



TOWN OF BROOKLINE

Massachusetts

OFFICE OF TOWN COUNSEL

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TO: Bernard Greene, Chair, Brookline Select Board
All Other Members of the Brookline Select Board

CC: Ben Kaufman, Town Clerk
Chas Carey, Town Administrator
Melissa Goff, Deputy Town Administrator
Devon Fields, Assistant Town Administrator for Operations
John A. Moreschi, First Assistant Town Counsel
Jonathan Simpson, Associate Town Counsel

FROM: Joe Callanan, Town Counsel

SUBJECT: Public Circulation of the Draft Local Ballot Information

DATE: April 4, 2023

This memorandum seeks to update you on my efforts to comply with [General Laws, c. 53, §18B](#), and as a follow up to my March 23, 2023 memorandum. If you recall my earlier memorandum, we have already sought written arguments, advocates stepped forward, we received written arguments, Town Counsel staff reviewed the written arguments, and we communicated with advocates after this review.

Public Circulation of the Draft Ballot Information. I intend with this memorandum to publicly circulate this draft ballot information. Please see attached Exhibit A.

I still intend to email this information to advocates and ensure it is posted on the Town Clerk's website, "[Election Information](#)" page, and look for a section entitled "Local Ballot Question Information."

I ask you again to share the release of this information with the members of the Town Meeting Member Association listserv. Town staff will forward this draft ballot information to other elected officials, members of the Advisory Committee, and other Town boards and commissions.

Memorandum to the Select Board

Public Circulation of the Draft Local Ballot Information

April 4, 2023

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The public may now weigh in on all the proposed ballot information, except the text of the ballot questions themselves as they have been set already by the Select Board. Thus, the public may critique the proposed summaries, one-sentence descriptions, and the arguments for and against.

If anyone has any concerns, then they should send me an email at jcallanan@brooklinema.gov.

Unless the public identifies an issue that I overlooked in my review that I described in my earlier memorandum and I should have caught upon my initial review, **only** the advocates may change their proposed argument at this point. Advocates have been able to see the arguments of their counterparts and they may change their arguments in response. I want to re-emphasize this point: the advocate controls their own argument at this point – whether they wish to respond to critiques they receive is entirely up to them.

Advocates will have until **Thursday, April 6, 2023, at 4:30 p.m.** to revise their draft arguments. This is optional: advocates do not need to change their draft arguments at all.

Submission of the Final Ballot Information to the Select Board. After advocates have had a chance to revise their draft arguments, submitted any changes, and we have heard from the public on all the reviewable section 18B information, I hope to have a final copy ready to submit to the Select Board on Friday, April 7, 2023.

My intent is that the Select Board would approve the final version of ballot information during your meeting scheduled for next Tuesday, April 11, 2023. G.L., c. 53, §18B(b) (first sentence). If the Select Board were to approve the information at that meeting, then we would be able to meet the statute's mailing deadline, which I explained in my earlier memorandum.

Conclusion. I intended these memoranda to address any concerns anyone may have about my plans to comply with Warrant Article 2 and the obligations of section 18B. In my earlier memorandum, I addressed concerns over circulation of the draft information, the public nature of this process, and my attempts to “model[] the acme in transparency and accountability.” If I have not, then please feel free to contact me. Thank you very much.

Text of proposed mailer
(formatting will change)

The Town of Brookline prepared this mailing, pursuant to GL c. 53, § 18B, to provide residents information about local ballot questions at the Town’s Annual Election on May 2, 2023.

As provided by law, proponents and opponents of each question prepared and wrote 150-word arguments and these arguments reflect their opinions, and not the opinions of the Town of Brookline. The Town of Brookline does not endorse these arguments, nor does the Town certify the truth or accuracy of any statement made in these arguments.

Listed with each question are the names and addresses of the advocates, and any relevant organizations, who wrote each argument. Any written comments by others, and earlier drafts about each argument, are on file in the Office of the Town Clerk and will be available to the voters at all polling places.

