2.7 acres (15%) of the 17.23 acres passive use Dane Park. [20]

In FY21, 31,175 rounds of golf were played at the Robert T. Lynch Municipal Golf Course (120 acres) and in 2020, the Arnold Arboretum (281 acres) had 2-3 million visits. [21], [22]

For each year during 2013-2021, the 9 hole Pine Meadows Golf Club in the Town of Lexington had a higher net revenue than the 18 hole Robert T. Lynch Municipal Golf Course. [23]

Golf Course Master Plan

The Golf Course Landscape Master Plan Design Review Committee is currently in the preliminary phases of creating a site wide plan. In a July 2022 meeting, now former Park and Recreation Commissioner Wendy Sheridan Ames "cited her vote of December 10, 2019, where she supported the option of moving forward with the master plan for the golf course and the club house. These plans included an analysis of whether a 9-hole course could fit here and alternatively this could be an 18-hole course and could the land reconfigured to be used for other purposes. She thinks what is being presented is a terrific plan though she is disappointed that there has been a lack of attention to the original intention of the Park and Recreation Commission regarding freeing up the perimeter land. She is concern[ed] about the amount of weight being put on the survey results as the survey went out to golfers and was not promoted through the Recreation or other town departments where you might have had additional comments from non-golfers. She thinks it is a terrific study but not reflective of what the entire community wants." [24]

In March 2022, the committee conducted a survey which included the following distribution channels: Brookline Golf Course Email Distribution List, brooklinegolf.com,

Brookline Recreation Website, Friends of Putterham Woods, Friends of Dane Park, Greenspace Alliance, Brookline Neighborhood Alliance, North Brookline Neighborhood Association, Emerson Garden Association. [25]
Additional stakeholders such as Mothers Out Front, the Brookline High School Environmental Action Club, Brookline school PTOs, the Charles River Watershed Association, Climate Action Brookline, and other recreational groups were not specifically invited to participate in the survey.

The Golf Course Landscape Master Plan Design survey had the following survey responses (576 total):
Do you play golf? Yes 89.41%, No 10.59%
Gender (Optional): 81.37% Male, 18.63% Female
Town of Residence 1. Brookline: 33.85% 2. Boston: 20.66% 3. Newton: 10.59% 4. West Roxbury: 6.77% 5. Needham: 5.56% 6. Dedham: 2.26 % 7. Others: 20.32%. [25]

The Golf Course Landscape Master Plan Design Review January 2022 slides state "the plan will take into account the footprint of the 18 hole golf course and efforts should be to minimize its footprint on the property to create more recreational or environmental sustainable area." [26]

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- "Add an event pavilion adjacent to upper parking area.
- Establish foot trails through Putterham Woods with connection to Dane Park.
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- Add shorter tees to promote beginner and youth use of the course.
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- Develop 'Course Closed' footpath with interior loops for walking, running XC skiing and sledding.
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This Warrant Article asks the Parks and Recreation Commission to be more inclusive when creating its plan for the 120 acres of open space. Additional stakeholders should be included in the process. The hard constraint of an 18 hole golf course should be relaxed to explore what is possible for this space. The land is protected by Article 97 and cannot be "used for other purposes than originally intended without approval by the Conservation Commission or the Park and Recreation Commission, the Board of Selectmen, and Town Meeting, plus a two-thirds vote of both houses of the Massachusetts legislature." [29] This Warrant Article does not make any recommendations to use the land for housing or commercial development.

SOURCES

[1] Brookline Park and Recreation Commission Meeting Minutes
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[2] "Propose Town Golf Course : Park Board Delays Plan for Putterham Meadow", The Chronicle, Brookline, 26 January 1924, page 4. https://brookline.advantage-preservation.com/viewer/?k=golf&i=f&by=1924&bdd=1920&d=01011920-12311929&m=between&ord=k1&fn=brookline_chronicle_usa_massachusetts_brookline_19240126_english_4&df=1&dt=10&cid=2914

[3] "Brookline", The Boston Globe, 2 October 1926, page 5
https://bostonglobe.newspapers.com/image/431168773/?terms=%22putterham%20meadows%22&match=1

[4] "Golf Project Going Ahead, Board is Now Negotiating for Exchange of Land, Two Architects Have Made Tentative Layouts for Municipal Links", Brookline Chronicle, 24 October 1929, page 1.
https://brookline.advantage-preservation.com/viewer/?k=golf&i=f&by=1929&bdd=1920&d=01011920-12311929&m=between&ord=k1&fn=brookline_chronicle_usa_massachusetts_brookline_19291024_english_1&df=1&dt=10&cid=2914

[5] "Fall Foliage in the Parks, The Parks as Spots to See and Places to Play, The Excelling and Contrasting Beauties of Riverdale Parkway and Putterham Meadows", The Brookline Chronicle, 28 October 1916, page 12. https://brookline.advantage-preservation.com/viewer/?k=%22putterham%20meadows%22&i=f&d=01011870-12311960&m=between&ord=k1&fn=the_chronicle_usa_massachusetts_brookline_19161028_english_12&df=1&dt=1&cid=2914

[6] Lazar, Marian, "An Historic Profile : Putterham Meadows", Brookline GreenSpace Alliance, Fall 2004, page 5. http://www.brooklinegreenspace.org/pdf/FallGreen04.pdf

[7] Town of Brookline, Massachusetts
Parks Open Space and Recreation Strategic Master Plan 2020 (page 342)

[8] Brookline Urban Forest Climate Resiliency Master Plan June 2021

[9] Athletic Playing Field Deficit Solution Summary and FAQs 03 30 2022.pdf

[10] Town of Brookline, Massachusetts
https://www.brooklinema.gov/DocumentCenter/View/20106/November-19-2019-Special-Town-Meeting-Warrant

[11] Town of Brookline, Massachusetts

https://www.brooklinema.gov/DocumentCenter/View/18847/WARRANT-2019-Annual-Town-Meeting

[12] 2018 80,000 user days at Evelyn Kirrane Aquatics Center provided by Leigh Jackson, Director of Recreation in 2022 email conversations

[13] Randall, Laura, "Noisy, silly, friendly pickleball - America's fastest growing sport", The Christian Science Monitor, 6 July 2022 https://www.csmonitor.com/The-Culture/2022/0706/Noisy-silly-friendly-pickleball-America-s-fastest-growing-sport#:~:text=amuse%20their%20children.-,%E2%80%9CIt%20is%20the%20fastest%20growing%20sport%20in%20the%20U.S.%20And,4.8%20million%20players%2C%20she%20says.

[14] Court numbers provided by Craig Corcoran in 2022 email conversations

[15] Regarding the Putterham Community Improvement Association
"Hold Banquet Next Tuesday, Second Annual Affair of Putterham Group", Brookline Chronicle, 14 May 1931, page 4
https://brookline.advantage-preservation.com/viewer/?k=%22putterham%20meadows%22&i=f&by=1931&bdd=1930&d=01011930-12311939&m=between&ord=k1&fn=brookline_chronicle_usa_massachusetts_brookline_19310514_english_4&df=1&dt=3&cid=2914

[16] 2022 Email conversations with Ellisa Yanover and Barbara Westley

[17] Alexandra Vecchio, Director of Parks and Open Space, and Eric Chute Gallentine, Commissioner of Public Works, Memo regarding Warrant Articles 23 and 24, March 29, 2022

[18] Murphy, Mike, Brookline Golf Course Robert T. Lynch Municipal 2022 Agricultural Plan

[19] 557 acres / 63191 people * 1000 = 8.8 acres per 1000 residents

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[21] From 2022 email conversation with Justin Lawson, Golf Course General Manager "In FY21 there were 31,175 rounds played. About 8.2% were resident rounds."

[22] "2020 Annual Report, The Arnold Arboretum of Harvard University" https://arboretum.harvard.edu/wp-content/uploads/2021/09/2020-annual-report.pdf

[23] Numbers derived from online sources and 2022 conversations with Melinda Spencer, Administrative Manager Town of Lexington, Recreation and Community Programs. See Google Sheet

https://docs.google.com/spreadsheets/d/14Be9Jhd6wbz4oX2KFJnmj5xwf09Oq3dsZsLdoe9NkCU/edit?usp=sharing

[24] "Park and Recreation Commission Meeting Minutes" 12 July 2022. https://www.brooklinema.gov/AgendaCenter/ViewFile/Minutes/_07122022-10868

[25] Brookline Golf Course : Golf Course Landscape Master Plan Design Review Committee March 16, 2022 Meeting slides, "Resident / Golfer Survey: Some early results Preview" slides 8-16 https://www.brooklinegolf.com/images/Golf_Course_DRC/DRC_Mar1622_Meeting.pdf

[26] Meeting January 26, 2022 - BROOKLINE GOLF COURSE Golf Course Landscape Master Plan Design Review Committee, slide 6 https://www.brooklinegolf.com/images/Golf_Course_DRC/DRC_Kickoff_Meeting_Presentation-compressed.pdf

[27] Meeting March 2, 2022 - BROOKLINE GOLF COURSE Golf Course Landscape Master Plan Design Review Committee, slide 8 https://www.brooklinegolf.com/images/Golf_Course_DRC/DRC_Mar222_Meeting_Slide_Deck.pdf

[28] Robert T. Lynch Golf Course Preliminary Master Plan Presentation, May 17, 2022, Slides 45-46 https://www.brooklinegolf.com/images/Golf_Course_DRC/Brookline_GC_PRELIM_MP_presentation_final_5-17-22_Minimum.pdf

[29] Brookline GreenSpace Alliance, "Open Space Protection in Brookline: An Introduction to Terminology" http://www.brooklinegreenspace.org/pdf/060114Land%20Protection%20Terms.pdf

[30] Uteuova, Aliya, "'Botox for your lawn': the controversial use of pesticides on golf courses" The Guardian, 6 August 2022, https://www.theguardian.com/us-news/2022/aug/06/pesticides-golf-courses-health-problems?CMP=share_btn_link

REVISED MOTION AND ARTICLE EXPLANATION OFFERED BY THE PETITIONERS

MOVED: That the Town adopt the following resolution:

WHEREAS Town Meeting is responsible for approving the operating budget of the Golf Enterprise Fund, which fund includes costs associated with the golf course, a practice putting green, driving range, a pro shop and restaurant, as well as with several community events such as movie night on the range, the Harvest Festival, and snow sport recreation; and

WHEREAS 124.6 acres of Putterham Meadows were originally purchased by the town from 1899 to 1901 explicitly for the purpose of providing playgrounds; and

WHEREAS Putterham Meadows was a bird sanctuary for seven years before the opening of the municipal golf course in 1933; and

WHEREAS Putterham Meadows offered a bridle path that was built in 1907 and covered many acres of land; and

WHEREAS the Golf Enterprise Fund began contributing to the Town's revenue pool in 1989, and the Town set an annual fee of $200,000, which declined over time and was eventually eliminated; and

WHEREAS Brookline's June 2021 Urban Forest Climate Resiliency Master Plan Report has a goal of planting 900 trees per year for the next 10 years; and

WHEREAS a multi-use path using the existing golf cart paths around the perimeter of Putterham Meadows could improve the connectivity of Brookline's Green Routes Bicycle Network; and

WHEREAS Brookline's two community gardens occupy minimal space and have a long waiting list; and

WHEREAS Brookline does not use pesticides or herbicides on its fields, the Robert T. Lynch Municipal Golf Course does use pesticides and herbicides, and in 2021 approximately 242 gallons of liquid and 1,305 lbs of dry pesticides containing dangerous and environmentally harmful chemicals were used at the golf course; and

WHEREAS, though the Robert T. Lynch Municipal Golf Course is considered by many community members and staff to be the most important and beautiful green space in Town, during the golf season, which is 9.5 to 10 months per year, non-golfers are only allowed access to the property on Monday mornings; and

WHEREAS the 120 acres of the Robert T. Lynch Municipal Golf Course covers 22% of Brookline's 557 acres of open space and 2.7% of all of Brookline; and

WHEREAS Brookline residents accounted for only 8.2% of golf rounds (2,556) at the Robert T. Lynch Municipal Golf Course in FY21 v. 91.8% of rounds played by non-residents (28,619); and

WHEREAS there are 30 other golf courses (9 of which are 9 holes) open to the public within 30 miles of the Robert T. Lynch Municipal Golf Course; and

WHEREAS the Golf Course Landscape Master Plan Design Review Committee is currently creating a site wide plan; and

WHEREAS the Golf Course Enterprise Fund has a FY21 year-end unreserved fund balance of $773,829; and

WHEREAS Town Meeting in the 2022 Annual Town Meeting approved a Golf Enterprise Fund budget of $2,580,460 of which $475K is from retained earnings to support Master Plan work;

NOW THEREFORE BE IT RESOLVED THAT: Town Meeting urges the Parks and Recreation Commission to:

(1) Broaden the scope of the Golf Course Landscape Master Plan to consider what environmentally responsible uses are feasible within the 120 acres, taking into account the community priorities identified in the Parks, Recreation and Open Space 2019 Strategic Master Plan Survey, the top 3 of which were Parks and Playgrounds; Trails & Pathways; and Nature Sanctuaries. The plan should include at least one option with a 9 hole golf course. The plan should include potential uses such as a perimeter path, wetland restoration, Miyawaki forest, tree nursery, community gardens, and/or other needs identified and expressed by the Parks and Recreation Commission. Plans should only consider uses that do not result in a further degradation of the natural peatland that currently exists on the golf course.

(2) Use a portion of either the $475K Master Plan funds or the Golf Course Enterprise Fund year-end unreserved fund balance to pay for the updated Plan.

Amendment

The co-petitioners have filed an amendment to the initial warrant article, incorporating the feedback and addressing the concerns expressed by community members across at least 4 public hearings of this article, including 2 hearings by the Parks and Recreation Commission.

The intent of WA39, as expressed in the original version, is to broaden the master planning process for the Robert T. Lynch Municipal Golf course to consider uses that would make this sizeable open space available to more community members, while also addressing the Town's open space and recreational priorities identified by the Parks and Recreation commission through their community survey. Since submitting this article, however, many community members have expressed concerns that approval of our warrant article would open the flood gates in terms of potential uses of this land, many of which would substantially threaten the natural habitat that currently exists.

Opening the planning process to environmentally damaging options, however, was not the intent of WA39s co-petitioners and so we have revised the article to help mitigate this possibility. To address the concerns that have been raised we seek to narrow the scope of the article as originally worded by limiting the kinds of alternative uses that would be considered in a more comprehensive master planning process. Specifically, while we are still requesting that at least one 9-hole option be investigated, with consideration of new options for the land made available by this configuration, we have added language that limits these considerations to environmentally sound and sustainable uses.

Town Meeting

Since Town Meeting is responsible for approving the operating budget of the Golf Enterprise Fund, this warrant article proposes an approach to Town Meeting contributing to the process of considering land use of 120 acres of Putterham Meadows. Brookline Recreation Department Director Leigh Jackson stated “there has been some public pressure recently around the golf course and whether it should be a golf course or not.” She stated that from a staff perspective, “it is fair and open for discussion in terms of the politics and town meeting and it's not for the staff to determine that it's a golf course.” She stated that “we just really see it as a beautiful incredible asset to the Community,” and “we are making the best use of it as a golf course that we can, while also putting into plan opening up more to the Community.” [1]

Previous Uses of Putterham Meadows

On January 26, 1924 - roughly 10 years before the Brookline municipal golf course was launched - the Brookline Chronicle noted in an article about a proposed golf course "[the land] was acquired for the purpose of providing a large recreation centre [sic] when that part of the town was developed;” and a golf course was not specified. [2]

Putterham Meadows as “a tract of meadows and swamps, woods, a brook and a marshy pond” once served as a bird sanctuary in which “a large variety of species should be found there” (noted the Boston Globe in 1926). [3] In 1929, the president of the club objected to the creation of a town golf course stating “We have the interest that every nature lover feels in a beautiful tract of largely unspoiled woods, and more specifically we are interested because for several years we have been maintaining a bird sanctuary there and we should be very sorry to be obliged for any reason to abandon it.” [4]

Putterham Meadows once had a bridle path. “Through its many acres runs a tortuous bridle-path, wide enough for horse and man to walk without fear or risk of collision. Up hill and down, through thick forest and past blooming meadow land it goes, leaving the civilized and macadamized atmosphere of Hammond Street on one end and merging again into the limit of cultivation on Newton Street on the other." [5] According to the Brookline GreenSpace Alliance, “This path ran for about a mile from Hammond Street to the intersection of Newton and South Streets, roughly following the modern property line between the town land and The Country Club.” [6]

Massachusetts Article 97

The land currently used as the Robert T. Lynch Golf Course is protected from development or alternate use by Massachusetts Article 97. But, a range of recreational or conservation options is possible within Article 97. Article 97 states “the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the

agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."

Brookline's Outdoor ~~Recreation~~ Needs

Brookline residents in the Parks, Recreation and Open Space 2019 Strategic Master Plan Survey ranked the following facilities/services as most important to their household: 1. Parks and playgrounds 2. Trails and pathways 3. Nature sanctuaries with the Municipal 18-hole Golf Course ranked as the 21st highest priority out of 21. [7]

The Brookline Urban Forest Climate Resiliency Master Plan Report from June 2021 "recommends that Brookline strive to achieve a Town-wide canopy goal of 49.1% coverage over the coming decade which will require the planting of 900 trees on public and private land each year for the next 10 years" and that "Several Town properties did show loss of canopy from 2014 to 2020 including… Putterham Meadows Golf Course (Tree clearing for driving range construction)." [8]

Town Meeting passed Warrant Article 31 in November 2019 by an almost unanimous margin of 191-YES, 1 NO, which requested that the Town of Brookline resolve to "Prioritize safe, space-efficient, and energy-efficient movement of people and goods over the movement and parking of private vehicles when designing and improving our public ways, with particular focus on high-traffic routes, connectivity and directness." [10] The northern end of the Robert T. Lynch Municipal Golf Course is less than a mile from the Chestnut Hill T stop. A multi-use path using the existing golf cart paths around the perimeter of the golf course could improve a micro-mobility user's commute between the Baker School and the Brookline High School significantly.

The Lawton Park Community Garden (23 beds, 0.1 acres) has approximately 65 people on its waiting list and the Community Gardens at Larz Anderson (103 beds, 1.7 acres) has a 2 year waiting list. [16]

Robert T. Lynch Municipal Golf Course

In a memorandum in response to Warrant Articles 23 and 24 from the Spring 2022 Town Meeting, Alexandra Vecchio, Director of Parks and Open Space and Erin Chute Gallentine, Commissioner of Public Works state on page 5 that "For many years, the town has not used pesticides or herbicides in treatments of our fields." [17] The Robert T. Lynch Municipal Golf Course is not subject to this policy. [18] It is common for golf courses to use these treatments. [30]

If 22% of Brookline's open space was no longer treated as space open to the public, then the current 8.8 acres per 1000 residents would fall even shorter of the standard of 10 acres per 1000 residents. [19]

The Robert T. Lynch Municipal Golf Course overflows into approximately 2.7 acres (15%) of the 17.23 acres passive use Dane Park. [20]

In FY21, 31,175 rounds of golf were played at the Robert T. Lynch Municipal Golf Course (120 acres) and in 2020, the Arnold Arboretum (281 acres) had 2-3 million visits. [21], [22]

For each year during 2013-2021, the 9 hole Pine Meadows Golf Club in the Town of Lexington had a higher net revenue than the 18 hole Robert T. Lynch Municipal Golf Course. [23]

Golf Course Master Plan

The Golf Course Landscape Master Plan Design Review Committee is currently in the preliminary phases of creating a site wide plan. In a July 2022 meeting, now former Park and Recreation Commissioner Wendy Sheridan Ames "cited her vote of December 10, 2019, where she supported the option of moving forward with the master plan for the golf course and the club house. These plans included an analysis of whether a 9-hole course could fit here and alternatively this could be an 18-hole course and could the land reconfigured to be used for other purposes. She thinks what is being presented is a terrific plan though she is disappointed that there has been a lack of attention to the original intention of the Park and Recreation Commission regarding freeing up the perimeter land. She is concern[ed] about the amount of weight being put on the survey results as the survey went out to golfers and was not promoted through the Recreation or other town departments where you might have had additional comments from non-golfers. She thinks it is a terrific study but not reflective of what the entire community wants." [24]

In March 2022, the committee conducted a survey which included the following distribution channels: Brookline Golf Course Email Distribution List, brooklinegolf.com, Brookline Recreation Website, Friends of Putterham Woods, Friends of Dane Park, Greenspace Alliance, Brookline Neighborhood Alliance, North Brookline Neighborhood Association, Emerson Garden Association. [25]
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[30] Uteuova, Aliya, "'Botox for your lawn': the controversial use of pesticides on golf courses" The Guardian, 6 August 2022, https://www.theguardian.com/us-news/2022/aug/06/pesticides-golf-courses-health-problems?CMP=share_btn_link

PLANNING BOARD REPORT AND RECOMMENDATION

Petitioners of Art. 39 propose a study to evaluate whether the golf course could be a location for recreational uses for the Town in addition to golf. The resolution asks for a study of the 120 acre golf course to explore that possibility. Currently, there is an 18 hole golf course, a driving range, a clubhouse with outdoor deck overlooking the golf course. The clubhouse contains a snack bar type restaurant and golf shop and has space for special events and private parties. In the wintertime, cross country skiers avail themselves of the snow covered terrain.

The citizen petitioners believe that if the golf course were reduced to 9 holes, there would be space to locate other recreational uses throughout the grounds. The article calls for studying a variety of recreational priorities mentioned in the Town's 2019 Strategic Recreational and Open Space Master Plan, including a bike perimeter path, wetlands restoration, a forest, community gardens, sports fields, tennis/pickleball courts, an outdoor pool, and a dog park.

At its hearing on the resolution, the Select Board voted to recommend No Action citing the enjoyment of golfers to be able to play an 18 hole golf course in town. It was pointed out that non-resident players help subsidize the cost of the golf course operations for Brookline residents.
The Planning Board held a hearing on October 19th on Art. 39 and heard a presentation from Petitioner Jennifer Goldsmith on other possible recreational uses at the golf course, which she stated had a higher priority for Brookline citizens. One Planning Board member was not supportive of the proposal although he would support a general recreation study; another Planning Board member supported any study involving residents. No one was present from the Department of Recreation or the Parks and Recreation Commission through an oversight of not having notified them of the hearing.
After being made aware of this, Planning Board Chair Steve Heikin agreed to ask the Planning Board to reopen the hearing in order to provide the opportunity for comment from the Recreation Department and Recreation Commission members.
At its November 2nd hearing, the Planning Board heard from members of the Board of Parks and Recreation and the Director of the Recreation Department about some concerns about Art. 39. It was explained that the Landscape Master Plan for the golf course property was already three-quarters complete and includes consideration of adding other recreational activities on to the property, such as walking paths, biking trails, and cross country ski trails, while still maintaining the 18-hole golf course. It was described that the Golf Course property is very challenging, with well-documented constraints. It is essentially a peat bog, with some forested areas on top of major ledge formation, and the substrate is not stable enough to have fill on top of it. A significant investment would need to be made to stabilize the soil in order to build sports fields, pools, or other recreational facilities on it; whereas, a golf course is better suited to this type of soil.
Several supporters of warrant article 39 for another golf course study pointed out that maintaining the 18 hole golf course was already a commitment in the Master Plan and that surveys had shown that a golf course was a lower priority for Brookline residents than many other recreational facilities.

At its first hearing, the Planning Board had not realized that a study of the golf course was almost 75% complete, that some other recreational uses were currently on the golf course, with others being considered in the Master Plan, and that funds from the golf course fully covered its operations. Additionally, money raised at the golf course is used to off-set costs for low-income families at recreational facilities in the Town.

After a unanimous vote to reconsider the Board's previous vote, the Planning Board voted to recommend No Action on Art. XXXIX.

The roll call vote went as follows: Heikin –aye, Zarrillo – aye, Brue – nay, Chipimo - aye, and Hines – nay. (Hamlin, and Hiller were not present.) The motion carried 3-2.

PARK AND RECREATION COMMISSION REPORT

On Wednesday September 28, 2022, Park and Recreation Commission voted against supporting Warrant article 39; 4 in favor of motion against support and 0 opposed, and 1 Abstained as follows:

Jim Carroll moved to not support Warrant Article 39 (Golf course Resolution)
Seconded by Antonia Bellalta
In favor of not supporting WA 39 : 4
~~C Batchelor,~~ A. Bellalta, L. Bernard, J. Carroll, T. Mooney, Voted Against not supporting Warrant Article 39 : 0
Abstained: 1
N. O'Connor

Comment:
On December 10 2019 the Park and Recreation Commission voted 4:1 to approve a Golf Course and Club House Master Plan as an 18 Hole Golf Course as currently constituted. In July/August 2021, The Golf Course Master Plan RFP was created for a comprehensive plan to address functionality, playability, aesthetic appeal and consistency of architectural design of the 18-hole golf course and practice areas as approved by Town Council and Purchasing Department.

On November 29, 2021 the Golf Course Master Plan Process began with the participation of a 7 member Design Team (4 Park and Rec Commissioners and 3 Residents), a public survey and also public comment at all Public Meetings (11 mtgs). The Design Consultant Team was asked by the Design Review Team to consider including additional community sports and activities (other than the existing community activities) feasible within the 120 acres and that do not jeopardize public safety or interfere with golfing activities.
After the thorough site analysis and understanding of the 120 acres of land which is comprised of peat, ledge, wetland restrictions and contaminated soils, the Design Consultant Team has developed a preliminary Golf Course Master Plan and will continue to develop the plan over the next 2 months that supports an 18 hole Golf Course and any additional community recreational sports and activities that can be safely supported at the Golf Course.
Objections to Warrant Article 39:

1. The actions of the Parks and Recreation Commission have not been accurately conveyed
2. The Golf Course land does not support the feasible construction of additional playing fields due to means, methods, and financial burdens
3. The Masterplan is including walking trails and is investigating other opportunities that are deemed safe in tandem with the game of Golf.
4. The Golf Course is a self-sustaining facility as an Enterprise Fund without any burden on the Town finances
5. The Masterplan demonstrates commitment to care, and maintenance of the land as regulated by the Commonwealth of Massachusetts.

