



## WARRANT

### THE COMMONWEALTH OF MASSACHUSETTS TOWN OF BROOKLINE ANNUAL TOWN MEETING

Norfolk, ss

To Any Constable of the Town of Brookline

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the Inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet at the High School Auditorium in said Brookline on TUESDAY, the TWENTY-FIRST day of MAY, 2019 at 7:00 o'clock in the evening for the Annual Town Meeting at which time and place the following articles are to be acted upon and determined by the representative town meeting:

#### **ARTICLE 1**

Submitted by: Select Board

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

#### **ARTICLE 2**

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.

**ARTICLE 3**

Submitted by: Treasurer/Collector

To see if the Town will authorize the Town Treasurer, with the approval of the Select Board, to enter into Compensating Balance Agreement(s) for FY2019 in accordance with General Laws Chapter 44, Section 53F, or act on anything relative thereto.

**ARTICLE 4**

Submitted by: Select Board

To see if the Town will accept General Laws Chapter 44, Section 53F 3/4, which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year 2020, which begins on July 1, 2019 or take any other action relative thereto.

**ARTICLE 5**

Submitted by: Select Board

To see if the town will vote to amend the town's general by-laws by adding the following new section 3.11a ½ to establish and authorize revolving funds for use by certain town departments, boards, committees, agencies or officers under Massachusetts General Laws Chapter 44, § 53E½, or take any other action relative thereto.

**ARTICLE 3.11A ½ : DEPARTMENTAL REVOLVING FUNDS**

3.11A ½ 1. Purpose. This by-law establishes and authorizes revolving funds for use by town departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

3.11A ½ 2. Expenditure Limitations. A town department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law/ordinance without appropriation subject to the following limitations:

- a. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund, except for those employed as school bus drivers.
- b. No liability shall be incurred in excess of the available balance of the fund.
- c. The total amount spent during a fiscal year shall not exceed the amount authorized by town meeting on or before July 1 of that fiscal year, or any

increased amount of that authorization that is later approved during that fiscal year by the Select Board and Advisory Committee.

3.11A ½ 3. Interest. Interest earned on monies credited to a revolving fund established by this by-law shall be credited to the general fund.

3.11A ½ 4. Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, by-laws, rules, regulations, policies or procedures that govern the receipt and custody of town monies and the expenditure and payment of town funds shall apply to the use of a revolving fund established and authorized by this by-law. The Comptroller shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Comptroller provides the department, board, committee, agency or officer on appropriations made for its/their use.

3.11A ½ 5. Authorized Revolving Funds.

A Revolving Fund	B Department, Board Committee, Agency or Officer Authorized to Spend from Fund	C Fees, Charges or Other Receipts Credited to Fund	D Program or Activity Expenses Payable from Fund	E Restrictions or Conditions on Expenses Payable from Fund	F Other Requirements/ Reports	G Fiscal Years
Student transportation	School Committee	Bus fees	To defray expenses related to student transportation			2020 and subsequent years

or act on anything relative thereto.

**ARTICLE 6**

Submitted by: Select Board

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

- 1) Special Appropriation Closeouts
- 2) Rescind the bond authorization for improvements to the Driscoll School, authorized as Item #70 of Section 13 of Article 7 of the 2018 Annual Town Meeting, in the amount of \$4,000,000.

**ARTICLE 7**

Submitted by: Select Board

To see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of the previous years, which may be legally unenforceable due to the insufficiency of the appropriations therefore, and

appropriate from available funds, a sum or sums of money therefore, or act on anything relative thereto.

**ARTICLE 8**

Submitted by: Board of Assessors

To see if the Town will elect to establish an additional property tax exemption for fiscal year 2020 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended, or act on anything relative thereto.

**ARTICLE 9**

Submitted by: Advisory Committee

To see if the Town will:

A.) Fiscal Year 2020 Budget

Appropriate the sums requested or proposed by the Select Board or by any other officer, board or committee, or any other sum or sums, for the fiscal year 2020 budget; without limiting the foregoing, appropriate the sums necessary for all town expenses, including the snow and ice budget, debt and interest, and operating expenses; fix the salaries of all elected officers as provided for in General Laws, Chapter 41, Section 108; authorize the leasing, leasing with an option to purchase or installment purchase of equipment; appropriate to a stabilization fund as provided for in General Laws Chapter 40, Section 5B; authorize the continuation of all revolving funds in accordance with General Laws, Chapter 44, Section 53E½ and all Enterprise Funds in accordance with General Laws, Chapter 44, Section 53F½; allocate available free cash; provide for a reserve fund; and establish the requirements for transfers among appropriations, interfund transfers, transfers for the purposes of salary adjustments, filling vacant positions and budgetary reporting.

B.) Fiscal Year 2020 Special Appropriations

Appropriate sums of money for the following special purposes:

- 1.) Appropriate \$55,000, or any other sum, to be expended under the direction of the Building Commissioner for the rehabilitation of Town buildings.
- 2.) Appropriate \$600,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board, for making extraordinary repairs to Fire Stations.
- 3.) Appropriate \$900,000, or any other sum, to be expended under the direction of the Police Chief, with any necessary contracts over \$100,000 to be approved by the Select Board, for upgrades/replacement of the Police and Fire Department's radio infrastructure.

- 4.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Fire Chief, for refurbishing the drafting pit at Station 6.
- 5.) Appropriate \$265,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Select Board, for traffic calming studies and improvements; provided that the Department of Public Works and Transportation Board provide status reports to the Select Board on a semi-annual basis.
- 6.) Appropriate \$31,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, for bicycle access improvements.
- 7.) Appropriate \$161,040, or any other sum, with any necessary contracts over \$100,000 to be approved by the Select Board, to be expended under the direction of the Commissioner of Public Works, for parking meter technology upgrades.
- 8.) Appropriate \$1,750,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for the rehabilitation of streets.
- 9.) Appropriate \$328,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for the rehabilitation of sidewalks.
- 10.) Appropriate \$1,125,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for modernization and improvements to the fire alarm call box system.
- 11.) Appropriate \$2,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for water system improvements.
- 12.) Appropriate \$265,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for water meter transmission unit (MTU) replacements.
- 13.) Appropriate \$3,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for wastewater system improvements.
- 14.) Appropriate \$455,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for improvements to the Netherland's Road facility.

- 15.) Appropriate \$600,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for improvements at Larz Anderson Park.
- 16.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, for the design of the renovation of Robinson Playground.
- 17.) Appropriate \$310,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for the renovation of playground equipment, fields, and fencing.
- 18.) Appropriate \$160,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for the rehabilitation of Town and School grounds.
- 19.) Appropriate \$200,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts to be approved by the Select Board and the Park and Recreation Commission, for the rehabilitation of tennis courts and basketball courts.
- 20.) Appropriate \$350,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, for the rehabilitation of comfort stations in parks and playgrounds.
- 21.) Appropriate \$235,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board and the Tree Planting Committee, for the removal and replacement of trees.
- 22.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Director of Recreation, for the renovation of a restroom at the Eliot Recreation Center.
- 23.) Appropriate \$110,000, or any other sum, to be expended under the direction of the Chief Procurement Officer for school furniture upgrades.
- 24.) Appropriate \$150,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over \$100,000 to be approved by the Select Board for HVAC equipment in Town and School facilities.
- 25.) Appropriate \$80,000, or any other sum, to be expended under the direction of the Building Commissioner for ADA renovations to Town and School facilities.

- 26.) Appropriate \$185,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over \$100,000 to be approved by the Select Board for energy conservation projects in Town and School facilities.
- 27.) Appropriate \$125,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over \$100,000 to be approved by the Select Board, for upgrades to energy management systems in Town and School facilities.
- 28.) Appropriate \$1,500,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and, with respect to School Buildings, by the School Committee, for building envelope / fenestration repairs to Town and School facilities.
- 29.) Appropriate \$260,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over \$100,000 to be approved by the Board of Select Board and, with respect to School Buildings, by the School Committee, for improvements to life safety systems and building security in Town and School facilities.
- 30.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Building Commissioner, for trash compactor replacements in Town and School facilities.
- 31.) Appropriate \$198,000 or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee, for minor renovations / upgrades to school buildings.
- 32.) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$108,800,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee to reconstruct the Driscoll School.
- 33.) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$82,900,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee to renovate and expand the Baldwin School.
- 34.) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$2,000,000 to be expended under the direction of the Building Commission, with any necessary contracts over \$100,000 to be approved by the Select Board and the School Committee, for a feasibility study to understand the extent of facility and

programming deficiencies, and to explore the formulation of a solution to those deficiencies, at the Pierce School located a 50 School Street in the Town of Brookline, Massachusetts and shown as Parcel I.D. No. 172/03-00; in the Town of Brookline Assessor's map and database, for which feasibility study the Town may be eligible for a grant from the Massachusetts School Building Authority (MSBA). The MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in connection with the feasibility study in excess of any grant that may be received from the MSBA shall be the sole responsibility of the Town.

- 35.) Appropriate \$1,450,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee, for the expansion of classroom capacity in various schools.

C.) Funding

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

**ARTICLE 10**

Submitted by: Select Board

To see if the Town will vote to authorize the Select Board to acquire on terms and conditions that are in the best interest of the Town, by purchase, gift, eminent domain or otherwise, in fee simple, all or some of the parcels of land comprising the real property of Newbury College located at 110, 117, 124 and 150 Fisher Avenue, 124 and 125 Holland Avenue, and 146 Hyslop Road, Brookline, Massachusetts, as substantially shown on the plan attached hereto entitled "Plan of Newbury College" a copy of which is on file in the Office of the Town Clerk, including all buildings and structures thereon and all privileges and appurtenances thereto belonging, as well as all trees and shrubs thereon, consisting of up to approximately 342,943 square feet, for general municipal and/or educational purposes, and for all purposes and uses accessory thereto, and that to meet such expenditure, appropriate a sum of money to be expended at the direction of the Selectmen to pay the costs of acquiring said property, and for the payment of all costs incidental and related thereto, and to determine whether such amount shall be raised by taxation, transfer from available funds, borrowing or otherwise; and to authorize the Select Board to apply for, accept and expend any grants from any source whatsoever that may be available to pay for any portion of said real property, or to take any other action relative thereto.

**Land Description:**



Seven parcels of land with the buildings thereon known as and numbered 110, 117, 124 and 150 Fisher Avenue; 124 and 125 Holland Avenue; and 146 Hyslop Road, Brookline, Massachusetts situated in Brookline, Norfolk County, Massachusetts, as substantially shown on the site plan entitled “Plan of Newbury College”.



Fisher Avenue	Parcel ID
#110	256-01-01
#117	250-01-02
#124	256-24-00
#150	250-01-02
Holland Road	
#124	250-03-05
#125	249-13-00
Hyslop Road	
#146	256-20-00

**Plan of Newbury College**

Scale: 1" = 100'