Questions 1 through 3 are separate questions. You may vote for or against each question independently. Each question requires a majority of those voting on that question to pass.

Question 1.

Shall the Town of Brookline be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bonds issued in order to pay costs of constructing a new PreK-8 School which includes renovations/addition to the existing historic Pierce School and other site improvements including reconstruction and repair of the Town Hall and Pierce School garages which are beneath the new school and the Town Park across School Street, including the payment of all costs related to designing the new school project, equipping and furnishing the school, site improvements, and all other costs incidental and related thereto?

TOWN COUNSEL SUMMARY:

State law, commonly known as “Proposition 2 ½,” limits the total amount of money that a Town can raise through property taxes by, among other things, setting a so-called levy limit. By passing an “override” or an “exclusion,” Proposition 2 ½ allows the voters of a Town to assess property taxes more than the levy limit’s usual allowable annual increase. Typically, the levy limit may only increase at an annual rate of 2.5 percent.

Proposition 2 ½ allows a Town to raise funds for the payment of certain capital projects and for the payment of associated debt service costs. This process is called a “debt exclusion”, which is a temporary tax levy increase until the Town pays off the bonds. Question 1 is a debt exclusion question.

If passed, this ballot question would, fund the renovation of the John Pierce School in the Brookline Village neighborhood.

The proposed renovation includes:

- (i) a full demolition of the Pierce School Building facing School Street, which was added in 1973, and construction of a new building in its place;
- (ii) renovations and additions to the historic Pierce School Building facing Pierce Street, which dates to 1855;
- (iii) reconstruction and repair of the park across School Street; and

- (iv) other site improvements including the reconstruction and repair of the Town Hall and Pierce School garages underneath the 1973 Pierce School Building.

When complete, the new Pierce School will have the capacity to educate approximately 725 K-8 students in a four-section, fully Americans with Disability Act-compliant building. The new Pierce School will also contain three classrooms for preschoolers in the Brookline Early Education Program, known as BEEP.

A “yes” vote on this question would allow a temporary property tax increase to pay for the bonds necessary for the Pierce School Building capital project.

A “no” vote would make no changes to the amount of property taxes the Town may raise other than what is allowed by Proposition 2 ½, so-called.

Yes _____ No _____

Proponent: Jeff Rudolph
Yes for Brookline
29 Greenough Street
Brookline, Massachusetts 02445

Brookline desperately needs a new Pierce School. Please vote YES to build it.

The Pierce School in Brookline Village houses 700+ K-8 students in a building designed for ~550. Twelve classes (~250 kids) and the library must function daily in one multi-story open space—a difficult learning environment for easily distracted students. Kids with hearing or other physical limitations cannot fully participate—they must be reassigned to other schools. Voting YES approves a 21st Century, fossil-fuel-free, safe, accessible, and appropriately-sized school.

With Massachusetts contributing up to \$38 million, the school will cost Brookline ~\$172 million—similar in cost to recent, comparable projects elsewhere. There is no realistic, less expensive alternative. Voting no will forfeit state funding and incur additional cost inflation. A renovation to code would cost nearly as much money and leave many problems unsolved.

See for yourself—take a tour. Sign-ups, and much more information, available at: <https://yesforbrookline.com/>



Opponent: Spend Smart Brookline
[address]

“Let them eat cake”

\$212,000,000 = The costliest elementary school project ever built in Massachusetts.

\$100 million was disqualified from state aid because the design exceeds reimbursement guidelines. Every excess dollar would be paid by taxpayers.

- 45% of the rooms exceed size guidelines.
- Gross Floor Area (not counting garage) is 30% over the guideline = \$35 million not reimbursed.
- Demolition & Hazardous Material Abatement = \$7 million. Reimbursed = \$0.
- Furniture, Fixtures and Equipment state guideline is \$1,200 per student. This plan spends \$2,550 per student. That's nearly \$1 million in excess, put on taxpayers.
- 19,000 more square feet than Ridley.
- 22,000 more square feet 'educational program area' than new Driscoll (for same number of students) = \$15 million.