6. The Golf Course is under the stewardship of a highly professional team that is actively demonstrating improved equity, inclusion and instruction for all people that wish to play the game of Golf.
7. The 18 Hole Golf Course supports School Golf Teams, Women's and Men's Leagues and provides lifelong activity of senior citizens.
8. The Masterplan includes the enhancement of activities outside of golf and is expanding opportunities as the land allows.

SELECT BOARD'S RECOMMENDATION

Article 39 is a resolution urging the Parks and Recreation Commission to broaden the scope of the master plan for the Robert T. Lynch Municipal Golf Course, with a particular eye towards considering whether a nine-hole course would be a preferable alternative to the current eighteen-hole course. The article details petitioners' many stated historical and environmental reasons for considering additional alternatives for the use of the golf course's space in its "whereas" clauses, asks that at least one option in the master plan include a nine-hole course, and proposes numerous alternatives for the remaining space in the event that such a nine-hole course is contemplated.

The Select Board expressed general support for staff's current operations of the Town's public golf course. One member noted that the course's out-of-town usage indicated a level of success that likely provides the financial support necessary for the course to operate. Another noted in contrast that the article is a non-binding resolution recommending further study of the nine-hole option, and referenced the petitioners' submitted evidence regarding another community's comparative financial success in running a nine-hole course. A third noted fatigue regarding warrant articles couched as requests for additional study, and added that the means of influencing the Parks and Recreation Commission's opinion on the matter would be to seek appointment to that Commission or otherwise directly petition it.

With the above discussion, at their meeting on October 18, 2022, and following a prior public hearing on the matter, the Select Board voted 4-1 to recommend NO ACTION be taken on Article 39 as submitted by petitioners.

ROLL CALL VOTE:

Aye:	No:
Hamilton	Aschkenasy
VanScoyoc	
Greene	
Sandman	

*The Select Board has not seen the revised petitioner motion.

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends NO ACTION on Warrant Article 39 by a vote of 3-18 with 4 abstentions.

Executive Summary	WA 39 calls for the Town to expand the scope of the currently underway Golf Course Landscape Master Plan (GCLMP) to consider other feasible recreational and open space needs, including reducing the golf course to nine holes, and to use a portion of the existing $475k Master Plan funds or other Golf Course Enterprise funds to pay for the scope expansion. According to the Town's Chief Procurement Officer, the scope of the existing RFP cannot be changed. Per the existing RFP: "This Master Plan will guide the Park & Recreation Commission's Infrastructure Investment Strategy for the Golf Course for the next 10 years and possibly beyond." The RFP Scope includes: "Creation of comprehensive plan to address functionality, playability, aesthetic appeal and consistency of architectural design of the 18-hole golf course and practice areas. The Architect/Consultant should be aware that golf is not the only sport that is played on the property. Other activities do include: nordic ski operations, group classes, hiking, and potential for more park style recreation for health benefits."
Voting Yes will...	Have no practical impact since the RFP scope cannot be changed and will communicate a vote of "no-confidence" in the currently underway GCLMP process and results.
Voting No will...	Allow the community to review the results (estimated to be December 2022) of the final GCLMP before registering objections and attempting to redirect the process.
Financial impact	To be determined. Dependent on whether improvements recommended by the GCLMP are delayed or a new RFP is ultimately posted.
Legal implications	None

Introduction

November 15, 2022 Special Town Meeting
39-22

In October of 2021 the Town entered into an Agreement for the Award of the Robert T. Lynch Municipal Golf Course Master Plan Reference #P-22-05 for the Town of Brookline Recreation Department in the amount of $50,000 with Mungean Golf Design. The Petitioners would like to modify the plan's scope because it was predicated on the continued operation of an 18-hole golf course and concerns that the plan does not sufficiently consider alternative or ancillary uses. On December 10, 2019, prior to creating the RFP for the Golf Course Master Plan, the Parks and Recreation Commission voted to continue the operation of Putterham as an 18-hole golf course.

The full RFP can be found at this link: Robert T. Lynch Municipal Golf Course Master Plan, as well as a topographical map. The Master Plan process included 9 public hearings.

Public comments at two public hearings held by the Ad Hoc Subcommittee of the Capital and Public Safety Subcommittees of the AC, were both for and against the warrant article. Those opposed stressed the importance of an 18-hole (versus 9-hole) municipal golf course at a very accessible price point. Those for echoed the petitioners' views. Links to recordings of both public hearings, the AC's October 25 meeting, as well as supporting materials can be found at the end of this report.

Discussion
The Petitioners believe that given the size of Putterham Meadows, the changing mix of and demand for recreational amenities sought by Town residents, as well as evolving best practices in climate mitigation, the uses of Putterham Meadows should be re-evaluated.

Justin Lawson, General Manager of the Golf Course, explained how the existing topographical, environmental, and regulatory constraints inhibit a major repurposing of this land, and that changes are already underway to broaden the range and reach of recreational activities provided at Putterham, and further improve its support of Brookline's climate sustainability goals. He also explained that the golf course land is primarily peat and ledge/puddingstone. Peat forms in wetlands and is a very efficient carbon sink. (Peat: Brittancia.com). Maintaining and enhancing the functioning of Putterham's wetland's is also part of the Master Landscape Plan (daylighting streams currently in culverts, expanding natural sites for water storage, planting more trees, etc.) Converting the wetlands to playing fields would be difficult and run counter to the Town's climate priorities. A portion of Putterham is also the former site of the Town's incinerator. Environmental and health regulations severely restrict what can occur on that land. On 10/17/22, Climate Action Brookline arranged a tour of the Golf Course with Mr. Lawson, during which these constraints were further identified and explained.

Members of the Parks and Recreation Commission spoke in support of the continued operation of an 18-hole golf course and in support of the Commission's planning process. (The Parks and Recreation Commission on 9/28/22 voted 4-0-1 against supporting WA 39).

Concerns expressed by AC members included:

- Risks to the golf course's ability to be self-sustaining under the current Enterprise Fund structure as well as its continued financial contribution to the Recreation Director's salary (10%) if it is reduced to a 9-hole course.
- The disruption to and undermining of the planning and prioritization process run by staff and the Parks & Recreation Commission.
- Whether the cannibalization of an existing recreational amenity is the best option for adding alternative recreational facilities.
- Whether existing topographical, environmental, and regulatory constraints prevent a major repurposing of this land.
- Discussion of current efforts to improve equity, inclusion and access to the golf course and the land; and
- The risk of degrading the land's current support of climate goals if new land uses are implemented.

An Amendment to WA 39 was moved and passed by a vote of 13-6-6, as follows (the amended language in **bold.)**

1. Broaden the scope of the Golf Course Landscape Master Plan to consider what other uses are feasible with the 120 acres, **but only to the extent such uses do not exacerbate climate change or otherwise harm the natural environment, when compared to the current uses**, taking into account the wants expressed in the Parks, Recreation and Open Space 2019 Strategic Master Plan Survey.

The AC voted NO ACTION on the amended WA 39 by a vote of 4-18-3.

The AC then voted NO ACTION on WA 39 as originally drafted, by a vote of 3-18-4.

NOW THEREFORE BE IT RESOLVED THAT: Town Meeting urges the Parks and Recreation Commission to:

(1) Broaden the scope of the Golf Course Landscape Master Plan to consider what other uses are feasible within the 120 acres, taking into account the wants expressed in the Parks, Recreation and Open Space 2019 Strategic Master Plan Survey. The plan should include at least one option with a 9 hole golf course. The plan should include potential uses such as a perimeter path, wetland restoration, Miyawaki forest, tree nursery, community gardens, playing fields, tennis/pickleball courts, a community pool, a fenced in dog park, and/or other recreational needs identified and expressed by the Parks and Recreation Commission.

(2) Use a portion of either the $475K Master Plan funds or the Golf Course Enterprise Fund year-end unreserved fund balance to pay for the updated Plan.

The detail of all Roll Call votes is found on the last page of this report.

The recording of the AC's October 25, 2022 meeting can be accessed here:

https://brooklinema.zoomgov.com/rec/play/BAMAL8e1dCt8VhAZsXzyuRh3df2MseWyNXr5F4GgmNH1WqZmLS5fjIZ3PkEvjtMF6ZgY08lAq3ZBDNIl.BfoGet4q2De_p0g9?continueMode=true

The recording of the Ad Hoc Subcommittee's October 12 meeting can be accessed here: https://brooklinema.zoomgov.com/rec/share/PFyFn8eY3TxjeTMWWWOjRnLgNBYDEaT8xC0OsZ4SrD2HXORqVK0aJxj6wRwiBToc.GmOStE1_EnRTMPPl?startTime=1665607622000 (Passcode: w9Ce9m##)

And the Ad Hoc Subcommittee's October 13 meeting can be accessed here: https://brooklinema.zoomgov.com/rec/share/ZUeLiMJrzW15-aqpymcVWrEI1k6JE62HC0QAtBFAzZiJ6iF0MTD1D2LBqxY3W5-A.fNZ5EGIsK3tlVWGR (No passcode required)

Meeting Materials and supplemental information: https://www.brooklinema.gov/DocumentCenter/Index/3099

The Petitioners' Presentation slides are available here: https://www.brooklinema.gov/DocumentCenter/View/35991/10-12-22-WA39-AC-Sub-Committee-meeting-

Recommendation
The Advisory Committee recommends NO ACTION on Warrant Article 39 by a vote of 3-18 with 4 abstentions.

ARTICLE 39 ADVISORY COMMITTEE VOTES

Article Description	**Resolution regarding the study and use of the Golf Course**
AC recommendation	**NO ACTION 3-18-4**
Ben Birnbaum	Y
Harry Bohrs	A
Cliff Brown	
Patty Correa	N
John Doggett	N
Katherine Florio	N
Harry Friedman	A
David-Marc Goldstein	N

Neil Gordon	N
Susan Granoff	N
Kelly Hardebeck	A
Amy Hummel	
Anita Johnson	Y
Alisa Jonas	A
Janice Kahn	N
Carol Levin	N
Pam Lodish	
Joslin Murphy	N
Donelle O'Neal, Sr.	N
Linda Olson Pehlke	N
Markus Penzel	N
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	N
Lee Selwyn	N
Alok Somani	N
Carolyn Thall	N
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

XXX

ARTICLE 40

FORTIETH ARTICLE

Submitted by: Alisa Jonas (TMM 16), Tracie Burns (TMM 8), Rosanna Cavallaro (resident precinct 8), Alec Lebovitz (TMM 8), Joanna Mark (resident precinct 16), Lynda Roseman (TMM 14), Kathleen Scanlon (TMM 3), Maura Toomey (TMM 2), Anne Turner (resident precinct 3), Marissa Voigt (TMM 6), Amanda Zimmerman (TMM 7)

To see if the Town will adopt the following Resolution:

WHEREAS access to outdoor fitness opportunities is important for the health and wellness of Brookline's residents;

WHEREAS water recreation and fitness exercises (e.g., lap swimming, water play, water aerobics and other low-weight-bearing exercises, water volleyball, competitive swimming) are some of the healthiest forms of exercise and can be done by persons of all ages and physical abilities;

WHEREAS, as the summers get hotter, making other outdoor fitness and recreational activities both less enjoyable and, for many members of the population, not feasible due to health risks of over-heating, outdoor water fitness activities will become increasingly important;

WHEREAS many Brookline households have the means to own a vacation home close to water, to join a private club, or to have their own backyard pool, while many other households do not have those options, and yet all of the Town's households should have the opportunity to swim outdoors, one of the highlights of summer time, and some of the best memories of childhood;

WHEREAS vulnerability assessments have identified areas in Brookline where the populations are disproportionately impacted by extreme heat due to their proximity to so-called "heat islands";

WHEREAS the world's experience with COVID, combined with scientific assessments that other pandemics will likely arise more frequently due to increased travel, has made more urgent the need for outdoor fitness and community activities;

WHEREAS the lack of an outdoor public pool precludes the opportunity for community members to build shared experiences, appreciate differences, and welcome residents of all ages from across the town;

WHEREAS a community pool would serve to address the need for loosely supervised recreational and physical activities for our teens who do not have access to private facilities, camps, and programs, especially in the summer;

WHEREAS it is critical that all young people learn to swim so as to avoid drowning, which is a leading cause of death in children; and Brookline's current facility lacks the physical capacity to meet the demand, resulting in oversubscribed lessons;

WHEREAS recently constructed municipal outdoor pools with modern amenities[1] generate more revenue than they expend in operating costs, resulting in net revenue to the community;[2]

WHEREAS the construction of an outdoor community pool complex has a very reasonable price tag when compared to the cost of other capital projects;[3]

WHEREAS a pool complex, including several pools, green space, bathhouse, and café; uses a surprisingly small footprint, generally about ½ acre, and so can be sited at locations that could also be the site of other complementary facilities;[4]

WHEREAS most of the larger towns (20,000 +) in the Greater Boston area provide their residents with at least one – and sometimes more than one - outdoor swimming option (pool, pond, or lake swimming facilities), frequently in addition to an indoor pool, even though many of these communities are considerably less populated than Brookline;

WHEREAS, as summer temperatures become more common in spring and fall, the outdoor swimming season has become longer, currently from Memorial Day through the end of September;

ENDNOTES

[1] For example, zero-depth entry, which is more accessible for young children, seniors, and those with disabilities, connected splash pads, greenery and/or café tables for seating

[2] Belmont, Wayland, and Lexington all generate more revenue (e.g., memberships, swim lessons, community events held at the pool, aerobics classes) than they expend in annual operating costs. An estimate of Belmont's net revenue for 2020 was $136,000.

[3] The capital cost for the recently constructed Belmont pool complex, which included 2 pools, 2 bathhouses, decking and greenspace surrounding the pools, and a café area was $5.3 million, and the Waltham community pool cost $6 million, including the cost of Hazmat remediation on the site, solar panels and making the project zero net energy. Needham's large multi-pool complex, including an Olympic-sized lap pool, other pools and splash pads, with challenging construction on a steep slope and a small community center with gym and offices, was $14 million. For comparative purposes, Brookline spent $7 million on the (beautiful) Fisher Hill Park and the current CIP includes $3 million for improvements to Skyline Park ($2 million for improved bathrooms and some added walking paths and $1 million to replace the artificial turf field), and the indoor rink complex is projected to cost $35-50 million.

[4] For example, Belmont's complex is 22,000 sq. ft, which is approximately ½ acre, and includes separate areas for lap swimming, diving, and recreational activities, a bathhouse, greenery, and a café space. At the Newbury site, at 3.14 acres, such a complex would take up less than 1/6 of the acreage.

WHEREAS solar or other renewable sources of power can provide the energy needed for a community outdoor pool;[5] heating can extend the seasons, and a relatively low cost bubble[6] can provide for year-round use;

WHEREAS Brookline's 2001 Needs Assessment found that more than two-thirds of Brookline residents have expressed interest in outdoor fitness, second only to performing arts;[7] and further, determined that the Town's next steps include the completion of a feasibility study for a public outdoor pool;

WHEREAS the 2005-2015 Comprehensive Plan analysis continued to show strong interest by the public in an outdoor community pool, ranking it among the highest priority items, and again included the feasibility study for a pool as an action item, this time for the 2005-2015 time frame;

WHEREAS the 2020 Parks Open Space and Recreation Strategic Asset Master Plan Update ("Plan Update") survey of residents found that the percent of residents who rated the future need for a public outdoor pool as important or very important[8] was higher than that for the majority of other future needs, exceeded only by improved trail connectivity, improved biking infrastructure, improved sanctuaries, and improved amenities (e.g., parking and equipment); [9]

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[5] DCR's newly built pool in Waltham uses solar energy and is a net zero.

[6] Wayland installed a bubble for year-round use in the late 2010s at a capital cost of $250,000, with annual heating and other operating expenses exceeded by revenue.

[7] 2001 Brookline Recreation Department assessment, based on a written survey, focus groups and a public meeting. The next most frequently cited interests were – in order of popularity - indoor fitness, arts and crafts, environmental activities, special events, aquatics, self-improvement, and sports and athletics

[8] Rating the outdoor pool either a 4 or a 5 out of a ranking scale of 1-5, with 1 being Not at All Important and 5 being Very Important.

[9] At 48%, ranking only behind improved trail connectivity (65%), improved biking infrastructure (66%), additional sanctuaries/nature center (64%), and improved amenities (e.g., parking, equipment)(52%), followed closely by athletic fields (47%), recreation center (45%), and improved aquatic facilities (46%); with indoor leisure play pool, indoor skating rink and additional gymnasiums ranked 4-5 by 30%, 26% and 11%, respectively. Note that while another survey question asked participants how they would divide a hypothetical $100 among a group of options for future needs, an outdoor pool was not included as one of the choices, and so that set of responses cannot be used for comparative purposes when analyzing residents' interest in an outdoor community pool.

WHEREAS, according to the National Sporting Goods Association, swimming ranked second in fitness activities nationwide in terms of participation in 2018.[10]

WHEREAS, according to the 2006 Master Plan, the National Recreation and Park Association (NRPA) standard for public pools has been one public pool per 20,000 in population; and Brookline, with a population of 61,000 has only one public pool; and further, according to the Plan Update, applying the 2019 NRPA Park Performance Review to Brookline, the Town needs to add 2 outdoor pools to meet the ***median*** for comparatively-sized similar communities;

WHEREAS, although the Reilly Pool in Brighton has been suggested as an option for Brookline residents seeking outdoor swimming options, it is an old pool with limited amenities: It does not allow any kind of chairs at the pool, it has no separation of the pool for different uses (such as an area for laps for adults and recreation for children), it has limited provision to enable young children, the elderly and the disabled to enter the pool, no facilities for younger children to play, solely concrete surrounding the pool, no opportunities for the Town to provide activities for its residents (e.g., swimming lessons, aerobics classes, swim meets, evening events, etc.), and on that same theme, it is not a community pool for the residents of the Town of Brookline.

WHEREAS, although the 2020 Plan Update states that " [s]plash pads are…becoming increasingly important because of climate change, and the increasing need for accessible cooling hubs as cities experience hotter, drier summers," splash pads are used by only very young children, and the 2020 Plan Update no longer explicitly mentions a feasibility study for an outdoor community pool to address those needs for other residents, making it all the more important to reassert that need.[11]

WHEREAS an outdoor community pool working group identified several possible Brookline sites, as called for by passage of Warrant Article 30 of the Spring 2019 Town Meeting, and other possibilities exist that were not discussed at the working group, including land on private property for which a private/public partnership might be possible;

WHEREAS the need for an outdoor community pool has been called for as far back as 2001, with the explicit directive to develop a feasibility study in both the 2001 and 2006 assessments of the Town's park and recreational needs; which directive should finally be

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[10] According to Brookline's Strategic Asset Master Plan of 2006: "The top four free-time activities for all Americans for the last decade have been and remain: watching television, reading, socializing with friends and family, and shopping. Swimming and walking are the only two physical activities that make the top ten on the list."

[11] This Plan Update instead recommends a $75,000-100,000 feasibility study for improving the indoor pool and Tappan Gym and $500,000 for consulting fees to identify a location and develop conceptual plans for an indoor full-size ice-skating rink, in addition to the $50,000 feasibility study for an indoor athletic/recreation center, which had been included in the previous plans together with the outdoor pool feasibility study.

acted upon, particularly as recent changes in our environment (longer and warmer summers and a pandemic) have made the need for an outdoor community pool greater over time;

WHEREAS the Spring 2019 Warrant Article 30 instructed that the site selection analysis be preparatory for a more comprehensive study of feasibility to be initiated thereafter;

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls for a long-overdue feasibility study for the development of a net zero emissions[12] outdoor community swimming facility for Brookline residents, to be led by either the Department of Parks and Open Space or the Department of Recreation, as determined by the Select Board; and

BE IT FURTHER RESOLVED that the feasibility study shall identify the most well-suited sites, following consideration of a range of sites for an outdoor swimming facility, and that this analysis shall (i) include a range of options that include but are not limited to Newbury College, the Department of Public Works site at Larz Anderson, redesign of a portion of the Soule Recreation Center land/parking lots that could be better utilized, a carved-out parcel of the 120 acre golf course land, or use of private land; (ii) take into consideration any advantages of siting the outdoor swimming facility together with other complementary Town facilities, such as the ice skating rink or a recreation center; (iii) prioritize equitable access by vulnerable populations who are disproportionately affected by extreme heat or who have limited economic means to access private swimming pools and swimming lessons; and(iv) assess the cost of a circuit shuttle for locations that are not close to public transportation; and

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[12] Net zero emissions is defined as follows:

a) A Zero Emissions facility is a facility that is Fossil Fuel Free (FFF) and Net Zero Energy (NZE).
b) Fossil Fuel Free means that the facility uses no fossil fuels for heating, ventilation, or air conditioning (HVAC), for domestic hot water, for cooking, or for any other purpose.
c) The facility may have emergency electricity generators that use fossil fuels.
d) The facility should not only be FFF on site, but also from the source. That is, the electricity used on site should be from renewable sources. This will require the purchase of 100% renewable electricity or renewable energy certificates. Any renewable energy certificates (RECs) associated with either on-site or off-site energy generation must be retained or retired to prevent double counting.
e) Net Zero Energy means that the facility produces as much energy as it consumes over the course of a year. This requires low energy consumption (gross EUI or Energy Use Intensity measured in kBtu/ft 2 /year) along with on-site renewable energy generation (gross REI or Renewable Energy Intensity also measured in kBtu/ft 2 /year), presumably provided by solar photovoltaic (PV) panels. Net Zero Energy means that gross REI equals or is greater than gross EUI.
f) For the facility, not just site EUI, but rather source EUI should be considered since that more accurately represents the carbon impacts of different fuel sources. Source energy accounts for upstream generation impacts of the fuel source, such as natural gas burned to generate electricity. Any renewable energy certificates (RECs) associated with on-site or off-site energy generation must be retained or retired to prevent double counting.

BEE IT FURTHER RESOLVED that $75,000 for the cost of the study shall either be included in the FY24 funding from a portion of the Community Preservation fund that is dedicated to recreation or be included in the FY24 Capital Improvements Plan; with a completion date for the feasibility study of July 1, 2024.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

When the DCR Connors Pool in Waltham first opened in 2015, Waltham's State Representative Peter Koutoujian's press release stated that "Many families in Waltham do not own a summer home or have memberships to private clubs, but they are no less deserving of the opportunity to seek refuge from the heat while enjoying a healthy activity." The same is true for Brookline households.

To help ensure that this opportunity becomes available for all Brookline residents, Warrant Article 30 of the Spring 2019 Town Meeting called for "a preliminary study of options for locating a public outdoor swimming facility for Brookline residents." The article was passed overwhelmingly by Town Meeting with only one "NO" vote. In the summer of that year, a working group was formed to review various site possibilities, and it met several times, and several sites were considered, but no single best site was identified.

The Therefore clause of Warrant Article 30 states that this "initial analysis" is to serve "as preparatory for a more comprehensive study of feasibility to be initiated thereafter." This current article authorizes such a more comprehensive feasibility study intended to assess a variety of factors including appropriate sizing, given the expected volume of users, cost, and space limitations; swimming pool layouts based on different uses, such as lap swimming, adult recreation, children's recreation, diving, competitive swimming, and kiddie pools for toddlers; types of amenities, such as decking, splash pads, slides for children, café space, green spaces; bath house needs, parking, other building uses that could be incorporated, such as a gym, multi-purpose rooms, and event spaces; design elements; sustainability considerations; accessibility considerations; site locations; and comparative costs of various options.

At the time Warrant Article 30 was being considered, several people noted that towns that have recently built new pool complexes were able to do so because they used funding received through these Towns' participation in the Community Preservation Act. Next year, for the first time, Brookline will begin to receive CPA funds, and a small portion of that year's funding could be used to pay for the feasibility study.

Because the purpose of this warrant article is so closely aligned with Spring 2019's Warrant Article 30, its Explanation and a Supplement presenting data that is equally relevant to this warrant article are included on the following pages.

Warrant Article 30 of Spring 2019 Town Meeting: Explanation

One of the more basic amenities to improve the quality of life for members of a community is the availability of some form of outdoor swimming in green space where all ages can come together for sports, relaxing and other forms of recreation. In years past, this option was available naturally in ponds, lakes and rivers. As increasing numbers of people moved to urban areas, municipalities increasingly took on the responsibility to artificially provide those opportunities. In the early part of the twentieth century, hundreds of public outdoor pools were built throughout the country. Some wealthier urban communities, however, preferred the option of relying on private clubs and pools in private yards.

Ironically, while Brookline apparently was the first municipality in the United States to build a public, albeit indoor, pool, in the late 1800s, we did not continue to progress in this area. While most of our neighboring comparable communities now have public outdoor swimming facilities (to name just a few: Needham, Newton, Natick, Lincoln, Wellesley, Waltham, Watertown, Milton, Belmont, Norwood, Framingham, Hingham) and our closest neighbor, Newton, has both a pool complex and a lake; Brookline has none. For those residents in Brookline who neither have pools in their backyards, nor have the resources to join private clubs, the local options are less than satisfactory: While the installation of sprinklers in neighborhood parks provide toddlers and young children with some form of outdoor water play, it is far from ideal and has limited utilization for persons beyond toddlerhood. And when the temperatures soar, and other forms of outdoor exercise are not healthy to do – neither for children nor for adults - the idea of going inside a muggy hot building to swim is far from enticing. Moreover, our indoor pool is old, lacking many of the amenities and accommodations that more modern pool facilities can provide to improve the experience for the young, old and disabled; including zero depth entry, play features, surrounding areas for play and relaxation, and the ability to provide formal therapeutic activities.

The upfront cost of construction exists, but is manageable. According to Raul Silver, Deputy Chief Engineer for the Department of Conservation Resources, the construction of a pool that can accommodate competitive swimming, together with bathhouse, filtration systems, decking, and surroundings, generally should be expected to cost $5 million, though the amount will vary depending on the site – and the size of the complex. Waltham's River Street Pool, constructed by DCR several years ago, cost $6 million, but it included Hazmat remediation and inclusion of solar panels and is zero net energy. Belmont also has had recent experience with construction of a new pool complex. The cost of the project, completed in 2016, was approximately $5.5 million. This amount included the cost of two pools, two bathhouses, decks and surrounding landscaped grounds. Such a price tag, while not a drop in the bucket, is easily comparable to the cost of many Town projects, while producing a substantial overall improvement in the quality

of life for residents of all ages. And with warmer temperatures extending into May and September, the usage can be extended into those months, which some communities have now done.

