



2019

**WARRANT ARTICLE EXPLANATIONS
FILED BY PETITIONERS FOR THE
MAY 21, 2019 ANNUAL TOWN MEETING**

ARTICLE 1

Submitted by: Select Board

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

ARTICLE 2

Submitted by: Human Resources

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

ARTICLE 3

Submitted by: Treasurer/Collector

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

ARTICLE 4

Submitted by: Select Board

This article asks that the Town accept to accept a new statute that governs the cable television public, educational governmental (PEG) Access fund. Funds in this account include fees collected from customers by the cable operator in support of public, educational and government (PEG) programming. These payment are then transmitted to Brookline Interactive Group (BIG) who serves as the entity responsible for operating and managing the use of public, educational and governmental access funding, equipment and channels on the Cable Television System.

ARTICLE 5

Submitted by: Select Board

Prior to the Municipal Modernization Act revolving funds under the provisions of General Laws, Chapter 44, Section 53E 1/2 could be established by an annual legislative body vote. The Town has several funds that were established in this manner and these funds are authorized annually through the budget process. The School Department has requested that a revolving fund be established to manage their school bus transportation program. Authorizations requested after FY2018 need to be established by by-law. This Article establishes a by-law for this purpose.

School Bus Program:

The Transportation Program is responsible for providing transportation to and from school for Public School of Brookline students. A bus fee is charged for this service. Transportation is also provided for Brookline special education students to and from school as indicated in their Individual Education Plan at no cost to the family.

FY19 was the first year of fee based busing for BHS students that reside in Baker and Heath zones. The fee was \$400 per rider. The district operates two busses to transport the program's capacity of 144 registered students over 7 trips on a daily basis. In year two, there is no recommendation to change the fee for this optional service. In the initial year of the program, no revolving fund was voted by the School Committee or Town Meeting, so the full cost of the service, \$151,200, was budgeted as part of the regular education busing line item and user fee revenue went to the Town's General Fund and was then directed to the School Department to support the operation.

Setting up a school bus user fee revolving fund is how many other school systems have handled accounting for transportation user fees. That law requires the fund to set a maximum balance or maximum level of receipts and end expenditure. The recommended maximum balance for this revolving fund would be \$75,000. Budgeted revenue is \$48,000 though maximum revenue received which can be expended in FY20 would be \$75,000. User fee estimates in the chart above are conservatively estimated so voted appropriations can reasonably be expected to cover incurred costs. Adopting the budget of \$108,600 for the BHS South Brookline transportation reflects creating a transportation revolving fund for FY20. Adding a third bus for BHS would require an additional \$66,300 be added to the overall transportation budget as presented above, and (probably) a vote from the School Committee to do so. This topic is likely to come up in future years as the student population as BHS continues to grow.

FY 19 BHS Service	\$ per Day	Days/ Payers	\$ Per Bus
2 Buses, Up to 4 hrs per day	\$420	360	\$151,200
True cost of BHS Busing			\$151,200

FY20 Service w/ Revolving Fund	\$ per Day	Days/ Payers	\$ Per Bus
2 Buses, 4 hrs per day	\$435	360	\$156,600
User Fee Revolving	\$400	120	\$48,000

Net Cost of Level Service BHS Busing			\$108,600
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For informational purposes only	\$ per Day	Days/ Payers	\$ Per Bus
Add 3rd BHS Bus	\$435	180	\$78,300
Est. User Fee (More Capacity)	\$400	30	\$12,000
Net Cost of Third BHS Bus			\$66,300

Funds are restricted by use to compensation for employees, contracted services and payment for equipment and materials to run program.

ARTICLE 6

Submitted by: Treasurer/Collector

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations. This article is also used for a debt rescission for the Driscoll School HVAC project now that the Building Committee has chosen a design option that will demolish the existing structure.

ARTICLE 7

Submitted by: Select Board

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

ARTICLE 8

Submitted by: Board of Assessors

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

ARTICLE 9

Submitted by: Advisory Committee

This is the annual appropriations article for FY2020. Included in this omnibus budget article are operating budgets, special appropriations, enterprise funds, revolving funds, and conditions of appropriation. This is the culmination of work that officially began with the publication of the Town Administrator's Financial Plan on February 12th. The proposed budget has since been reviewed by numerous sub-committees of the Advisory Committee,

the full Advisory Committee, and the Select Board. The vote ultimately recommended to Town Meeting is offered by the Advisory Committee.