Date: January 22, 2019

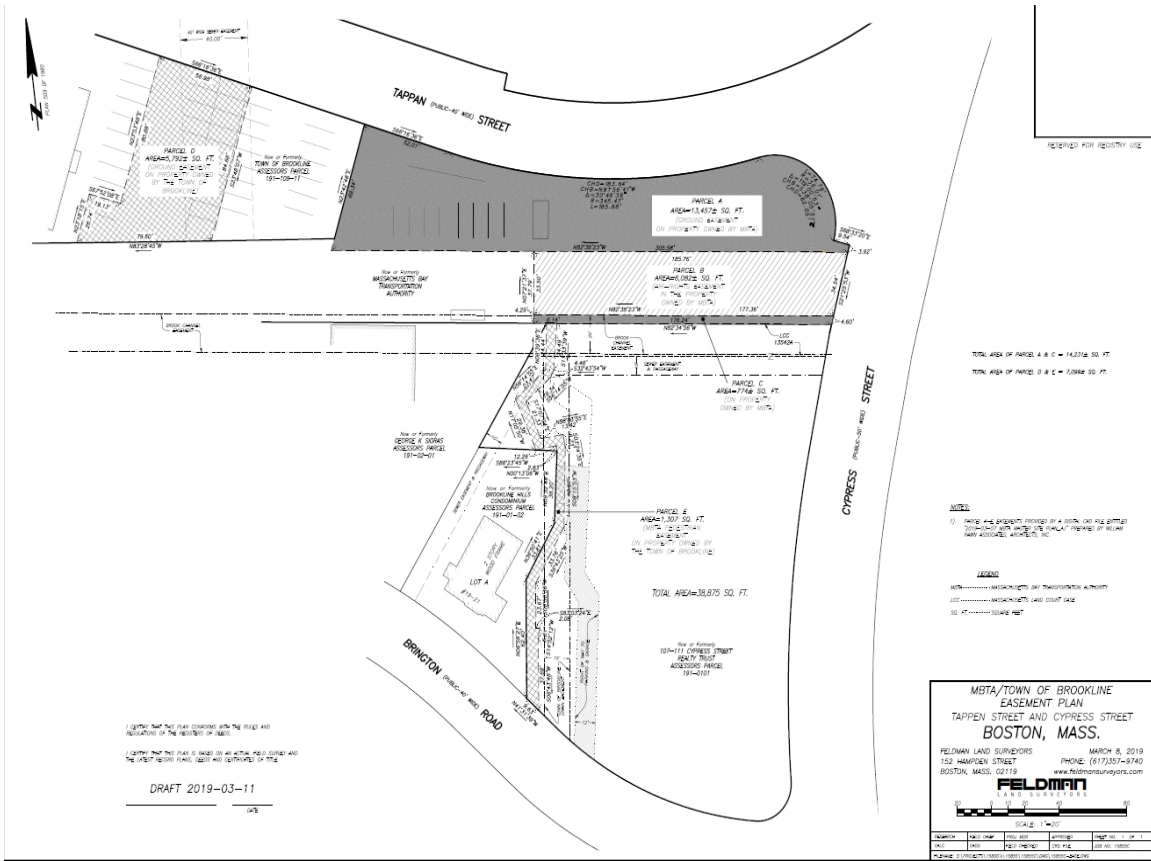
## **ARTICLE 11**

**Submitted by:** Select Board

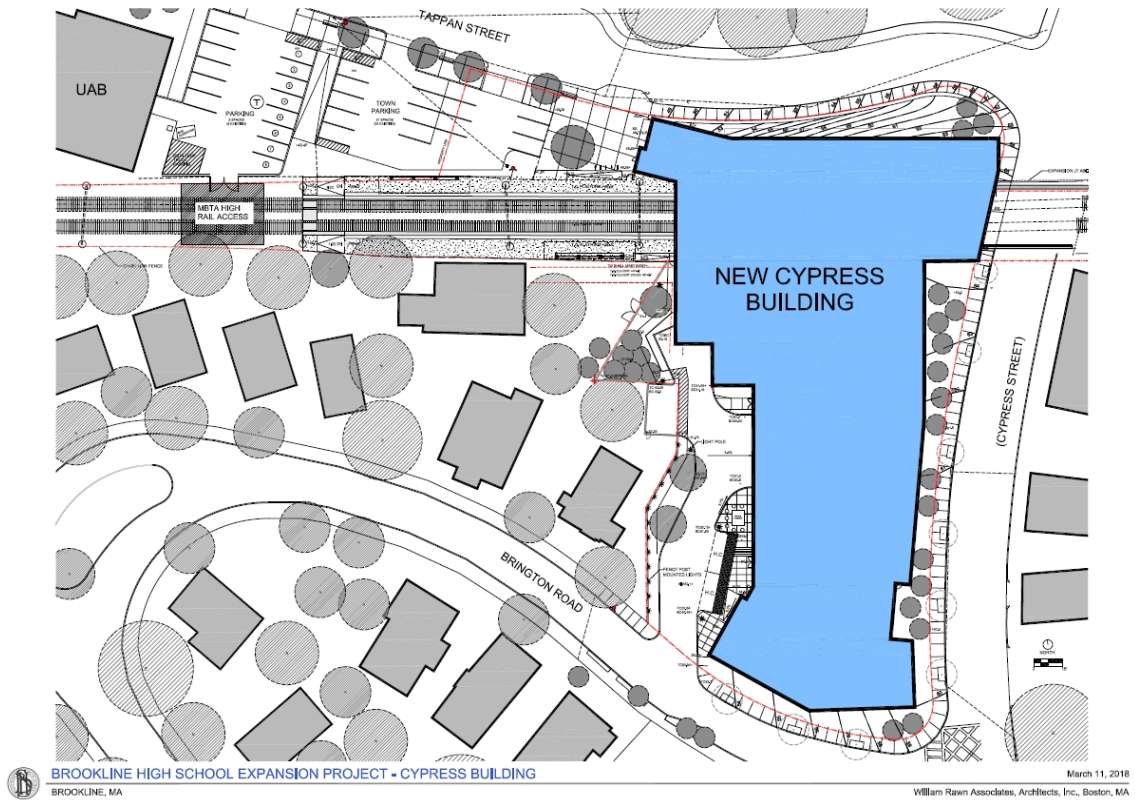
To see if the Town will vote to authorize the Select Board to grant and acquire, as necessary, permanent rights and easements necessary to facilitate the construction of the new Brookline High School Expansion located at 111 Cypress Street as well as certain improvements to the MBTA Brookline Hills Station, as substantially shown on the plans submitted herewith entitled “Brookline High School Improvements Project” and “MBTA/Town of Brookline Easements Plan”, as those plans may be amended. The rights and easements will be granted and acquired pursuant to a Reciprocal Easement Agreement between the Town and the MBTA, wherein:

- The Town will acquire certain ground and air rights easements from the MBTA sufficient to allow the construction of the Brookline High School Expansion and attendant improvements on MBTA air rights and land located at the corner of Cypress Street and Tappan Street, a portion of which contains the MBTA Brookline Hills Parking Lot, with said easements being shown as parcels labeled “A” “B” and “C” on the plan “MBTA/Town of Brookline Easements Plan” and containing approximately 14,231 square feet in ground easement area and 6,082 in air rights easement area.
- The Town will grant to the MBTA certain rights and easements sufficient to relocate the MBTA Brookline Hills Parking Lot onto Town-owned land on Tappan Street and to allow pedestrian access over Town-owned land from Brington Road to the MBTA Brookline Hills Station with said easements being shown as parcels labeled “D” and “E” on the plan “MBTA/Town of Brookline Easements Plan” and containing approximately 7,099 square feet in easement area.

*(Larger copies of the following plans will be available in the Select Board’s Office)*



**BROOKLINE HIGH SCHOOL IMPROVEMENTS PROJECT**

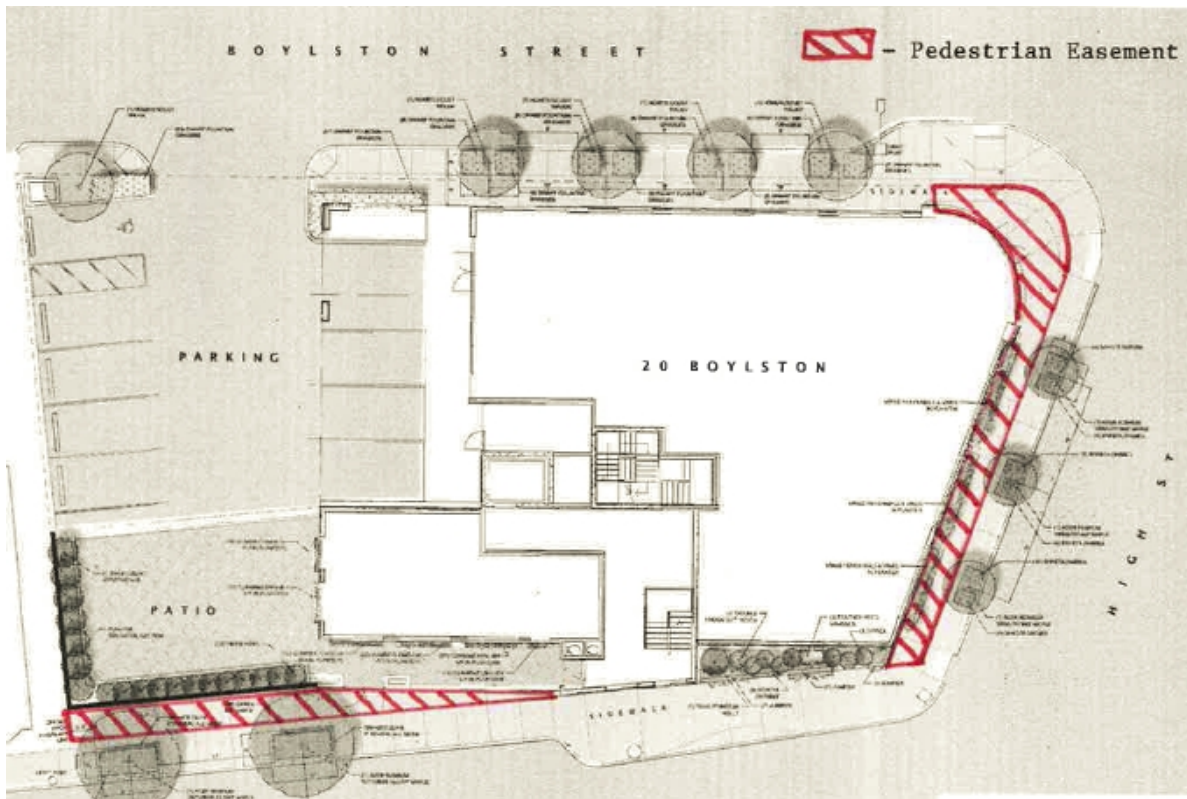


Or act on anything relative thereto.

**ARTICLE 12**

Submitted by: Commissioner of Public Works

To see if the Town will vote to authorize the Select Board, on such terms and conditions that are in the best interest of the Town, to accept a grant of easements from Kenwood Investments LLC, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, or one of its successors or assigns (“Grantor”), over portions of land located at 20 Boylston Street, Brookline, Massachusetts and substantially shown as Pedestrian Easement on the sketch included with this Article for the purposes of providing permanent, safe and continuous pedestrian access along Boylston Street, High Street and Walnut Street in conjunction with Grantor’s development of a mixed use building at the site, said easement will be further described in an Easement Agreement and plan to be recorded at the Norfolk County Registry of Deeds upon acceptance by the Select Board.



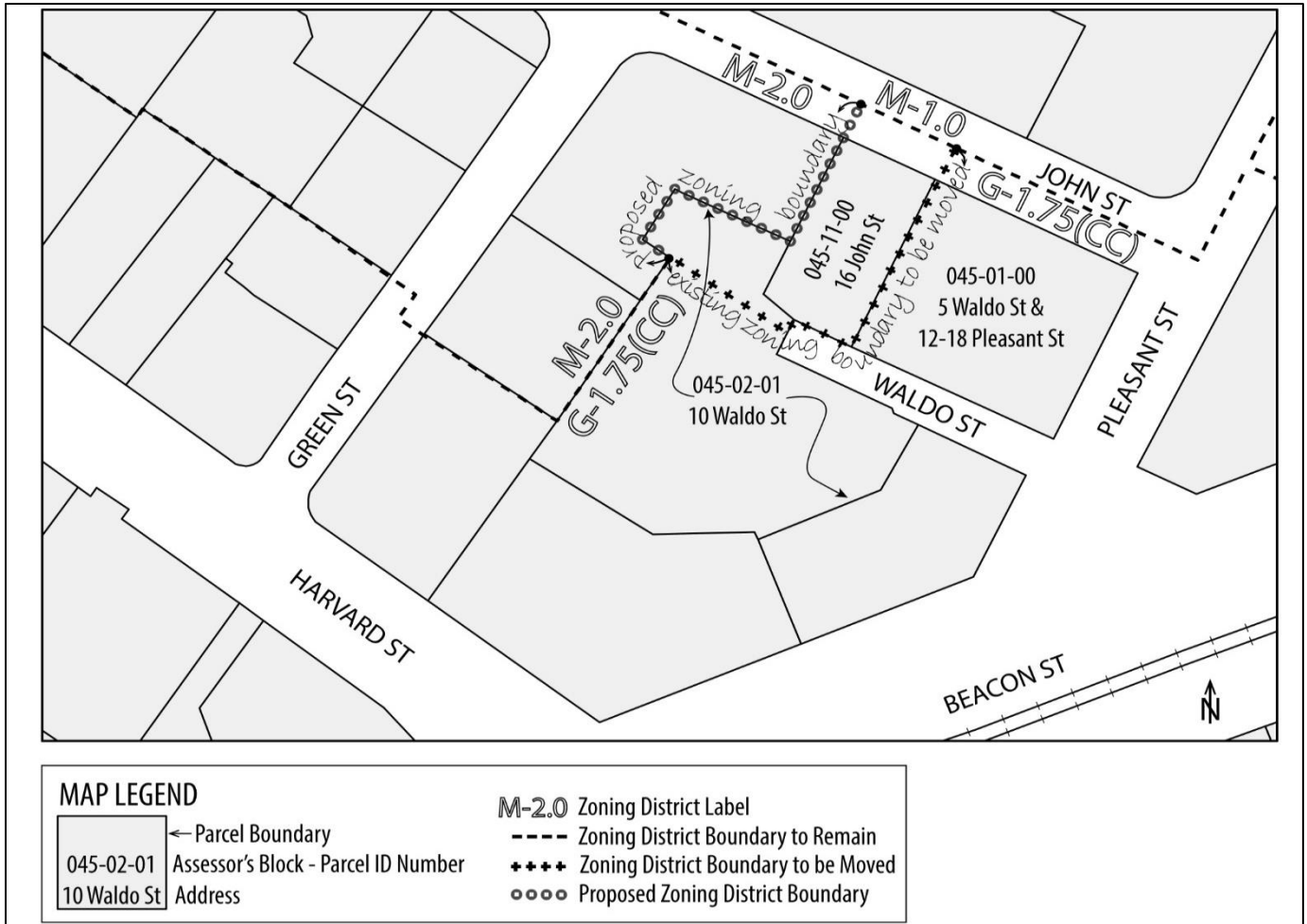
Or act on anything relative thereto.