While the ongoing operation of a Town pool complex requires expenditures, full cost recovery is highly feasible for newly designed outdoor pools with modern amenities, having much higher utilization rates than indoor pools. In fact, revenue earned can often equal or exceed the cost. See figures below for Belmont's pool complex and Lexington's recently renovated one, as provided by those Town's recreation departments:

Belmont

2020 Estimates:	
Operating Cost:	$262,000
Revenue:	$398,000
Net revenue:	**$136,000**

Lexington

Operating Cost (approximate):	$300,000
Revenue (approximate):	$320,000
Net Revenue (approximate):	**$ 20,000**

At the time of the writing of this warrant article, the Town is considering the purchase of Newbury College properties, and there have been some suggestions made to use a portion of that land for an outdoor pool. But other options for locations also exist. Less than an acre of land is required for such a purpose. Currently, the Department of Public Works makes use of an area of Larz Anderson for storage of equipment and trucks and is unattractive at best. The repurposing of that land for a pool complex would be more in line with the goals of Article 97 to use parkland for recreational purposes, and could adjoin currently underutilized green space near the entrance of the park. With creative design, the co-locating of both outdoor pool facilities and the outdoor skating rink could transform the area into a multi-month and multipurpose outdoor recreational complex, with room to spare for additional recreational purposes. There also are other potential sites that could be identified, such as underutilized land near the parking lot at the Putterham golf course.

The purpose of this Warrant article is to enable the Town's Department of Parks and Open Space to consider various options, with the goal of moving forward with a feasibility study following this initial analysis. The Town's only statistically valid survey of residents with regard to needs for parks, open space, and recreation found that an outdoor pool is one the highest priority items for residents, listed 4th most frequently as the "single most important issue/need concerning Brookline Parks, Recreation Programs, and Facilities." (See the Parks, Open Space and Recreation Strategic Master Plan Needs Assessment.). And given the high level of priority given to establishment of an outdoor pool, the Town's Action Plan, derived from the 2005-2015 Comprehensive Plan, identified the implementation of a feasibility study for an outdoor pool to be completed within the 2005-2015 time frame. Although more than a decade late, it is not too late to begin the process.

For all those of us who were fortunate to have grown up in communities that offered outdoor swimming opportunities, our experiences provided many of the highlights of growing up. And as we age, the importance of having such opportunities becomes equally important. The combination of swimming, fresh air and community is one of the of the best sources of well-being that can be provided to residents of all ages. Passage of this resolution gives the Department of Parks and Open Space the authority to begin the work to provide this benefit to the Town's residents.

Warrant Article 30 Supporting Materials:

I. BROOKLINE JUNE 2006 PARKS, OPEN SPACE AND RECREATION STRATEGIC MASTER PLAN NEEDS ASSESSMENT:

- In the Needs Assessment survey of Brookline residents, **an outdoor pool was listed 4th most frequently** as the single most important issue/need concerning Brookline Parks, Recreation Programs, and Facilities:

  "What is the Single Most Important Issue/Need Concerning Brookline Parks, Recreation Programs, and Facilities?
  Top 5:
  Keep parks maintained, clean and safe
  More sports fields for youth and adults
  More areas for off leash dogs (longer off leash hours)
  Need an outdoor swimming pool
  More open space"

- The Needs Assessment makes use of the Recreation, Park and Open Space Standards and Guidelines published by the National Recreation and Park Association (the "NRPA standards") to determine Level of Service needs for Brookline. Per these standards:
  Activity/ Facility Number of Units per Population:
  Swimming Pools: 1 per 20,000
  (Brookline's population: 59,000)

- "The top four free-time activities for all Americans for the last decade have been and remain: watching television, reading, socializing with friends and family, and shopping. **Swimming and walking are the only two physical activities that make the top ten on the list."**

II. PRE-EXISTING MANDATE FOR FEASIBILITY STUDY:

2005-2015 Comprehensive Plan's 2005-2015 ACTION PLAN AND PROGRESS REPORT 2005-2006: "The recommended actions in this document are the result of an extensive public involvement process….:

PREPARE FEASIBILITY STUDY FOR OUTDOOR POOL To be carried out by Natural Resources, Open Space, Parks & Recreation." (to be completed in the "medium term" during the 2005-2015 time period)

III. SOME NEIGHBORING TOWNS/CITIES WITH PUBLIC OUTDOOR SWIMMING FACILITIES*** AND THEIR POPULATION SIZE

TOWN	POPULATION	TOWN	POPULATION
Arlington	43,000	Natick	36,000
Belmont	25,000	Needham	29,000
Cambridge*	114,000 (3 facilities)	Newton	89,000 (2 facilities)
Canton	22,000 (2 facilities)	Norwood	29,000 (2 facilities)
Easton	23,000	Sharon	18,000
Framingham	68,000 (3 facilities)	Somerville**	81,000 (2 facilities)
Lexington	31,000 (2 facilities)	Walpole	25,000 (2 facilities)
Lincoln	6,000	Waltham*	61,000
Medfield	6,000	Watertown*	32,000
Medford	56,000 (2 facilities)	Wayland	14,000
Melrose*	28,000	Wellesley	28,000
Milton	27,000	Weston	11,000

*DCR Facility
**Constructed by DCR, operated by Municipality
***This list is in no way comprehensive, but rather derived from some online research by petitioners of various municipalities.
Note: Many of these municipalities also have indoor pools.

IV. SAMPLE OPERATING COSTS/REVENUE/NET REVENUE

Belmont
2019 Estimates:
Operating Costs* $263,900
Revenue: $398,000 (includes memberships, daily passes, swim classes, swim teams, private lessons)
Net Revenue Projection* $135,000
*Does not factor in indirect costs, such as Recreation Dept staff time apportioned to the pool.

Lexington
(Cost and revenue figures are for 2 outdoor facilities: The pool complex and the reservoir)
2017* Actual:

Operating costs	$290,000
Revenue	$310,000 (includes resident and non-resident passes, daily fees and swim lessons)
Net Revenue:	**$ 20,000**

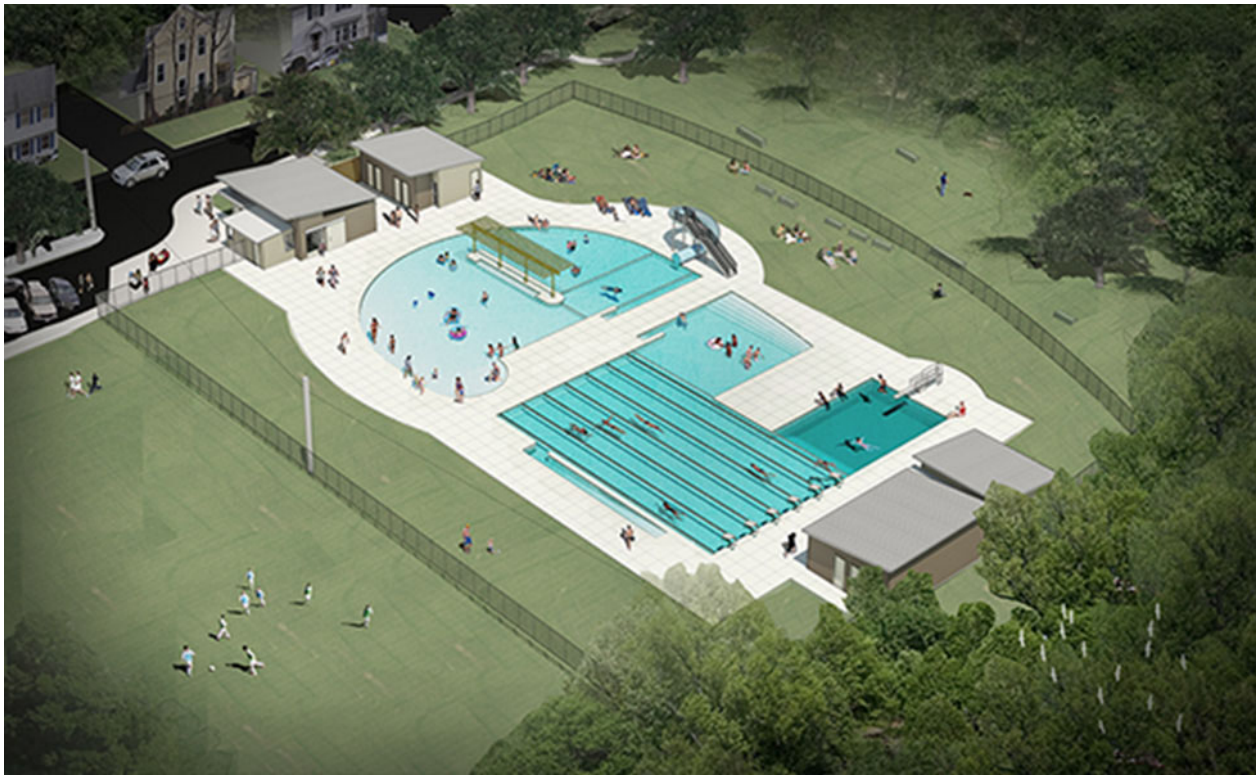
*Pool closed for renovation during much of 2018, so cost/revenue atypical

According to Needham Recreation Department staff, outdoor pools with modern amenities, having much higher utilization rates than indoor pools, generally can expect high levels of cost recovery. (No data yet for Needham pool complex, since newly opened for only last 2 weeks of 2018.

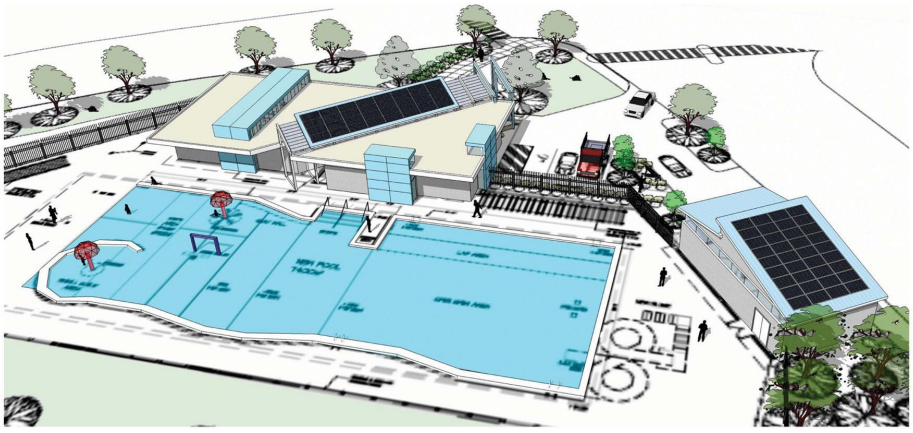
Added in 2022: Wayland has annual revenue that consistently exceeds annual operating costs, even with the pool open year-round with the use of a bubble that must be installed and dismantled each year, and with higher operating costs since heating is used during the colder months.

V. RECENT POOL COMPLEX CONSTRUCTION COSTS

Belmont Underwood Pool:
Construction Cost: $5.2 million (including cost of 2 pools, 2 bathhouses, decking, and greenspace grounds surrounding the pools). Planning began in 2013/ pool construction completed 2015.



Waltham DCR Connors Memorial Pool:
Construction Cost: $6,000,000 (including cost of pool with zero depth entry, play features, separate lap area, bathhouse, decking and seating, filtration system, landscaping, parking, solar panels, zero net energy, Hazmat remediation). According to conversation with Raul Silver, Deputy Engineer, Mass DCR, responsible for the pool's construction: Pools are not expensive, bath house is much of the cost. Connors Pool higher cost due to Hazmat remediation on the site and zero net energy construction. Construction initiated 2010, completed 2012.

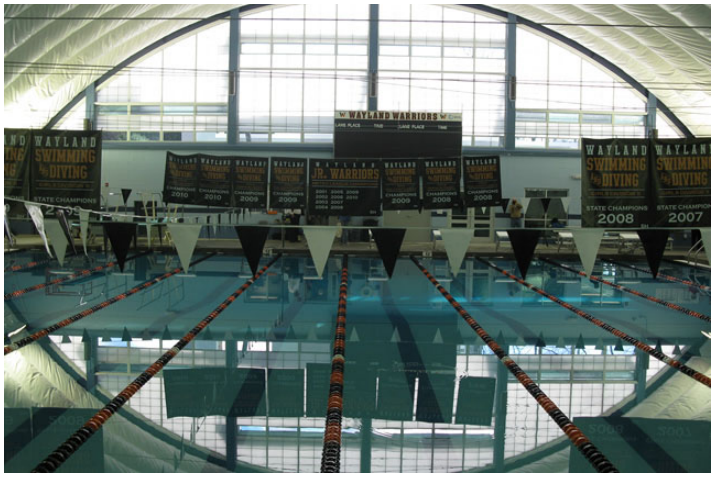


Aerial View from the South

Needham Rosemary Pool Complex:

Construction Cost: $14 million overall cost, of which $3.2 million was the construction cost for the pools. Cost was higher due to 1) topographical difficulties causing construction complexities (site located on a slope down toward a lake, with the pools sitting almost level with the lake and installed with ballast slabs and helical piles) and 2) bathhouse is first floor of two story building housing recreation dept offices and gym. Total cost was for the 2 pools (a recreation pool with zero depth entrance, play features, slides, water walking and fitness laps; and a competition pool), splashpad/spray park, the bathhouse for showers, etc., parking, site improvements, terraces, ramps. Feasibility study began 2013/pool construction completed 2018.

Wayland Community Pool: Construction Cost: $2.5 million (includes single competition length pool with 10 lanes and two diving boards, and with an inflatable bubble supported by a steel and glass structure to allow for year-round use; renovation of already-existing lobby areas, locker rooms, showers and bathrooms). Constructed in 2010.



MOTION OFFERED BY THE PETITIONERS

MOVED: That the Town adopt the following Resolution:

WHEREAS access to outdoor fitness opportunities is important for the health and wellness of Brookline's residents;

WHEREAS water recreation and fitness exercises (e.g., lap swimming, water play, water aerobics and other low-weight-bearing exercises, water volleyball, competitive swimming) are some of the healthiest forms of exercise and can be done by persons of all ages and physical abilities;

WHEREAS, as the summers get hotter, making other outdoor fitness and recreational activities both less enjoyable and, for many members of the population, not feasible due to health risks of over-heating, outdoor water fitness activities will become increasingly important;

WHEREAS many Brookline households have the means to own a vacation home close to water, to join a private club, or to have their own backyard pool, while many other households do not have those options, and yet all of the Town's households should have the opportunity to swim outdoors, one of the highlights of summer time, and some of the best memories of childhood;

WHEREAS vulnerability assessments have identified areas in Brookline where the populations are disproportionately impacted by extreme heat due to their proximity to so-called "heat islands";

WHEREAS the world's experience with COVID, combined with scientific assessments that other pandemics will likely arise more frequently due to increased travel, has made more urgent the need for outdoor fitness and community activities;

WHEREAS the lack of an outdoor public pool precludes the opportunity for community members to build shared experiences, appreciate differences, and welcome residents of all ages from across the town;

WHEREAS a community pool would serve to address the need for loosely supervised recreational and physical activities for our teens who do not have access to private facilities, camps, and programs, especially in the summer;

WHEREAS it is critical that all young people learn to swim so as to avoid drowning, which is a leading cause of death in children; and Brookline's current facility lacks the physical capacity to meet the demand, resulting in oversubscribed lessons;

WHEREAS recently constructed municipal outdoor pools with modern amenities[13] generate more revenue than they expend in operating costs, resulting in net revenue to the community;[14]

WHEREAS the construction of an outdoor community pool complex has a very reasonable price tag when compared to the cost of other capital projects;[15]

WHEREAS a pool complex, including several pools, green space, bathhouse, and café; uses a surprisingly small footprint, generally about ½ acre, and so can be sited at locations that could also be the site of other complementary facilities;[16]

ENDNOTES

[13] For example, zero-depth entry, which is more accessible for young children, seniors, and those with disabilities, connected splash pads, greenery and/or café tables for seating

[14] Belmont, Wayland, and Lexington all generate more revenue (e.g., memberships, swim lessons, community events held at the pool, aerobics classes) than they expend in annual operating costs. An estimate of Belmont's net revenue for 2020 was $136,000.

[15] The capital cost for the recently constructed Belmont pool complex, which included 2 pools, 2 bathhouses, decking and greenspace surrounding the pools, and a café area was $5.3 million, and the Waltham community pool cost $6 million, including the cost of Hazmat remediation on the site, solar panels and making the project zero net energy. Needham's large multi-pool complex, including an Olympic-sized lap pool, other pools and splash pads, with challenging construction on a steep slope and a small community center with gym and offices, was $14 million. For comparative purposes, Brookline spent $7 million on the (beautiful) Fisher Hill Park and the current CIP includes $3 million for improvements to Skyline Park ($2 million for improved bathrooms and some added walking paths and $1 million to replace the artificial turf field), and the indoor rink complex is projected to cost $35-50 million.

[16] For example, Belmont's complex is 22,000 sq. ft, which is approximately ½ acre, and includes separate areas for lap swimming, diving, and recreational activities, a bathhouse, greenery, and a café space. At the Newbury site, at 3.14 acres, such a complex would take up less than 1/6 of the acreage.

WHEREAS most of the larger towns (20,000 +) in the Greater Boston area provide their residents with at least one – and sometimes more than one - outdoor swimming option (pool, pond, or lake swimming facilities), frequently in addition to an indoor pool, even though many of these communities are considerably less populated than Brookline;

WHEREAS, as summer temperatures become more common in spring and fall, the outdoor swimming season has become longer, currently from Memorial Day through the end of September;

WHEREAS solar or other renewable sources of power can provide the energy needed for a community outdoor pool;[17] heating can extend the seasons, and a relatively low cost bubble[18] can provide for year-round use;

WHEREAS Brookline's 2001 Needs Assessment found that more than two-thirds of Brookline residents have expressed interest in outdoor fitness, second only to performing arts;[19] and further, determined that the Town's next steps include the completion of a feasibility study for a public outdoor pool;

WHEREAS the 2005-2015 Comprehensive Plan analysis continued to show strong interest by the public in an outdoor community pool, ranking it among the highest priority items, and again included the feasibility study for a pool as an action item, this time for the 2005-2015 time frame;

WHEREAS the 2020 Parks Open Space and Recreation Strategic Asset Master Plan Update ("Plan Update") survey of residents found that the percent of residents who rated the future need for a public outdoor pool as important or very important[20] was higher than that for the majority of other future needs, exceeded only by improved trail connectivity, improved biking infrastructure, improved sanctuaries, and improved amenities (e.g., parking and equipment); [21]

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[17] DCR's newly built pool in Waltham uses solar energy and is a net zero.

[18] Wayland installed a bubble for year-round use in the late 2010s at a capital cost of $250,000, with annual heating and other operating expenses exceeded by revenue.

[19] 2001 Brookline Recreation Department assessment, based on a written survey, focus groups and a public meeting. The next most frequently cited interests were – in order of popularity - indoor fitness, arts and crafts, environmental activities, special events, aquatics, self-improvement, and sports and athletics

[20] Rating the outdoor pool either a 4 or a 5 out of a ranking scale of 1-5, with 1 being Not at All Important and 5 being Very Important.

[21] At 48%, ranking only behind improved trail connectivity (65%), improved biking infrastructure (66%), additional sanctuaries/nature center (64%), and improved amenities (e.g., parking, equipment)(52%), followed closely by athletic fields (47%), recreation center (45%), and improved aquatic facilities (46%); with indoor leisure play pool, indoor skating rink and additional gymnasiums ranked 4-5 by 30%, 26% and 11%, respectively. Note that while another survey question asked participants how they would divide a hypothetical $100 among a group of

WHEREAS, according to the National Sporting Goods Association, swimming ranked second in fitness activities nationwide in terms of participation in 2018.[22]

WHEREAS, according to the 2006 Master Plan, the National Recreation and Park Association (NRPA) standard for public pools has been one public pool per 20,000 in population; and Brookline, with a population of 61,000 has only one public pool; and further, according to the Plan Update, applying the 2019 NRPA Park Performance Review to Brookline, the Town needs to add 2 outdoor pools to meet the ***median*** for comparatively-sized similar communities;

WHEREAS, although the Reilly Pool in Brighton has been suggested as an option for Brookline residents seeking outdoor swimming options, it is an old pool with limited amenities: It does not allow any kind of chairs at the pool, it has no separation of the pool for different uses (such as an area for laps for adults and recreation for children), it has limited provision to enable young children, the elderly and the disabled to enter the pool, no facilities for younger children to play, solely concrete surrounding the pool, no opportunities for the Town to provide activities for its residents (e.g., swimming lessons, aerobics classes, swim meets, evening events, etc.), and on that same theme, it is not a community pool for the residents of the Town of Brookline.

WHEREAS, although the 2020 Plan Update states that " [s]plash pads are…becoming increasingly important because of climate change, and the increasing need for accessible cooling hubs as cities experience hotter, drier summers," splash pads are used by only very young children, and the 2020 Plan Update no longer explicitly mentions a feasibility study for an outdoor community pool to address those needs for other residents, making it all the more important to reassert that need.[23]

WHEREAS an outdoor community pool working group identified several possible Brookline sites, as called for by passage of Warrant Article 30 of the Spring 2019 Town Meeting, and other possibilities exist that were not discussed at the working group,

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options for future needs, an outdoor pool was not included as one of the choices, and so that set of responses cannot be used for comparative purposes when analyzing residents' interest in an outdoor community pool.

[22] According to Brookline's Strategic Asset Master Plan of 2006: "The top four free-time activities for all Americans for the last decade have been and remain: watching television, reading, socializing with friends and family, and shopping. Swimming and walking are the only two physical activities that make the top ten on the list."

[23] This Plan Update instead recommends a $75,000-100,000 feasibility study for improving the indoor pool and Tappan Gym and $500,000 for consulting fees to identify a location and develop conceptual plans for an indoor full-size ice-skating rink, in addition to the $50,000 feasibility study for an indoor athletic/recreation center, which had been included in the previous plans together with the outdoor pool feasibility study.

including land on private property for which a private/public partnership might be possible;

WHEREAS the need for an outdoor community pool has been called for as far back as 2001, with the explicit directive to develop a feasibility study in both the 2001 and 2006 assessments of the Town's park and recreational needs; which directive should finally be acted upon, particularly as recent changes in our environment (longer and warmer summers and a pandemic) have made the need for an outdoor community pool greater over time;

WHEREAS the Spring 2019 Warrant Article 30 instructed that the site selection analysis be preparatory for a more comprehensive study of feasibility to be initiated thereafter;

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls for a long-overdue feasibility study for the development of a net zero emissions[24] outdoor community swimming facility for Brookline residents, to be led by either the Department of Parks and Open Space or the Department of Recreation, as determined by the Select Board; and

BE IT FURTHER RESOLVED that the feasibility study shall identify the most well-suited sites, following consideration of a range of sites for an outdoor swimming facility, and that this analysis shall (i) include a range of options that include but are not limited to Newbury College, the Department of Public Works site at Larz Anderson, redesign of a portion of the Soule Recreation Center land/parking lots that could be better utilized, a carved-out parcel of the 120 acre golf course land, or use of private land; (ii) take into consideration any advantages of siting the outdoor swimming facility together with other

[24] Net zero emissions is defined as follows:

g) A Zero Emissions facility is a facility that is Fossil Fuel Free (FFF) and Net Zero Energy (NZE).
h) Fossil Fuel Free means that the facility uses no fossil fuels for heating, ventilation, or air conditioning (HVAC), for domestic hot water, for cooking, or for any other purpose.
i) The facility may have emergency electricity generators that use fossil fuels.
j) The facility should not only be FFF on site, but also from the source. That is, the electricity used on site should be from renewable sources. This will require the purchase of 100% renewable electricity or renewable energy certificates. Any renewable energy certificates (RECs) associated with either on-site or off-site energy generation must be retained or retired to prevent double counting.
k) Net Zero Energy means that the facility produces as much energy as it consumes over the course of a year. This requires low energy consumption (gross EUI or Energy Use Intensity measured in kBtu/ft 2 /year) along with on-site renewable energy generation (gross REI or Renewable Energy Intensity also measured in kBtu/ft 2 /year), presumably provided by solar photovoltaic (PV) panels. Net Zero Energy means that gross REI equals or is greater than gross EUI.
l) For the facility, not just site EUI, but rather source EUI should be considered since that more accurately represents the carbon impacts of different fuel sources. Source energy accounts for upstream generation impacts of the fuel source, such as natural gas burned to generate electricity. Any renewable energy certificates (RECs) associated with on-site or off-site energy generation must be retained or retired to prevent double counting.

complementary Town facilities, such as the ice skating rink or a recreation center; (iii) prioritize equitable access by vulnerable populations who are disproportionately affected by extreme heat or who have limited economic means to access private swimming pools and swimming lessons; and(iv) assess the cost of a circuit shuttle for locations that are not close to public transportation; and

BE~~E~~ IT FURTHER RESOLVED that $75,000 for the cost of the study shall ~~either~~ be ~~included in the FY24 funding~~ paid from a portion of the FY~~24~~25 Community Preservation fund that is dedicated to recreation or otherwise be covered by other Town funding sources, such as the Recreation Department revolving retained funds or be included in the FY~~24~~26 Capital Improvements Plan; with a completion date for the feasibility study of July 1, ~~2024.~~2026.

PLANNING BOARD REPORT AND RECOMMENDATION

Art. 40 is a resolution requesting that a $75,000 feasibility study be done to explore and evaluate possible sites for an outdoor swimming pool. It is suggested that funds could be allocated either from CPA monies or the FY 2024 CIP. Sites mentioned in the article for consideration include the former Newbury College property on the west side of Fisher Avenue, Larz Anderson Park, Soule Recreation Center land or parking lots, and the Putterham golf course. Petitioners note that having the pool located with other complementary recreation or community facilities, such as the skating rink, would be a benefit and that to foster equitable access a shuttle bus could be provided if the location is not near public transportation. The petitioners also propose that the pool facility be fossil fuel free and net zero.

The Planning Board supports having a study done of various options for where an outdoor swimming pool could be located in Town, with the hope that this would result in a more detailed feasibility study of the site, or sites, chosen. The Planning Board heard that in a Town's needs survey, having a community pool was an extremely high priority. A pool would serve both young and old residents and especially those that don't have access to a swimming pool in the summer by belonging to a private club. It is particularly important to have a place for people to cool off with global warming making summers hotter than they have ever been.