ARTICLE 10

Submitted by: Select Board

This article mirrors the language found under Article 2 of the April 9, 2019 First Special Town Meeting. The Select Board is re-filing this article in case more time is needed in order to take action contemplated by the article.

ARTICLE 11

Submitted by: Select Board

The planned expansion of Brookline High School includes the construction of a new school building situated on Cypress Street. The design of the new building extends over the MBTA Green Line tracks onto property owned by the MBTA. The Town has reached Agreement with the MBTA, wherein the MBTA will grant easements for the necessary air rights and ground rights to allow the construction of the new building and the Town will undertake certain improvements to the Brookline Hills MBTA Station, including replacement of MBTA parking area utilized by the new school building, making the MBTA Station accessible for people with disabilities and creating public accessibility to the MBTA Station from Brington Road.

The High School Project and the MBTA Station Improvements will require certain rights and easements over certain portions of Town Property on Tappan Street and off Brington Road order to provide access to and egress from the MBTA Facilities for MBTA patrons and employees. The Town, in turn, will acquire rights and easements over MBTA property, including air rights to extend the new building over the tracks. This warrant article will give the Select Board the authority to enter into a reciprocal easement agreements with the MBTA that will allow the High School Expansion project to proceed as planned.

ARTICLE 12

Submitted by: Commissioner of Public Works

20 Boylston Street is the site of a proposed mixed-use development, which received a Special Permit for construction pursuant to the Town's Design Review and Affordable Housing provisions of its Zoning By-Law. During the design phase of the project, with input from the neighbors, the Design Advisory Team and the Planning Board, the owner agreed to increase the width of the sidewalks on Walnut Street and High Street by setting the building back in excess of the minimum setbacks and adding sidewalk area on its property. The owner also agreed to plant several street trees on the sidewalk. Without

this additional sidewalk area provided by the owner, there is insufficient room for both the trees to be planted and safe pedestrian passage as part of this project.

The Department of Public Works and the Transportation Board have recommended, and the Special Permit requires, that the owner grant the Town an easement over the newly created sidewalk area on its property to ensure adequate pedestrian access. The easement would allow the sidewalk to remain a safe and generous width, larger than required and satisfactory to the Design Advisory Team and Planning Board. The owner supports the grant of this pedestrian easement to the Town.

Therefore, the petitioner is submitting this warrant article as a means to ensure the planting of street trees, public safety and access in conjunction with the Zoning Board of Appeals' approval of the project, and to ensure that the Town has a permanent, non-revocable mechanism for sufficient pedestrian access over the newly created portion of the sidewalk on the owner's lot.

ARTICLE 13

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

The Coolidge Corner Study Committee (CCSC) recommends Town Meeting approval of a new Waldo Durgin Overlay Zoning District for a portion of Coolidge Corner. The CCSC considers this district of unique civic significance as a highly visible location in Coolidge Corner, the commercial heart of Brookline.

Executive Summary

The proposed Waldo Durgin Overlay Zoning District includes three contiguous tax parcels including 8-10 Waldo Street, 10-18 Pleasant Street, and 16 John Street. Collectively these parcels total approximately 1.3 acres. All three parcels in the overlay district are owned by Chestnut Hill Realty entities (CHR). These parcels now include the underutilized Waldo and Durgin garage structures and a surface parking lot used primarily by adjacent condominium owners.

CHR has proposed two alternative redevelopment programs for the site: (1) a residential building comprising 299 units filed as a Comprehensive Permit under MGL Chapter 40B regulations; and (2) a mixed-use project including a hotel with 210 rooms and a residential building with 143 units and ground floor commercial space. Both proposed projects comprise a total of approximately 350,000 square feet.

A comprehensive permit public hearing process is currently active for the 40B proposal with the Brookline Zoning Board of Appeals (ZBA). The proposed mixed-use plan would include multi-family residential and hotel buildings at a scale not presently permitted under existing zoning; consequently, this redevelopment option will require adoption of zoning amendments.

The proposed zoning is supplemented by a set of Design Guidelines, a Memorandum of Agreement (MOA), and Tax Certainty Agreement. The MOA defines and references the mixed-use development project including preliminary site plans and building floor plans, including an underground parking garage. Through the MOA, CHR has committed to pedestrian, bicycle, and traffic mitigation; public realm improvements (on and off-site); sustainable design elements; and unique provisions to meet affordable housing requirements.