**ARTICLE 13**

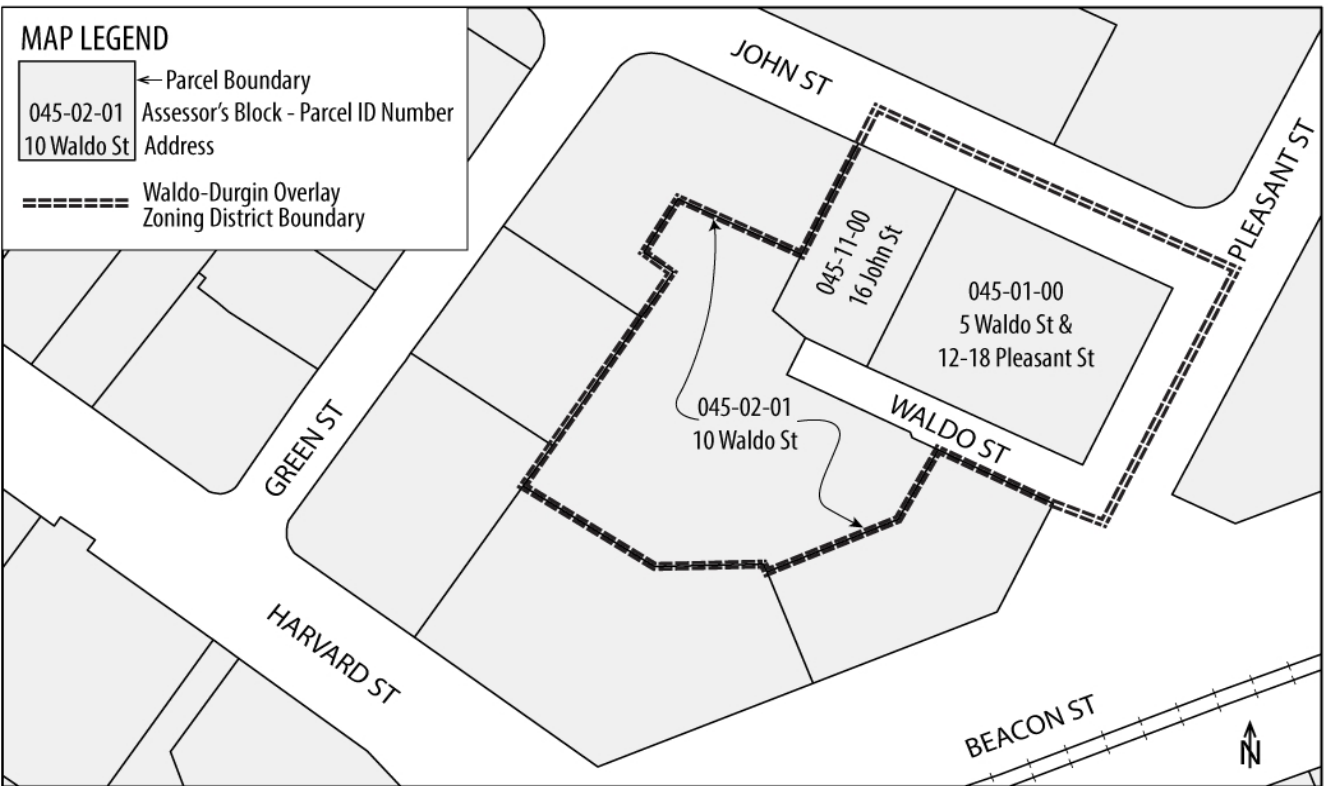
Submitted by: Neil Wishinsky on behalf of the Coolidge Corner Study Committee and other residents

To see if the Town will amend the Zoning By-Law and Zoning Map as follows:

1. By adopting the following map change adjusting the boundary between the G-1.75(CC) and M-2.0 districts, such that the entirety of parcels with Tax Parcel Identifications 045-02-01 (10 Waldo Street, currently located in both districts) and 045-11-00 (16 John Street, currently located in the M-2.0 district) would both be fully located within the G-1.75(CC) district.



2. By adopting the following map change, adding a Waldo-Durgin Overlay District as shown below, including: parcels with Tax Parcel Identifications 045-02-01 (10 Waldo Street), 045-11-00 (16 John Street), and 045-01-00 (5 Waldo Street & 12-18 Pleasant Street); all of Waldo Street; and portions of John and Pleasant Street.



**3. By amending Section 3.01.4 by adding a new item at the end:**

*"f. Waldo-Durgin Overlay District"*

**4. By amending Section 4.07 – Table of Use Regulations – to allow for greater design flexibility for mixed-use buildings in the Waldo-Durgin Overlay District, by adding a sentence at the end of the description of Use 6 in the Use Table, underlined below:**

Use 6, Multiple or attached dwelling of four or more units other than the preceding item divided into dwelling units occupied by not more than one family but not including lodging house, hotel, dormitory, fraternity or sorority.

\*Compliance with §4.08 required if containing 6 or more dwelling units.

Permitted by special permit in S-0.5P and S-0.75P Districts subject to §5.06.

In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby space. Within the Waldo-Durgin Overlay District, the percentage of such frontage devoted to residential use may be increased by special permit in accordance with §5.06.4.k.

5. **By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 21 after the words “G-1.75” in the row for the G-1.75 District which Footnote 21 shall read as follows:**

*“21. See Section 5.06.4 – Special Districts, subsections b. Coolidge Corner General Business District G-1.75(CC) and k. Waldo-Durgin Overlay District with respect to uses and all dimensional requirements.”*

6. **By amending Section 5.06.4.b – Coolidge Corner General Business District G-1.75(CC) – by adding a new item at the end:**

*“6. For such applications within the Waldo-Durgin Overlay District, the Board of Appeals may grant by special permit an increase in gross floor area or height subject to the procedures, limitations, and conditions of §5.06.4.k.”*

7. **By amending Section 5.06.4 – Special Districts – by adding a new item as follows:**

*“k. Waldo-Durgin Overlay District*

- 1) It has been determined through study of the northeast block of Coolidge Corner that potential exists for careful, planned redevelopment. It has further been determined that, due to the circulation patterns as well as the adjacency of this area to cultural anchors, retail businesses, transit systems and residential neighborhoods, a mix of residential and commercial uses are appropriate. Significant improvements to the pedestrian realm, the provision of publicly accessible amenities for the neighborhood, sustainability improvements and the preference for parking infrastructure to be located underground are all reasons why additional density may be allowed by Special Permit under the criteria of this section.*
- 2) At any point prior to June 1, 2020, an applicant may seek relief by Special Permit under this Overlay District by completing the Design Review preapplication process as set forth in Section 5.09 (3)(a)(2) provided the proposed project includes the following requirements and limitations:*
  - a. Includes a minimum of 57,000 square feet of contiguous land*
  - b. Includes a Hotel component with at least 160 rooms.*
- 3) The Board of Appeals may grant a Special Permit under this section allowing for a project that meets the following requirements and limitations. Conformance with said requirements and limitations shall be made conditions of the Special Permit.*
  - a. The project must contain a minimum of 12% Open Space. For the purposes of this requirement, Open Space shall include parts of a Lot at ground level that meet one or more of the following criteria: contiguous landscaped areas that are at the least 200 square feet in size; and walkways open to the public that include planted containers, landscaped beds, and/or street trees.*

*b. Parking*

- i. All parking structures shall be located underground and shall be a maximum of 115,000 gross square feet in size.*
- ii. The number of parking spaces required per Article 6 of the Zoning By-Law may be reduced at the request of the applicant, following review of a parking study and favorable recommendation by the Planning Board.*
- iii. Parking Infrastructure Flexibility – To encourage the reduction of vehicle use over time, an applicant may seek a modification to any Special Permit granted under Section 5.06.4.k to both reduce the number of required spaces and convert the use from underground parking to other allowed uses, subject to all other provisions of the By-Law with respect to use, as long as updated traffic and parking studies demonstrate those parking spaces are no longer needed. Any such below ground space, whether or not it is habitable, shall be excluded from the maximum Floor Area Ratio calculations.*
- iv. Any fees charged for parking must be separate from any rental, lease, sale, employment, contract or other arrangement permitting a user to occupy the building.*

*c. The Gross Floor Area Ratio for a project permitted pursuant to this section shall not exceed 6.0. If a Special Permit application includes less than 86,250 square feet of underground parking infrastructure, then, in addition to the review processes described in Section 5.09 (Design Review) the applicant shall, prior to submitting a Special Permit application, request a public hearing with the Economic Development Advisory Board (EDAB) to review the financial feasibility of the project. Based on the information presented by the applicant and/or EDAB's consultant(s), if any, EDAB may make a recommendation to the Planning Board and Board of Appeals as to whether the Floor Area Ratio is justified.*

*d. The maximum building height may be 160' for portions of a building that are within 180' of Pleasant Street and 110' of John Street; otherwise, the maximum building height is 125'. These maximum building heights do not include rooftop structures such as elevator penthouses and mechanical equipment. Building heights shall be measured from the District Record Grade rather than as prescribed in Section 5.30. The District Record Grade shall be the record grade of Pleasant Street at the edge of pavement opposite the midpoint of the Pleasant Street boundary of the Waldo-Durgin Overlay District .*



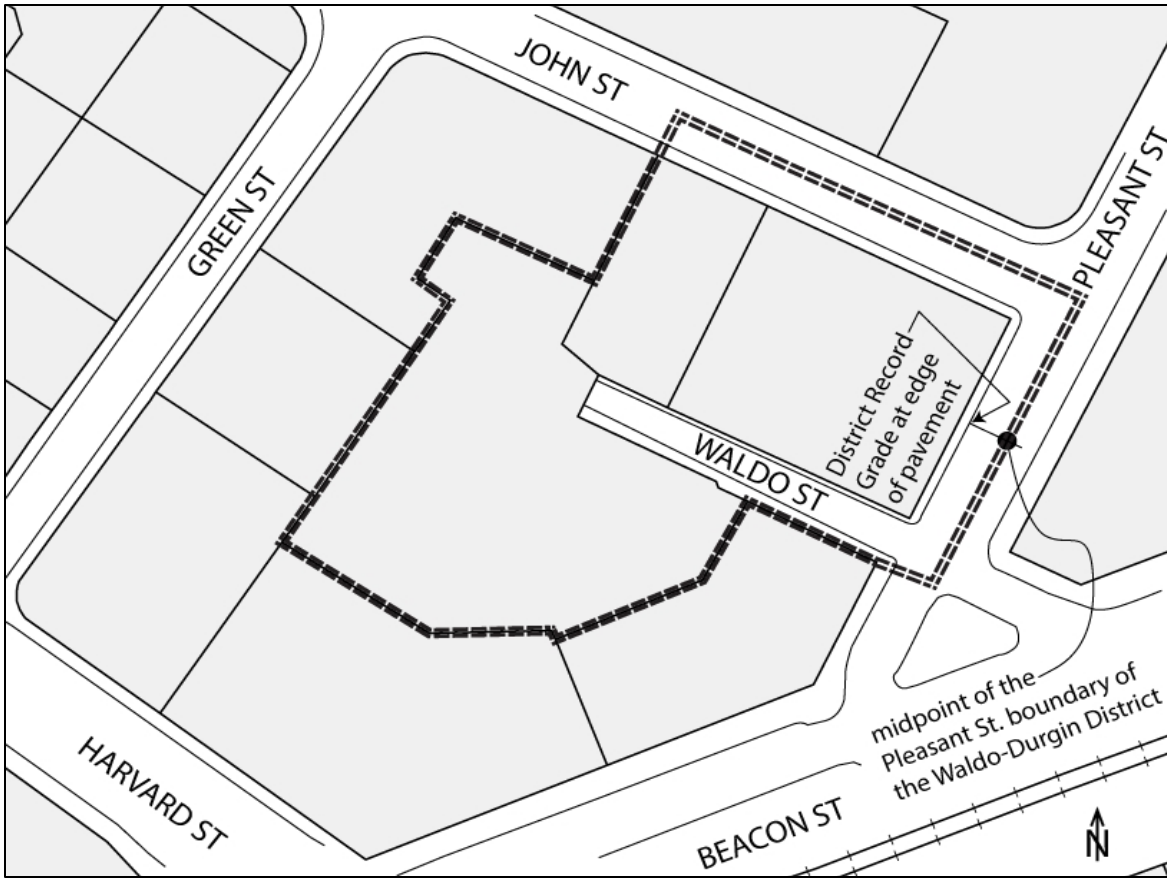


Figure 5.06.4.k.1 – Height of Building Measurements in the Waldo-Durgin Overlay District