Therefore, the Planning Board voted Favorable Action on Art. XL, as submitted. The roll call vote went as follows: Zarrillo – aye, Hamlin– aye, Brue – aye, and
Hines – aye. (Heikin, Hiller and Chipimo were not present.)

PARK AND RECREATION COMMISSION REPORT

On Wednesday October 12, 2022 Park and Recreation Commission meeting voted 4 in favor to 2 against to Abstain from a vote on Warrant Article 40 as follows:

Clara Batchelor moved:

November 15, 2022 Special Town Meeting
40-20

That the Park & Recreation Commission abstain from a vote on Warrant Article 40 (outdoor Pool) because of lack of funding source and other needed assets.
2nd by Antonia Bellalta
Vote in favor to Abstain: 4
C Batchelor, A. Bellalta , J. Carroll, N. O'Connor
Vote not to Abstain: 2
L Bernard, T. Mooney

Comment:
Due to competing interests for recreational facilities and the need for funding for multiple feasibility studies, it was felt that there is a preference to refocus as a whole. The majority wanted a better understanding of potential sites and total estimates for feasibility studies on costs of the various needs in town: outdoor pool, skating rink, recreation complex and how they might be either combined or considered within the context of each other.

SELECT BOARD'S RECOMMENDATION

The Select Board is not making a recommendation under Article 40.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation will be included in the Supplement.

XXX

ARTICLE 40

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 40 as amended by the petitioners by a vote of 15 in favor, 4 opposed, and 4 abstentions.

Executive Summary	WA40 calls for the Town to initiate, under the leadership of the Parks and Open Space or the Recreation Departments, a feasibility study for a net zero emissions outdoor community swimming facility. The estimated $75,000 cost of a feasibility study is to be paid from Community Preservation Act (CPA) or Capital Improvement Plan (CIP) funds. Potential funding sources include the Recreation Department revolving retained funds, the CPA or CIP accounts. In terms of timing, feasibility study funding would be expected to be allocated in FY25 with the target completion date of the study being July 1, 2026. There was significant support in the Committee for a feasibility study as an outdoor swimming pool facility was considered a highly valuable addition to Brookline's recreation offerings as it promotes good health, be highly popular and would be financially self-sustaining. All 35 surrounding communities have an outdoor swimming facility, except Brookline and Peabody. Concerns were expressed about capital availability, the capital project planning and prioritization process, and the need to consider this in the context of all recreation requirements. There were 21 public comments in favor and none against this warrant article.
Voting Yes will...	Ask Town Meeting to initiate a Feasibility Study Committee for a net-zero emissions outdoor community swimming facility to be led by either the Parks and Open Space or Recreation Departments and allocate funds in FY25 or FY 26 to support that Committee.

Voting No will...	Delay a feasibility study of an outdoor pool until the Parks & Recreation Commission establishes priorities among three options and obtains funding accordingly to study 1) a stand-alone outdoor pool, 2) a recreation center which includes an outdoor pool, or 3) a larger multi-site recreation facilities study as was sought by the Parks & Recreation Commission in 2020.
Financial impact	The estimated $75,000 cost of a feasibility study would reduce the availability of either CPA, CIP, or Recreation Department revolving funds for other qualified uses.
Legal implications	No legal implications identified.

Introduction
In the Spring of 2019 Town Meeting Warrant Article 30 called for "a preliminary study of options for locating a public outdoor swimming facility for Brookline residents." Subsequently, the Parks Department examined possible sites for test fits, and the Parks and Recreation Commission formed an Outdoor Pool Working Group to study the matter. The Parks and Recreation Commission hoped to study the feasibility and potential siting of an outdoor pool as part of a comprehensive study of multiple outdoor recreation needs in the Town. Such a study has not yet been funded. Both the Parks Department and the Parks and Recreation Commission acknowledge the Town is underserved by the absence of an outdoor pool.

Discussion
The Petitioners presented their case and observed that many families in Brookline do not own a summer home or have memberships to private clubs, but they are no less deserving of the opportunity to seek refuge from the increasingly hot summers due to climate change while enjoying a healthy outdoor activity.

They pointed out that Brookline is underserved according to national standards from the National Park and Recreation Association, in that the Association's guidelines are for 1 swimming pool for every 20,000 residents. The petitioners also noted that of a survey of the 35 surrounding communities only Brookline and Peabody have no outdoor pools.

In terms of the economics, outdoor swimming complexes typically require a small amount of capital ($6-12M) to build, and that the net operating revenue is positive and self-sustaining. The petitioners pointed, as examples, to Belmont whose net revenue after operating expenses were recovered, was about $200,000 and Lexington's net revenue was almost $80,000.

Committee members were enthusiastic about the idea of an outdoor pool, particularly regarding the health, overall recreation and community benefits, that such a facility would offer, and this mirrored the public comments both verbal and written. Concerns were expressed about the importance of finding an accessible location with adequate transportation and optimizing land use in town to preserve true open park space. Capital scarcity was a concern, as well as that an outdoor swimming complex should be considered in an overall outdoor recreation plan for the town, rather than in isolation.

Meeting Recording:
https://brooklinema.zoomgov.com/rec/play/Bo6e1ww9bJIr_r5LrpuD6T95obTgbDUWZLfKnvdWUSpAXiswgjvOaeynaP_5iiuVPCzTudyidCvpxz7q.bYU2SKCFvKx9c4u8?continueMode=true

Recommendation
Overall the Committee agreed with the petitioners that a feasibility study should be done, so the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 40, as amended by the petitioners (shown below), by a vote of 15-4-4.

Petitioner's Amended Resolution

VOTED: That the Town adopt the following Resolution:

RESOLUTION CALLING FOR A COMMUNITY OUTDOOR POOL FEASIBILITY STUDY

WHEREAS access to outdoor fitness opportunities is important for the health and wellness of Brookline's residents;

WHEREAS water recreation and fitness exercises (e.g., lap swimming, water play, water aerobics and other low-weight-bearing exercises, water volleyball, competitive swimming) are some of the healthiest forms of exercise and can be done by persons of all ages and physical abilities;

WHEREAS, as the summers get hotter, making other outdoor fitness and recreational activities both less enjoyable and, for many members of the population, not feasible due to health risks of over-heating, outdoor water fitness activities will become increasingly important;

WHEREAS many Brookline households have the means to own a vacation home close to water, to join a private club, or to have their own backyard pool, while many other

households do not have those options, and yet all of the Town's households should have the opportunity to swim outdoors, one of the highlights of summer time, and some of the best memories of childhood;

WHEREAS vulnerability assessments have identified areas in Brookline where the populations are disproportionately impacted by extreme heat due to their proximity to so-called "heat islands";

WHEREAS the world's experience with COVID, combined with scientific assessments that other pandemics will likely arise more frequently due to increased travel, has made more urgent the need for outdoor fitness and community activities;

WHEREAS the lack of an outdoor public pool precludes the opportunity for community members to build shared experiences, appreciate differences, and welcome residents of all ages from across the town;

WHEREAS a community pool would serve to address the need for loosely supervised recreational and physical activities for our teens who do not have access to private facilities, camps, and programs, especially in the summer;

WHEREAS it is critical that all young people learn to swim so as to avoid drowning, which is a leading cause of death in children; and Brookline's current facility lacks the physical capacity to meet the demand, resulting in oversubscribed lessons;

WHEREAS recently constructed municipal outdoor pools with modern amenities generate more revenue than they expend in operating costs, resulting in net revenue to the community;

WHEREAS the construction of an outdoor community pool complex has a very reasonable price tag when compared to the cost of other capital projects;

WHEREAS a pool complex, including several pools, green space, bathhouse, and café; uses a surprisingly small footprint, generally about ½ acre, and so can be sited at locations that could also be the site of other complementary facilities;

WHEREAS most of the larger towns (20,000 +) in the Greater Boston area provide their residents with at least one – and sometimes more than one - outdoor swimming option (pool, pond, or lake swimming facilities), frequently in addition to an indoor pool, even though many of these communities are considerably less populated than Brookline;

WHEREAS, as summer temperatures become more common in spring and fall, the outdoor swimming season has become longer, currently from Memorial Day through the end of September;

WHEREAS solar or other renewable sources of power can provide the energy needed for a community outdoor pool; heating can extend the seasons, and a relatively low cost bubble can provide for year-round use;

WHEREAS Brookline's 2001 Needs Assessment found that more than two-thirds of Brookline residents have expressed interest in outdoor fitness, second only to performing arts; and further, determined that the Town's next steps include the completion of a feasibility study for a public outdoor pool;

WHEREAS the 2005-2015 Comprehensive Plan analysis continued to show strong interest by the public in an outdoor community pool, ranking it among the highest priority items, and again included the feasibility study for a pool as an action item, this time for the 2005-2015 time frame;

WHEREAS the 2020 Parks Open Space and Recreation Strategic Asset Master Plan Update ("Plan Update") survey of residents found that the percent of residents who rated the future need for a public outdoor pool as important or very important was higher than that for the majority of other future needs, exceeded only by improved trail connectivity, improved biking infrastructure, improved sanctuaries, and improved amenities (e.g., parking and equipment);

WHEREAS, according to the National Sporting Goods Association, swimming ranked second in fitness activities nationwide in terms of participation in 2018.

WHEREAS, according to the 2006 Master Plan, the National Recreation and Park Association (NRPA) standard for public pools has been one public pool per 20,000 in population; and Brookline, with a population of 61,000 has only one public pool; and further, according to the Plan Update, applying the 2019 NRPA Park Performance Review to Brookline, the Town needs to add 2 outdoor pools to meet the ***median*** for comparatively-sized similar communities;

WHEREAS, although the Reilly Pool in Brighton has been suggested as an option for Brookline residents seeking outdoor swimming options, it is an old pool with limited amenities: It does not allow any kind of chairs at the pool, it has no separation of the pool for different uses (such as an area for laps for adults and recreation for children), it has limited provision to enable young children, the elderly and the disabled to enter the pool, no facilities for younger children to play, solely concrete surrounding the pool, no opportunities for the Town to provide activities for its residents (e.g., swimming lessons, aerobics classes, swim meets, evening events, etc.), and on that same theme, it is not a community pool for the residents of the Town of Brookline.

WHEREAS, although the 2020 Plan Update states that " [s]plash pads are…becoming increasingly important because of climate change, and the increasing need for accessible cooling hubs as cities experience hotter, drier summers," splash pads are used by only very young children, and the 2020 Plan Update no longer explicitly mentions a feasibility

study for an outdoor community pool to address those needs for other residents, making it all the more important to reassert that need.

WHEREAS an outdoor community pool working group identified several possible Brookline sites, as called for by passage of Warrant Article 30 of the Spring 2019 Town Meeting, and other possibilities exist that were not discussed at the working group, including land on private property for which a private/public partnership might be possible;

WHEREAS the need for an outdoor community pool has been called for as far back as 2001, with the explicit directive to develop a feasibility study in both the 2001 and 2006 assessments of the Town's park and recreational needs; which directive should finally be acted upon, particularly as recent changes in our environment (longer and warmer summers and a pandemic) have made the need for an outdoor community pool greater over time;

WHEREAS the Spring 2019 Warrant Article 30 instructed that the site selection analysis be preparatory for a more comprehensive study of feasibility to be initiated thereafter;

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls for a long-overdue feasibility study for the development of a net zero emissions outdoor community swimming facility for Brookline residents, to be led by either the Department of Parks and Open Space or the Department of Recreation, as determined by the Select Board; and

BE IT FURTHER RESOLVED that the feasibility study shall identify the most well-suited sites, following consideration of a range of sites for an outdoor swimming facility, and that this analysis shall (i) include a range of options that include but are not limited to Newbury College, the Department of Public Works site at Larz Anderson, redesign of a portion of the Soule Recreation Center land/parking lots that could be better utilized, a carved-out parcel of the 120 acre golf course land, or use of private land; (ii) take into consideration any advantages of siting the outdoor swimming facility together with other complementary Town facilities, such as the ice skating rink or a recreation center; (iii) prioritize equitable access by vulnerable populations who are disproportionately affected by extreme heat or who have limited economic means to access private swimming pools and swimming lessons; and(iv) assess the cost of a circuit shuttle for locations that are not close to public transportation; and

BE~~E~~ IT FURTHER RESOLVED that $75,000 for the cost of the study shall ~~either~~ be ~~included in the FY24 funding~~ paid from a portion of the FY~~24~~25 Community Preservation fund that is dedicated to recreation or otherwise be covered by other Town funding sources, such as the Recreation Department revolving retained funds or be included in the FY~~24~~26 Capital Improvements Plan; with a completion date for the feasibility study of July 1, ~~2024.~~2026.

ARTICLE 40 ADVISORY COMMITTEE VOTES

Article Description	**Feasibility study for outdoor pool**
AC recommendation	**15-4-4**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	
Anita Johnson	N
Alisa Jonas	Y
Janice Kahn	A
Carol Levin	N
Pam Lodish	
Joslin Murphy	N
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	A

Markus Penzel	Y
David Pollak	A
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	N
Alok Somani	
Carolyn Thall	Y
Christine Westphal	A
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

ARTICLE 41

FORTY-FIRST ARTICLE

Submitted by: Wendy MacMillan, Kimberley Richardson, Deborah Brown

To see if the Town will adopt the following resolution:

WHEREAS the shortage of affordable housing in Brookline harms very-low, low, moderate, middle, and upper-middle income residents, especially renters;

WHEREAS Brookline residents participating in the 2021 Housing Production Plan community engagement sessions consistently expressed issues with housing instability and a need for more affordable housing;

WHEREAS Brookline's affordable housing stock is very limited. June 2015 HPP data offers the most recent data, but the housing availability has only worsened. There are 670 units non-profit subsidized housing; 426 units senior/disability; 82 units special needs; 73 single room occupancy (SRO) units; 89 general units; and 88 general affordable homeownership units;

WHEREAS Brookline Housing Authority (BHA) has 923 units, 4589 are senior/disability, 31 special needs and 434 unrestricted;

WHEREAS Brookline has 380 subsidized units; of that 153 are senior and disabled units and 227 general units;

WHEREAS exclusionary zoning disproportionately harms buyers and renters of color[1];

WHEREAS the price of homes for sale in Brookline, like those in the rest of the Boston area, have doubled over the past ten years[2];

WHEREAS Brookline has 2,910 units (11.1%) according to DHCD's Subsidized Housing Inventory, b t this total includes units under construction or not ready for occupancy, units permitted and not constructed[3];

WHEREAS because Brookline reached its Chapter 40B safe harbor threshold (10%) in 2022, this eliminates an incentive to build affordable housing under 40B[4];

[1] https://www.whitehouse. gov/cea/written-materials/2021/06/17/exclusionary-zoning -its-effect-on-racial{f: discrimination-in-the-housing-market/
[2] https://www.zillow.com/brookline-ma/home-values/
[3] http:www.brooklinema.gov/1311/Chapter-40-B-Status
[4] https://www.wickedlocal.com/story/brookline-tab/2020/07/08/brookline-meets-40b-threshold-but-affordable-housing-talks-not0over-yet/ 114692922/

WHEREAS meeting Chapter 40B affordability and unit creation standards will not address Brookline's housing needs;

WHEREAS the Brookline Zoning Bylaw floor area ratio requirements, limit housing production in Brookline and further exacerbate Brookline's housing shortage;

WHEREAS there is a lack of incentives in Brookline's Zoning Bylaw for developments to include all income-restricted affordable housing units;

WHEREAS Affordable Housing Overlay Districts (AHODs) have proven to increase affordable housing. Cambridge, Somerville and North Reading are Greater Boston communities that have passed AHOD bylaws and regulations;

WHEREAS establishing an AHOD will promote the public good by supporting the development of housing that is affordable to households earning at or below 120% of the area median income.

WHEREAS numerous communities have found that incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning at or below l20% of the area median income is achievable without stressing municipal infrastructure;

WHEREAS AHODs would serve to incentivize the reuse of existing, buildings in order to create AHOD Projects that are more compatible with established neighborhoods and align with Brookline's design objectives;

WHEREAS communities have seen significant benefits when AHOD Projects are permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives;

WHEREAS AHODs will promote affordable housing objectives, promote greater socioeconomic diversity, and ensure a more equitable distribution of affordable housing town-wide;

WHEREAS- Brookline has passed the Community Preservation Act and continues to seek passage of the real estate transfer fee which, along with Brookline's Affordable Housing Trust, can provide subsidy funds to promote AHOD development;

WHEREAS Brookline, a MBTA community, is required to have zoning that provides for at least I district of reasonable size in which multi-family housing is permitted as of right;[5]

WHEREAS according to the Intergovernmental Panel on Climate Change (IPCC) "Established cities will achieve the largest greenhouse gas emissions savings by replacing,

[5] https://www.mass.gov/info-details/multi:family-zoning-requirement-for-mbta-communities

repurposing, or retrofitting the building stock, targeted infilling and densifying"[6]; in other words, AHODs would likely result in a healthier environment;

WHEREAS having denser and smaller housing units around shops, public transportation, and job hubs, near Boston (as opposed to housing in suburbs further from workplaces) is more environmentally efficient[7];

WHEREAS creating significant additional affordable housing, with varying tiers of affordability, will provide housing opportunities for current and future Brookline residents, including people who live in BHA properties

WHEREAS housing density may also increase economic development and thus Brookline's goals for its commercial tax base.[8]

THEREFORE BE IT RESOLVED that, in order to alleviate the dramatic shortage of affordable homes in Brookline, and to provide a meaningful incentive for the construction of mixed-income affordable housing developments in Brookline, the Select Board will create and charge an Affordable Housing Overlay District Study Committee with studying an affordable housing overlay district for Brookline. The committee shall be composed of no more than eight residents that reflect the economic and racial diversity found in Brookline, with at least two members who live or have lived in public or affordable housing, at least one member with zoning experience, one member who will serve on the Housing Advisory Board, and at least two members with expertise in affordable housing development. They are to issue a report no later than November 2023, recommending zoning bylaw language which would make zoning changes to create an AHOD in Brookline with the following characteristics:

1. All housing units in an eligible housing development must include permanent affordability deed restrictions which include both rental and home price limits and gross household income limits. Housing units will be for households meeting gross household income limits which are annually published by the U.S. Department of Housing and Urban Development, and will be certified upon initial occupancy and recertified annually. Restrictions must ensure that the following income tiers are served:
    a. Very low-income households earning up to 30% of area median income (AMI);
    b. Low-income households earning up to 60% of AMI;
    c. Moderate-income households earning up to 80% of AMI; and
    d. Middle-income households earning up to 120% of AMI.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Currently in Brookline, there is a shortage of housing opportunities for low and moderate-income households. Housing prices and the housing shortage impact our families,

[6] https://www.ipcc.ch/site/assets/uploads/2022/04/P56 _Doc_ 4 _ Changes _to _the_ Underlying_ Scientific-Tech _ Assessrnent.pdf
[7] https://www.housingconsortium. org/2020/ 11 / 19/pro-environment-pro-density/
[8] The Power of Density By Richard Florida.The Atlantic, SEPTEMBER 8, 2010
Organizations like the Word Bank also see the financial, social and environmental benefits of density. See High Density Cities Hold the Key to Transforming Economic Geography

classmates, friends, and neighbors The purpose of this resolution is to create opportunities for low to moderate income people to afford to live in Brookline by proposing an Affordable Housing Overlay District (AHOD) as a solution. An Affordable Housing Overlay District as implemented in several communities around the country such as Cambridge would create exceptions to certain zoning restrictions in order to encourage developers to build affordable housing, and allow them to do so more densely. Buildings that would qualify for the AHOD would be 100% affordable at different tiers of income, including housing for very low-income residents. The creation of denser, more affordable housing around hubs of public transportation, shops, and workplaces reduces the need for personal vehicles that emit CO2. An AHOD would make building affordable housing financially feasible for developers and address the urgent housing and climate crises simultaneously.

PLANNING BOARD REPORT AND RECOMMENDATION

Article 41 is a resolution that proposes the creation of an affordable housing overlay district (AHOD) to promote more affordable housing opportunities in Brookline. As stated in the explanation of the warrant article, the petitioners believe this is especially important now that the town has achieved the 10% threshold, which means that developers can no longer maximize utilization of MGL Chapter 40B to produce affordable housing. Several other communities, such as Cambridge and Somerville, have created AHODs in order to increase the number of affordable units in their communities. It would be required that that a building in an AHOD be a 100% affordable and include different levels of affordability for very low, low, moderate and middle income people. Incentives, such as less restrictive zoning, would allow more units and greater density. By encouraging AHODs to be located near rapid transit, climate action goals would be benefitted through the reduction of car trips and the emissions they create.

Petitioners stipulate in the explanation that a racially and economic diverse committee be appointed to work on formulating AHOD requirements and have no more than eight residents -- two, living or having lived in public or affordable housing; one, with zoning experience; one, from the HAB; and two, with affordable housing development experience. Although the petitioners mandate a report with recommended zoning changes no later than November 23, 2023, the Advisory Committee subcommittee recommended eliminating a hard and fast deadline to give the committee time to prepare a carefully thought-out report. The Housing Advisory Board (HAB) has recommended FAVORABLE ACTION on Warrant Article 41, believing it is a useful tool to encourage the development of more Affordable Housing, and has offered to take on a leadership role, possibly having the AHOD Committee be a HAB subcommittee.
At its November 2nd hearing, the Planning Board agreed with the HAB recommendation, was pleased it agreed to take a leadership role, and supports the creation of a subcommittee to work on AHOD zoning. When the committee feels it has successfully explored and evaluated how any new zoning can best be implemented, the committee should report back to Town Meeting.
Therefore, the Planning Board voted to recommend Favorable Action on Art. XXXI, as recommended by the HAB. The roll call vote went as follows: Heikin – aye, Zarrillo – aye, Brue – aye, Chipimo– aye and Hines – aye. (Hamlin and Hiller were not present.)

SELECT BOARD'S RECOMMENDATION

A vote and recommendation will be included in the Supplement.

ADVISORY COMMITTEE'S RECOMMENDATION

A vote and recommendation will be included in the Supplement.

XXX

ARTICLE 41

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 41 as amended by the Advisory Committee, by a vote of 12 in favor, 6 opposed, with 5 abstentions.

Executive Summary	Warrant Article 41 is a resolution urging the Brookline Housing Advisory Board (HAB) to create and charge an Affordable Housing Overlay District (AHOD) Study Subcommittee composed of a mix of HAB members and non-members. "The Subcommittee should issue a report that draws conclusions as to the potential relevance, requirements and effectiveness of an AHOD to create more affordable housing in Brookline." AHODs are zoning overlays that typically offer incentives such as density bonuses and expedited or "by right" permitting in return for increases in affordability. They can apply to limited geographic areas or the whole town, and they can have different incentives for different areas or types of projects. They have been implemented in neighboring communities. This resolution asks for study of projects that would be permanently 100% affordable at a range of income levels from below 30% up to 120% of Area Median Income (AMI).
Voting Yes will...	Urge the HAB to form a subcommittee to conduct this study and make a report.
Voting No will...	Have no effect.
Financial impact	The study would be carried out by the HAB and HAB subcommittee, and the HAB has voted in favor of WA 41 indicating their willingness to take on this work. Staff support from the Planning and Community Development Department will be needed, and those resources are in high demand and short supply. However, leveraging volunteer housing expertise as proposed is arguably the most cost-effective approach to developing this study. The specification of a date for the report has been removed, so staff resources can be allocated with consideration of resource availability.

Legal implications	None

Overview
Warrant Article 41 is the work of three Brookline High School seniors and members of the BHS Climate Justice Club. In their "Whereas" clauses and Explanation, they argue that the shortage of housing opportunities in Brookline for low- and moderate-income households is an urgent social and climate justice issue, and that an AHOD in Brookline could "make building affordable housing financially feasible for developers and address the urgent housing and climate crises simultaneously."

Originally conceived of as a zoning bylaw amendment similar to those enacted in Cambridge, Somerville and North Reading, it was submitted as a resolution to study the topic of AHODs and how this might provide an advantageous tool to increase affordable housing in Brookline.

AHODs – also known as AHOs and AHOZs (zones) – are a relatively new zoning tool that has been in use since 2000 in the US. In Massachusetts, North Reading adopted an AHOD in 2008, Cambridge in 2020, and Somerville in 2020.

AHODs come in different flavors. In Cambridge it is applied to the entire city, while in many other municipalities including Somerville and North Reading, it applies to selective districts. This resolution calls for 100% affordability in order to qualify for the overlay benefits, which is similar to Cambridge's and Somerville's Ordinances. However, North Reading's ordinance does not call for 100% affordability.

The Municipal Research and Services Center of Washington (State) provides a succinct description of the utility of AHOs in an article titled "Using Affordable Housing Overlay Zones to Reduce the Risk of Displacement":

> "**Benefits of an AHOZ**
> Affordable housing development is challenging and difficult, due in part to:
> High land costs;
> 1. Competition from market-rate developers who can usually afford to pay more than nonprofit and public affordable housing developers; and
> 2. Discretionary review (such as those triggered by a 'conditional use' designation), which can add significant cost, unpredictable delays, and risk for any housing developers
>
> AHOZ density bonuses allow more units per acre to be built, which reduces the per unit cost. Because the density bonus will likely only be used by nonprofit and

> public housing developers, the market price of land will presumably be based on how the land could be developed without the density bonus, which should make it easier for those types of developers to acquire land for their housing projects. Treating AHOZ projects as 'by right' permitted uses in a zoning code will reduce the extra time and expense needed when an applicant is required to go through a discretionary development review process (such as those typically required for conditional uses)."

A case study of the 2005 Oakley, California AHO[i] (that as of 2019 had resulted in seven affordable housing projects totaling 509 units) provides the following insight: "Unlike inclusionary zoning that requires either the building of affordable housing or the payment of an in-lieu fee, AHOs are incentive-based, offering developers key concessions in exchange for producing affordable housing. Both AHOs and Inclusionary Housing Ordinances can be used as complementary tools along with other housing policies."

Revisions to WA 41
The Petitioners have collaborated closely with the Advisory Committee and other Boards, and Article 41 has undergone significant revision since its initial version.