Compared to every other elementary and middle school in MSBA pipeline:

- Highest cost
- Lowest reimbursement rate
- Highest taxpayers burden

Cost estimates are not reliable with rising interest rates and economic uncertainty.

Questions 2A and 2B are separate questions. You may vote for or against each question independently. Each question requires a majority of those voting on that question to pass. If both Questions 2A and 2B pass, the question with the highest dollar amount will prevail over the other.

Question 2A.

Shall the Town of Brookline be allowed to assess an additional \$11,983,367 in real estate and personal property taxes for the purposes of funding the costs of Brookline Public Schools (\$6,988,367) and funding the costs of additional expenditures in municipal departments (\$4,995,000) for the fiscal year beginning July 1, 2023?

TOWN COUNSEL SUMMARY:

State law, commonly known as "Proposition 2 ½," limits the total amount of money that a Town can raise through property taxes by, among other things, setting a so-called levy limit. By passing an "override" or an "exclusion," Proposition 2 ½ allows the voters of a Town to assess property taxes more than the levy limit's usual allowable annual increase. Typically, the levy limit may only increase at an annual rate of 2.5 percent.

By passing an "override," Proposition 2 ½ allows a Town to assess more taxes than the allowable increases for governmental expenses likely to recur or continue, although the additional funds may be used for any public purpose. An override increases the amount of property tax revenue a Town may raise in the year specified and also into future years. Question 2A is an override question.

If passed, this question would increase property taxes by \$11,983,367 gradually over the next three years. The override would fund municipal and school operations and close certain budget deficits facing Brookline. Current funding levels would be maintained.

The municipal, or “Town”, portion of the override totals \$4,995,000. This part will close the deficit and pay for additional streetscape and roadway maintenance, vehicle replacement, facilities maintenance, employee recruitment and retention, rodent control, Planning Department studies, forestry management, and other Town initiatives. The school portion of the override totals \$6,988,367. This part will close that department’s deficit and achieve the staffing levels, class sizes, caseloads, and programming the Public Schools of Brookline has requested.

Question 2A, and the following Question 2B, both request authorization to assess additional property taxes. Question 2A does not include all the requested increases in property taxes that Question 2B does.

Any question with a majority of votes passes. Questions 2A and 2B may also both fail to reach a majority of votes. But, if both questions pass, only the higher amount in question 2B will be the new higher levy limit.

A “yes” vote on this question allow a permanent \$11,983,367 Townwide property tax increase for the purposes of funding the costs of Brookline Public Schools (\$6,988,367) and funding the costs of additional expenditures in municipal departments (\$4,995,000).

A “no” vote would make no changes to the amount of property taxes the Town may raise other than what is allowed by Proposition 2 ½, so-called.

Yes _____ No _____

Proponent: Jeff Rudolph
 Yes for Brookline
 29 Greenough Street
 Brookline, Massachusetts 02445

Massachusetts municipalities cannot raise real estate taxes more than 2-1/2% per year without a town-wide vote.

Brookline’s expenses have risen by 4% a year or more. Every year it is more difficult to maintain roads, schools, and public safety services. Brookline is asking voters to raise taxes by \$11.98 million in three steps:

	Town (Million \$)	Schools (Million \$)
2023-24	\$ 2.860	\$ 3.690
2024-25	\$ 1.120	\$ 1.710
2025-26	<u>\$ 1.015</u>	<u>\$ 1.580</u>
	\$ 4.995	\$ 6.980
Total by 2025-26:		\$ 11.98
% increase in taxes:		4.20%

The case for the override is simple: To maintain Town and School services and catch up on road and building repairs, we need more revenue.

Please vote for Question 2A even if you vote for Question 2B.

See where the money will go here: <https://www.brooklinema.gov/3590/FY2024-26-Override-Central>

See the impact on the property you live in here: <https://apps.brooklinema.gov/assessors/odesearch.asp>



Opponents: A.K. Nandakumar and Roger Blood

Property taxes have increased 36% in just five years. They will jump another 23% in the next five years if Questions 1 and 2 pass (inclusive of other known debt). Brookline’s outstanding debt is nearly \$1/2 billion. That’s 60% more than what it was only five years ago.