- e. *The residential component of the project shall not include more than 132 units that do not meet the Affordable Unit definition in Section 4.08(2)(c) nor shall it contain more than 13 habitable, above-ground stories of primarily residential use.*
- f. *The non-residential component of the project shall not contain more than 10 habitable, above-ground stories.*
- g. *No rear yard is required. The above-ground portion of any building shall be setback at least 10' from the property line bordering John Street.*
- h. *Use Flexibility*
  - i. *The ground floor use along the entire length of Pleasant Street may only include the following uses as defined and regulated in Section 4.07, Table of Use Regulations: entertainment and recreation facility (Use 16), certain retail uses (Uses 29, 33, 33A), restaurants (Uses 30 and 34), and office (Use 35). Additionally, the building use along Pleasant Street must include at least one retail (Use 29, 33, or 33A), or restaurant (Use 30 or 34) space that is at least 30' wide*

*along Pleasant Street and a minimum of 1,200 square feet in floor space.*

- ii. The ground floor of a residential building may have maximum frontage along a street that exceeds the 40% maximum in Use 6 in Section 4.07 - Table of Use Regulations, if the applicant adequately demonstrates that: (i) the location of residential and non-residential uses of the ground floor are appropriate given the transition between residential and commercial neighborhoods; and (ii) the average frontage for the first floor is no more than 75% residential.*
- iii. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential or hotel use without being considered an accessory use.*

*4) Any application including new structures that seeks relief under this Overlay District Special Permit shall:*

- a) be subject to Site Plan Review by the Planning Board to ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading and passenger pick-up zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian, bicycle and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:*
  - i. Demonstrated design compliance with any General By-Law related to erosion and sediment control and stormwater management;*
  - ii. Property lines and physical features, including roads, driveways, parking for vehicles and bicycles, loading areas and trash storage for the project site; and*
  - iii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, and exterior lighting.*

*b) be deemed a Major Impact Project with respect to Section 5.09, Design Review.*

*c) include as a condition of the special permit a Transportation Access Plan Agreement (“TAPA”) approved by the Director of Transportation that includes Transportation Demand Management (“TDM”) programs and an annual report review process. All owner(s) of the property or properties subject to the special permit shall submit an annual report for review and approval to the Director of Transportation relative to the implementation and effectiveness of the TAPA. The Director of Transportation in consultation with the Director of Planning and Community Development shall determine whether the TAPA is working satisfactorily or whether reasonable modifications to the TAPA are required. The TAPA shall be modified to incorporate any reasonable requests of the Director of Transportation within 60 days after they issue their determination. Failure to issue such a determination within 60 days of receiving the annual report shall be deemed acceptance of the report and existing provisions of the TAPA. If any owner objects to any new request as being unreasonable or not required, such matter may be presented to the Transportation Board for recommendation to the Board of Appeals for determination.”*

*5) Allowing the additional density through the Special Permit contemplated by this Section has a potential benefit contemporaneous with its inclusion in the By-Law. However, planning objectives potentially achieved by this Section may not be met if substantial time elapses. Therefore, if upon closing the public hearing on a Special Permit under Section 5.06.4.k, the Board of Appeals finds: (a) more than two years has elapsed since the opening of the public hearing; and (b) the amount of elapsed time is, in the discretion of the Board, excessive and contravenes the planning objectives of Section 5.06.4.k, the Board may deny the request for a Waldo-Durgin Overlay District Special Permit.*

**8. By amending Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements – by adding a new footnote as follows:**

*“3. For the Waldo-Durgin Overlay Special District, parking requirements shall be the same as those districts with a maximum floor area ratio of 1.75, except as otherwise provided for in Section 5.06.4.k”.*

**9. By amending Section 7.07 – Sign By-Law – Exceptions to the Above – by adding to Section 7.07.1 a new item at the end:**

*“e. The Board of Appeals may be special permit grant relief to the requirements of Section 7.01 for signage for the buildings in the Waldo-Durgin Overlay Special District subject, however, to compliance with the Design Review Procedures set forth in Section 7.08.”*

...or act upon anything else relative thereto.

## **ARTICLE 14**

**Submitted by:** Select Board

To see if the Town will authorize the Select Board to enter into any necessary agreement(s) and/or amendments to existing agreements or other action(s) required to carry out the terms and conditions set forth in that certain Memorandum of Agreement and related Tax Certainty Agreement, between the Town of Brookline (hereinafter referred to as the "Town") and CHR Pleasant, LLC, 16 John Street Realty Trust U/D/T and Waldo Street, LLC, their successors and assigns (hereinafter collectively referred to as "CHR"). CHR owns the parcels of land commonly referred to as 8-10 Waldo Street, 10-18 Pleasant Street and 16 John Street in Brookline, Massachusetts (hereinafter collectively referred to as the "Site") as further described in the legal description below, and all in connection with a proposed mixed-use development including: a 210-room hotel, 143 residential units, and underground parking of approximately 289 parking spaces (hereinafter referred to as the "Mixed Use Project"); as further described below, said Memorandum of Agreement to include the following terms at a minimum:

- 1) requiring CHR to continue the public hearings on the 40B Project at the Site until all approvals for the Mixed Use Project are received;
- 2) requiring CHR to offer an Access Agreement with the existing tenant of 279 Harvard Street (known by the community as "the Booksmith" or "the Brookline Booksmith") prior to applying for Special Permits for the Mixed Use Project;
- 3) requiring CHR to not object to certain conditions of the Special Permits related to the Mixed Use Project, including:
  - a) required retail or restaurant space on Pleasant Street;
  - b) providing meeting space in the hotel for occasional use by the Town and Brookline community non-profits for a nominal custodial fee;
  - c) providing a minimum of 11 residential units on-site serving households earning up to 80% of the area median income;
  - d) making a payment to the Town's Affordable Housing Trust Fund in the amount of \$3,275,000;
  - e) commitments to sustainable design elements;
  - f) historic documentation of the Durgin Garage at 10-18 Pleasant Street;
  - g) providing public benefits to mitigate the impact of the proposed project including but not limited to the installation of landscaping and plaza space at a Town-owned parcel with an address of 37 John Street on the northwest corner of John and Green Streets currently used for parking and a small seating area; the installation of landscaping and seating at the Town-owned Coolidge Corner Library; bicycle, pedestrian and landscaping improvements; and a traffic impact study and mitigation measures that include annual monitoring;

- h) agreement to grant the Town a future pedestrian access easement on the property running from John Street through the property to Waldo Street and on to Pleasant Street;
- 4) providing a 95-year Tax Certainty Agreement which shall be a restrictive covenant; and
- 5) requiring that the agreement(s) be recorded in the chain of title; and upon any further terms and conditions that the Board deems in the best interest of the Town with respect to the proposed development of the said Site.
- 6) and other terms and conditions that the Select Board deem in the best interest of the Town.

The legal descriptions of the parcels for the Site are as follows:

EXHIBIT A

**Tract One — 16 John Street, Brookline, MA**

The land, with the buildings thereon, situated on John Street in Brookline bounded and measured as follows:

- NORTHEASTERLY: by said John Street, Sixty-five (65) feet;
- SOUTHEASTERLY: by land of John G. Stearns et al, One hundred twenty-three and 56/100 (123.56) feet;
- SOUTHWESTERLY: on the Northeasterly line of Waldo Street so called, Thirty-six and 17/100 (36.17) feet;
- SOUTHWESTERLY: again but a little more Westerly on land formerly of John G, Stearns et al, Twenty-seven and 80/100 (27.80) feet; and
- NORTHWESTERLY: on other land formerly of John G. Stearns et al, One Hundred nineteen and 12/100 (119.12) feet.

Containing 7873 square feet of land and being the parcel shown enclosed in red lines on a “Plan of land in Brookline” by Aspinwall and Lincoln, Civil Engineers, dated March 9, 1895.

**Tract Two — 8-10 Waldo Street, Brookline, MA**

Two certain parcels of land with the buildings thereon situated in Brookline, Norfolk County, Massachusetts, bounded and described as follows:

**PARCEL I**

- NORTHEASTERLY: by Waldo Street, one hundred and one and 96/100 (101.96) feet;
- SOUTHEASTERLY: by a twenty (20) foot passageway, shown as Lot C on a plan hereinafter mentioned by two lines measuring fifty and 19/100 (50.19) feet, and eighty-eight and 03/100 (88.03) feet, each respectively;
- SOUTHWESTERLY: five (5) feet;
- SOUTHERLY: seventy and 35/100 (70.35) feet; and
- SOUTHWESTERLY: ninety-two and 03/100 (92.03) feet, by land of Trustees of Tufts College, as shown on said plan;
- NORTHWESTERLY: by land now or formerly of Eisenburg et al Trustees and land now or formerly of Helpern Procter & Lowenstein, as shown on said plan, by two

lines measuring thirty and 20/100 (30.20) feet and one hundred thirty-four and 96/100 (134.96) feet, each respectively;

NORTHEASTERLY: by Lot A, as shown on said plan, being the second parcel hereinafter described by two lines measuring sixty-seven and 85/100 (67.85) feet and twenty-seven and 16/100 (27.16) feet, each respectively;

SOUTHEASTERLY: by the end line of Waldo Street, as shown on said plan, fifteen and 03/100 (15.03) feet;

Containing 27,215 square feet of land and being shown as Lot B on a plan entitled "Plan of Land in Brookline, Mass." drawn by Everett M. Brooks Co., Civil Engineers, dated June 29, 1950 and recorded in Norfolk County Registry of Deeds at Book 3452, Page 470.

#### PARCEL II

SOUTHEASTERLY: by the end line of Waldo Street, fourteen and 98/100 (14.98) feet;

SOUTHWESTERLY: by Lot B and land of Lowenstein, as shown on a plan hereinafter mentioned, being the first parcel hereinafter described by two lines measuring twenty-seven and 16/100 (27.16) feet and eighty-nine and 58/100 (89.58) feet, each respectively;

NORTHWESTERLY: by Lot 5, as indicated on said plan, forty-one and 18/100 (41.18) feet;

NORTHEASTERLY: by Lots 3, 2 and 1 as indicated on said plan eighty-two and 36/100 (82.36) feet;

SOUTHEASTERLY: by land now or formerly of Kemp, as shown on said plan, thirty-nine and 12/100 (39.12) feet;

NORTHEASTERLY: by land now or formerly of said Kemp, as shown on said plan, twenty-seven and 80/100 (27.80) feet;

Said parcel being shown as Lot A on plan hereinabove mentioned and containing 4,474 square feet of land.

Together with right to use Waldo Street as recited in deed dated March 1, 1913, recorded in Book 1241, Page 499 and deed dated July 1, 1914, recorded in Book 1285, Page 11 and as shown on plan in Book 1241, Page 499.

Together with passageway rights as shown on plan in Book 1546, Page 112 and recited in deed dated November 27, 1939, recorded in Book 2258, Page 331,

Together with the rights to use the 20 foot passageway (Lot C) shown on plan recorded in Book 1241, Page 499 and recited in deed in Book 1241, Page 499,

Together with any and all rights in and to passageways, including but not limited to, rights to use passageways.

#### PARCEL III — Waldo Street

Also including that portion of Waldo Street, owned by Optionor, subject to the passageway rights of others in a portion thereof, insofar as in force and applicable.

#### **Tract Three — 10-18 Pleasant Street, Brookline, MA**

A certain parcel of land with the buildings thereon situated in Brookline, Norfolk County, bounded and described as follows:

SOUTHEASTERLY: by Pleasant Street, 125.68 feet;

NORTHEASTERLY: by John Street, 155 feet;

NORTHWESTERLY: by land now or formerly of Daniel H. Brewer, 123.56 feet;  
and

SOUTHWESTERLY by Waldo Street, 155 feet.

Excepting therefrom, however, such portion thereof as is described in a release given by Arthur Russell to the Town of Brookline for the alteration and widening of Pleasant

Street dated November 14, 1926, recorded with the Norfolk County Registry of Deeds in Book 1725, Page 232, and shown on a plan entitled “Plan of Alteration and Widening of Pleasant Street Between Waldo Street and John Street Brookline, Mass.”, dated November 15, 1926 and recorded with said Deeds in Book 1726, Page 637.

Said parcel is shown on a plan by Aspinwall and Lincoln, Civil Engineers, dated July 9, 1889 and recorded with said Deeds in Book 625, Page 205.