Changes include:

1. Oversight responsibility for the study committee was changed from the Select Board to the HAB. This suggestion was made by Planning Department Director Kara Brewton and has been endorsed by the HAB. This change is consistent with the HAB's Mission:

   "The Housing Advisory Board (HAB) promotes the preservation and creation of housing, which is affordable to low, moderate, and upper-moderate income households. With this goal, it studies and provides guidance to town staff and boards regarding Brookline's housing needs, policies, programs, and zoning tools."

2. Report date: Removed to provide flexibility to the HAB, the Planning Department, and for integration of this study with other aspects of the town's planning framework.

3. Committee composition:
   a. Added "a mix of HAB members and non-members",
   b. Addressed concerns related to the equal protection guarantees of the federal/state constitutions by incorporating edits suggested by Town Counsel
   c. Added "at least one member designated by the Director of the Council on Aging"

4. Subcommittee report: Deleting any reference to a delivery date, and focusing the report on "the potential relevance, requirements and effectiveness of an AHOD" rather than a broader consideration of "actions to create more affordable housing in Brookline."

5. Suggested characteristics of an AHOD: Two clauses listing possible characteristics of an AHOD were deleted, leaving those details up to the future HAB Study Subcommittee.

6. Whereas clauses: About half were edited, and two were deleted.

Advisory Committee Discussion
The Advisory Committee discussion addressed a range of high-level considerations.

A. **Comprehensive planning: Should this be a separate study rather than made a part of the anticipated town-wide comprehensive plan?** There was opposition to adding additional independent studies, saying that we need to do much more holistic planning. On the other side of this issue, it was noted that this is a highly technical zoning tool, and that the HAB is well suited to do a "deep dive" and report back on the potential of AHODs for Brookline.

B. **100% affordable housing versus mixed income: Are 100% subsidized housing buildings the right model for Brookline?** There was concern about building 100% subsidized housing rather than adding affordable units in mixed income buildings as is the case with Brookline's inclusionary zoning and most 40B projects. This concern is more related to family housing, as there are many affordable senior housing buildings in Brookline and the model works well with integrated support services for seniors.

In favor of studying 100% affordable AHODs, it was pointed out that there aren't currently any state or federal subsidy programs or other frameworks for mixed-income development with high percentages of affordable units, so it would be difficult to conduct a productive study. What we have now is our inclusionary zoning requirement at 15% affordable; 40B at either 20% (for 60% AMI) or 25% (for 80% AMI) minimum affordable; and 100% affordable projects that are typically Low-Income Housing Tax Credit (LIHTC) deals, public housing, or both. Studying the possible opportunities of 100% affordable overlays is both sensible and coherent.

C. **Density and change:** Concerns were raised about big buildings, particularly when they are different from the buildings around them, about the possible loss of streetscape, about impact on other resources (transit, parks, etc.) and competition for scarce parking if minimums were lowered or eliminated.

D. **Cost and responsibility:** Regional job growth and the associated demand for housing is being generated in Cambridge, Boston, and other nearby communities that all benefit from the commercial taxes collected from that growth. Brookline has limited commercial development and tax base, and the question was raised as to whether Brookline should be responsible for building the housing to meet that need. 100% affordable family housing adds school age population, and the associated new tax revenue is unlikely to cover the associated cost of town services.

E. **Limited opportunity:** Finally, because

a. Brookline is built out and lacks economic opportunity zones or brownfield sites (such as Kendall Square, Assembly Square, Boston Seaport, etc.),
b. Brookline's high land values,
c. and Brookline's limited resources to supplement project funding (Affordable Housing Trust, CPA, etc.),

concern was raised that AHOD incentives (density bonuses, etc.) might have to be too high to be acceptable to the community in order to attract the 100% affordable housing development that they would be intended for. However, it was pointed out by the same speakers that this is what the study will investigate and report on, and we just shouldn't set our hopes too high for how many sites might be viable, and how far an AHOD might take us in terms of creating significant numbers of new affordable units.

Petitioners' Amended Motion

The BHS student "leads" were active participants with the Advisory Committee and other Boards who took up WA 41, and agreed to all of the Advisory Committee's amendments to the "Resolved" clause along with all but one of the AC's changes to the "Whereas" clauses. However, they asked AC to restore one "Whereas" clause that had been removed at Subcommittee, and it is our understanding that they will move a Petitioners' Amended Motion at Town Meeting that reflects this one difference.

The original version of the clause in question (that was removed in the AC amended motion) read as follows:

> "WHEREAS exclusionary zoning disproportionately harms buyers and renters of color;"[1]

[1] https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market/

The version that the Petitioners would like to restore was edited based on comments at the Subcommittee discussion made by Planning and Community Development Director Kara Brewton. This amended version reads as follows:

> "WHEREAS Brookline and similar communities have historically excluded BIPOC renters and homeowners, and these disparities are further exacerbated by the town's current housing situation."
> [6] http://brooklinehistoricalsociety.org/RaceAndClass/RacialCovenants.pdf
> [7] https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market/

AC discussion: Addition/restoration of the above "Whereas" clause was moved and discussed at the November 3 AC meeting. The Advisory Committee often scrutinizes such Whereas clauses because in its opinion such clauses reflect statements of fact and must therefore be well sourced. Advisory Committee members pointed out that while it is strictly true that people of color were excluded in Brookline (and across America), making the Whereas clause literally true, it is somewhat misleading in that it is well-documented that exclusionary covenants existed in Brookline which prohibited sales and rentals to Jewish, Irish, and Chinese people in addition to people of color. In addition, it was noted that the Whereas clause is not particularly closely tied to the content and spirit of the Resolution.

The Advisory Committee declined to restore the Whereas clause into the Resolution by a vote of 3 in favor, 19 opposed, with 1 abstention.

Meeting Recording: https://brooklinema.zoomgov.com/rec/share/49RHsUe6oT-jAdS4gam46X4RH3cLKcAMC730vfIGkAQuFuICUG450xHXJWuD2KDZ.MEGFIoZm2kh95535

Recommendation
The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 41, as amended by the Advisory Committee (shown below), by a vote of 12-6-5. Following the vote summary table we include a redlined version showing the differences between the Advisory Committee motion and the motion as originally filed with the Warrant.

Article 41 as amended by the Advisory Committee

VOTED: That the Town adopt the following resolution:

RESOLUTION REGARDING AN AFFORDABLE HOUSING OVERLAY DISTRICT (AHOD) STUDY COMMITTEE

WHEREAS the shortage of affordable housing in Brookline and the region disadvantages low- and moderate-income residents, especially renters;

WHEREAS Brookline residents participating in the 2021 Housing Production Plan community engagement sessions expressed issues with housing instability and a need for more affordable housing;

WHEREAS Brookline's affordable housing stock is only 2,125 units according to the Brookline Department of Planning & Community Development's June 2022 Affordable Housing Inventory spreadsheet. There are 670 units of subsidized housing owned or controlled by non-profits other than the Brookline Housing Authority, most of which are for seniors.

WHEREAS Brookline Housing Authority (BHA) has 923 units, 458 are senior/disability, 31 special needs and 434 unrestricted;

WHEREAS Brookline has 380 subsidized rental units owned by private investors; of that 153 are senior and disabled units and 227 general units;

WHEREAS Brookline has 152 subsidized owner-occupied units;

WHEREAS the price of homes for sale in Brookline, like those in the rest of the Boston area, have doubled over the past ten years;

WHEREAS Brookline has an additional 304 net new units of additional subsidized units approved but not ready for occupancy, units permitted and not constructed;

WHEREAS because Brookline reached its Chapter 40B safe harbor threshold (10%) in 2022, this eliminates an incentive to build affordable housing under 40B;

WHEREAS meeting Chapter 40B affordability and unit creation standards will not address Brookline's housing needs;

WHEREAS there are areas in Brookline where the Zoning Bylaw including its Dimensional Requirements may limit affordable housing production;

WHEREAS there is a lack of incentives in Brookline's Zoning Bylaw for developments to include all income-restricted affordable housing units;

WHEREAS Cambridge, Somerville and North Reading are Greater Boston communities that have passed AHOD bylaws and regulations;

WHEREAS establishing an AHOD may promote the public good by supporting the development of housing that is affordable to households earning at or below 120% of the area median income.

WHEREAS incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning at or below 120% of the area median income may be achievable without stressing municipal infrastructure;

WHEREAS AHODs may promote affordable housing objectives, promote greater socioeconomic diversity, and ensure a more equitable distribution of affordable housing town-wide;

WHEREAS Brookline has passed the Community Preservation Act and continues to seek passage of the real estate transfer fee which, along with Brookline's Affordable Housing Trust, can potentially provide subsidy funds to promote AHOD development;

WHEREAS Brookline, a MBTA community, is required to have zoning that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right;

WHEREAS according to the Intergovernmental Panel on Climate Change (IPCC) "Established cities will achieve the largest greenhouse gas emissions savings by replacing, repurposing, or retrofitting the building stock, targeted infilling and densifying"; in other words, AHODs would likely result in a healthier environment;

WHEREAS having denser and smaller housing units around shops, public transportation, and job hubs near Boston (as opposed to housing in suburbs further from workplaces) is more environmentally efficient;
WHEREAS creating significant additional affordable housing, with varying tiers of affordability, will provide housing opportunities for current and future Brookline residents, including people who live in BHA properties;

WHEREAS housing density may also increase economic development and thus Brookline's goals for its commercial tax base;

THEREFORE BE IT RESOLVED that, to encourage the development of affordable homes in Brookline by exploring the potential for the creation of 100% affordable housing developments in Brookline, the Housing Advisory Board (HAB) is urged to create and charge an Affordable Housing Overlay District Study Subcommittee for Brookline. The subcommittee shall be composed of a mix of HAB members and non-members to include no more than eight residents and the HAB will seek to have it reflect the economic and racial diversity (to the extent consistent with law) found in Brookline, with at least two members who live or have lived in public or affordable housing, at least one member with zoning expertise, at least one member who serves on the Housing Advisory Board, at least one member designated by the Director of the Council on Aging, and at least two members with expertise in affordable housing development.

The Subcommittee should issue a report that draws conclusions as to the potential relevance, requirements and effectiveness of an AHOD to create more affordable housing in Brookline. The AHOD study should take into consideration the following:

All housing units in an eligible housing development must include permanent affordability deed restrictions which include both rental and home price limits and gross household income limits. Housing units will be for households meeting gross household income limits which are annually published by the U.S. Department of Housing and Urban Development, and will be certified upon initial occupancy and recertified annually. Restrictions must ensure that all units will serve residents at one or more of the following income tiers:
a. Very low-income households earning up to 30% of area median income (AMI);
b. Low-income households earning up to 60% of AMI;
c. Moderate-income households earning up to 80% of AMI; and
d. Middle-income households earning up to 120% of AMI.

ARTICLE 41 ADVISORY COMMITTEE VOTES

Article Description	**Resolution regarding an affordable housing overlay district study committee**
AC recommendation	**12-6-5**
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	A
Patty Correa	Y
John Doggett	A
Katherine Florio	
Harry Friedman	N
David-Marc Goldstein	
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y

Amy Hummel	A
Anita Johnson	A
Alisa Jonas	A
Janice Kahn	Y
Carol Levin	N
Pam Lodish	
Joslin Murphy	N
Donelle O'Neal, Sr.	N
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	
Carlos Ridruejo	Y
Lee Selwyn	N
Alok Somani	
Carolyn Thall	Y
Christine Westphal	N
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

APPENDIX

Article 41 showing the changes between the Advisory Committee motion and the petitioner's original language. Note that footnotes have been removed for clarity. New language is in **bold**; removed language in ~~strikethru~~.

~~Warrant~~ Article 41: RESOLUTION REGARDING AN AFFORDABLE HOUSING OVERLAY DISTRICT (AHOD) STUDY COMMITTEE

To see if the Town will adopt the following resolution:

WHEREAS the shortage of affordable housing in Brookline harms very-low, low, moderate, middle, and upper-middle income residents, especially renters;

WHEREAS Brookline residents participating in the 2021 Housing Production Plan community engagement sessions ~~consistently~~ expressed issues with housing instability and a need for more affordable housing;

WHEREAS Brookline's affordable housing stock is **only 2,125 units according to the Brookline Department of Planning & Community Development's June 2022 Affordable Housing Inventory spreadsheet** ~~very limited~~. June 2015 HPP data offers the most recent data, but the housing availability has only worsened. There are 670 units ~~non-profit~~ **of** subsidized housing **owned or controlled by non-profits other than the Brookline Housing Authority, most of which are for seniors.**~~; 426 units senior/disability; 82 units special needs; 73 single room occupancy (SRO) units; 89 general units; and 88 general affordable homeownership units;~~

WHEREAS Brookline Housing Authority (BHA) has 923 units, 458~~9~~ are senior/disability, 31 special needs and 434 unrestricted;

WHEREAS Brookline has 380 subsidized **rental** units **owned by private investors**; of that 153 are senior and disabled units and 227 general units;

WHEREAS Brookline has 152 subsidized owner-occupied units;

~~WHEREAS exclusionary zoning disproportionately harms buyers and renters of color;~~

WHEREAS the price of homes for sale in Brookline, like those in the rest of the Boston area, have doubled over the past ten years;

WHEREAS Brookline has **an additional 304 net new units of additional subsidized units approved but** ~~2,910 units (11.1%) according to DHCD's Subsidized Housing Inventory, but this total includes units under construction or~~ not ready for occupancy, units permitted and not constructed;

WHEREAS because Brookline reached its Chapter 40B safe harbor threshold (10%) in 2022, this eliminates an incentive to build affordable housing under 40B;

WHEREAS meeting Chapter 40B affordability and unit creation standards will not address Brookline's housing needs;

WHEREAS there are areas in Brookline where the Zoning Bylaw including its Dimensional Requirements may limit affordable housing production;

~~WHEREAS the Brookline Zoning Bylaw floor area ratio requirements, limit housing production in Brookline and further exacerbate Brookline's housing shortage;~~

WHEREAS there is a lack of incentives in Brookline's Zoning Bylaw for developments to include all income-restricted affordable housing units;

WHEREAS ~~Affordable Housing Overlay Districts (AHODs) have proven to increase affordable housing.~~ Cambridge, Somerville and North Reading are Greater Boston communities that have passed AHOD bylaws and regulations;

WHEREAS establishing an AHOD ~~will~~ **may** promote the public good by supporting the development of housing that is affordable to households earning at or below 120% of the area median income;

WHEREAS ~~numerous communities have found that~~ incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning at or below 120% of the area median income ~~is~~ **may be** achievable without stressing municipal infrastructure;

~~WHEREAS AHODs would serve to incentivize the reuse of existing buildings in order to create AHOD Projects that are more compatible with established neighborhoods and align with Brookline's design objectives;~~

~~WHEREAS communities have seen significant benefits when AHOD Projects are permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives;~~

WHEREAS AHODs ~~will~~ **may** promote affordable housing objectives, promote greater socioeconomic diversity, and ensure a more equitable distribution of affordable housing town-wide;

WHEREAS Brookline has passed the Community Preservation Act and continues to seek passage of the real estate transfer fee which, along with Brookline's Affordable Housing Trust, can **potentially** provide subsidy funds to promote AHOD development;

WHEREAS Brookline, a MBTA community, is required to have zoning that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right;

WHEREAS according to the Intergovernmental Panel on Climate Change (IPCC) "Established cities will achieve the largest greenhouse gas emissions savings by replacing, repurposing, or retrofitting the building stock, targeted infilling and densifying"; in other words, AHODs would likely result in a healthier environment;

WHEREAS having denser and smaller housing units around shops, public transportation, and job hubs near Boston (as opposed to housing in suburbs further from workplaces) is more environmentally efficient;

WHEREAS creating significant additional affordable housing, with varying tiers of affordability, will provide housing opportunities for current and future Brookline residents, including people who live in BHA properties;

WHEREAS housing density may also increase economic development and thus Brookline's goals for its commercial tax base;

THEREFORE BE IT RESOLVED that, ~~in order~~ to ~~alleviate the dramatic shortage~~ **encourage the development** of affordable homes in Brookline **by exploring the potential for the creation of 100%**~~, and to provide a meaningful incentive for the construction of mixed-income~~ affordable housing developments in Brookline, the ~~Select~~ **Housing Advisory** Board **(HAB) is urged** ~~will~~ **to** create and charge an Affordable Housing Overlay District Study ~~Committee~~ **Subcommittee** ~~with studying an affordable housing overlay district~~ for Brookline. The **sub**committee shall be composed of **a mix of HAB members and non-members to include** no more than eight residents and **the HAB will seek to have it** ~~that~~ reflect the economic and racial diversity **(to the extent consistent with law)** found in Brookline, with at least two members who have lived in public or affordable housing, at least one member with zoning ~~experience~~ **expertise**, **at least** one member who ~~will~~ serve**s** on the Housing Advisory Board, **at least one member designated by the Director of the Council on Aging,** and at least two members with expertise in affordable housing development.

The **Subcommittee should issue a report that draws conclusions as to the potential relevance, requirements, and effectiveness of an AHOD to create more affordable housing in Brookline. The**~~y are to issue a report no later than November 2023, recommending zoning bylaw language which would make zoning change to create an~~ AHOD **study should take into consideration** ~~in Brookline with~~ the following characteristics:

1. All housing units in an eligible housing development must include permanent affordability deed restrictions which include both rental and home price limits and gross household income limits. Housing units will be for households meeting gross household income limits which are annually published by the U.S. Department of Housing and Urban Development, and will be certified upon initial occupancy and recertified annually. Restrictions must ensure that **all units will serve residents at**

one or more of the following income tiers ~~are served~~:

a. Very low-income households earning up to 30% of area median income (AMI);
b. Low-income households earning up to 60% of AMI;
c. Moderate-income households earning up to 80% of AMI; and
d. Middle-income households earning up to 12% of AMI.

~~2. AHOD provisions shall include appropriate zoning relief to achieve the goal of financially feasible development and a maximum number of affordable homes. Relief may include but is not limited to: building height; number of stories; floor area ratio; parking; and setbacks.~~

~~3. AHOD provisions may apply to mixed-use buildings.~~

ARTICLE 41

MOTION OFFERED BY THE PETITIONER

MOVED: That the Town adopt the following resolution:

RESOLUTION REGARDING AN AFFORDABLE HOUSING OVERLAY DISTRICT (AHOD) STUDY COMMITTEE

WHEREAS the shortage of affordable housing in Brookline and the region disadvantages low- and moderate-income residents, especially renters;

WHEREAS Brookline residents participating in the 2021 Housing Production Plan community engagement sessions expressed issues with housing instability and a need for more affordable housing;

WHEREAS Brookline's affordable housing stock is only 2,125 units according to the Brookline Department of Planning & Community Development's June 2022 Affordable Housing Inventory spreadsheet. There are 670 units of subsidized housing owned or controlled by non-profits other than the Brookline Housing Authority, most of which are for seniors.

WHEREAS Brookline Housing Authority (BHA) has 923 units, 458 are senior/disability, 31 special needs and 434 unrestricted;

WHEREAS Brookline has 380 subsidized rental units owned by private investors; of that 153 are senior and disabled units and 227 general units;

WHEREAS Brookline has 152 subsidized owner-occupied units;

WHEREAS exclusionary zoning disproportionately harms buyers and renters of color;

WHEREAS the price of homes for sale in Brookline, like those in the rest of the Boston area, have doubled over the past ten years;

WHEREAS Brookline has an additional 304 net new units of additional subsidized units approved but not ready for occupancy, units permitted and not constructed;

WHEREAS because Brookline reached its Chapter 40B safe harbor threshold (10%) in 2022, this eliminates an incentive to build affordable housing under 40B;

WHEREAS meeting Chapter 40B affordability and unit creation standards will not address Brookline's housing needs;

WHEREAS there are areas in Brookline where the Zoning Bylaw including its Dimensional Requirements may limit affordable housing production;

WHEREAS there is a lack of incentives in Brookline's Zoning Bylaw for developments to include all income-restricted affordable housing units;

WHEREAS Cambridge, Somerville and North Reading are Greater Boston communities that have passed AHOD bylaws and regulations;

WHEREAS establishing an AHOD may promote the public good by supporting the development of housing that is affordable to households earning at or below 120% of the area median income.

WHEREAS incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning at or below 120% of the area median income may be achievable without stressing municipal infrastructure;

WHEREAS AHODs may promote affordable housing objectives, promote greater socioeconomic diversity, and ensure a more equitable distribution of affordable housing town-wide;

WHEREAS Brookline has passed the Community Preservation Act and continues to seek passage of the real estate transfer fee which, along with Brookline's Affordable Housing Trust, can potentially provide subsidy funds to promote AHOD development;

WHEREAS Brookline, a MBTA community, is required to have zoning that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right;

WHEREAS according to the Intergovernmental Panel on Climate Change (IPCC) "Established cities will achieve the largest greenhouse gas emissions savings by replacing, repurposing, or retrofitting the building stock, targeted infilling and densifying"; in other words, AHODs would likely result in a healthier environment;

WHEREAS having denser and smaller housing units around shops, public transportation, and job hubs near Boston (as opposed to housing in suburbs further from workplaces) is more environmentally efficient;

WHEREAS creating significant additional affordable housing, with varying tiers of affordability, will provide housing opportunities for current and future Brookline residents, including people who live in BHA properties;

WHEREAS housing density may also increase economic development and thus Brookline's goals for its commercial tax base;

THEREFORE BE IT RESOLVED that, to encourage the development of affordable homes in Brookline by exploring the potential for the creation of 100% affordable housing developments in Brookline, the Housing Advisory Board (HAB) is urged to create and charge an Affordable Housing Overlay District Study Subcommittee for Brookline. The subcommittee shall be composed of a mix of HAB members and non-members to include no more than eight residents and the HAB will seek to have it reflect the economic and racial diversity (to the extent consistent with law) found in Brookline,
with at least two members who live or have lived in public or affordable housing, at least one member with zoning expertise, at least one member who serves on the Housing Advisory Board, at least one member designated by the Director of the Council on Aging, and at least two members with expertise in affordable housing development.

Markup showing the amendments sought by the Advisory Committee motion on WA41, as shown on page 6 and following of Supplement 1 for Article 41 in the Combined Reports. Removals in ~~red strikethrough~~.

MOVED: That the Town adopt the following resolution:

RESOLUTION REGARDING AN AFFORDABLE HOUSING OVERLAY
DISTRICT (AHOD) STUDY COMMITTEE

WHEREAS the shortage of affordable housing in Brookline and the region disadvantages low- and moderate-income residents, especially renters;

WHEREAS Brookline residents participating in the 2021 Housing Production Plan community engagement sessions expressed issues with housing instability and a need for more affordable housing;

WHEREAS Brookline's affordable housing stock is only 2,125 units according to the Brookline Department of Planning & Community Development's June 2022 Affordable Housing Inventory spreadsheet. There are 670 units of subsidized housing owned or controlled by non-profits other than the Brookline Housing Authority, most of which are for seniors.

WHEREAS Brookline Housing Authority (BHA) has 923 units, 458 are senior/disability, 31 special needs and 434 unrestricted;

WHEREAS Brookline has 380 subsidized rental units owned by private investors; of that 153 are senior and disabled units and 227 general units;

WHEREAS Brookline has 152 subsidized owner-occupied units;

~~WHEREAS exclusionary zoning disproportionately harms buyers and renters of color;~~

WHEREAS the price of homes for sale in Brookline, like those in the rest of the Boston area, have doubled over the past ten years;

WHEREAS Brookline has an additional 304 net new units of additional subsidized units approved but not ready for occupancy, units permitted and not constructed;

WHEREAS because Brookline reached its Chapter 40B safe harbor threshold (10%) in 2022, this eliminates an incentive to build affordable housing under 40B;

WHEREAS meeting Chapter 40B affordability and unit creation standards will not address Brookline's housing needs;

WHEREAS there are areas in Brookline where the Zoning Bylaw including its Dimensional Requirements may limit affordable housing production;

WHEREAS there is a lack of incentives in Brookline's Zoning Bylaw for developments to include all income-restricted affordable housing units;

WHEREAS Cambridge, Somerville and North Reading are Greater Boston communities that have passed AHOD bylaws and regulations;

WHEREAS establishing an AHOD may promote the public good by supporting the development of housing that is affordable to households earning at or below 120% of the area median income.

WHEREAS incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning at or below 120% of the area median income may be achievable without stressing municipal infrastructure;

WHEREAS AHODs may promote affordable housing objectives, promote greater socioeconomic diversity, and ensure a more equitable distribution of affordable housing town-wide;

WHEREAS Brookline has passed the Community Preservation Act and continues to seek passage of the real estate transfer fee which, along with Brookline's Affordable Housing Trust, can potentially provide subsidy funds to promote AHOD development;

WHEREAS Brookline, a MBTA community, is required to have zoning that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right;

WHEREAS according to the Intergovernmental Panel on Climate Change (IPCC) "Established cities will achieve the largest greenhouse gas emissions savings by replacing, repurposing, or retrofitting the building stock, targeted infilling and densifying"; in other words, AHODs would likely result in a healthier environment;

WHEREAS having denser and smaller housing units around shops, public transportation, and job hubs near Boston (as opposed to housing in suburbs further from workplaces) is more environmentally efficient;

WHEREAS creating significant additional affordable housing, with varying tiers of affordability, will provide housing opportunities for current and future Brookline residents, including people who live in BHA properties;

WHEREAS housing density may also increase economic development and thus Brookline's goals for its commercial tax base;

THEREFORE BE IT RESOLVED that, to encourage the development of affordable homes in Brookline by exploring the potential for the creation of 100% affordable housing developments in Brookline, the Housing Advisory Board (HAB) is urged to create and charge an Affordable Housing Overlay District Study Subcommittee for Brookline. The subcommittee shall be composed of a mix of HAB members and non-members to include no more than eight residents and the HAB will seek to have it reflect the economic and racial diversity (to the extent consistent with law) found in Brookline, with at least two members who live or have lived in public or affordable housing, at least one member with zoning expertise, at least one member who serves on the Housing Advisory Board, at least one member designated by the Director of the Council on Aging, and at least two members with expertise in affordable housing development.