The mixed-use project would require Special Permits from the ZBA and Site Plan Review by the Planning Board. It would be deemed a Major Impact Project subject to review by a Design Advisory Team appointed by the Planning Board.

The CCSC believes the mixed-use development program provides the Town several advantages over the 40B alternative including the following:

- Substantially greater local control over the design of the site plan and buildings.
- Significantly more extensive public realm improvements, including landscape upgrades at the Coolidge Corner Library and conversion of the 14-space municipal parking lot at John & Green Streets to a park.
- Ability to require active ground level, publicly accessible café/restaurant or retail in the residential building. Further the MOA stipulates that if this space is vacant for more than a year, CHR will offer it to the Town to use.
- Ability to require on-going conditions after the project is constructed, including annual Transportation Demand Management (TDM) reports for the hotel, parking and operations management.
- Flexible provisions to encourage retrofitting portions of the underground parking garage for other uses should future demand justify fewer spaces.
- Superior environmentally sustainable design including the developer's commitment to meet LEED v4 certifiable standards and Energy Use Intensity (EUI) targets that exceed stretch building codes.
- Significantly higher tax revenue from both property tax (including a portion at higher commercial rates) and the room occupancy excise tax from the hotel; in total annual tax revenues are estimated to exceed the 40B option by \$1.65 million in the initial year of stabilized occupancy.
- Lower demand for schools and other municipal services as the mixed-use option would have less than half of the residential units proposed in the 40B.
- Use of meeting space in the hotel by the Town and Brookline community non-profit groups at a nominal custodial fee.

The CCSC acknowledges that the 40B option would provide more Affordable Housing units in the near term than the mixed-use proposal (both in total and in units counted on the Town's Subsidized Housing Inventory). To address this concern the Committee worked with CHR and the Housing Advisory Board (HAB) on an agreement that would provide a lump sum payment to the Housing Trust Fund of \$3.275 million from CHR in lieu of ten Affordable units provided on site. It is anticipated that the HAB will be able to leverage these funds in concert with mission based non-profit housing developers to create significantly more Affordable units than the ten not provided on site. This payment is in addition to the 11 affordable (at 80% Area Median Income) provided on-site.

Coolidge Corner Study Committee

The Coolidge Corner Study Committee was appointed by the Select Board in 2017 to study the Waldo Durgin and 1200 Beacon Street (AKA Holiday Inn) sites for potential redevelopment. Plans for 1200 Beacon were subsequently withdrawn and the CCSC

focused solely on the Waldo Durgin site. CCSC membership included representatives from the Select Board, Planning Board, Preservation Commission, Economic Development Advisory Board, Housing Advisory Board, Town Meeting Members, and neighborhood representatives. CCSC members are architects, attorneys, urban planners, real estate professionals, and neighborhood advocates. Please see <https://www.brooklinema.gov/1367/Coolidge-Corner-Study-Committee>.

Special District Overlay Zoning

The Town's Zoning By-Law allows for the creation of Special Districts in recognition that conditions present within the Town may require detailed neighborhood, district or site planning and design review to ensure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To ensure that the dimensional and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations.

The Waldo Durgin Overlay District zoning does not replace the underlying G-1.75 (CC) zoning; rather it supplements it by allowing by Special Permit permitted uses at a greater density than would otherwise be allowed via the underlying zoning. The overlay district also requires such projects to be subject to additional Special District Zoning requirements and restrictions, including Design Guidelines and Site Plan Review by the Planning Board.

Mixed-Use Development Project

The proposed mixed-use project consists of two separate buildings of high-quality urban and sustainable design. The buildings will comprise a total of approximately 350,000 square feet representing a Floor Area Ratio of approximately 6.0. A high-end, select service hotel is proposed for the west portion of the site including 210 rooms. The hotel is designed as an 8-10 story building with the footprint aligning with adjacent retail buildings fronting on Beacon and Harvard Streets. A multi-family residential building is proposed for the east portion of the site and would include 143 apartment units on 14 floors, with co-working space, and café/restaurant or retail space on the ground floor. The co-working space is proposed on the first and second (mezzanine) floors along Pleasant Street. The residential building will be designed for and as indicated by CHR, marketed to, "Empty Nesters" although there will be no formal age restrictions. The buildings will be accessed via an L-shaped new street running through the site from Pleasant Street through Waldo Street to John Street.