OR ACT ON ANYTHING RELATIVE THERETO.

**ARTICLE 15**

Submitted by:

To see if the Town will accept a Restrictive Covenant, entitled “Tax Certainty Agreement”, in substantially the same form as the draft attached hereto and included herewith as Exhibit A and incorporated herein by reference, from CHR Pleasant, LLC, and Waldo Street, LLC, Massachusetts limited liability companies and the 16 John Street Realty Trust u/d/t, their successors and assigns (hereinafter collectively referred to as “CHR”) relative to the land and buildings owned by CHR and commonly referred to as 8-10 Waldo Street, 10-18 Pleasant Street and 16 John Street in Brookline, Massachusetts (hereinafter collectively referred to as the “Site”) all as further described in the legal description below; such Covenant will be upon such terms and conditions as the Select Board deems in the best interests of the Town with respect to the proposed development of the Site and will provide for the future tax certainty of the land and buildings thereon, and authorize the Select Board to enter into any necessary agreement(s) in furtherance of the purposes of the Restrictive Covenant with respect to the future tax certainty of the land and buildings as more specifically set forth in the Restrictive Covenant.

Legal Description of the Site:

**Tract One — 16 John Street, Brookline, MA**

The land, with the buildings thereon, situated on John Street in Brookline bounded and measured as follows:

NORTHEASTERLY: by said John Street, Sixty-five (65) feet;  
SOUTHEASTERLY: by land of John G. Stearns et al, One hundred twenty-three and 56/100 (123.56) feet;  
SOUTHWESTERLY: on the Northeasterly line of Waldo Street so called, Thirty-six and 17/100 (36.17) feet;  
SOUTHWESTERLY: again but a little more Westerly on land formerly of John G, Stearns et al, Twenty-seven and 80/100 (27.80) feet; and  
NORTHWESTERLY: on other land formerly of John G. Stearns et al, One Hundred nineteen and 12/100 (119.12) feet.

Containing 7873 square feet of land and being the parcel shown enclosed in red lines on a “Plan of land in Brookline” by Aspinwall and Lincoln, Civil Engineers, dated March 9, 1895.

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PARCEL I

NORTHEASTERLY: by Waldo Street, one hundred and one and 96/100 (101.96) feet;

SOUTHEASTERLY: by a twenty (20) foot passageway, shown as Lot C on a plan hereinafter mentioned by two lines measuring fifty and 19/100 (50.19) feet, and eighty-eight and 03/100 (88.03) feet, each respectively;

SOUTHWESTERLY: five (5) feet;

SOUTHERLY: seventy and 35/100 (70.35) feet; and

SOUTHWESTERLY: ninety-two and 03/100 (92.03) feet, by land of Trustees of Tufts College, as shown on said plan;

NORTHWESTERLY: by land now or formerly of Eisenburg et al Trustees and land now or formerly of Helpern Procter & Lowenstein, as shown on said plan, by two lines measuring thirty and 20/100 (30.20) feet and one hundred thirty-four and 96/100 (134.96) feet, each respectively;

NORTHEASTERLY: by Lot A, as shown on said plan, being the second parcel hereinafter described by two lines measuring sixty-seven and 85/100 (67.85) feet and twenty-seven and 16/100 (27.16) feet, each respectively;

SOUTHEASTERLY: by the end line of Waldo Street, as shown on said plan, fifteen and 03/100 (15.03) feet;

Containing 27,215 square feet of land and being shown as Lot B on a plan entitled "Plan of Land in Brookline, Mass." drawn by Everett M. Brooks Co., Civil Engineers, dated June 29, 1950 and recorded in Norfolk County Registry of Deeds at Book 3452, Page 470.

PARCEL II

SOUTHEASTERLY: by the end line of Waldo Street, fourteen and 98/100 (14.98) feet;

SOUTHWESTERLY: by Lot B and land of Lowenstein, as shown on a plan hereinafter mentioned, being the first parcel hereinafter described by two lines measuring twenty-seven and 16/100 (27.16) feet and eighty-nine and 58/100 (89.58) feet, each respectively;

NORTHWESTERLY: by Lot 5, as indicated on said plan, forty-one and 18/100 (41.18) feet;

NORTHEASTERLY: by Lots 3, 2 and 1 as indicated on said plan eighty-two and 36/100 (82.36) feet;

SOUTHEASTERLY: by land now or formerly of Kemp, as shown on said plan, thirty-nine and 12/100 (39.12) feet;

NORTHEASTERLY: by land now or formerly of said Kemp, as shown on said plan, twenty-seven and 80/100 (27.80) feet;

Said parcel being shown as Lot A on plan hereinabove mentioned and containing 4,474 square feet of land.

Together with right to use Waldo Street as recited in deed dated March 1, 1913, recorded in Book 1241, Page 499 and deed dated July 1, 1914, recorded in Book 1285, Page 11 and as shown on plan in Book 1241, Page 499.

Together with passageway rights as shown on plan in Book 1546, Page 112 and recited in deed dated November 27, 1939, recorded in Book 2258, Page 331,

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Together with any and all rights in and to passageways, including but not limited to, rights to use passageways.

PARCEL III — Waldo Street

Also including that portion of Waldo Street, owned by Optionor , subject to the passageway rights of others in a portion thereof, insofar as in force and applicable.

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Excepting therefrom, however, such portion thereof as is described in a release given by Arthur Russell to the Town of Brookline for the alteration and widening of Pleasant Street dated November 14, 1926, recorded with the Norfolk County Registry of Deeds in Book 1725, Page 232, and shown on a plan entitled “Plan of Alteration and Widening of Pleasant Street Between Waldo Street and John Street Brookline, Mass.”, dated November 15, 1926 and recorded with said Deeds in Book 1726, Page 637.

Said parcel is shown on a plan by Aspinwall and Lincoln, Civil Engineers, dated July 9, 1889 and recorded with said Deeds in Book 625, Page 205.

**EXHIBIT A – DRAFT Restrictive Covenant – “Tax Certainty Agreement”**

**DRAFT – March 6, 2019**

**IN RE: the several parcels known as 8-10 Waldo Street (Parcel I.D. No. 045-02-01);  
16 John Street (Parcel I.D. 045-11-00) and 10-18 Pleasant Street (Parcel I.D. No.  
045-01-00)**

**BROOKLINE, MASSACHUSETTS  
TAX CERTAINTY AGREEMENT**

This Agreement between \_ CHR Pleasant, LLC and Waldo Street, LLC, Massachusetts limited liability companies, with a principal place of business at Chestnut Hill Realty Corp., 300 Independence Drive, Chestnut Hill, MA 02467, and the 16 John Street Realty Trust u/d/t, and their successors and assigns (“CHR”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), is made and entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

**PREAMBLE**

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the Coolidge Corner area and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, CHR owns the several parcels of real property known as and numbered as 8-10 Waldo Street (Parcel I.D. No. 045-02-01); 16 John Street (Parcel I.D. 045-11-00) and 10-18 Pleasant Street (Parcel I.D. No. 045-01-00) (collectively hereinafter the “Premises”), the legal descriptions of which are attached hereto as Exhibit A, which currently consists of a garage, vacant lot and commercial building; and

WHEREAS, CHR has proposed a mixed use development on the Premises including a modern Select-Service hotel and luxury residential building with underground parking (the “Project”); and

WHEREAS, the Town requires a public area easement of approximately 1,000 +/- square feet of land in order to connect the site from John Street through the Premises to Pleasant Street in the area which is more particularly shown on a sketch plan provided by the Town and attached hereto as Exhibit B (hereinafter the “the Public Easement”); and

WHEREAS, CHR requires a zoning amendment to construct the Project; and

WHEREAS, CHR acknowledges the value of the Public Easement to the Project; and

WHEREAS, CHR has stated to the Town that the Project is not likely to result in a loss of the Town’s taxable property, and in order to assure that the Premises will pay taxes or the equivalent thereof in the future it has offered to enter into this Agreement; and

WHEREAS, the Town intends to file a Warrant Article for consideration by Town Meeting to accept the Pedestrian Easement and authorize the Board of Selectmen to execute and record the Pedestrian Easement from CHR on certain terms and conditions and upon the assurance that CHR would enter into an agreement binding upon its successors and assigns with respect to the future payment of taxes or the equivalent thereof; and

WHEREAS, the Town and CHR seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may be exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and CHR have agreed that CHR and its successors and assigns in title to the Premises will make, during the term of this Agreement, as that term is explicitly defined below, voluntary payments to the Town in lieu of real estate and hotel room excise taxes in circumstances in which CHR or its successors and assigns in title would not otherwise be obligated to pay on the Premises to the Town under applicable law. Voluntary in-lieu of tax payments are in addition to other economic enhancements provided by CHR in developing the Premises as may be mutually agreed between the Town, acting through its Select Board, and CHR;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, CHR and the Town agree as follows:

1. CHR Commitment to Voluntary Annual Payment to the Town. This Agreement shall become effective on the date of its recording with the Norfolk Registry of Deeds and the Norfolk Registry District of the Land Court as may be required (“the Effective Date”). Subsequently, commencing with the first fiscal tax year next following the first assessment date on which the Project has been constructed by CHR on the Premises and has received a final Certificate of Occupancy from the Town, in the fiscal years thereafter during which the Premises is being used for an Exempt Use or Uses, as hereinafter defined, and expiring ninety-five years from the Effective Date of this Agreement (the “Term”), CHR shall make a direct financial contribution to the Town (the “Annual Payment”), and the Town shall accept the Annual Payment in full satisfaction of CHR’s obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Sections 2 and 3, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. During the Term, the Annual Payment shall be paid by CHR to the Town pursuant to this Agreement, consisting of the “Voluntary Real Estate Tax Payment” more particularly described in Section 2 below and the “Voluntary Hotel Room Tax Payment” more particularly described in Section 3 below. The assessment date shall mean January 1<sup>st</sup> or another date on which the Town Assessors by statute determine the value of real property for the next following fiscal year.

2. Voluntary Payment in Lieu of Real Estate Tax to the Town. The “Voluntary Real Estate Tax Payment” shall be paid to the Town by CHR and its successors-in-title pursuant to this Agreement in quarterly installments on the date real property taxes are due and payable in the Town in each applicable fiscal tax year during the Term. The total Voluntary Payment shall be equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the Premises were it not used for an Exempt Use or Uses and thus not exempt from real property taxes under applicable law in the relevant fiscal tax year. CHR shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided CHR shall before commencing legal action first use good faith efforts to mediate the issue of valuation with the Assessors. An Exempt Use or Uses shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement. The Town shall provide CHR with a written statement of the amount due not less than thirty (30) days prior to the due date.

3. Voluntary Payment in Lieu of Excise Taxes to the Town. Currently, the Town of Brookline imposes an occupancy excise tax charged against hotel revenues in accordance with Massachusetts General Laws, Chapter 64G, Sections 3 and 3A. CHR agrees that in the event the Project no longer includes the hotel use subject to occupancy excise taxes, then pursuant to this Agreement, it and its successors-in-title, shall make a voluntary payment in lieu of excise taxes (“Voluntary Room Tax Payment”) in quarterly installments on the date real property taxes are

due and payable in the Town in each applicable fiscal tax year during the Term. If the hotel use is paying an occupancy excise tax for all hotel rooms in the Project at the time of the final Certificate of Occupancy (“Project Hotel Rooms”) in accordance with Massachusetts General Laws, Chapter 64G, Sections 3 and 3A, then there will be no Voluntary Room Tax Payment owed to the Town. If, however, the hotel use is no longer subject to Massachusetts General Laws, Chapter 64G, Sections 3 and 3A, or if the hotel use changes to any other use not subject to local occupancy excise tax, CHR shall be obligated to make the Voluntary Room Tax Payment based upon the following formula:

- a. (Audited Total Room Revenue of Premises) x (Local Option Hotel tax), or if hotel operations cease:
- b. (REVPAR) x (Project Hotel Rooms) x (Local Option Hotel tax), where REVPAR, or Revenue Per Available Room, is the annual Boston Average for Limited Service Hotels, as reported by STR Analytics (formerly Smith Travel Research) or similar industry leader in reporting hotel performance metrics, and, if needed, updated by the Town’s annual assessment date for the following fiscal year.

4. Termination of Agreement. The Town or CHR shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by CHR of taxes, similar assessments or payments in lieu of such taxes on the Premises used for an Exempt Use or Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or CHR, with the exception of a change that would have the effect of expanding the uses covered by the term Exempt Uses in this Agreement. This Agreement shall not in any manner whatsoever restrict the Town’s exercise of its police power. Upon transfer of title of the Premises CHR’s obligations under the Agreement shall automatically terminate and the successor owner of the Premises shall be bound by the terms of this Agreement in accordance with the Successor Affirmation set forth in Section 8 of this Agreement.