ARTICLE 42

FOURTY-SECOND ARTICLE

Reports of Town Officers and Committees

REPORT ON WARRANT ARTICLE 17 OF THE NOVEMBER 2021 TOWN MEETING

PREPARED BY:
THE SOLID WASTE ADVISORY COMMITTEE'S
COMPOSTING TASK FORCE

Kathleen O'Connell (Co-Chair), Susan Rittling (Co-Chair),
Pam Allara, Deane Coady, Karen Kraut

November, 2022

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III. Food Waste Diversion Technologies & Facilities

IV. Policy Mechanisms to Mandate Composting

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VII. Recommended Implementation Strategy & Timeline

VIII. Conclusions & Recommendations

I. EXECUTIVE SUMMARY

Background

The Brookline Solid Waste Advisory Committee (SWAC) is a group of 6-7 volunteer residents of the Town of Brookline whose charge is to advise the Select Board on best practices in solid waste management, and promote increased recycling to decrease the waste stream and create a more sustainable community. These efforts have become more urgent in recent years as landfills throughout Massachusetts have closed, leaving incineration or export to other states as the only options for disposal of Brookline's solid waste. As climate change accelerates, the fact that these disposal options generate greenhouse gases (methane from landfills and CO_2 from incineration) adds increased urgency to efforts to divert waste from the solid waste stream.

In response to this urgent need, SWAC worked with the Department of Public Works (DPW) in 2021 to create a Zero Waste Framework. As part of this Framework, Brookline committed to:

> "advance towards Zero Waste by: 1) reducing the municipal solid waste generation per capita by at least 15% by 2030 compared to 2015; and 2) reducing the amount of municipal solid waste disposed to landfill and incineration by at least 50% by 2030 compared to 2015, and increase the diversion rate away from landfill and incineration to at least 70% by 2030."

This multiyear plan to eliminate/reduce the generation of solid waste in the Town of Brookline included a short term goal of diverting food waste from the waste stream. Since food waste constitutes 25% or more of the waste stream in Massachusetts, composting this food waste is a very effective way to divert a substantial portion of solid waste. A recommendation identified in the Framework is to "require all residents and businesses to divert organics from disposal and require private haulers to provide organics collection," with a projected timeline of 2026-2027. Several Brookline residents saw the proposed timeline as too slow and submitted a warrant article to Town Meeting in November 2021 urging SWAC and the DPW to investigate how to initiate this requirement (mandatory composting) without delay. The warrant article that passed Town Meeting nearly unanimously called on SWAC to "research and propose a plan to expand the Town's mandatory recycling program to include all compostable organic waste and to identify any necessary changes to bylaws, rules, and regulations needed to start implementation" and to submit the "final report at the November, 2022 Town Meeting."

Composting Task Force

In response to this charge, SWAC appointed a Task Force to explore the options for the town to institute a mandatory composting program. This Task Force was co-chaired by two members of SWAC, Susan Rittling and Kathleen O'Connell. The Task Force was comprised of one additional representative from SWAC, Deane Coady, and two volunteer members of the public, Karen Kraut and Pam Allara. With support from DPW staff, the Task Force met monthly from February 2022 to October 2022. The Task Force investigated composting efforts and options in Massachusetts, the capacity of Brookline's DPW and outside contractors to collect/dispose of compost, as well as existing barriers and strategies to overcome them. This information was compiled into the following six sections as outlined in this report: Preliminary Cost Assessment; Food Waste Diversion Technologies and Facilities; Policy Mechanisms to Mandate Composting; Funding; Education & Outreach; and Recommended Implementation Strategy & Timeline. Report recommendations are listed in the final section entitled Conclusions and Recommendations. The recommendations outlined in this report,

including the need for a fully resourced and successful phased approach to curbside compost collection prior to the institution of a mandatory composting program, were endorsed by vote of the Solid Waste Advisory Committee at its November 1, 2022 meeting.

Overview of Findings and Recommendations

Preliminary Cost Assessment. DPW staff and the Task Force assessed the costs and feasibility of compost collection using in-house municipal services as compared to contracted compost hauling services. In-house collection was estimated to be less expensive than contracted collection after the first three years, but this method has a key barrier that needs to be overcome: the need for increased staffing to add routine compost collection to current solid waste collection operations, coupled with the difficulties in hiring new staff in the current environment. The Task Force noted that a local staging area, where compost collected from individual routes can be stored and consolidated for transfer to the final compost destination, could decrease costs. Without this facility, collection trucks must drive directly to the disposal location, which would be an inefficient use of staff, equipment, time and fuel. Fortunately, Brookline currently has a transfer station used for solid waste: the Town should explore expanding this permit to include compost.

Food Waste Diversion Technologies & Facilities. A main conclusion of the Task Force is that the options for disposal of organic waste in eastern Massachusetts are extremely limited, and this lack of options is a barrier to enacting mandatory composting. After evaluating the types of food waste disposal available, the Task Force concluded that aerobic composting was the only method available that is consistent with the town's climate goals. There are two such facilities within 50 miles of Brookline that have the capacity to accept Brookline's organics, one of which only accepts compost that they have collected. This lack of infrastructure must be addressed on a regional or state level to incentivize the creation of composting facilities close to the Boston metropolitan area, where land prices are a barrier to entry into this industry.

Policy Mechanisms to Mandate Composting. Mandatory composting requires the amendment of Article 8.16 Collection and Recycling of Waste Materials (along with the adopted Solid Waste Regulations) to codify a composting requirement. Since Article 8.16 already has language mandating recycling and the separation of recyclables from trash, the Task Force felt it would be most logical to amend this language to include compostable items. Additional input from Town Counsel is required to confirm this idea, but this was not considered to be a barrier to implementation. The Department of Public Works is not currently staffed to accommodate additional enforcement around composting and would require additional staff to oversee compost code enforcement and ensure minimal contamination.

Funding. Collection of compost will inevitably result in increased costs for collection and disposal, with collection being the great majority of the costs. The Task Force considered several options for offsetting these costs, including modifying the current hybrid pay-as-you throw solid waste system to further incentivize solid waste reduction, implementing a fee for bulky waste collection (currently a free service), and reducing the frequency of solid waste collection. There are also some state and federal grant programs available that can cover a portion of the costs and are identified in this section of the report. Further discussion and coordination within DPW will be required to assess the feasibility of implementing these strategies.

Education & Outreach. Brookline currently supports a voluntary composting program through Black Earth Compost, where residents may subscribe to curbside organic collection at a fixed price. DPW has obtained funds to support this program by providing a limited number of free compost carts and accessories, and has

engaged in several efforts to publicize this service. Nevertheless, fewer than 1850 of the current 14,000 households served by Brookline municipal waste collection service have enrolled in this program. Therefore, the Task Force identified education and outreach as major efforts required to support a townwide composting program. Even with a mandate in place, ensuring compliance will be challenging. Experience from other towns indicates that social diffusion is the most effective behavior modification tool, and that if people see and hear about composting from their neighbors, they are more likely to adopt these practices. In addition, there is widespread misinformation about composting that needs to be overcome. The Task Force identified a number of avenues and approaches to disseminate accurate and compelling information about composting. Any education/outreach program will be labor intensive and will require considerable DPW staff time, as well as significant support from citizen volunteers.

Recommended Implementation Strategy & Timeline. Having identified opportunities and several barriers to enacting mandatory composting, the Task Force recommends the Town first launch an opt-in "phased approach" curbside compost collection program. A phased approach would allow the DPW time to make operational changes to efficiently support the compost program, address resident concerns, and conduct comprehensive education and outreach around composting. Due to the significant investment costs associated with the use of in-house services for a compost program, the phased approach program would need to be contracted out. The DPW would therefore need to execute Requests for Proposal for compost collection and disposal services to identify a suitable contractor. The implementation of a curbside compost collection program will require continued collaboration between the DPW and SWAC, as well as community organizations, regional town governments and the Commonwealth of Massachusetts. The Task Force also recommends that the DPW pilot a compost drop-off bin program to ensure equitable access to composting for all residents in Brookline. Assuming a fully-funded and staffed program, the recommended implementation timeline can be seen below:

- January, 2023: Request program funding for Fiscal Year 24. If approved, money will become available July 1, 2023.
- July, 2023: Prepare for launch of "phased approach" program (hire DPW staff, put out a Request for Proposal for hauling/disposal, conduct outreach and education, etc.)
- Fiscal Year 2024: Pilot 2-3 drop-off compost bin locations
- Launch a curbside compost collection program (the following timeline assumes a fully-funded and staffed program):
    - Calendar Year 2024: Household cap of 5,000
    - Calendar Year 2025: Household cap of 10,000
    - Calendar Year 2026: Household cap of 14,547

II. PRELIMINARY COST ASSESSMENT

In collaboration with the Task Force, Department of Public Works staff analyzed the probable costs associated with an increase in staff, fleet, services, and equipment to execute curbside composting town-wide. The estimate assumes that designated collection vehicles and staff would adhere to a collection schedule that coincides with the municipal solid waste and single-stream recycling schedule. Whether a townwide compost program is executed using in-house collection and disposal staff or contracted staff the Town would need to hire both a Compost/Organics Coordinator and Environmental Sanitation Inspector to manage the program, routes, customers, data, education, regulations, and documentation. They would also need to purchase supplies and services to support the program regardless of how the compost was collected and disposed of. The following costs are estimates based off data at the time of drafting this report. Costs will very likely shift depending on the implementation timeline.

Compost Program Management, Oversight, Billing & Inspection

Compost Coordinator (T6)	$73,453 + Benefits (35%)	$ 99,162
Environmental Sanitation Inspector	$70,019 + Benefits (35%)	$ 94,526
Administrative Overhead/Clerical/Mailings		$ 20,000
Software		$ 20,000
Hazardous Waste/Materials Mgmt/Contaminated Loads		$ 6,500
Program Services and Supplies		$ 60,000
2 Electric Vehicle(s)		$ 80,000
		$380,188

The estimated cost to run and support a townwide compost program would require approximately $380,188 as a base to administer the program, support the residents, inspect/enforce regulations, track data, manage invoices and educate about proper and accepted compost practices to minimize loads that are rejected due to contamination. This includes a one-time payment of $80,000 for the purchase of two electric vehicles for staff administering the program.

In-House Collection of Townwide Compost

3 Sanitation Truck Supervisors	$191,545 + Benefits (35%)	$258,586
3 Equipment Operators	$172,095 + Benefits (35%)	$232,329
Overtime		$ 18,000
Working Out of Class/Longevity/Boots Allowance		$ 13,000
Fleet Mechanic	$ 64,414 + Benefits (35%)	$ 86,959
Fleet Services		$ 18,000
OT		$ 48,000
Seasonal		$ 30,000
Fuel		$ 45,000
3 Packer Vehicles/Compost Collection (3-year payment plan)		$400,000
Carts & Containers (3-year payment plan)		$125,000
		$1,274,874

If the Town were to assume all responsibility to collect compost curbside with Town-owned vehicles and in-house staff it is estimated to require 3 additional packer vehicles with 2 operators per vehicle. Operating the 3 packers daily would require a mechanic for daily, seasonal and overnight maintenance work. All holidays would require a shift in the collection schedule leading to a weekend day of overtime for collection. The estimated annual cost for in-house crews for the collection of compost and provision of compost carts and supplies is estimated at $1.3M. Note that current estimates are based on a 3-year payment plan for both the fleet vehicles and the carts. Following the third year, the equipment would be paid off and owned by the Town. However, Town staff predict that by year five, the packer vehicles would require continued maintenance. Based on today's prices, maintenance costs would amount to approximately $50,000 - $80,000 per year. If the Town were to move forward with the program, it would evaluate the availability of electric packer vehicles for collection. This would shift the estimated budget by increasing the purchase price, eliminating the fuel price and increasing the outsourced fleet service cost.

Transport to Off Site Disposal Locations with In-House Staff

3 Equipment Operators	$172,095 + Benefits (35%)	$232,329
Fuel		$ 22,000
		$254,329

The Town is not licensed to store compost material at the transfer station. This material would be driven to an off-site disposal facility at the end of each workday following collection. The estimated cost to have a second shift of single occupant operators that would drive the vehicles to the disposal site is estimated at $255,000.

Disposal

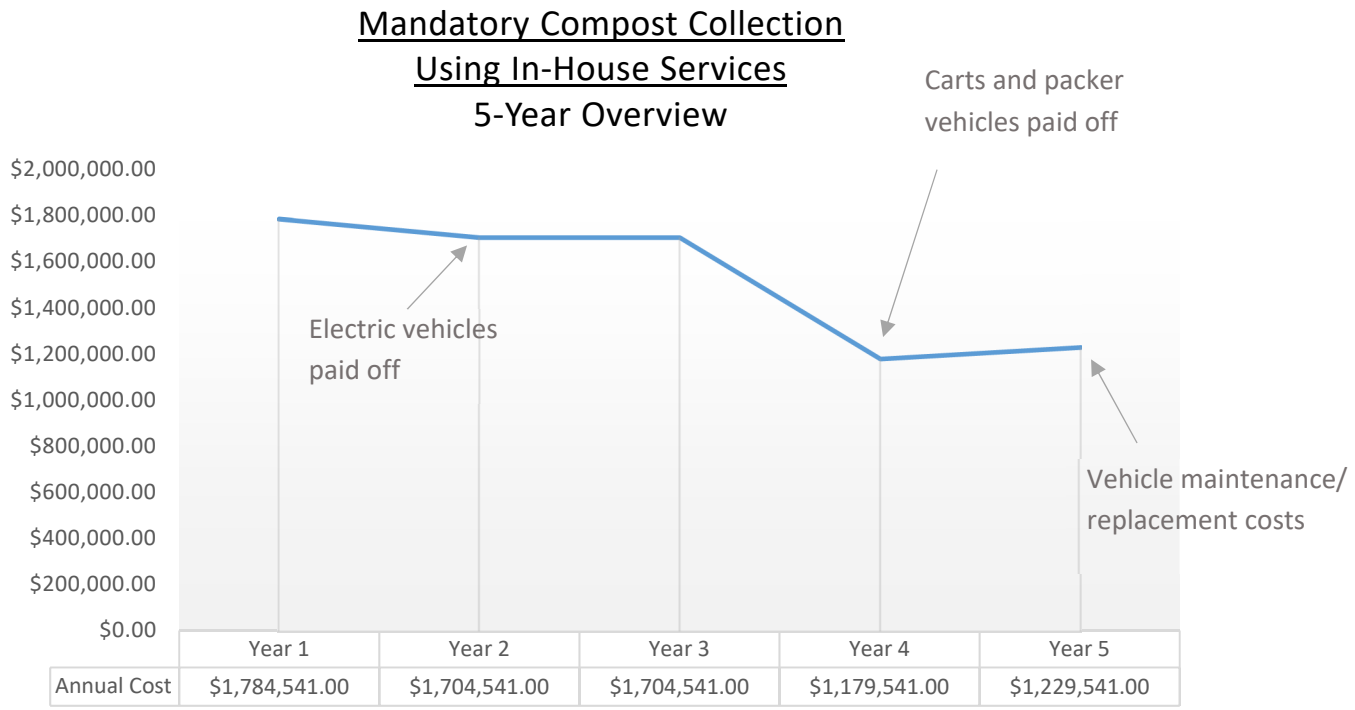
Compost Disposal (2270 Tons * $70/Ton)	$158,900
MSW Disposal Savings (2270 Tons * $125/Ton)	-$283,750

The Town estimates annual disposal of 2270 tons of compost material based upon MassDEP's estimate that food waste comprises roughly 25% of residential solid waste in Massachusetts. The current cost per ton to dispose of compost at Black Earth Compost's facility is estimated at $70. The total estimated disposal fee per year is $158,900. Note that the diversion of 2270 tons of compostable material away from the municipal solid waste (MSW) stream will result in MSW disposal savings. The Town is currently charged a $125 per ton tipping fee for solid waste disposal. It is estimated that a townwide compost program could reduce solid waste disposal fees by $283,750 each year.

Total Cost of Townwide Compost Program with In-House Services

Administration/Management	$ 380,188
Collection	$ 1,274,874
Hauling/Disposal	$ 413,229
	$ 2,068,291
MSW Disposal Savings	-$ 283,750
	$1,784,541

The estimated first year cost for the Town to implement a mandated compost program with in-house resources is $2,068,291. After factoring in the reduction in solid waste tipping fees, the overall cost is $1,784,541.



Contracted Compost Carts, Collection, Hauling, Disposal

The estimated cost for Townwide compost services for collection, hauling and disposal with a third party and provision of compost carts and supplies is $1.6M based upon the following estimates from another Metro-Boston community. This community was charged $8.75 per household per month (with the assumption that 9,000 households or more would participate in the program) by their contracted hauler. This cost of $8.75 per household per month includes all fees associated with collection, hauling, and disposal.

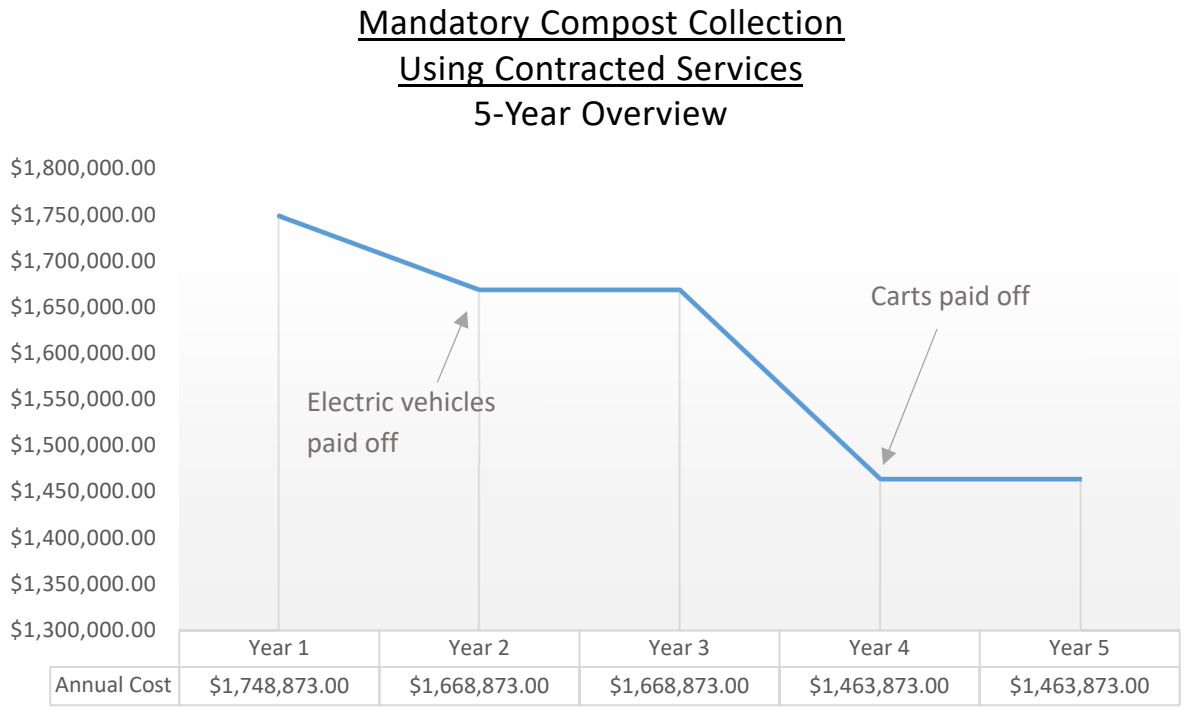
$8.75 (cost per household per month) * 14,547 households = $127,286.25

Cost per month is $127,286.25 * 12 months =	$1,527,435
Carts & Containers (3-year payment plan)	$ 125,000
	$1,652,435

Total Cost of Townwide Compost Program with Contracted Services

Administration/Management	$ 380,188
Collection/Carts/Hauling/Disposal	$1,652,435
	$2,032,623
MSW Disposal Savings	-$ 283,750
	$1,748,873

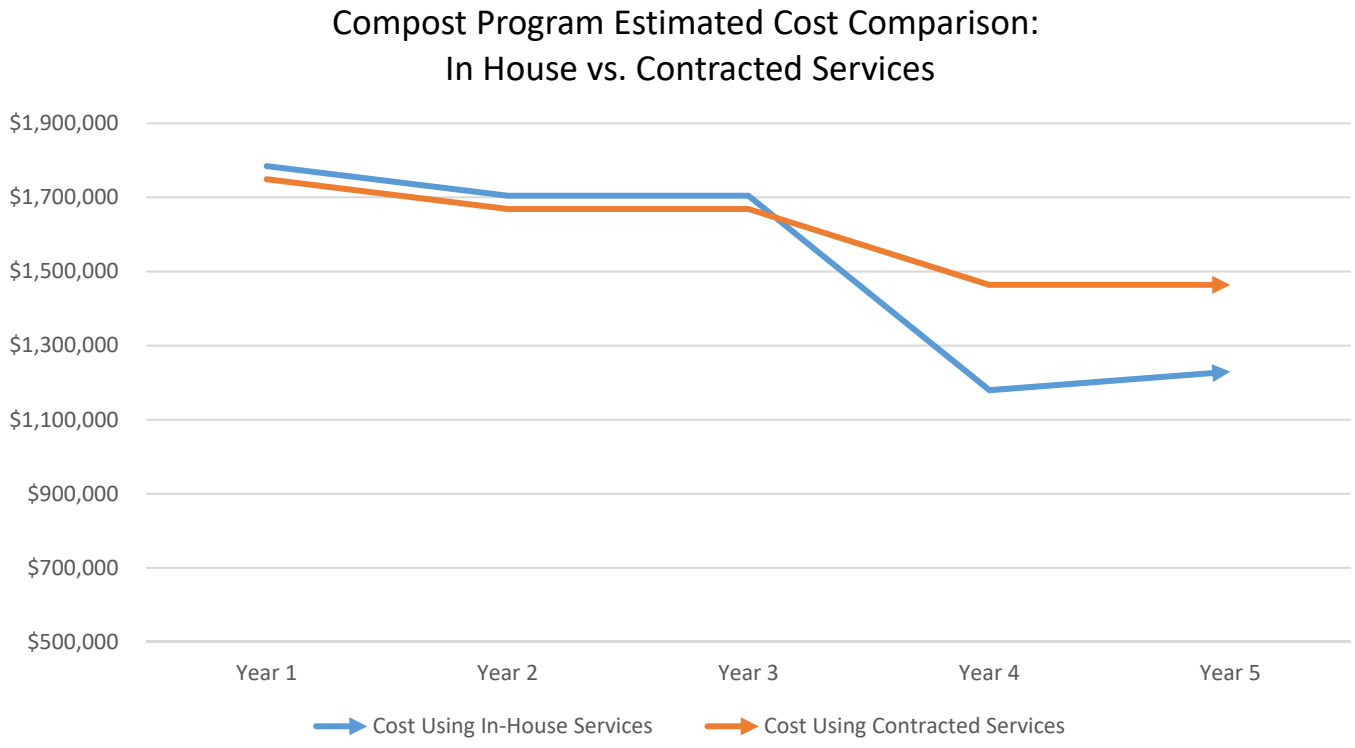
The overall first year cost for the Town to implement a mandated compost program with in-house management and outsourced collection, carts and containers, hauling and disposal is $2,032,623. After factoring in the reduction in solid waste tipping fees, the overall cost is $1,748,873.



In-House vs Contracted Service Program Cost Comparison

The estimated numbers for the Town do not include all costs around long-term retirement liability or other post-employment benefits. The costs presented are preliminary and provided as a starting point to consider all inputs to operate a mandatory compost program in the Town of Brookline. As indicated by these calculations, program costs using in-house resources would likely be more expensive for the first three years. However, following the purchase of packer vehicles and carts, the annual program costs would be reduced, rendering in-house services slightly less expensive than contracted services.

Year	Cost Using In-House Services	Cost Using Contracted Services
Year 1	$1,784,541	$1,748,873
Year 2	$1,704,541	$1,668,873
Year 3	$1,704,541	$1,668,873
Year 4	$1,179,541	$1,463,873
Year 5	$1,229,541	$1,463,873



While the Town cost for full service is competitive financially after year three, there are several factors that must be considered. The life span of a packer vehicle is approximately 10 years, meaning that the Town would likely need to replace the 3 packer vehicles after this time period and incur costs associated with replacement. Another concern regarding in-house collection and hauling is that it is unlikely that the Town would be able to attract and retain the employees necessary to collect and haul the material in this current job market.

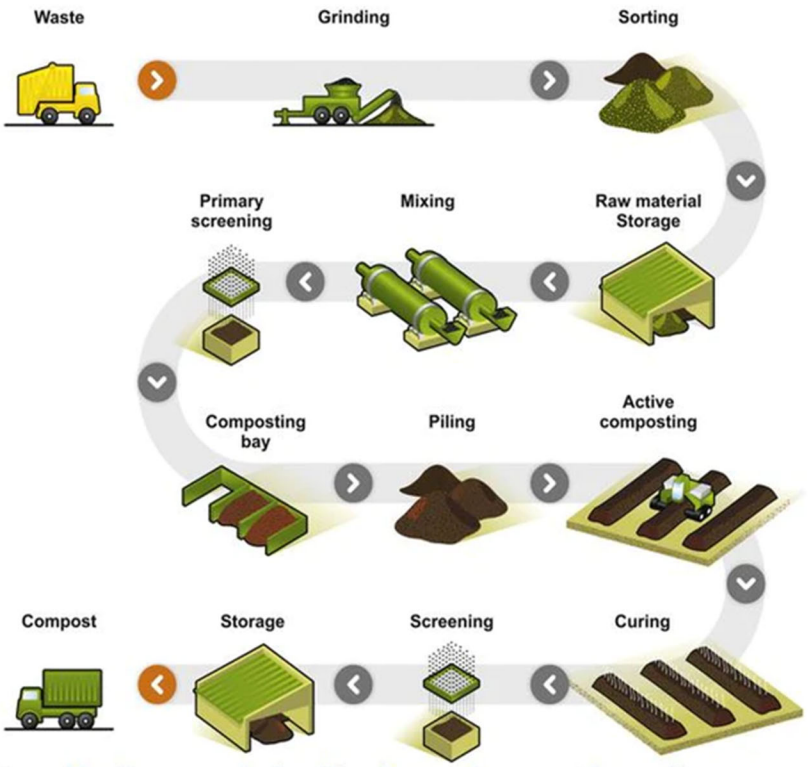
III. FOOD WASTE DIVERSION TECHNOLOGIES & FACILITIES

Composting is the process of natural materials, such as food scraps, leaves and wood, breaking down or decomposing into a rich fertile soil-like material called compost. Composting can be either aerobic (oxygen is present) or anaerobic (oxygen is absent). When done on a large scale, the choice of technology affects what material is accepted, the cost of tipping, and the type of end product generated.