The mixed-use proposal includes a two-level underground garage comprising approximately 115,000 square feet that will accommodate an estimated 289 total parking spaces. Parking garage capacity is based on the following utilization assumptions: 74 spaces for hotel use (0.35 per room), 157 spaces for the residential apartments (1.1 per unit), 23 spaces for adjacent residents replacing loss of the surface lot, 10 spaces for commercial space use (1.1 per 1,000 SF), 11 spaces to replace existing spaces in the service

alley, and 14 spaces to replace those taken from converting the municipal lot on the corner of John and Green Streets to a park.

The John/Green Street park will be landscaped by CHR as part of the package of public realm improvements. The underground parking infrastructure allows for approximately 12,000 square feet of landscaped space throughout the site; most of this open space would not be available if parking was located at grade.

40B Proposal

CHR has a Comprehensive Permit application for the subject location currently pending before the Brookline Zoning Board of Appeals (ZBA) filed under MGL Chapter 40B regulations. The 40B proposal includes a 12-story building comprising approximately 347,000 square feet, with 299 residential units and 333 parking spaces (including 41 surface spaces and 292 spaces below grade). CHR's 40B hearing at the ZBA has been continued while the CCSC worked on the overlay district zoning amendment and supplemental development agreements.

CHR is proposing the mixed-use development project contemplated by the proposed overlay district zoning and supplemental development agreements. However, if there are amendments to the zoning that would, in CHR's judgment, result in the mixed-use project being financially or operationally infeasible, this would void the development agreements described in the MOA.

CHR has stated if the overlay zoning warrant articles aren't passed, they will proceed with the 40B proposal under the pending ZBA application. This would likely result in CHR receiving a comprehensive 40B permit for a project of similar size, but with no on-going special permit conditions, significant community benefits, or sustainability commitments as provided with the mixed-use project. CHR's 40B application can move forward despite the Town's temporary 40B safe harbor status (applicable through October 2019) as this designation applies only to new 40B applicants.

Supplemental Controls, Guidelines & Agreements

The proposed special district overlay zoning is accompanied by a set of detailed Design Guidelines, and a Memorandum of Agreement (MOA) and Tax Certainty Agreement between the Select Board and CHR. Collectively these land use regulations, developer agreements, and design guidelines will provide the Town, abutters, and Coolidge Corner residents and business owners with far greater controls, public benefits, and mitigation than would be available under the 40B option.

The overlay zoning and MOA include new requirements beyond those in prior development agreements, providing for more comprehensive sustainable design elements, and a provision for that would allow portions of the underground garage to be used by others and/or retrofitted for other uses should parking demand change over time. These

key provisions of the overlay zoning and the MOA have been negotiated with CHR to ensure a high quality, well-designed project that reflects the Town's commitment to environmental sustainability.

A. Design Guidelines

The Design Guidelines were drafted by the CCSC's Architecture Subcommittee with significant input from CHR's design consultants, led by Cambridge 7 Architects. The guidelines are intended to inform the visual and functional aspects of the buildings, influence their relationship to neighboring buildings, and highlight their impact on the urban fabric of Coolidge Corner. The guidelines cover a range of site and building design features including open space, circulation, entrances, porosity, building mass, setbacks, fenestration, façade materials, rooftops, and sustainability. The Design Guidelines proposed by the CCSC are anticipated to be adopted by the Planning Board at their March 14, 2019 meeting.

The mixed-use project will be designated a Major Impact Project subject to review by a Design Advisory Team (DAT) appointed by the Planning Board. The DAT will advise the Planning Board regarding the Site Plan permit and the ZBA regarding the Special Permit.

B. Memorandum of Agreement (MOA)

The MOA outlines detailed commitments related to the mixed-use development project not appropriate for inclusion in the zoning by-law. The MOA references a description of the proposed development program, preliminary site plans, preliminary building floor plans, a parking plan (structure and utilization), traffic mitigation, public realm improvements and unique provisions to meet affordable housing requirements.

CHR's pending 40B application before the ZBA will continue to be stayed under the MOA through the spring Town Meeting and beyond, assuming the warrant articles are passed without material change. Once the zoning article is approved by the Attorney General, the MOA will be recorded.

C. Tax Certainty Agreement

CHR will execute an agreement that provides for tax payments at the full assessed value of the property for a period of 95 years even if all or portions of the property were to be transferred to a non-profit owner-occupant. It also contains a provision to ensure payment of the occupancy excise tax as long as the building is operated as a hotel. This agreement will be recorded in the property chain of title. The Tax Certainty Agreement is contingent upon approval of the overlay district zoning.