5. Period of Restrictions. It is the intent of the parties that the restrictions set forth herein be imposed for a term of ninety-five (95) years from the Effective Date hereof, and CHR hereby agrees and acknowledges that the restrictions shall not be deemed to be “unlimited as to time” within the meaning of Massachusetts General Laws, Chapter 184, Section 23, and that prior to the expiration of the initial thirty (30) years and prior to the expiration of any subsequent renewal period, such restrictions may be renewed from time to time thereafter for additional periods not in excess of twenty (20) years each, in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 or any successor statute.

6. Representations as to Authority. The Town’s Authority. The Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town’s Bylaws and under the laws of Massachusetts to execute, deliver, perform

and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction (which the Town will not instigate and has no reason to believe will be forthcoming), the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

CHR's Authority. CHR represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. CHR represents that (i) the individual executing and delivering this Agreement on CHR's behalf is the incumbent of the office stated under his name, and such offices has been authorized to do so by all necessary corporate action taken by and on the part of CHR, (ii) the Agreement has been duly and validly authorized, executed and delivered by CHR, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction (which CHR will not instigate and has no reason to believe will be forthcoming), the Agreement constitutes the valid and binding obligation of CHR, enforceable against CHR in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against CHR, CHR agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

7. Lien/Collection Remedies. Upon the failure to make any Voluntary Payment to the Town, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Upon written request from time to time to the Town Tax Collector, the Tax Collector shall provide the record owner of the Premises with a written statement certifying compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

8. Deed Reference and Affirmation of Successor In Title. CHR and its successors in title agree that during the Term, that each successive deed to the Premises executed and delivered by the grantor shall contain the following statement:

“Reference is made to an Agreement by and between CHR (add entities as necessary) and the Town of Brookline dated \_\_\_\_\_, \_\_\_\_\_, recorded with Norfolk County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the ‘Payment in Lieu of Tax Agreement’), as well as all amendments duly made and recorded. By acceptance and recording of this deed, the Grantee acknowledges and accepts the Payment in Lieu of Tax Agreement and all relevant

amendments and agrees that the same shall be binding and enforceable against the Grantee in accordance with its terms.”

CHR and such successors in title shall notify the Town in the manner provided in Section 9 hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 8. The Town shall not be required to issue the certification provided for in Section 7 hereof absent compliance with Section 8, where applicable.

9. Miscellaneous Provisions.

(a) **Notices. All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:**

Chestnut Hill Realty Corp.  
300 Independence Drive  
Chestnut Hill, MA 02467

With a copy to:

Robert L. Allen Jr., Esq.  
Law Office of Robert L. Allen Jr., LLP  
300 Washington Street  
Brookline, MA 02445

Town of Brookline  
Attn: Town Administrator  
Brookline Town Hall  
333 Washington Street  
Brookline, MA 02445

With a copy to:

Town of Brookline  
Attn: Town Counsel  
333 Washington Street  
Brookline, MA 02445

\_\_\_ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

\_\_\_ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger’s receipt; or

— By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) **Severability/Captions.** **The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those CHR obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.**

(c) **Waivers/Time of Essence.** **The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.**

(d) **Amendments.** **This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.**

(e) **Whole Agreement/Survival.** **This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.**

(f) **Real Property.** **All references in this Agreement to real property or property owned by or of CHR shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.**

(g) **Reservations.** **The Town and CHR agree that this Agreement provides the Town with protection of its tax base; but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its**

**police power or imposes any restrictions on CHR's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, an Exempt Use or Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and CHR each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. CHR is entering into this Agreement voluntarily; and nothing in this Agreement or CHR's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by CHR of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by CHR for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by CHR under, and subject to all of the terms and conditions of, this Agreement.**

(h) **Counterparts.** This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) **Applicable Law.** This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) **Successor In Title/Recording.** This Agreement shall bind CHR and its successors and assigns in title to the Premises and shall be deemed to "run with the land" for the duration of the Term. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court as appropriate upon execution of this Agreement and approval of all permitting for the Project.

**IN WITNESS** whereof the parties have executed this Agreement under seal as of the Effective Date.

Chestnut Hill Realty Corp.

Town of Brookline  
Select Board:

By: XXXXX

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

President

Hereunto duly authorized

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Hereunto duly authorized  
Date: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

\_\_\_\_\_  
Personally Known \_\_\_\_\_  
Produced Identification \_\_\_\_\_  
Expires: \_\_\_\_\_  
Type of Identification \_\_\_\_\_

Notary Public

My Commission

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ Select Board, of the Town of Brookline, proved to me through satisfactory evidence of identification to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

\_\_\_\_\_  
Personally Known \_\_\_\_\_  
Produced Identification \_\_\_\_\_  
Expires: \_\_\_\_\_  
Type of Identification \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission

OR ACT ON ANYTHING RELATIVE THERETO.

**ARTICLE 16**

Submitted by: Chris Dempsey, TMM6

## Establishment of a Parking Benefit District in Brookline Village

To see if the Town will vote pursuant to General Laws Chapter 40, Section 22A½ to establish a Parking Benefit District in Brookline Village as substantially described and shown below in the plan entitled “Brookline Village Parking Benefit District”, in which a portion of parking revenue collected therein may be designated for use in that district through a dedicated fund in accordance with the purposes and uses listed in section 22A of said Chapter 40; and further, to establish and designate a Brookline Village Parking Benefit District Advisory Board to make recommendations to the Select Board about said Parking Benefit District; said Advisory Board to be composed of nine members appointed by the Select Board, at least five of whom shall be individuals who own or manage commercial businesses located in the district,



- Brookline Avenue
- Pearl Street
- Station Street
- Cypress Street from Washington Street to Searle Avenue)
- Kent Street
- Washington Street from Pearl Street to Greenough Circle
- Harvard Street from Harvard Square to School Street/Aspinwall Avenue
- Webster Place
- Holden Street
- Pierce Street
- Town lots on Holden/Pierce (Town Hall), Kent Street, Webster Place, and School Street, or take any other action relative thereto.

### **ARTICLE 17**

**Submitted by:** Neil Gordon, TMM1

## **Include the Commission for Diversity, Inclusion and Community Relations on the Review Committee for the Naming of Public Facilities**

To see if the Town will

- (i) vote to amend Section 6.8.2 (A) of the Town's General by-laws, Naming Public Facilities – Review Committee, as follows (new language appearing in **bold underline**):

### **Section 6.8.2 REVIEW COMMITTEE**

- (A) Appointment - The Board of Selectmen shall appoint a Committee of **not less than** five **nor more than seven** members for staggered three year terms to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission, **the Commission for Diversity, Inclusion and Community Relations** and the School Committee. In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.
- (ii) make such other changes to the composition to the Naming Public Facilities Review Committee as Town Meeting shall approve.

Or take any other action relative thereto.

## **ARTICLE 18**

**Submitted by:** Commissioner of Public Works

To see if the Town will amend the General By-Laws, Article 8.6, Dog Control, Section 8.6.7 thereof (Restraint of Dogs) and Article 10.2, Prosecutions and Enforcement, as follows (additions appear in underlined bold text, and deletions appear in stricken bold text):

### **SECTION 8.6.7(a) RESTRAINT OF DOGS**

Any person owning or harboring a dog shall not suffer or allow it to run at large in any of the streets or public ways, or places in the Town of Brookline, or upon the premises of any one other than the owner or keeper, unless the owner or occupant of such premises grants permission. Under no circumstances shall a dog, even on a leash, be allowed on private property, unless specific permission has been granted. No dog shall be permitted in any public place or street within the Town of Brookline unless it is effectively restrained by a chain or leash not exceeding 7 feet in length.

However, in areas officially designated as designated off leash area by the Park and Recreation Commission, or its designee, a dog shall be allowed to be off the leash under the following conditions:

1. the dog must at all times be accompanied by and under the control of a person;
2. any dog left unattended may be impounded,
3. the person in charge of a dog inside a designated off leash area must remove any fecal material deposited by that dog in the designated off leash area, before taking the dog from the designated off leash area; and
4. the person in charge of a dog inside a designated off leash area must control the animal so that it does not disturb the surrounding area by barking or other action and so that it does not disturb or threaten others using the designated off leash area and the area surrounding the designated off leash area.
5. no area adjacent to a school shall be used as an off leash area without approval of the School Committee.
6. the Director of Parks and Open Space or his/her designee shall place a sign, in a conspicuous place, in all designated off leash areas which shall state the authorized hour(s) when such area may be used for such purpose and any other conditions of such use.
7. **the dog must be registered with and accompanied by proof of current registration in the Town's off leash program in order to participate, which participation shall be subject to compliance with publicly available rules established by the Director of Parks and Open Space.**

ARTICLE 10.2  
PROSECUTIONS AND ENFORCEMENT

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following bylaws and articles shall be by the following department head or their designees:

<u>DEPARTMENT HEAD</u>	<u>ARTICLE</u>
...	
COMMISSIONER OF PUBLIC WORKS	
Part VI-Public Property	Articles 5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9

Part VII-Streets & Ways	Articles	7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10,7.11
Part VIII-Public Health & Safety	Articles	8.2, <b>8.6.7</b> , 8.8, 8.14, 8.15,8.16, 8.18,8.24, 8.25,8.26

Or act on anything relative thereto.

**ARTICLE 19**

Submitted by: Anthony Ishak, Neil Gordon, Kate Silbaugh; TMM1

To see if the Town will amend Article 8.23 of the Town’s General By-laws (“Tobacco Control”) as follows (language to be omitted appearing in ~~strikethrough~~; language to be added appearing in **bold underline**; Section 8.23.2 – Definitions, has been alphabetized but otherwise are unchanged except as indicated):

**ARTICLE 8.23  
TOBACCO CONTROL**

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, including but not limited to its younger population, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

- a. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.
- b. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of ~~a tobacco~~ **product or component part thereof** ~~menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette products or component part thereof~~ including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, **menthol, mint, wintergreen,** dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives

or flavorings that do not contribute to the distinguishable taste or aroma of the product, ~~or the provision of ingredient information.~~

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

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

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

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

g. E-Cigarette – Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid **flavored or unflavored** nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, **electronic hookah, e-hookah, hookah sticks, personal vaporizers, mechanical mods, vape pens, vaping devices,** or under any other product name. **“E-Cigarette” includes any component or part of an e-cigarette.**

h. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

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

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

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

l. Flavored tobacco ~~or e-cigarette~~ product - Any tobacco product or ~~e-cigarette~~ component part thereof that contains a constituent that has or produces a characterizing flavor (**including but not limited to menthol, mint, and wintergreen**). A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco ~~or e-cigarette~~ products, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco ~~or e-cigarette~~ products, that such tobacco ~~or e-cigarette~~ products has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco ~~or e-cigarette~~ products is a flavored tobacco ~~or e-cigarette~~ products.

- m. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
- n. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.
- o. Minor - A person under twenty-one years of age.
- p. Retail Establishment - any store that sells goods or articles of personal services to the public.
- q. Retail tobacco store:- An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.
- r. Self-Service Display – Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.
- s. Smoke Constituent: - Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco ~~or e-cigarette~~ product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco ~~or e-cigarette~~ product.
- t. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.
- u. Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.
- v. Tobacco Product- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.**

**including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.**

w. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco or e-cigarette products by self-service, with or without assistance by a clerk or operator.

x. Workplace - An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.

### SECTION 8.23.3 - REGULATED CONDUCT

#### a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles. The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds. The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

#### b. Workplaces



(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility.

(3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable **for** work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work. c. E-cigarette Usage – Locations Prohibited (1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

#### SECTION 8.23.4 - POSTING REQUIREMENTS

Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

#### SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit – No Entity otherwise permitted to sell tobacco products shall sell **or offer to sell** such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1<sup>st</sup>, at a fee set forth in the Department's Schedule of Fees and Charges. ~~Effective September 1, 2017 or~~

~~upon the approval of the Attorney General if later, the~~**The** Director of Public Health shall not issue any new tobacco sales permits to first-time permit applicants with ~~new~~ businesses not ~~currently~~ licensed **as of September 1, 2017**. Holders of tobacco sales permits on ~~the effective~~ **such** date ~~of this section~~ may continue to use such permits. All such holders must apply for renewal of their permits according to the procedures of the Department. Those who fail to apply for renewal in a timely manner will receive written notification from the Department and then those permits may be revoked or fines imposed after such procedure as set forth in the procedures of the Department. Any such action may be appealed to the Board of Selectmen within thirty (30) days. However, applicants who acquire a business that is the holder of a tobacco sales permit ~~on the effective date of this section~~ may apply, within sixty (60) days of such acquisition, for a tobacco sales permit such as that held by the previous owner of the business, only if the buyer intends to sell tobacco products and will be operating a substantially similar business, and subject to rules and requirements of the Health Department.

b. Prohibition of Tobacco Vending Machines – The sale of tobacco or e-cigarette products by means of vending machines is prohibited.

c. Restrictions on the Distribution of Tobacco or e-cigarette Products - No person, firm, corporation, establishment or agency shall distribute tobacco or e-cigarette products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product “giveaways”, or distribution of a tobacco or e-cigarette product as an incentive, prize, award or bonus in a game, contest or tournament involving skill or chance.