Aerobic Composting

Aerobic composting occurs in the presence of oxygen. During this process, naturally occurring microorganisms that live in the moisture that surrounds the waste material break down food and yard waste. Since oxygen is key to aerobic composting, the waste material must be repeatedly turned or rotated to expose all the material to enough oxygen for decomposition to occur.

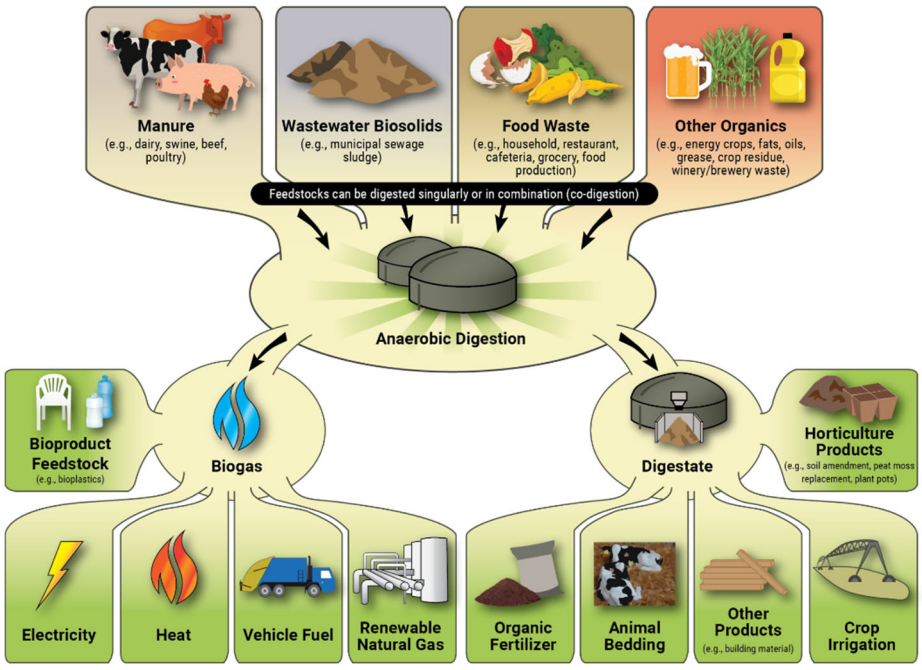
During the aerobic composting process, carbon dioxide, water and heat are produced. This carbon dioxide is not considered a contributor to greenhouse gases as it is classified as biogenic (naturally occurring) rather than anthropogenic (manmade). The heat generated during this process also kills off many of the potentially harmful pathogens in the compost material.



Source: https://www.researchgate.net/figure/Large-scale-commercial-composting-process-Reprinted-from-Polymer-International-57_fig14_299767774

Anaerobic Digestion & Co-Digestion

Anaerobic digestion is a process where microorganisms break down organic materials, such as food scraps, yard waste, manure, and sewage sludge, in the absence of oxygen. Anaerobic co-digestion is a very similar process whereby organic waste is added to dairy farm or wastewater digesters with excess capacity. Anaerobic digestion and co-digestion produce two end products: biogas and a solid residual. Biogas is made up primarily of methane and carbon dioxide. The reason methane is produced during this process and not during aerobic composting is due to the presence of different microorganisms that can exist without oxygen and produce methane while breaking down the organic material. The biogas produced during anaerobic digestion can be captured and used as a source of energy similar to natural gas, but when burned, it will add carbon dioxide to the atmosphere. The other byproduct of anaerobic digestion is a solid residual called biosolids that can be spread on fields as a soil additive.[1]



Source: US EPA: How Does Anaerobic Digestion Work
(https://www.epa.gov/agstar/how-does-anaerobic-digestion-work)

There are two basic types of anaerobic digesters: low solids and high solids. Low solids digesters are common at wastewater treatment plants and require a low proportion of solids to moisture in the material slurry. High solids digesters are less common and require less moisture, so they can potentially accept a food and yard waste mix.[1]

Contamination issues have been documented in sludge derived from co-digestion of food waste with sewage. These contaminants include pharmaceuticals, chemicals derived from personal care products, and per- and poly-fluoroalkylated substances (PFAS). PFAS are of special concern since these chemicals are difficult to break down, and can persist in the environment for extended periods. These concerns render the residue derived from

[1] EPA - Organics: Anaerobic Digestion - https://archive.epa.gov/region9/organics/web/html/index-6.html

anaerobic digestion that includes sewage unacceptable for agricultural uses: instead, this sludge is a toxic by-product. Taken together, anaerobic digestion of food waste along with municipal sewage have the same environmental drawbacks as waste incineration: generation of CO2 (through burning of biogas in the case of anaerobic digestion) and production of a toxic residue.

Taking these environmental issues into consideration, this Task Force recommends that the Town of Brookline dispose of its food waste solely through aerobic composting or anaerobic digestion at facilities that do not utilize sewage.

Diverting Food Scraps for Animal Feed

Another opportunity for disposing of food waste is to divert the food scraps for animal feed. Farmers have been using food scraps to feed their livestock for centuries. The use of food scraps reduces feed costs for farmers and it is often cheaper for organizations to haul food waste to a farm or livestock facility rather than to a landfill. Pigs in particular are good candidates for food scrap diversion as they are omnivorous and eat most things.

Comparison of Food Diversion Technologies

Type of Technology	Pros	Cons
Aerobic Composting	● Diverts food scraps from landfills, which cuts down on methane gas formation which occurs when these scraps decompose in landfills in the absence of oxygen. Landfills are the third largest source of methane emissions. ● Since this is a hot process (due to the bacteria breaking down the scraps), the decaying process is faster. The heat also destroys typical harmful bacteria and pathogens that might be present in everyday compost. ● By-products are heat, CO2 and water. The amount of CO2 produced is minimal and CO2 is 1/20 as destructive as methane gas, which is produced in anaerobic digestion. ● End product is a rich fertile material that can be used to enrich soil and enhance plant growth.	● Labor intensive, the compost has to be turned every few days. ● Space intensive, need large enough area to create compost windrows or piles. ● Composition of the piles needs to be monitored carefully in order to produce healthy, usable compost. ● Collected material needs to be free of major contamination. ● Need to be sure the collected material is free of major contaminants such as pesticides, herbicides, heavy metals, pathogens, etc. (e.g., pet waste can contain pathogens). ● Compost sites may give off strong odors, so typically need to be located away from residential areas. ● May be a long drive to cart the food waste to the composting sites, which has an impact on costs and the environment.
Anaerobic Digestion/Co-Digestion	● Generates biogas, a renewable energy source similar to natural gas. ● Diverts food scraps from landfill where the scraps decompose and produce methane gas which is released into the atmosphere.	● The cost of building and running a digester are high, so they are not widespread. ● Slow process, can take a while for the process to complete. ● May be a long drive to cart the food.

	• Biosolids can be used as a soil amendment which can reduce the need for chemical fertilizers, improve plant growth, reduce soil erosion and nutrient run-off, alleviate soil compaction, and help soil retain water. • Not as manually intensive as material does not require aeration or turning. • More nutrients are retained during the process.	waste to the digester, which has an impact on costs and the environment. • The burning of biogas to generate energy adds to current air pollution. • Anaerobic digesters can have the risk of accidental toxic spills. • Can cause odors that are offensive to neighbors. • Pathogens and harmful bacteria can survive the process. • Burning biogas generates CO2, adding to global warming. • When mixed with sewage, can produce biosolids contaminated with PFAS and other known toxins.
Food Scraps for Animal Feed	• Keeps food scraps out of landfills. • Helps lower farmers' animal feed costs. • Utilizes leftover human food as food for other animals.	• Contamination rates need to be very low. • Farms may have a limited range of food materials/compostable items they will accept. • Concern about how contamination might affect the health of the livestock. • Farms only want food waste and not yard waste.

Composting Facilities

As part of our process, the Task Force identified nearby composting facilities that had the potential to accept Brookline's projected food waste. The Task Force utilized the Mass DEP's list of food waste diversion facilities as a starting point, and contacted facilities within 60 miles of Brookline, to inquire about the following:

- their capacity to accommodate the estimated weekly volume of Brookline's food waste and yard waste
- the method of food waste diversion used by the facility
- whether they accept yard waste in addition to food waste
- estimated tipping fees per ton (for both yard waste and food waste)
- capacity to collect the waste directly from Brookline

Based on these inquiries, the Task Force identified the following four facilities as having the capacity to accept Brookline's compost.

Facility Name	Diversion Method	Location	Approximate Miles from Brookline's Transfer Station	Accepts Yard Waste	Comments
Agresource, Inc.	Aerobic Compost	Ipswich	55	Yes	Tipping fees to be determined. While Agresource primarily accepts yard waste at the moment, they have the capacity to accept all of Brookline's food waste in addition to yard waste.
Black Earth Compost	Aerobic Compost	Groton	45	Yes	If selected, Black Earth Compost requires that they haul all food waste. While they accept yard waste, they do not collect items over a certain size. They estimated a food waste tipping fee of $70 per ton, and a yard waste tipping fee of $5 per yard.
Feedback Earth	Animal Feed	North Grafton	40	No	Currently working solely with larger manufacturers and grocers to ensure minimal contamination. Looking to process residential and mixed business waste in the near future. Requires limited contamination, which would be problematic.
Vanguard Renewables	Anaerobic Co-Digester	Haverhill	50	No	Co-Digester currently utilizes approximately 30% animal manure and 70% food waste. Town would have the opportunity to purchase harvested energy.

Findings & Recommendations

While Feedback Earth has the capacity to accept Brookline's organic waste, the facility would require minimal contamination due to the fact that the food waste would be turned into animal feed. This Task Force does not feel that this is a suitable diversion method for Brookline since a Townwide compost program will undoubtedly involve contaminated loads. The Task Force recommends that the Town prioritize disposal of organics through aerobic composting. If this is not possible, the Town should consider anaerobic digestion only at facilities that do not utilize sewage. Any composting facility Brookline chooses to utilize should test for PFAS.

The options for disposal of organic waste in eastern Massachusetts are extremely limited, and this lack of options is a barrier to enacting mandatory composting. The lack of infrastructure must be addressed on a regional or state level to incentivize the creation of composting facilities close to the Boston metropolitan area, where land prices are a barrier to entry into this industry. The Town should conduct a further review of the remaining facilities and compare the costs and benefits of each. It is important to note that transport to any of the above identified disposal sites would require thousands of gallons of fuel per year. The Town should consider the purchase of electric packer vehicles to reduce greenhouse gas emissions and conduct research to identify any additional facilities in close proximity to Brookline that could potentially accept the Town's compostables.

IV. POLICY MECHANISMS TO MANDATE COMPOSTING

In order to effectively mandate composting for all Brookline residents and businesses, a specific regulatory mechanism must be identified. Research has been conducted to explore the differing political strategies and regulatory mechanisms other municipalities from across the nation have utilized to mandate composting. Several case studies have been studied as part of this report to identify how other communities have pursued mandatory organics diversion. Municipalities studied include Hamilton, MA, Boulder, CO, and San Francisco, CA. Descriptions of each case study can be found in Appendix A. The case studies indicated that most municipalities with a mandatory program have amended existing policy to include composting (as opposed to crafting a stand-alone policy), and that these municipalities share similar exemptions and enforcement practices. This Task Force has compiled this information to inform how Brookline could institute a similar mandate.

Identified Policy Mechanisms

As Brookline considers how to move forward with townwide mandatory composting, the existing bylaws and regulations already in place must be considered, as well as the feasibility of each strategy. This Task Force has identified two mechanisms to integrate composting into the Town's Bylaw: Option 1) Amend Article 8.16 Collection and Recycling of Waste Materials (along with the adopted Solid Waste Regulations), or Option 2) Develop a stand-alone Zero Waste Bylaw.

Developing a stand-alone Zero Waste Bylaw would require a significant amount of work and would likely cover similar topics as those discussed in Article 8.16. Since Article 8.16 already has language mandating recycling and the separation of recyclables from trash, it would be most logical to amend this language to include compostable items.

The following sections of text from Article 8.16 are comparable to the language in the policies mentioned above, and are suitable for revision. Suggested language is underlined and marked in red.

Section 8.16.4 Separation of Waste Materials *"In order to implement recycling and composting in conjunction with the Town's solid waste collection programs, owners, residents, and occupants of every household, residential unit, commercial facility or other building, whose waste is collected as a Town service or by a permitted hauler, shall separate for collection, in the manner set forth in this By-Law and the regulations adopted hereunder, the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations."*

Section 8.16.5 Mandatory Systems for Collection, Storage and Removal of Recyclables in Residential and Commercial Buildings *"All owners, landlords and property managers of residential and commercial buildings shall set up systems for the collection, storage, and removal of recyclables and compostables generated by the occupants and residents in their buildings, in accordance with the regulations adopted hereunder."*

Section 8.16.6 Permitted Haulers to Comply with All Regulations and to Provide Recycling Removal Services for Residential and Commercial Properties *"Every permitted hauler shall be required to provide its residential and commercial customers with the services of collecting and properly disposing of recyclables and compostables."*

Important Considerations for Brookline

Exemptions

As identified in the case studies listed in Appendix A, there are several conditions which may justify an exemption. The following exemptions should be considered as language is drafted:

- Residents who compost on their property
- Residents with mobility issues
- Space limitations that may affect storage space for containers for recyclables, compostables or trash
- Businesses that occupy less than 50% of the floor area of a residence
- A business or property owner or manager that can demonstrate extreme economic hardship
- Innovation exemption - a business or property owner may apply for an exemption if they are reusing or repurposing a significant portion of their waste stream
- Businesses that generate a de minimis volume of trash, recyclables or compostables
- Any business owner or manager who can demonstrate that compliance would require the business to violate other municipal codes or regulations, or applicable state or federal regulations

Enforcement

There are several options in regards to enforcement protocol which Brookline should consider. The existing language in the Solid Waste Regulations notes the following:

> *"PENALTY (1) Whoever violates any provision of these regulations adopted under the authority of Chapter 111, Section 31, General Laws, shall be punished by a fine as determined by the Director of Public Health and the Commissioner of Public Works as established by Town By-laws. (2) Any person who shall fail to comply with any order issued pursuant to the provisions of the regulations governing the handling, storage, collection and disposal of solid waste shall be fined as established by Town By-laws."*

Similar to existing protocol, fines could be issued for non-compliance with composting requirements. Alternatively, the Town could instead direct trash haulers not to collect waste carts from households that do not compost (and are not exempt under the bylaw).

Currently, the Department of Public Works has one full-time dedicated staff person who specializes in code enforcement around the following issues: solid waste, recycling, leaf blower usage, and snow removal. To successfully launch a townwide composting program, the DPW would need to hire additional staff to support code enforcement and to focus on contamination reduction strategies and education.

Findings & Recommendations

Most municipalities with mandatory composting programs have amended existing policy to include composting. The Task Force recommends that the Town amend Article 8.16 Collection and Recycling of Waste Materials (along with the Solid Waste Regulations) to include a requirement to compost following the successful completion of a phased approach (as described in Section VII: Recommended Implementation Strategy & Timeline). Exemptions and appropriate enforcement practices must be considered – this Task Force has outlined several in this report for the Town's consideration. This Task Force also found that the DPW is not currently staffed to accommodate additional enforcement and education around composting. To ensure efficient and effective enforcement, this Task Force recommends that the Department of Public Works hire additional staff to oversee compost code enforcement, ensure minimal contamination, and provide education and outreach to Brookline residents.

V. FUNDING

As has been detailed in previous sections, separating and collecting compostables will require investment in infrastructure and personnel costs. This section suggests some mechanisms to generate funds to support these costs.

Grants

There are several state and federal grant programs available to support the development of municipal composting services. The table below lists the programs that are most applicable to Brookline. Please note the availability of these grants and their corresponding award amounts are based on programs offered in 2022 and are subject to change.

Funding Agency	Grant Name	Dollar Amount
State of Massachusetts	Recycling Dividends Program	$6000-$9000/year
State of Massachusetts	Wheeled Organics Cart	$105,000
USDA-NRCS	Composting and Food Waste Reduction Pilot	$300,000

Massachusetts Recycling Dividends Program: This is a program from the Commonwealth of Massachusetts aimed at promoting best practices in solid waste disposal. The program awards points for a number of different activities that reduce solid waste. Brookline already participates in this program; adoption of a curbside food waste collection program would increase the payment to the town.

The Wheeled Organics Cart program leverages the purchasing power of the Commonwealth of Massachusetts to help municipalities to purchase and provide wheeled carts to residents to support a curbside organics collection program. The cost of these wheeled carts can be substantial when the program is implemented town wide. The program is limited to supporting the purchase of 5000 carts.

The US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) has implemented a grant program for the past several years through its Office of Urban Agriculture and Innovation Program entitled "Composting and Food Waste Reduction (CFWR) Pilot Project." The program supports pilot projects to introduce composting, reduce food waste, and anticipate economic benefits for the target community. The maximum award under this program is $300,000. The most recent call for proposals was in 2022, so it is not clear if the program will be available in 2023.

Taken together, these grant programs could provide some assistance for a Brookline composting program, but will not be able to cover all of the costs of the program.

Instituting Pure Pay-As-You-Throw

Alternatively, funds could be generated through changes to the way the Town collects revenue for solid waste disposal from residents, such as the adoption of a Full Pay-As-You-Throw (PAYT) system.

PAYT systems aim to charge residents for waste collection in proportion to the amount of waste generated. Most PAYT systems utilize a price-per-bag mechanism, where all solid waste must be disposed in Town-approved plastic bags. The cost of these bags reflects the costs associated with disposal of solid waste. While the cost per individual bag is relatively low, the total cost over the space of a year can be substantial. These costs provide an immediate incentive for solid waste reduction.

Brookline has implemented a Hybrid Pay-As-You-Throw system. In the Brookline system, residents pay an annual fee to the town based on the size of the trash cart provided by the town – larger carts cost more per year than smaller carts. This system has drawbacks in that there is no immediate reward for reducing solid waste disposal, and the current pricing system does not incentivize waste reduction.

If Brookline were to convert its Hybrid PAYT system to a Full PAYT system, there is the potential for an immediate increase in revenue, and these increased revenues could be used to offset the cost of collection of food waste. The table below compares the annual revenue generated today from the HPAYT system to the estimated revenue that could be achieved by converting to a Full PAYT system, where all solid waste must be disposed in Town-approved bags.

	True Pay As You Throw Estimate					Comparison with Current Pricing			
Toter size (gallons)	Number of 13-gallon bags per week	Number of 13-gallon bags per year	Price per bag*	Revenue per year		Current price per toter	Difference from True PAYT	Total number of toters town-wide	Total difference
96	7	364	$ 1.30	$ 473.20		$ 392.00	$ 81.20	2243	$ 182,131.60
65	5	260	$ 1.30	$ 338.00		$ 310.00	$ 28.00	4540	$ 127,120.00
35	3	156	$ 1.30	$ 202.80		$ 230.00	- $ 27.20	5923	- $ 161,105.60
Total estimated annual revenue from moving to True Pay-As-You-Throw-System									**$ 148,145.40**

* Price per bag estimated from amount charged for 13 gallon bags by other MA communities that use PAYT.

These calculations are maximal numbers, assuming that every resident fills their carts every week, which may not be the case. They are also initial estimates, as we would hope that the number of bags used each week would be reduced over time due to composting and cost-saving measures implemented by households.

Conversion to a true PAYT system would require monitoring what is in the toters collected by the Town. Consultation with DPW is needed to estimate the cost of enforcing the use of PAYT bags.

Bulky Item Collection Fees

Between January, 2022 and October, 2022, the Town received over 6,000 bulky item pickup requests from residents. Many other municipalities in Massachusetts charge residents a fee for bulky item collection. Currently, this service is free for all Brookline residents. The City of Newton charges $20 per item collected. If Brookline were to charge a similar amount, they would likely see an annual revenue of over $150,000. Establishing a bulky item collection fee structure could assist with covering bulky item collection and disposal costs, in addition to offsetting costs associated with a curbside compost collection program.

Findings & Recommendations

There are various opportunities the Town could utilize and further investigate to offset the costs associated with launching and implementing a curbside compost collection program. This Task Force recommends that the DPW consider applying any of the above (or other) applicable grants. The Town should also review the fee structure for solid waste collection, specifically charging for bulky items and the Hybrid Pay-As-You-Throw system, to incentivize waste reduction.

VI. OUTREACH AND EDUCATION

Strong communication and outreach are essential for the compost program's success. Research shows that most people need to see/hear/learn about something eight times before they will act. One of the most successful ways to impact behavior is through social diffusion - the spread of behavior from person to person.

The Town is already conducting some communication and outreach around composting including: tabling at farmers markets and community events, working with school clubs and environmental action groups, press releases, Soofa signs, social media, etc. At present, nearly 2,000 households have paid subscriptions to Black Earth Compost. However, a curbside compost collection program will require a comprehensive communication and outreach plan to elicit widespread participation.

A successful communication/outreach plan should seek to notify residents of this new program, educate the community about composting, and dispel misinformation/quell concerns. In this chapter, we outline several education and outreach tools and strategies for the Town to consider, as well as several important considerations.

Outreach & Education Tools/Strategies

Pre-Launch

The below strategies and tools would be most effective if used prior to the launch of a compost program. These strategies are intended to lay the groundwork for a successful, well-received program. They focus on building leadership within the community, notifying all residents about the launch of the program, and ensuring information is easily accessible.

1. Identify Compost Ambassadors

Brookline has over 2,000 residents who compost. John Dempsey, Chair of the Solid Waste Advisory Committee and vocal advocate for composting, believes "Once a composter, always a composter"! Of these 2,000 composters, the DPW could identify individuals who would be interested in serving as "Compost Ambassadors". These ambassadors would be located throughout Town (ideally 3-5 ambassadors per precinct) and would provide support and assistance to residents who are considering composting or are new to composting. A Compost Ambassador's main duties will involve dispelling misinformation, offering suggestions and tips, sharing/distributing DPW-prepared resources and information, or directing concerned residents to the DPW as needed. Interested residents could sign up through an application process with the Department of Public Works. Each ambassador would be provided with DPW-resources and information so that they are comfortable fielding questions from their neighbors.

2. Educational Webinars or Seminars

Staff could organize virtual webinars and Q&A sessions regarding the composting program, or hold in-person seminars or workshops on composting.

3. Townwide poll or survey

A 2021 survey conducted by Brookline's Chapter of Mothers Out Front asked the following question of 120 Brookline residents: "What's preventing you from composting?" The answers were informative. The three top reasons listed were:

- Overwhelmed (I keep meaning to get to it)
- Worry (fear of rodents…smell...the unknown)
- Logistics (the bags, the bin, the space needed, etc.)

The DPW should consider acquiring similar baseline data (on a greater scale) to gauge chief barriers to program participation and concerns about composting from residents. A survey or poll could also help to assess knowledge and attitudes around composting before, during and after the program launch.

4. Social Media Campaign

Developing short video clips on the "how's" and the "why's" of composting is an effective strategy to spread information. Brookline High School's Food and Justice Club, with the assistance of a school composting volunteer, developed a 60-second video to show students and staff what goes into the compost bin versus the trash and recycling bins. Nearby communities with compost programs, including Boston and Cambridge, have also developed videos about their composting programs and how to compost. Such video clips can be combined with Facebook and Instagram posts, tweets, etc. on the various platforms in which Brookline residents participate, including: Brookline Twitter, Brookline Facebook page, neighborhood association listservs, faith-based community listservs, school PTO newsletters, Town meeting listserv, Mothers Out Front, Climate Action Brookline, etc.

5. Tabling at Town Events & Outside Supermarkets

Town events, such as DPW Day and Brookline Day, in addition to well-frequented spaces, such as supermarkets and farmers markets, would be effective locations to share information on the upcoming compost program.

6. Flyers

Posting flyers across Town advertising the new program would be an effective strategy to spread awareness townwide. Consider bulletin boards in parks and community spaces, such as the library and schools. Share information on the compost drop-off bin program by hanging flyers in Brookline Housing Authority buildings.

7. Website

Creating an interactive map online illustrating where the community compost drop off bins are located would be a valuable tool for many residents. All resources and information should be easily accessible on the Town's website.

During Implementation/Ongoing

The below strategies and tools would be most effective if used following the launch of a compost program (during implementation). These strategies are intended to continue building visibility for the program, provide residents with program information, and encourage proper composting practices.

1. Share a Curbside Compost Pickup Guide

This document should be shared with anyone who receives a curbside composting cart. It should include an overview of why composting is important, how curbside compost collection works, what you can put in your compost bin, FAQ, and composting tips. An example guide can be found in Appendix B.

2. Yard Sign Campaign "I Compost"

Ask if residents who participate in the compost program would consent to having an "I Compost" yard sign in their front yard. This could build visibility for the program across Town.

3. Utilize light pole banners across Town

Hang banners on Town light poles to inform residents about the program and/or celebrate progress/share statistics about waste diversion.

4. Host a Townwide "Compost Awareness" month annually

Work with schools, non-profit organizations and local community groups to host a series of events regarding composting and waste reduction. Consider hosting a composting demonstration, a series of lectures, and/or a week-long "Slash the Trash" challenge (or something similar) where the DPW encourages residents to see how little trash they can produce.

5. Utilize Recollect's Waste Wizard

Ensure that the Recollect App references the Town's composting program and that residents can use the wizard to search for a particular item and determine if the item should be composted, recycled or put in the trash.

6. Waste Brochure to Include Composting Information

Include information on composting in the DPW's sanitation brochure that is distributed to all residents.

Important Considerations

Outreach should be focused around dispelling compost misinformation. The DPW should prioritize acquiring data on Brookline residents' perception of the program to inform outreach content and educational materials. The Town should also ensure that information on where to purchase composting supplies (kitchen countertop bins, replacement carts, and compost bags) is easily accessible on the website.

Given the diverse makeup of residents on municipal service, the communication and outreach strategies must reflect the needs of the population in terms of language, age, disability, and income status. Educational

materials should be accessible and user-friendly (e.g., multilingual, screen-ready friendly online materials, graphics should use colorblind-friendly color palettes, etc.).

This work will be labor intensive and will require considerable DPW staff time, as well as significant support from local advocacy groups. Additional Town staff will be needed to support ongoing outreach and engagement to encourage program participation, dispel misinformation, and educate residents on proper composting practices.