Financial Feasibility Analysis

CCSC members and neighbors were concerned about the size of the proposed mixed-use development, especially the height of the residential building. To address these concerns the Town retained Pam McKinney, a highly regarded independent real estate consultant,

to evaluate the project scale necessary to meet financial feasibility thresholds. Ms. McKinney was previously engaged by the Town to conduct similar feasibility analysis for other major commercial re-zoning proposals.

Over the past 18 months Pam met with the CCSC and Town officials to discuss the financial analysis she performed for several different development program scenarios. During the CCSC review process the residential building plan was modified to reduce the building footprint, height and add commercial space at the ground floor and mezzanine. Ms. McKinney concluded that the mixed-use development program, as revised, was of appropriate scale and design to meet current lender underwriting standards to be financially feasible. She noted the proposed high-rise scale is needed for redevelopment of this in-fill urban site given increased construction costs for Class A buildings, the high cost of providing parking underground, land values in Brookline, rising construction loan interest rates, and the requirements to fund affordable housing and significant public realm improvements.

Bottom line the projected return on cost was deemed adequate, but very tight, in meeting the minimum threshold for financial feasibility. Ms. McKinney also noted that the supplemental components of the development program, including parking and amenity space, are needed to support the premium rental rates required for the proposed hotel and apartment building to be financially viable.

Affordable Housing

This overlay district zoning is being proposed as an alternative to an all-housing 299-unit Comprehensive Permit (40B) project. The 40B project would override, rather than amend, Brookline's zoning controls. In lieu of 40B, the proposed mixed-use project would be subject to all of the provisions of the Town's inclusionary zoning by-law (Section 4.08).

Brookline inclusionary zoning requires that 15 percent of a proposed project's total number of units qualify as affordable. Of the proposed 143 rental units, the 15 percent requirement translates into 21 affordable units to be provided within the proposed building. In turn, 21 affordable units translates physically into two stories of onsite apartments.

The CCSC's public discussions included advocacies for both affordable housing and for possible ways to control and reduce the height and massing of the proposed residential building. As part of those discussions the Housing Advisory Board (HAB) explored several possible avenues for fulfilling the affordable housing requirements under Section 4.08 which could, at the same time reduce the height and massing of the proposed building.

Section 4.08 allows the Town to negotiate "alternative requirements for affordable units", including:

The applicant may make a cash payment to the Town's Housing Trust with a value comparable to the difference between the value of the affordable units required under this §4.08 if provided on-site, and the fair market value of such units free of the [below-

market rent] conditions. The applicant's Affordable Housing Plan shall show that the applicant shall provide a greater affordable housing benefit to the Town than would have been provided on site.

The agreement negotiated by HAB with CHR, and incorporated into the MOA, includes the provision of both on site affordable units and a substantial payment into the Town's Affordable Housing Trust Fund.

Of the 21 required affordable units 11 will be required to be built onsite, which physically translates to approximately one story, though these units will be dispersed throughout the building. In lieu of the remaining 10 affordable units being built onsite, the HAB has endorsed a cash payment by CHR to the Town's Affordable Housing Trust in the amount of \$3,275,000. This lump sum payment would average about \$328,000 for each of the 10 remaining affordable onsite units and would meet the above-referenced alternative requirement of the Town's inclusionary zoning bylaw. The Town's outside consultant, Pam McKinney, has validated this negotiated amount, consistent with the above provision. Twenty five percent of the Trust Fund payment will be due upon issuance of the building permit, with the balance due prior to the issuance of the Certificate of Occupancy. Interest will accrue on the lump sum payment if project completion is delayed.

Equally important to the fair market value of the Trust Fund payment (economic cost to the developer) is the second part of the Section 4.08's alternative requirements, i.e., that the applicant's payment to the Housing Trust "*shall provide a greater affordable housing benefit to the Town than would have been provided on site.*"

The Town's Affordable Housing Trust has deployed funds totaling about \$9 million which has produced 180 affordable housing units in five projects as follows:

- \$1.981 million for 32 new low-income rental units at the BHA's Dummer Street project: \$61,906 per affordable unit
- \$820,000 for 24 new moderate-income owner-occupied units at Olmsted Hill: \$34,166 per affordable unit
- \$829,000 for 31 low-income enhanced lodging house rental units on Beals Street: \$26,741 per affordable unit
- \$1.466 million for 57 low and moderate-income senior rentals at JFK crossing: \$25,719 per affordable unit (groundbreaking scheduled for early 2019)
- \$3.78 million for 20 low-income rental units and 16 moderate-income ownership units at St. Aidan's: \$105,000 per unit

The Trust Fund's average cost per affordable unit produced in these five projects has been approximately \$50,000 per affordable unit.