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

e. Self-Service Displays – All self-service displays as defined by 8.23.2 (e) are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked.

f. Prohibition of the Sale of Tobacco Products and e-cigarettes by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco or e-cigarette products.

g. Prohibition of the Sale of Tobacco and e-cigarette Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

h. Required Signage

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

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

i. Tobacco Sales

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

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

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

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

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

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

SECTION 8.23.6 - VIOLATIONS AND PENALTIES

a. Any person who violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of \$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of \$100 for a first offense, \$200 for a second offense, and \$300 for a third or subsequent offense.

c. Employees who violate any provision of Section 8.23.3(b) **or 8.23.5** shall be punished by a fine of \$100 per day for each day of such violation.

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

e. Violations of this by-law may be dealt with in a noncriminal manner as provided in PART X of the Town by-laws.

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

#### SECTION 8.23.7 - SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

Or act on anything relative thereto.

#### **ARTICLE 20**

**Submitted by:** Rebecca Stone, TMM 3

To see if the Town will amend its by-laws to improve gender equity in public toilet facilities by providing free menstrual hygiene products in restrooms serving the general public in its public buildings, as follows:

#### 8.37 MENSTRUAL HYGIENE PRODUCTS ACCESS BY-LAW

##### SECTION 8.37.1 DEFINITIONS

"Menstrual hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

“Restrooms serving the general public” mean restrooms established for use by members of the public (as differentiated from staff restroom facilities).

“Public Building” for the purposes of this Warrant Article means any facility owned or leased by the Town of Brookline that contains restrooms for the general public and over which the Town has care, maintenance, custody, and/or control. This shall include, but not be limited to: Public Libraries, the Town Hall Complex (including the Public Health Bldg), the Public Safety Bldg, Recreational Facilities, and Parks.

“Female-bodied” means any individual who experiences a menstrual cycle.

#### SECTION 8.37.2 ACCESS TO MENSTRUAL HYGIENE PRODUCTS

The Town of Brookline shall make available and accessible at no charge menstrual hygiene products (tampons and pads/napkins) in its public building restrooms that serve female-bodied members of the public.

#### SECTION 8.37.3 MANNER OF DISPENSING

Machine dispensers for menstrual hygiene products provided under this by-law shall be chosen in consultation with the Building Department and Department of Public Health, but must comply with ADA and other equity-of-access laws and considerations.

Menstrual hygiene products made available at no charge from an employee, office, or other site in a public building upon in-person request does not constitute compliance with this by-law.

#### SECTION 8.37.4 GREEN PRODUCTS

Tampons with plastic applicators may not be provided under this by-law.

#### SECTION 8.37.5 EFFECTIVE DATE

This by-law shall take effect July 1, 2021. It will become effective for the Public Schools of Brookline upon adoption by the Brookline School Committee.

or act on anything relative thereto.

### **ARTICLE 21**

Submitted by: Kate Silbaugh, Neil Wishinsky

To see if the Town will amend the General By-Laws by amending Section 8.37.5, Subsection A.2., as follows (additions are denoted in **bold, italicized text**, deletions are denoted in ~~stricken~~ text):

2. Marijuana Establishments shall execute and maintain a Host Community Agreement with the Town which shall include the conditions for having the Marijuana Establishment within the Town in conformity with applicable law. ***Prior to entering into a Host Community Agreement, the Town shall make a preliminary assessment regarding whether the proposed Marijuana Establishment complies with applicable State and local law, including the Town’s Zoning By-Law and General By-Laws. The Town may request additional***

*information (including surveys, studies or other data) as it may deem reasonably necessary for making the preliminary assessment. The Town shall be under no obligation to enter into a Host Community Agreement if it determines that the proposed Marijuana Establishment may violate applicable State or local law. Should the Town determine to enter into a Host Community Agreement, nothing in this Section shall limit the ability of the Town subsequently to require additional information or exercise its discretion under the General By-Laws and the Zoning By-Law.*

Or take any other action relative thereto.

## **ARTICLE 22**

Submitted by: Francis G. Caro, TMM10

### **Resolution calling for a study of pedestrian-friendly street lighting**

To see if the Town will adopt the following resolution:

WHEREAS the Town encourages walking as a mode of transportation, especially in densely developed areas,

WHEREAS, residents and visitors walk on sidewalks and across streets after dark,

WHEREAS, safety is a concern for people of all ages and abilities who walk after dark,

WHEREAS the Town, for illumination of its streets and sidewalks, currently relies primarily on "highway lighting" that fails to provide consistently adequate lighting for pedestrians, especially where there are mature street trees,

WHEREAS "highway lighting" is a source of glare that can interfere with the vision of pedestrians,

WHEREAS pedestrian-friendly lighting reduces such glare and allows improved illumination so pedestrians can see obstacles such as uneven, raised black asphalt pavement covering tree roots,

WHEREAS pedestrian-friendly lighting reduces dark shadows that may make pedestrians feel Insecure,

WHEREAS the Town's Complete Streets policy states that "Sidewalks and crosswalks should be adequately lit,"

WHEREAS the Town already has some pedestrian-friendly street lighting that demonstrates the benefits for pedestrians of this form of street lighting,

THEREFORE, BE IT RESOLVED that Town Meeting requests that the Select Board appoint a committee to develop a plan to extend pedestrian-friendly lighting along sidewalks with extensive pedestrian activity;

BE IT FURTHER RESOLVED THAT Town Meeting requests that the committee be charged to determine the extent to which there is public demand for improved lighting for pedestrians, identify locations where improved pedestrian lighting is most needed, and examine costs of installation and operation of new pedestrian-friendly street lighting;

BE IT FURTHER RESOLVED that Town Meeting requests that the committee report its recommendations to a future Town Meeting.

Or act on anything relative thereto.

### **ARTICLE 23**

Submitted by: Jesse M. Gray, TMM10, Heather Hamilton

To see if the Town will adopt the following resolution:

#### RESOLUTION CALLING FOR THE ELECTRIFICATION OF THE TOWN'S MOTORIZED FLEET

Whereas, Brookline has a strong desire to assist the rest of the world in stopping climate change; and

Whereas, the Town must dramatically reduce its emissions via implementation of "strong and immediate" policies if it wishes to assist in keeping global warming below 1.5°C, per the December 2018 Intergovernmental Panel on Climate Change report; and

Whereas, fossil fuels for the Town's own motorized vehicles are a significant source of atmospheric carbon emissions, and all Town vehicles burn fossil fuels (although many sedans are hybrids); and

Whereas, a variety of all-electric vehicles (and sources of 100% clean electricity) are now available, with more becoming available every year;

NOW THEREFORE, BE IT RESOLVED that the Town Meeting calls upon the Town to fully electrify the Town's motorized vehicle fleet.

BE IT FURTHER RESOLVED THAT the Town Meeting calls upon the Town, as of July 1, 2019 or using funds allocated in the budget for FY2020 and fiscal years thereafter, to no longer acquire via purchase, lease, or otherwise, fossil fuel-consuming vehicles, including cars, trucks, buses, emergency vehicles, street sweepers, lawn mowers, snow blowers, skid-steers, or any other motorized portable equipment for which a *practical alternative* is already acquirable or can reasonably be expected to become acquirable within the needed time frame via purchase or lease. For purposes of this resolution, a *practical alternative* shall be defined as one or more non-motorized or electrified device(s) that singly or in combination can reasonably be expected to (1) meet the required needs with equivalent utility for the intended use (as determined by the department head requesting the vehicle) once an appropriate charger (or outlet) is installed, and (2) cost no more than 25% greater, in their initial purchase or total lease price, than an otherwise suitable fossil fuel-consuming vehicle, inclusive of obtainable

federal, state, and vendor purchase or lease incentives but exclusive of one-time costs of installing infrastructure and equipment needed to provide electrical power for charging or operation. A fossil fuel-consuming vehicle, when electrified post-market (but prior to use), shall be considered as a potential *practical alternative* with total purchase cost equal to the sum of the initial purchase cost and post-market electrification cost.

BE IT FURTHER RESOLVED THAT when a higher ranked *practical alternative* on the following list is obtainable, the Town Meeting calls upon the Town to choose that higher ranked item over lower ranked ones, in the following order:

1. Fully electric equipment (*e.g.*, Battery Electric Vehicles [BEVs])
2. Partially electric plug-in hybrid equipment (*e.g.*, Plug-in Hybrid EVs [PHEVs])
3. Partially electric non-plug-in hybrid equipment (*e.g.*, conventional hybrids).

BE IT FURTHER RESOLVED THAT the Town Meeting requests the Town to note the energy source(s) of vehicles and powered devices in budget requests (*e.g.*, fossil fuel, plug-in hybrid, non-plug-in hybrid, or fully electric).

BE IT FURTHER RESOLVED THAT although much of the Town's school bus and school van transport is currently provided by contract, such that vehicles are not owned or leased by the Town, the Town Meeting nevertheless encourages the Town and Schools to explore electrification of the contracted fleet and, as soon as is practical, to transition the contracted fleet to fully electric vehicles, by modifying or switching the contract and/or by acquiring some or all of the Town's own fleet via purchase or lease.

Or act on anything relative thereto.

## **ARTICLE 24**

Submitted by: David Lescohier, TMM11

To see if the Town will adopt the following resolution:

### **A Resolution Calling for a Procurement Policy to Annually Increase the Town Supply of Green Electricity from Renewable Sources**

WHEREAS May 2017 Annual Town Meeting passed Warrant Article 20, which committed Brookline to uphold the Paris Agreement on Climate Change, and Warrant Article 21, which established energy-efficiency goals and minimums for the ninth elementary school and the Brookline High School expansion;

WHEREAS in September 2018, the Select Board by adopting the Climate Action Plan, revised its goal—originally set to conform with the Massachusetts Global Warming Solutions Act goal of 80% reduction of GHG emissions—to a goal of achieving zero greenhouse gas emissions for the government and the community by 2050;

WHEREAS the Intergovernmental Panel on Climate Change, a group of scientists convened by the United Nations, released its report, which said that to prevent a catastrophic rise of 2.7 degrees Fahrenheit of warming, CO<sub>2</sub> emissions must be reduced



by 45 percent from 2010 levels by 2030, and 100 percent by 2050, which has galvanized many in town;

WHEREAS the National Climate Assessment report stated that without "substantial and sustained reductions" in greenhouse gas emissions, climate change will hurt people, economies, and resources across the U.S.;

WHEREAS the December 2018 Special Town Meeting passed amendments to Warrant Articles 2 and 3, imposing a condition that no funds be used during schematic design for non-emergency fossil-fuel operated building systems for the ninth elementary school and also the Driscoll School;

WHEREAS in order for the Town to achieve zero greenhouse gas emissions, the Town's electricity must be supplied by 100% Green Electricity renewable sources;

Therefore, be it

RESOLVED that Town Meeting urges that the Town to rely on 100% Green Electricity from renewable sources by the earlier of any future Brookline Climate Action Plan goal or 2050;

RESOLVED that Town Meeting urges the Select Board adopt a policy to request that Town Meeting appropriate year by year increases for the purchase of Renewable Energy Certificates, and that this policy written into the Town of Brookline Financial Plan;

RESOLVED that Town Meeting urges that these appropriation-increase requests be sufficient to meet the resolution's 100% green electricity goal by 2050, or earlier, if, in the future, the Brookline Climate Action Plan advances this date;

RESOLVED that Town Meeting urges that Select Board adopt this policy and make it effective beginning in FY 2021;

Or take any other action relative thereto.

**ARTICLE 25**

Submitted by: Deborah Brown, Susan Wolf Ditkoff, and Michael Sandman

To see if the Town will appropriate a sum not to exceed \$250,000 in FY2020, to be raised from free cash or other available sources, to expended by the Town of Brookline's Office of Diversity, Inclusion, and Community Relations in order to hire a professional, independent third-party consultant who will perform a comprehensive race and equity review of, and make recommendations to, all departments within the Town of Brookline, prior to the preparation of and for inclusion in the FY2021 budget, in order to advance racial equity in Brookline, or take any other action relative thereto.