The proposed \$12 million operating override -- by far the largest in Brookline’s history – raises annual taxes over 4%, compounded annually. Government by override is necessary only when there is no political will to close our growing operating deficit.

Voting No on Question 2A will tell our Town and School officials that fixing Brookline’s structural budget deficit -- including controlling costs—should be their highest priority. Residents deserve accountable leadership.

Brookline cannot be affordable when large overrides are scheduled every few years. To avoid facing yet another override 3-4 years down the road, we must say No to Question 2 now.

Question 2B.

Shall the Town of Brookline be allowed to assess an additional \$13,833,367 in real estate and personal property for the purposes of funding the costs of Brookline Public Schools (\$6,988,367), funding the costs of additional expenditures in municipal departments (\$4,995,000), and funding the costs of a municipal composting collection service (\$1,850,000) for the fiscal year beginning July 1, 2023?

TOWN COUNSEL SUMMARY:

State law, commonly known as “Proposition 2 ½,” limits the total amount of money that a Town can raise through property taxes by, among other things, setting a so-called levy limit. By passing an “override” or an “exclusion,” Proposition 2 ½ allows the voters of a Town to assess property taxes more than the levy limit’s usual allowable annual increase. Typically, the levy limit may only increase at an annual rate of 2.5 percent.

By passing an “override,” Proposition 2 ½ allows a Town to assess more taxes than the allowable increases for governmental expenses likely to recur or continue, although the additional funds may be used for any public

purpose. An override increases the amount of property tax revenue a Town may raise in the year specified and also into future years. Question 2B is override question.

If passed, this question would increase property taxes by \$13,833,367 gradually over the next three years. The override would fund municipal and school operations and close certain budget deficits facing Brookline. Current funding levels would be maintained, and the \$13,833,367 override would provide \$1,850,000 in funding for a municipal composting collection service.

The municipal, or “Town”, portion of the override totals \$4,995,000. This part will close the deficit and pay for additional streetscape and roadway maintenance, vehicle replacement, facilities maintenance, employee recruitment and retention, rodent control, Planning Department studies, forestry management, and other Town initiatives. The school portion of the override totals \$6,988,367. This part will close that department’s deficit and achieve the staffing levels, class sizes, caseloads, and programming the Public Schools of Brookline has requested. Finally, this question also includes \$1,850,000 in funding for a municipal composting collection service.

Question 2B, and the previous Question 2A, both request authorization to assess additional property taxes. Question 2B includes the increases in property taxes from Question 2A and more—funding for municipal composting.

Any question with a majority of votes passes. Questions 2A and 2B may also both fail to reach a majority of votes. But, if both questions pass, only the higher amount in question 2B will be the new higher levy limit.

A “yes” vote on this question allow a permanent \$11,983,367 Townwide property tax increase for the purposes of funding the costs of Brookline Public Schools (\$6,988,367), funding the costs of additional expenditures in municipal departments (\$4,995,000), and funding the costs of a municipal composting collection service (\$1,850,000).

A “no” vote would make no changes to the amount of property taxes the Town may raise other than what is allowed by Proposition 2 ½, so-called.

Yes _____ No _____

Proponent: Jeff Rudolph
Yes for Brookline
29 Greenough Street
Brookline, Massachusetts 02445

Voting “Yes” for Question 2B accepts the \$11.98 million requested in Question 2A, and adds funding for a new service, town-wide composting. Composting will reduce trash costs, reduce the rodent population, and help the environment. The additional cost for composting will add \$1.85 million, or 0.65% to our taxes.

Composting – add’l cost:	\$1.85M
% increase in taxes:	0.65%

When you vote for Question 2B, please also vote for Question 2A. That helps ensure that funds requested in 2A win approval.