The Trust Fund's above-described track record indicates that it will be able to create a number of new affordable housing units several times that of the 10 units being removed from the proposed residential building. That is because the Trust Fund's average cost per-unit to create new affordable housing - about \$50,000 over recent years - is a fraction of the \$328,000 per-unit buyout cost. This better affordable housing outcome is achievable by working with non-profit affordable housing sponsors who are able to access state, federal and private housing assistance funds whereby our Housing Trust Funds become the "last dollars in" to make desired affordable housing proposals financially feasible in Brookline.

Compared with the 299-unit Chapter 40B alternative, the mixed-use zoning alternative with the \$3,275,000 Affordable Housing Trust Fund payment has the advantages of far greater Town control over project design and a large annual fiscal benefit. While the mixed-use zoning will eventually produce a multiple of the 11 onsite affordable units, a very large 40B project would, in the shorter run, add more units to Brookline's subsidized housing inventory credit (SHI) as defined by the Commonwealth.

Fiscal Impact

The mixed-use proposal offers significantly better fiscal impact to the Town of Brookline than the 40B option, both in terms of higher tax revenues and lower demand for municipal services.

The hotel building, which would comprise approximately 41% of the total gross square feet of the mixed-use project, will be taxed at a commercial property tax rate that is presently 164% greater than the residential tax rate. In addition, the hotel will pay occupancy excise tax equal to 6.0% of room revenue. Total annual tax revenue generated by the mixed-use project upon stabilized occupancy is estimated to be approximately \$3.36 million. This annual tax revenue would be approximately \$3.0 million higher than current property tax revenue, and \$1.65 million higher than the proposed 40B option. The mixed-use project will also have substantially fewer apartment units than the 40B proposal, resulting in lower demand for schools and other Town services.

Public Benefits

In addition to the significant positive fiscal impacts noted above, the proposed mixed-use project will offer substantial public benefits not available under the 40B proposal. These benefits include the following:

Open Space: Design and aesthetic improvements to the outdoor spaces including open space on site; landscaping and seating at the Town-owned Coolidge Corner Library; and the conversion of surface parking to park at the intersection of John and Green Streets.

Pedestrian Circulation and Safety: Recorded public area easement for pedestrians will be provided connecting the site from Pleasant Street through Waldo Street and the redeveloped property to John Street. Generous sidewalk widths and traffic calming devices will be installed to facilitate pedestrian safety. In addition, CHR has pledged to

use best efforts to secure an agreement providing connection from the hotel lobby to Brookline Booksmith, allowing for direct pedestrian access to/from Harvard Street.

Active Ground Level Retail: A commitment to construct a (minimum) 1,200 square foot space along Pleasant Street to be operated as a public café/restaurant or retail space. In the event this space is not economically viable, the space could be used by the Town at cost.

Community Meeting Space: Access to meeting space in the hotel for occasional use by the Town and Brookline community non-profits for a nominal custodial fee.

Traffic Monitoring: Provision of a traffic impact study and mitigation measures that include annual monitoring for the hotel.

Historic Records: CHR will provide to the Town historic documentation of the Durgin Garage prior to demolition.

Sustainable Design

CHR has agreed to comply with Leadership in Energy and Environmental Design (LEED) Silver v4 standards for both the proposed hotel and residential buildings. In addition, they have agreed to Energy Use Intensity (EUI) targets that exceed the Commonwealth of Massachusetts stretch building codes. (EUI is a measure of energy consumption within a building in a one-year period, typically expressed in kilo-British Thermal Units divided by the building's total gross square feet.) LEED Silver standards encompass building and site design elements, construction materials sourcing and debris recycling, building operations, and transportation. As the project is designed, CHR will seek opportunities for the mixed-use project to further the Town's goal to reach zero emissions by 2050, including evaluating the viability of an all-electric HVAC system.

The mixed-use project's main focus areas of sustainable design that will support LEED certifiability include the following:

Building Design – Façade & MEP Systems: Optimization of energy performance will be the focus in the design of the building's façades and the mechanical / electrical / plumbing (MEP) systems. Façade optimization shall consider passive design principles such as the ratio of glazed to opaque surfaces, thermal performance of wall assemblies, and solar shading. Multiple MEP systems will be evaluated, with greenhouse gas emissions impact included as a key determinant of project suitability.