**ARTICLE 26**

Submitted by: Deborah Brown, Susan Wolf Ditkoff, and Michael Sandman

**To see if the Town will adopt the following Resolution:**

Whereas the Town of Brookline entered into the Government Alliance on Race and Equity (GARE) by vote of Town Meeting in May 2017 (Article 22), and

Whereas the Town of Brookline desires to be a leading municipality with respect to equity, diversity, and inclusion goals, specifically with respect to (i) recruitment, employment, retention, and promotion of a diverse Town workforce, (ii) the culture and environment of Town departments, (iii) procurement and contracting, (iv) participation by all segments of the Town's population in Town boards, commissions, and committees, and (v) interactions with the police; (vi) affordable housing; and (viii) the enforcement of non-discrimination requirements in Town bylaws and regulations and state and federal laws and regulations ("Equity Goals"), and

Whereas "Equity Goals" shall include goals related to persons based on race, ethnicity, income, disability, gender and gender identity, language status, immigration status, religion, or family composition,

**Now, therefore, be it hereby Resolved that the Town of Brookline shall engage a third-party consultant to undertake an independent, comprehensive review of practices and operations with respect to Equity Goals across all Town Departments. The consultant shall report jointly to the Town Administrator and the Town Chief Diversity Officer, and progress shall be presented regularly to the Select Board and the Commission on Diversity, Inclusion, and Community Relations as the supervising body. An interim report shall be presented to Town Meeting no later than November 2019, with the expectation that the first set of recommendations will focus on racial equity, and be defined and considered for appropriation within FY2021 departmental budgets (to be approved at the Annual Town Meeting in May 2020).**

Or act on anything relative thereto.

## **ARTICLE 27**

**Submitted by:** Mike Offner

To see if the Town will adopt the following Resolution:

### **AN APOLOGY TO GERALD ALSTON AND COMMITMENT TO DO BETTER**

WHEREAS, regarding the termination of Brookline firefighter Gerald Alston, the Massachusetts Civil Service Commission has declared, "The Town's own actions and inactions were the reasons that made it impossible for Firefighter Alston to return to work, which formed the basis of the Town's decision to terminate his employment";

WHEREAS, the Massachusetts Civil Service Commission has declared, "When a municipality's own violation of a tenured employee's rights has prevented the employee from returning to work, as here, the Town cannot use that inability to work as just cause for discharging the employee from his tenured position";

WHEREAS, the Massachusetts Civil Service Commission has declared that use of a racial epithet, "coupled with subsequent actions and inactions by Town officials at all levels, which compounded the racist comment into an avalanche of unfair, arbitrary, capricious and retaliatory behavior that infringed on Firefighter Alston's civil service rights, made it impossible for him to perform his job as a Brookline firefighter";

WHEREAS, the Massachusetts Civil Service Commission has declared, "the Town of Brookline has failed to show just cause for terminating Gerald Alston from employment;"

NOW, THEREFORE, BE IT HEREBY RESOLVED, the Town of Brookline apologizes to Gerald Alston for any and all pain and suffering he has experienced as a result of his employment as a Brookline firefighter and as a result of his termination from that position; and further, the Town of Brookline endeavors to engage in serious introspection, reflection, and open dialogue so that no employee or resident of Brookline, or any person passing through Brookline for any amount of time, shall ever again have to experience anything like that which Mr. Alston has gone through.

**ARTICLE 28**

Submitted by: Cornelia van der Ziel, TMM15

**VOTED: THAT THE TOWN OF BROOKLINE ADOPT THE FOLLOWING RESOLUTION:**

**RESOLUTION IN SUPPORT OF CHANGING THE FLAG AND SEAL OF THE COMMONWEALTH OF MASSACHUSETTS**

WHEREAS, the history of State of Massachusetts is replete with instances of conflict between the European Colonists and the Native Nations of the region, who first extended the hand of friendship to the Colonists in 1620 and helped them survive during the settlers' first winter on their land; and

WHEREAS, members of the Native Nation for whom the State of Massachusetts is named were ambushed and killed by Myles Standish, first commander of the Plymouth Colony, in April 1623, barely two years after the Pilgrims arrived on their shores; and

WHEREAS, the symbols in the current flag and seal of the Commonwealth are a composite of appropriated symbols that do not reflect the true history; and

WHEREAS, since colonial times, the history of relations between what is now the State of Massachusetts and the Native Nations include forced internment leading to the death of hundreds in 1675 on Deer Island and their subsequent enslavement in Boston, Bermuda and the Caribbean islands; and

WHEREAS, the Native Nations within current State of Massachusetts were kept in a state of serfdom, and their members were legally considered incompetent wards of the state until the nonviolent action of the so-called Mashpee Rebellion of 1833 which led to the granting of Native self-rule by the Massachusetts legislature in 1834, as if it were the right of the Massachusetts legislature to grant such rights; and

WHEREAS, Native Americans were legally prohibited from setting foot into Boston from 1675 until 2004, when the law was repealed; and

WHEREAS, the 400<sup>th</sup> anniversary of the landing of the European Colonists at Plymouth Plantation is approaching in 2020, giving every citizen of the Commonwealth a chance to reflect on this history and to come to a new awareness of the possibility of a better

relationship between the heirs of the European conquest and the Native Nations of the Commonwealth; and

WHEREAS, Native Americans have long suffered the many abuses of racism, the appropriation of their symbols for public schools and sports teams, the confiscation and pollution of their ancestral lands and the encroachment on their cultures;

Now, therefore, BE IT RESOLVED that Town Meeting of Brookline adopts this resolution in support of H.2776 and S.1877, entitled “Resolve providing for the creation of a special commission relative to the seal and motto of the Commonwealth” and commends Representative Nika Elugardo as a sponsor and Representative Tommy Vitolo as a cosponsor of this resolution and further urges Representatives Edward Coppinger and Michael Moran and Senator Cynthia Creem to support and vote in favor of the aforementioned Resolve (H.2776 and S.1877) in the General Court and that the Joint Committee on State Administration and Regulatory Oversight (or all other legislative committees which may hear the bill), after holding a public hearing, report it out favorably and if the legislation shall pass, that Governor Charles Baker shall sign it and work with members of the General Court to ensure its enactment.

BE IT FURTHER RESOLVED that Brookline Town Meeting instructs the Town Clerk shall cause a copy of this resolution to be sent to State Representatives Elugardo, Vitolo, Coppinger and Moran, to Senator Creem and to Governor Charles Baker.

Or act on anything relative thereto.

## **ARTICLE 29**

Submitted by: Mariah Nobrega

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

### **RESOLUTION TO ENCOURAGE BROOKLINE’S TOWN MEETING TO PURSUE REPRESENTATIVENESS AMONG ITS MEMBERSHIP**

WHEREAS, the Town of Brookline, Massachusetts (the Town) has a proclaimed public policy to improve diversity, inclusion, and community relations within its territory; and

WHEREAS, in Town Bylaw 3.14, which defines both the Commission and the Office for Diversity, Inclusion and Community Relations (CDICR/ODICR), says that (bold is emphasis added) “the Town believes that inclusion will provide opportunities and incentives to all who touch Brookline to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, **including town government**; and that inclusion is, therefore, a critically important government interest of the Town”; and further defines inclusion as “actively pursuing goals of including, integrating, engaging, and welcoming into the community all persons who come in contact with the Town **regardless of their race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin, military or veteran status, genetic information, marital status, receipt of public benefits (including housing subsidies), or family status (e.g. because one has or doesn't have children)** (herein, “Brookline Protected Classes”); and

WHEREAS, in March 2017 the Town became a core member of the Government Alliance on Race and Equity (GARE), a national network of local governments working to achieve racial equity and advance opportunity for all; and GARE activities are commendable but are focused on town department practices, not elected bodies; and

WHEREAS, a fall 2018 ODICR survey of diversity on Town Commissions, Committees, and Boards found that these bodies are not inclusive or representative of the town overall, concluding based in part on the following evidence that “this survey...illustrates a stark disconnect between the demographics of Brookline’s residents and those involved in town government.”

- 93.3% of those who answered the question were white, compared to 76.7% of Brookline overall
- 42.9% were age 65 or older (overall: 15.7%); conversely 6.1% were age 19-34 (overall: 35.8%); and

WHEREAS, ODICR is seeking ways to close this inclusion gap but cannot do so unilaterally; and,

WHEREAS, in a more inclusive Town government, Town Meeting Members would not solely be elected as geographic representatives but to be truly representative, would also capture a proportional representation of Brookline Protected Classes; and,

WHEREAS, in a more inclusive Town Meeting environment, the voices who speak would also represent a greater inclusivity among Brookline Protected Classes,

THEREFORE, BE IT RESOLVED that Town Meeting Members should encourage each other and themselves to identify and support candidates to run for Town Meeting who belong to one or more underrepresented Brookline Protected Classes, so as to build inclusion in town elected bodies with the goal of Town Meeting more closely reflecting the community from which it is elected, and

BE IT FURTHER RESOLVED that the Moderator should be encouraged to consider inclusivity across Brookline Protected Classes as an important aspect of deciding order of speakers, among other considerations.

Or act on anything relative thereto.

### **ARTICLE 30**

Submitted by: : Rosanna Cavallaro; Alisa Jonas, TMM16; Lynda Roseman, TMM 14; Irene Scharf, TMM 16; Maura Toomey, TMM 8

Resolution calling for a preliminary study of options for locating a public outdoor swimming facility for Brookline residents.

To see if the Town will adopt the following resolution:

WHEREAS, the Town of Brookline has a both a large population of children and a large and growing population of elderly persons;

WHEREAS, the health and overall quality of life for all residents is a priority for good governance;

WHEREAS, swimming is one of the healthiest forms of exercise for children and for the elderly – as well as for those with ages in between;

WHEREAS, the opportunity to be outdoors, whether for sports or otherwise, is healthful in and of itself;

WHEREAS, outdoor community pools are opportunities for community-building;

WHEREAS, some of the more memorable experiences of childhood are swimming outdoors – for those persons who have had the opportunities to do so;

WHEREAS, currently in Brookline, the only opportunities for outdoor swimming are limited to private clubs and private homes;

WHEREAS, most towns in the Greater Boston area comparable to Brookline provide their residents with one – and sometimes more than one - outdoor swimming facility (for example, Needham, Newton, Natick, Wellesley, Waltham, Watertown, Milton, Belmont, Norwood, Framingham, Hingham);

WHEREAS, the Town of Brookline is the largest town in Massachusetts;

WHEREAS, surprisingly, the website blog for Gohlke Pools of Denton, Texas asserts that “[T]he first swimming pool was a public pool built in 1887 in Brookline, Massachusetts” and that “[P]ools such as this were great places to socialize, and they provided a way to escape the summer heat...”

WHEREAS, Brookline residents surveyed by the Town placed having an outdoor swimming pool high on their list of priorities for parks and open space;

WHEREAS, the only pool currently available to Brookline residents not only lacks fresh air, but is an older facility and so also lacking in accommodations that benefit the very young, the elderly and the disabled, such as zero depth entry, play features, surrounding areas for play and relaxation, and the ability to provide formal therapeutic activities;

WHEREAS, the Town currently is assessing town-wide needs for open space and recreation, brought about by the possibility of acquiring Newbury College properties;

WHEREAS, there are several sites that could serve as locations for outdoor swimming, including but not limited to the DPW site at Larz Anderson, which, if transformed for outdoor swimming, could, together with the ice rink, become part of a larger multi-month recreational center for residents;

NOW, THEREFORE, BE IT RESOLVED that Town Meeting calls for a preliminary study of options for siting an outdoor swimming facility for Brookline residents, to be led

by the Department of Parks and Open Space, including but not limited to the DPW site at Larz Anderson, land abutting the Putterham golf course, a portion of the property at Newbury College, and any other locations deemed appropriate to evaluate; with such initial analysis serving as preparatory for a more comprehensive study of feasibility to be initiated thereafter.

Or act on anything relative thereto.

**ARTICLE 31**

Reports of Town Officers and Committees

AND YOU ARE DIRECTED TO SERVE THIS WARRANT IN ACCORDANCE WITH THE BY-LAWS OF THE TOWN OF BROOKLINE.

HEREOF FAIL NOT, and make due return of this WARRANT, with your doings thereon, to the Select Board at least FOURTEEN DAYS before the day of said meeting.

Given under our hands and the seal of the TOWN of Brookline, Massachusetts, this 12th day of March, 2019.

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SELECT BOARD



**BY VIRTUE OF THIS WARRANT, I THIS DAY NOTIFIED AND WARNED THE INHABITANTS OF SAID TOWN TO MEET AT THE HIGH SCHOOL AUDITORIUM IN SAID TOWN ON TUESDAY, May 21, 2019 AT 7:00 P.M. BY POSTING TRUE AND ATTESTED COPIES OF THE WITHIN WARRANT IN TEN (10) PUBLIC PLACES. ALL OF THIS WAS DONE AT LEAST FOURTEEN (14) DAYS BEFORE SAID MEETING.**

\_\_\_\_\_  
CONSTABLE

\_\_\_\_\_  
DATE