See where the money will go:

<https://www.brooklinema.gov/3590/FY2024-26-Override-Central>

See the tax impact where you live:

<https://apps.brooklinema.gov/assessors/odesearch.asp>

More info here:

<https://yesforbrookline.com/>



Opponents: Since Town Counsel received no argument from any opponent to this ballot question, Town Counsel prepared this argument, pursuant to G.L. c. 53, § 18B(e) (last sentence)

One question is a \$210 million override for a new school, and another raises another \$12 million more tax revenue each year for essentially existing services.

Is now the right time for another \$2 million annual tax increase? For a new program? For a new composting program?

We already have access to composting services **through existing private businesses**. Keep the [existing curbside composting](#) program with [Black Earth Compost](#). Don't create another brand-new program when we already cannot afford our existing services.

Do we need to create a new government service when we are struggling, hence question 2A, to pay for existing services? We simply cannot afford it.

While everyone who pays property taxes will have to pay this \$2 million annual tax increase, not everyone will benefit. Do you know if where you live has Town trash pickup? Not everyone does.

Enough is enough. Vote NO on Question 2B.

Question 3.

Shall the Town of Brookline adopt the following changes to the Town’s General Bylaws that would limit the number of Storefront Marijuana Retailer licenses to no more than four, consistent with Warrant Article 15 of the November 2022 Special Town Meeting?

TOWN COUNSEL SUMMARY:

If passed, this local ballot question would limit the number of storefront marijuana retailer licenses in the Town to four or less. The November 2022 Special Town Meeting passed this proposed bylaw as Warrant Article 15. State law requires that the Town of Brookline voters decide whether to adopt this bylaw change. G.L., c. 94G, § 3(e).

The license cap will stay unchanged for all other license types. These other license types include marijuana delivery operators, social consumption retailers, and marijuana couriers. The present license cap for each license type equals 20% of the number of liquor licenses for off-premises alcohol consumption that the Select Board has issued. Today, the cap is five.

A “yes” vote on this question would limit the number of storefront marijuana retailer licenses in the Town to four or less.

A “no” vote would make no changes to the number of storefront marijuana retailer licenses in the Town.

TEXT OF THE BYLAW:

Section 8.37.4 Caps on the Number Select Board Licenses for Marijuana Retailers

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) Marijuana Delivery Operators, b) Social Consumption Retailers, and c) Marijuana Couriers.

The Select Board shall not issue more than four Storefront Marijuana Retailer licenses.

Yes _____ No _____

Proponent: Susan Park
Parents for Yes on 3
[address]

Town Meeting approved a limit of cannabis storefronts to 4, bringing this question to you for final adoption. That bylaw was supported by the Advisory Council on Public Health, the Cannabis Mitigation Advisory Committee, and the Public Safety Subcommittee of the Advisory Committee.

State definitions of “social equity applicant,” provide no way for Brookline to ensure that the social equity applicant has an ownership stake in the business. The social equity license applicant can be an employee of the business.

There are 4 social equity warehouse operator licenses and 4 social equity courier licenses available. These will remain available regardless of this ballot question. The warehouse is analogous to Amazon: 5000 feet of

storage and delivery integrated, without a retail storefront. Couriers do deliveries only, analogous to Grubhub, and are easier to launch. The Town has not tried to use these licenses, and it should before asking for more retail storefronts.

Opponent: [Potential new advocate]

Brookline's cap on the number of marijuana store front retailers is currently five. The Town has granted four of these five licenses. With one more license, the Select Board would have the ability to license a Social Equity applicant. The Select Board are creating a Cannabis Equity Policy that would preference equity applicants. Updated state cannabis legislation adopted in 2022 seeks to encourage full participation in the cannabis industry by people disproportionately harmed by the war on drugs. Among other provisions, the new law creates a Cannabis Equity Fund to give capital grants and/or loans to equity entrepreneurs. To incentivize municipalities to host equity businesses, the new law calls for distributing 1% of the total sales revenue of such a business back to the host municipality. Brookline should retain the ability to grant a social equity license. To do that, vote NO on Question 3.