Sustainable Transportation: The site meets LEED standards in regard to its' close proximity to public transportation. In addition, the project will include bicycle parking facilities to encourage active modes of transit for residents and guests and provide

electronic vehicle (EV) charging capabilities to enable the all-electric future of transportation.

Water Efficiency: The plumbing system in both the hotel and residential buildings will incorporate low-flow fixtures to reduce potable water use and impact on the local watershed.

Sustainable Construction and Demolition Waste Management: The general contractor and subcontractors will be required to divert construction materials and debris away from landfills to recycling and reuse facilities.

Parking

As has been the case in other successful commercial re-zonings in Brookline, there was a range of opinions expressed by CCSC members, neighbors, and area business owners as to how much parking is needed to support the proposed mixed-use development. Factors influencing the supply of parking include potential impact on traffic congestion, unmet parking demand spilling over into nearby lots or on-street spaces, and financial feasibility (i.e., sufficient spaces to support rental of hotel rooms and apartments, including to the target market of empty nesters). Some individuals representing local merchants felt there is currently inadequate parking in the district.

CCSC members and CHR agreed that a longer-term view of parking should be considered given changes in automobile ownership patterns, and growing use of public transit and on-demand car services such as Uber and Lyft. CHR's current mixed-use plan includes 289 parking spaces in the underground garage. As previously noted, total capacity design is based on the following utilization assumptions: 0.35 spaces per hotel room, 1.1 spaces per apartment unit, and 1.1 spaces per 1,000 SF of commercial space, plus allowances for the replacement of spaces for the adjacent resident's surface lot, the pocket park, and the service alley.

CHR believes adequate parking capacity is critical to support the premium rental rates for the hotel rooms and apartments necessary to make the mixed-use project financially feasible. This assumption is supported by real estate consultant Pam McKinney. However, the proposed overlay district zoning imposes no parking space minimums, in total or by use ratios. Importantly CHR has also agreed to provide parking on an unbundled basis to development occupants. This will make possible that excess underground parking, if any, could be made available to other Coolidge Corner residents and businesses, or could be retrofit for other (non-parking) uses. Such a revision would require Town review and approval, with the developer demonstrating sufficient supply to meet demand. CHR cannot revise the development plan in the Special Permit application pre construction phase without financial analysis to reconfirm the required project scale.

Sunset Provision and Timetable

The proposed overlay zoning effectively sunsets (expires) as of June 2020 if the developer

has not by that date begun the special permit process utilizing the overlay zoning. CHR is required to use best efforts to diligently secure all permits, and a special permit application can be denied if CHR delays. Before any existing structures on site can be demolished, CHR must have a building permit and demonstrate their financing is in place to complete the mixed-use project. Upon completion of the mixed-use development, CHR will withdraw its 40B application, and a public easement for pedestrians and Tax Certainty agreement held in escrow will be recorded in the chain of title. Acceptance of the public easement is anticipated at a future Town Meeting following special permit approvals, once the exact location of the buildings and walkways are defined.

Companion Warrant Articles

Additional Warrant Articles were filed that, if passed, would authorize Town Meeting approval for the Select Board to enter into the Memorandum of Agreement, Tax Certainty Agreement and any other related agreements necessary to accommodate the proposed mixed-use project.

ARTICLE 14

Submitted by: Select Board

This Article, if approved, will authorize the Select Board to enter into and/or amend as necessary any new or existing agreements so that the Town receives the full benefits and protections as set forth in the Memorandum of Agreement pertaining to the proposed development at the site described as 8-10 Waldo street, 10-18 Pleasant Street and 16 John Street in Brookline.

A draft of the Memorandum of Agreement and draft exhibits follows. While the exact language is still being negotiated, the agreed-to terms are summarized in the article and reflected in the following draft.

Reading the longer explanation for the related Waldo Durgin Overlay District Zoning Article will be helpful to understand how this article works in concert with other related articles.

It is the intention of the Select Board to have the agreement executed far enough in advance of Town Meeting so as to allow Town Meeting Members to review its terms prior to voting on the series of warrant articles related to this site. Copies of said Memorandum of Agreement, once executed, will be available at the Select Board's Office.