Findings & Recommendations

The Task Force recommends that the Town conduct comprehensive, accessible outreach and education to accompany a curbside compost collection program and consider the proposed strategies listed above. Additional Town staff, in addition to buy-in and support from local advocacy groups, will be needed to support ongoing outreach and education pre- and post-program launch.

VII. RECOMMENDED IMPLEMENTATION STRATEGY & TIMELINE

Phased Approach Compost Collection Program

Several case studies were reviewed as part of this investigatory process to identify how other communities have pursued townwide organics diversion. Local benchmark municipalities such as Boston, Cambridge and Watertown are currently offering opt-in composting programs to collect data. While Hamilton instituted an Organics Waste Ban in 2021, it offered an opt-in composting program for 9 years prior to establishing this mandate. Most municipalities offered (or are currently offering) a "phased approach", in which a certain number of households are able to sign up for a free curbside composting collection service each year (raising the maximum number of eligible households annually). The phased approach allows the community time to make operational changes to efficiently support the compost program, address resident concerns, conduct comprehensive education and outreach around composting, while also identifying how to fund the program on a townwide scale.

The Task Force recommends that the Town launch an opt-in "phased approach" compost program to better inform how the Town could establish a mandatory program. The Town would learn a great deal through a phased approach that would enable it to adjust costs and assumptions based upon a true experience of how resources are spent and needed in Brookline to support a successful compost program. A phased approach would also provide time for the Town to conduct widespread, comprehensive compost outreach and education to encourage program participation and to dispel misinformation about composting.

Similar to programs offered in Boston, Watertown and Cambridge, the Task Force suggests the Town offer a free composting collection service to a certain number of households each year. To ensure the success of a phased approach program, the DPW would require appropriate funding and staff capacity to manage operations, conduct community engagement and education, and provide support to program participants. Assuming the program is fully resourced, the Task Force suggests a minimum of a 3-year phased plan, with the intent to offer curbside food waste collection to all households on Town service at the end of this multi-year approach. The Task Force suggests the following approach:

Year 1: 5,000 households eligible
Year 2: 10,000 households eligible
Year 3: 14,547 households (all households on Town Service) eligible

As discussed in the Preliminary Cost Assessment section of this report, the Town would need to utilize contracted services to collect compost during the phased approach program. Depending upon cost efficiency and the preferred method of operations determined by DPW staff and the contracted compost collector, this Task Force has outlined two phased approach strategies below.

1. The Town could offer an opt-in compost program to one specific neighborhood/area. Limiting participation to a specific geographic area or pre-existing collection route would result in a more efficient collection process and would likely lessen expenses. Each year, the Town could add additional areas/collection routes while increasing the maximum number of household participants.

2. The Town could offer free curbside organics collection to any household in Brookline and, similar to option 1, establish a maximum number of program participants for each year. At the onset of the program, all households in Brookline already subscribed to a composting service would automatically be absorbed into the Town's program.

Compost Drop-Off Bin Pilot Program

While offering composting pick up services to residents of public housing is beyond the scope of this report, it is important to address in order to ensure that the majority of low income residents also have a way to participate in a composting program. One solution (used by many municipalities) is to offer multiple drop-off sites around Brookline with close proximity to public housing, similar to Project Oscar developed by Boston. With this approach, public housing residents would have options to participate in the Town's composting program without the issues raised with on-site composting (such as the presence of rodents, insects and odor). This Task Force suggests the Town pilot 2-3 drop off box locations in fiscal year 2024. Locations to consider include schools, fire stations, police station, libraries, and the senior center.

As a compost drop-off bin pilot program is developed, DPW staff will need to consider container capacity, the frequency with which it is emptied, and how the container is secured to minimize contamination and prevent rodent access. As documented in successful drop off bin programs, such as Project Oscar, these bins would need to be regularly monitored and maintained (especially in the warm summer months) to minimize any odor. Additional staff time would be required to conduct education and outreach to encourage program participation and minimize contamination, to care for and maintain the bins, and ensure regular supervision of the drop off sites. Costs associated with this pilot program would include hauling/disposal fees, educational materials (such as signage), and equipment (bins and bags).

Timeline

Following comprehensive research and the development of this report, the Task Force proposes the following timeline for the recommended phased approach.

- January, 2023: Request program funding for Fiscal Year 24. If approved, money will become available July 1, 2023.
- July, 2023: Prepare for launch of "phased approach" program (hire staff, put out a Request for Proposal for hauling/disposal, conduct outreach and education, etc.)
- Fiscal Year 2024: Pilot 2-3 drop-off compost bin locations
- Launch a curbside compost collection program (the following timeline assumes a fully-funded and staffed program):
    - Calendar Year 2024: Household cap of 5,000
    - Calendar Year 2025: Household cap of 10,000
    - Calendar Year 2026: Household cap of 14,547 (all households on Town service)

The Zero Waste Framework, published in 2021, set a goal for the Town to implement a mandatory organics diversion program between Fiscal Year 2026 and Fiscal Year 2027. This Task Force does not believe that a mandatory compost program could be established sooner than is proposed in this guiding document.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Throughout 2022, this Task Force has conducted significant research to inform recommendations that will support the Town of Brookline in launching a townwide composting program. Many local municipalities near Brookline are in the process of launching, or have already launched, opt-in composting programs. The Task Force's research has shown that most municipalities that have instituted a mandatory composting first offered opt-in programs to collect data and educate residents to ensure a successful program.

This Task Force strongly recommends that the Town of Brookline launch an opt-in phased approach composting program for residents on Town service beginning calendar year 2024. Concurrently with this curbside collection program, the Town should pilot a compost drop-off bin program in fiscal year 2024 to ensure equal access to composting for all residents. This Task Force notes the urgency of implementing these programs as soon as possible to combat the climate crisis. Similar programs are being prioritized by neighboring municipalities including Boston, Watertown, and Cambridge – Brookline has a shared responsibility with these regional partners to divert waste from incineration and reduce greenhouse gas emissions.

The Task Force makes the following recommendations to address the resolution posed by Warrant Article 17.

Recommendations of the Solid Waste Advisory Committee Composting Task Force

The Task Force recommends that the Town:

A. Preliminary Cost Assessment
    a. Explore expanding Brookline's Transfer Station permit to include the ability to temporarily store compost to minimize costs.
    b. Execute Requests for Proposals for compost collection and disposal services.
B. Food Waste Diversion Technologies & Facilities
    a. Prioritize disposal of organics through aerobic composting. If this is not possible the Town should consider anaerobic digestion only at facilities that do not utilize sewage.

    b. In any contract with a composting facility, include a requirement to annually test finished compost for PFAS.

C. Policy Mechanisms to Mandate Composting
    a. Amend Article 8.16 Collection and Recycling of Waste Materials (along with the Solid Waste Regulations) to include language that requires composting following the successful completion of a phased-approach curbside compost collection program.
    b. Hire additional DPW staff to oversee compost code enforcement, support outreach and education and ensure minimal contamination.

D. Funding
    a. Review the fee structure for solid waste collection, specifically charging for bulky items and Hybrid Pay-As-You-Throw, to incentivize waste reduction.
    b. Consider applying for (a) grant(s) to offset program costs.

E. Outreach & Education
    a. Conduct comprehensive, accessible outreach and education strategies to accompany a curbside compost collection program and consider incorporating the proposed strategies listed in this report.

F. Implementation Strategy & Timeline
    a. Launch an opt-in "phased approach" curbside composting program beginning in calendar year 2024.
    b. Launch a pilot compost drop-off bin program in fiscal year 2024.

Additional Research/Action Needed

Given the limited amount of time and resources available to this Task Force, there were several questions and matters raised during this process that merit further investigation. These topics have been listed below for DPW consideration:

- Conduct a further review of the facilities identified in this report as having the capacity to accept Brookline's separated organics and compare the costs and benefits of each. Conduct additional research to identify any other facilities that could potentially accept Brookline's compostables.
- Pursue regional partnerships to facilitate the development of additional composting facilities in proximity to Brookline.
- Investigate incorporation of split-body trucks (to collect yard waste and food waste concurrently).
- Conduct a cost benefit analysis of every other week trash pick-up while maintaining weekly recycling and composting pickup.
- Set up communication with Boston, Watertown and Cambridge. Outline the scope and timeline of their phased-in programs, identify lessons learned, successes, challenges, etc.
- Research strategies to mitigate contamination, such as waste audits and the use of "see through" trash bags (so that audits of trash are easier to conduct).
- Advocates and community groups contact elected officials about the urgent need to create incentives to establish more composting facilities near the Boston metropolitan area.

APPENDICES

APPENDIX A:

Case Studies of Municipalities With a Mandatory Composting Program

Town of Hamilton, Massachusetts

The Town of Hamilton adopted an Organics Ban in 2021. Nine years prior to the institution of this ban (in April, 2012), the Town had provided each residential household with a 13-gallon compost toter, a 2-gallon countertop collector and access to free weekly curbside compost collection. The Organics Ban specifically prohibits all food waste and compostable paper from entering the Town's solid waste trash stream.

Regulatory Mechanism: Organics Ban (2021)

Exemptions: Those who compost food scraps on their premises may apply to the DPW for an exemption from the ban. If an exemption is granted, the resident will affix an exemption sticker to their solid waste bins.

Enforcement: No fines shall be imposed for non-compliance. Instead, trash haulers have been instructed not to pick up the black trash bin from households that do not compost (or do not have an exemption sticker).

Provisions: Board of Selectmen will monitor the monthly tonnages of residential solid waste and organics and may take further actions if deemed appropriate to further increase the amount of organics composted.

City of San Francisco, California

Curbside collection of organic material became available to all properties in San Francisco on a voluntary basis in 2001. In 2009, The City of San Francisco amended their Environment Code by adding a chapter entitled "Mandatory Recycling and Composting Ordinance". The City also amended the San Francisco Public Works Code and the San Francisco Health Code to involve composting considerations. All persons in San Francisco are mandated to separate recyclables, compostables and landfilled trash and participate in recycling and composting programs. Owners or managers of multifamily or commercial properties must provide a refuse collection service for recycling, compost and trash to the tenants, employees, contractors and customers of the properties. These property owners or managers must also provide information and/or training for new tenants, employees and contractors, including janitors, on how to source separate recycling, compostables and trash, and must re-educate existing tenants, employees or contractors at least once a year.

Regulatory Mechanism: City Code amended (2009)

Exemptions: A property owner or manager may seek a waiver if the applicant submits documentation that shows that the property doesn't have adequate storage space for containers for recyclables, compostables or trash. If space limitations are confirmed after on-site verification, the Director shall first evaluate the feasibility of sharing containers with contiguous properties.

Enforcement: Director of the Department of Public Health and/or the Director of Public Works (or his/her designee) may impose administrative fines for violations. The fines for any violation at a dwelling or commercial property that generates less than one cubic yard of refuse per week may not exceed $100. Prior to issuing a fine, the collector will tag improperly disposed materials, send written notice to the customer, and may refuse to empty the container (except for multi-family dwellings).

If the Director of Public Health directs a Dwelling or a Commercial Property to be inspected to determine whether the Owner has complied with the City Code, the Owner shall pay an inspection fee equal to $167 per house of the Department of Public Health staff time spent during the inspection. The City shall use administrative penalties collected, including recovery of enforcement costs, to fund implementation and enforcement.

City of Boulder, Colorado

Beginning in 2010, the annual Boulder hauler reporting form included a request for the number of trash, recycling and compost customers (by service address) by sector in additional to tonnage data. In 2015, the City of Boulder amended their City Code to include a Universal Zero Waste Ordinance, which requires all properties, businesses and waste haulers to provide composting, recycling and landfill collection services to tenants, residents, customers and employees. The ordinance also requires business owners to separate recyclables and compostables from trash, place bins for each waste stream, post signs on or above all waste bins, and train employees on proper sorting. A unique aspect of the Universal Zero Waste Ordinance is that it does not legally require proper sorting of the waste streams, rather it relies on the assumption that if all three waste collection services are accessible, convenient, and easy to understand then everyone will use the services properly. The city created resources including offering free signs, a step-by-step guidebook and how-to videos. They also require that businesses train their employees with a Sorting 101 video and sorting quiz, which helps address contamination issues. Note: Boulder does not have municipal trash hauling.

Regulatory Mechanism: Universal Zero Waste Ordinance (2015)

Exemptions: There are quite a few exemptions, including the following: 1) The owner of a business that occupies less than 50% of the floor area of a residence, 2) A business or property owner or manager that can demonstrate extreme economic hardship as defined by the city manager, 3) A property or business owner that composts on-site in compliance with all applicable laws ("Compost piles permitted if not a nuisance"), 4) Property owners that share collection service, 5) A business or property owner that can demonstrate that the property is sufficiently space constrained, and 6) A business or property owner that reuses or repurposes a significant portion of their waste stream.

Enforcement: If the City Manager finds a violation, they may, after notice and an opportunity for hearing, impose the following civil penalties: first violation: $500; second violation: $1,000; the third and subsequent violations: $2,000.

Enforcement is largely complaint-based. In 2019, the City began to phase in required reporting for restaurants and grocery stores through submission of an online form that includes photos of their bins and signs.

APPENDIX B:

Example Guide for Curbside Compost Collection Program

As described in Section VI of the report, the Task Force suggests that the DPW share an informational pamphlet describing the program and composting best practices with all new participants of the Town's compost program. Included below is some draft pamphlet content for the DPW's consideration.

Did you know that food scraps make up anywhere between 25-40% of household trash in Massachusetts? Composting reduces the amount of trash that gets sent to the incinerator and combats climate change! Putting food scraps in a locked curbside bin (as opposed to a trash bin) can also help the Town manage rodent activity.

Composting with the Town of Brookline is easy! Follow the tips in the guide below on how to compost correctly.

A. What's in my starter kit?:

- 13-gallon curbside bin
- One roll of compostable liners

B. How does the program work?

- Store food scraps in a closed lid container on your kitchen countertop. We recommend lining this bin with a compostable liner to make clean-up a breeze!
- Line your 13-gallon curbside bin with a BPI, CMA or OK Compost certified compostable bag (available at [STORE NAMES]).
- Once your countertop bin is full, empty it into your curbside compost bin, just as you would your regular trash.
- On your trash/recycling day, bring your 13-gallon compost bin to the curb for collection. As with trash and recycling, be sure your compost bin is on the curb by 6 am the day of pickup.

C. The most common things that go into compost:

- Vegetable and fruit (even if they're moldy!)
- Meat, fish, poultry, bones
- Dairy products (cheese, yogurt, cottage cheese, etc.)
- Cut flowers
- Egg shells, bread, pasta and coffee grounds
- Food-soiled paper and cardboard like pizza boxes, paper coffee filters, napkins, paper towels and brown paper bags

D. Keep the below items out of your compost:

- Pet waste or diapers (even if they are "compostable")
- Yard waste
- Plastic
- Recycling
- Trash

E. Keep your compost bin clean by following these simple steps:

- Line your outdoor bin and/or countertop container. This is required to ensure the bins can be fully emptied. A double lined paper grocery bag works well or you can use BPI, CMA or OK Compost certified compostable bag liners.
- The drier the contents in the bin, the easier the bin empties, especially in winter and summer. Be sure to drain liquids from food before putting food scraps in your bin.
- Empty food scraps from your kitchen container into your outside bin throughout the week. Some people empty daily, others may only empty every few days. You can also store your container in the freezer to reduce any odors during warmer months.
- Give your kitchen counter container a quick rinse every time you empty it.
- Set your bin out every week, even if your bin is not full, to avoid smells. Once it's been collected and emptied, you may have a bit of liquid left in the bin; make sure to pour the dirty water onto gravel or grass. Rinse out your curbside bin every couple of weeks to reduce odors.

F. Common composting myths dispelled (produced by the Runkle School student council, 2019)

Top excuses for NOT composting (and why you should reconsider!):

1. **I don't have enough room for composting: FALSE -** Composting with weekly curbside pickup means you only need space for a small compost bin in your fridge or on your counter and a small outdoor bin that is stored alongside your regular trash and recycling bins. You might even be able to save space by downsizing your trash bin!
2. **I already have a backyard compost: YOU'RE AWESOME!** You can still sign up for curbside composting, which accepts many items that typically can't go in backyard bins (meat, fish, egg shells, dairy, etc.).
3. **Composting is gross! FALSE -** You are already throwing away the same food scraps into your regular trash. A separate compost bin makes it easy to take food waste outside before it gets smelly!
4. **I don't know anything about gardening: NO PROBLEM** - With curbside pickup, you don't have to manage the compost production at all. You just dump scraps in the bin, and the hauler takes care of the rest!
5. **I don't know what is compostable and what isn't: NO PROBLEM –** this pamphlet includes a detailed list of what you can and can't compost.
6. **Composting is a hassle: FALSE.** Once you get in the habit of using your compost bin, it is no more difficult than using a recycling bin!
7. **Composting doesn't make that much of a difference: FALSE** - Food waste (25% of your household trash) sent to landfills produces methane gas, which is a greenhouse gas 86 times more potent than CO2! Food waste sent to incinerators produces CO2 and toxic ash. Compounding the issue, trash is often sent hundreds of miles away by trucks to landfills (often in other states) or incinerators, using gas to get there.

8. **I don’t have time to sign up: Signing up only takes a few minutes!** Go to www.brooklinema.gov/dpw and get started today!

G. Additional information can be found at www.brooklinema.gov/dpw. If you have any questions or need assistance, please contact the Department of Public Works at (617) 730-2156.

T O W N o f B R O O K L I N E
Massachusetts

Park and Recreation Commission

Park and Recreation Commission
Nancy O'Connor, Co-Chairperson
Clara Batchelor, Co-Chairperson
Antonia Bellalta
Lauren Bernard
James Carroll
Theresa Mooney
John Pan
Jason Ribatt

Director of Parks and Open Space
Alexandra Vecchio

Director of Recreation
Leigh Jackson

November 9, 2022

Dear Select Board Members, Advisory Committee Members, Town Meeting Members,

I am writing to you as a co-chair of the Park and Recreation Commission and a member of the Spring 2022 Town Meeting Warrant Article 26 Committee.

Last May, Town Meeting voted to refer Warrant Article 26 to the Park and Recreation Commission with a request for a report to the Fall 2022 Town Meeting. Immediately following the close of the May Town Meeting, the Park and Recreation Commission assembled a group of interested stakeholders as well as other residents. The group identified six key areas to research including recreation programming, financial aid policy, financing/long-term funding, community outreach and engagement, staffing needs, and roles and responsibilities of the Park and Recreation Commission.

Ably supported by Recreation Department staff, Committee members met both as a committee of the whole as well as in working groups throughout the summer and fall for a total of over 30 meetings.

Due to the complexities of a number of issues under examination, the final report continues to be reviewed and will be sent to Town Meeting Members electronically as well as posted on the Town's website before the conclusion of this month's Special Town Meeting(s).

The Park and Recreation Commissioners wish to thank the members of the Warrant Article 26 Committee for their commitment to this important work. In particular, we would like to begin by acknowledging the many hours spent by the Brookline Recreation Department staff and managers including Leigh Jackson, Recreation Director; Jonathan Lewitus, Assistant Director; Gerry Kelly, Business Manager; and Laurie Ferrell, Administrator. These staff members helped in the drafting of the report while simultaneously implementing important objectives of this endeavor. Because of their

commitment to equity and excellence, hundreds of Brookline children will have participated in recreation programming by the end of this calendar year.

In addition, we also would like to recognize the Warrant Article 26 Committee members including Wendy Sheridan Ames, Committee co-chair, TMM and former Park and Recreation; Deborah Brown, Committee co-chair; Carla Benka, TMM and former Advisory Committee member; Kimberley Richardson, TMM; Stephen Reeders, Advisory Committee Member; Michael Alperin, Executive Director Brookline Housing Authority; Danielle Mendola, Brookline Housing Authority; Charlie Homer, TMM, Advisory Committee on Public Health Member; Juan Cantu, Executive Director Steps to Success; and Park and Recreation Commissioners Theresa Kennelly Mooney and Lauren Bernard, TMM. These volunteers put their families and day jobs aside to draft a comprehensive strategy to help those who lack the means to fully participate in the Town's recreation activities.

The Commission would also like to express its appreciation to Recreation Department staff and volunteers for their robust commitment to outreach and engagement. These people designed and distributed outreach materials to nearly 1,000 residents. They brought in allies like the Brookline Food Pantry to distribute materials. Thank you again to Jonathan Lewitus and to our valued volunteers including Kimberley Richardson, Danielle Mendola, Juan Cantu, Wendy Sheridan Ames, Committee co-chair, TMM and former Park and Recreation Commissioner and Theresa Mooney. A special thanks to Carlos Tamay.

Finally, the Commissioners would like to thank the many Brookline residents who participated in surveys, conducted outreach and engaged with the Recreation Department and the Warrant Article 26 Committee during this work.

With Gratitude,
Nancy O'Connor
Co-Chair, Park and Recreation Commission

REPORT TO TOWN MEETING
From
The Planning Process Study Committee
November 7, 2022

On September 20, 2022 the Brookline Select Board appointed eight community members to the Planning Process Study Committee. The addition of John VanScoyoc as the Select Board liaison brings membership of the Committee to nine members. Emily DeHoog from the Department of Planning and Community Development will provide the main staff support to the Committee. The Committee met for the first time on Monday, October 31, 2022. At this first meeting the Committee voted to appoint Linda Olson Pehlke as Chair.

Membership of the Committee is as follows:

Carla Benka – Former Advisory Committee Vice-Chair, TMM P14
Abigail Hiller – Planning Board Member
Jonathan Klein – Housing Advisory Board Member
Linda Olson Pehlke, Planner, TMM P17 and Advisory Committee Member
Susan Podziba – Professional Public Policy Mediator
Al Raine – Economic Development Advisory Board
Felina Silver Robinson – TMM P3 and Chair, Brookline Commission for Women
Jennifer Sullivan – Interim General Counsel, Commonwealth of Massachusetts, Division of Capital Asset Management and Maintenance
John VanScoyoc – Select Board

As you may recall, this Committee came into being as a result of several previous votes at Town Meeting, namely, WA 26, from the Fall, 2021 Special Town Meeting, a resolution calling on 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. Also, WA 10 from the Spring, 2022 Annual Town Meeting, re-directed $148,644 in CIP funds from a previously approved zoning "clean-up" project that had not been completed to this larger comprehensive planning effort.

The PPSC charge is appended at the end of this report. We began our work by seeking out "Best Practice" plans as a starting point. These were gleaned from those plans recognized by the American Planning Association as "best practice" and from Committee member suggestions. Another APA publication, "Sustaining Places: Best Practices for Comprehensive Plans" will be a foundational resource for the Committee's work. It is apparent to all members that both the state of the practice and community conditions have changed fundamentally from the last time Brookline undertook a comprehensive planning process, which produced the 2005-2015 Brookline Comprehensive Plan.

One of our very first tasks was to consider rough budget estimates for FY 2024, FY 2025 and FY 2026 for the comprehensive planning and zoning reform effort. Kara Brewton offered the following estimates, which were derived from conversations with planning consultants.

FY 2024-$289,703
FY 2025-$304,188
FY 2026-$304,188

$898,078 is the total project cost estimate (which includes the re-directed $148,644) It is anticipated that the first two years will involve the comprehensive planning efforts and the third year would be dedicated to the zoning reform effort. While these estimates are preliminary, it was necessary to have placeholder estimates for Town budgeting purposes.

Our goal is to complete our work, resulting in a Request for Proposal(s) (RFP's) for planning services in 6-8 months.

The Planning Process Study Committee would like to encourage the public and Town Meeting Members to attend our meetings and follow our progress. The PPSC website can be found here: https://www.brooklinema.gov/2483/Planning-Process-Study-Committee.

Charge for Planning Process Study Committee
The Committee, in consultation with the Department of Planning and Community Development and the Town Administrator, is charged with developing a timeline, work program, budget and scope for an inclusive, community-driven planning and zoning reform process. Specifically, the Committee should:

1) Summarize why the Town needs to update their Comprehensive Plan now. In other words, what is the risk for Brookline if the Comprehensive Plan is not updated?
2) Review best practices for modern Comprehensive Plans, including but not limited to other community Comprehensive Plans and the regional Metropolitan Area Planning Council's regional plan to identify what would be appropriate for Brookline's Comprehensive Plan. For example, although state law defines elements (e.g., Land Use, Circulation, etc.) that should be included when a Master Plan is completed, many modern Comprehensive Plans are organized across these segmented elements so that a cohesive, prioritized Town policy directive is laid out.

3) Review prior planning studies and make a recommendation on which of these should be incorporated, rather than duplicated, during the overall planning process.

4) Outline a Comprehensive Planning process that includes, but is not limited to:
a. incorporates perspectives from a full spectrum of stakeholders;
b. develops a shared fact-base of existing conditions (local and regional), including qualitative and quantitative measurements of current and potential (i.e. build-out) land use, inequities, public services, infrastructure, and community assets compared to peer communities;
c. creates and analyzes a variety of demographic (local and regional) and land-use projections, including a "no zoning change" scenario;
d. inventories public infrastructure capacities and future needs;
e. identifies implementation priorities and other potential tasks across all Town Departments and the Public Schools of Brookline;
f. takes into account a set of Town goals and priorities developed by the Select Board and Town Administrator;
g. develops a statement of Town-wide values;
h. identifies benchmarks for the Town and Public Schools of Brookline that reflect Townwide

values and performance metrics for Town services and facilities;
i. explores a variety of planning and zoning tools and techniques including form-based zoning; and
j. results in a planning document that can be the basis for a Zoning Reform process, including regulations that: incentivize desired outcomes as defined in the Comprehensive Plan process, adjust regulatory processes towards more predictable outcomes for all participants, and make recommendations regarding enforcement related to use, development and construction (e.g., processes, staffing, enforcement fines).

5) Scope & Budget Development
a. Recommends to the Planning Board and Select Board a detailed scope and budget for the Comprehensive Planning process, including staff and volunteer time
b. Recommends to the Select Board an estimated budget for the Zoning Reform process, including staff and volunteer time, which will need to be updated once the Comprehensive Planning process is complete

SELECT BOARD

Heather Hamilton, Chair
John VanScoyoc, Vice Chair
Bernard W. Greene
Miriam Aschkenasy
Michael Sandman

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Dennis Doughty, Chair