DRAFT MOA 3/6/19

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE TOWN OF BROOKLINE AND CHR PLEASANT, LLC, WALDO STREET, LLC, AND 16 JOHN
STREET REALTY TRUST

This Memorandum of Agreement between CHR Pleasant, LLC and Waldo Street, LLC, Massachusetts limited liability companies with a principal place of business at Chestnut Hill Realty Corp., Inc., 300 Independence Drive, Chestnut Hill MA 02467 and 16 John Street Realty Trust, their successors and assigns (“hereinafter collectively referred to as “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”), (collectively referred to as the “Parties”) is made and entered into this ___ day of _____, 2019, 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:

WHEREAS, CHR seeks to construct a mixed use project, including a select service hotel with up to 210 rooms (the “Hotel Project”) and a primarily residential building with up to 143 units with retail or restaurant space on the ground floor and potentially a shared office use on the first and second floors (the “Residential Project”) and underground parking of approximately 289 parking spaces (the “Parking Garage”)(hereinafter collectively referred to as the “Mixed Use Project”) a summary of the proposed Mixed Use Project and associated concept site and building plans and elevations are attached hereto as Exhibit A;

WHEREAS, the proposed location for the Mixed Use Project is made up of several parcels located at 8-10 Waldo Street, 10-18 Pleasant Street and 16 John Street all as more particularly described in the legal descriptions contained in Exhibit B, attached hereto and incorporated herein by reference (collectively referred to as the “Property” or the “Site” unless otherwise indicated);

WHEREAS, CHR received a project eligibility letter from Mass Development and currently has an application for a Comprehensive Permit for the same Property pursuant to G.L.c.40B pending before the Zoning Board of Appeals to build 299 residential units and 333 parking spaces (the “40B Project”);

WHEREAS, the Parties agree that the Mixed Use Project will benefit the Town in many ways including but not limited to: providing eleven (11) affordable units on-site in the Residential Building; a cash-payment in the amount of \$3.275 Million for ten (10) of the twenty-one (21) required affordable units made payable to the Affordable Housing

Trust Fund; a 95-year Tax Certainty Agreement; improvements to the public realm including a public area easement connecting the Site from John Street through the Property to Pleasant Street (the “Public Easement”), increased open and green space, improved pedestrian and bike amenities and improved design and aesthetics; and access to meeting space for non-profit Brookline community groups;

WHEREAS, the Coolidge Corner Study Committee (“the Committee”) intends to submit a zoning by-law amendment for consideration at the Town Meeting commencing May 21, 2019 that if approved would permit the Mixed Use Project to proceed; and in recognition of the intent and spirit of the vision of the Committee as expressed in the Proposed Zoning Amendment and draft Design Guidelines submitted to the Planning Board for adoption, CHR has expressed its commitment to work with the Town to provide a project with buildings of high quality architecture, urban and sustainable design;

WHEREAS, the Parties agree that the Mixed Use Project is beneficial to the Coolidge Corner neighborhood and Town, but will also have impacts on the Town; accordingly, if CHR proceeds with the Mixed Use Project it agrees to take steps to mitigate the impacts of the Mixed Use Project on the Town, as hereinafter set forth;

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board and the Board of Appeals in reviewing any application for a special permit(s) for the Mixed Use Project;

WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and obligations with respect to the Mixed Use Project and those certain permits and approvals required for the Mixed Use Project, as well as any other agreements between CHR and the Town pertaining to the Mixed Use Project, including a 95-year Tax Certainty Agreement, the Public Easement, all on the terms and conditions hereinafter set forth;

WHEREAS, the Parties contemplate entering into such further binding agreements as reasonably appropriate and approved by both Parties to proceed with the Mixed Use Project and to satisfy the mutual obligations contained herein;

WHEREAS, the Parties have discussed the terms and conditions to be included in the Agreement in connection with the Mixed Use Project and in order to mitigate impact(s) upon the Town;

NOW THEREFORE, in consideration of the promises and mutual obligations of the Parties hereto and upon good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, each of them does hereby covenant and agree as follows:

1. All references herein to the following terms shall have the meanings hereinafter set forth:

- a. All references to the “Proposed Zoning Amendment” shall be construed as a reference to the text of a Warrant Article prepared for the Town Meeting commencing May 21, 2019, a copy of which is attached hereto as Exhibit C, as such text may be amended at Town Meeting, provided that such amendments do not impose burdens on the Mixed Use Project which are materially adverse to the feasibility of construction or to the operational or financial feasibility of the Project in the reasonable judgement of CHR. If any such amendment/s to the text of the Proposed Zoning Warrant Article (Exhibit C) do impose burdens on the Mixed Use Project which are materially adverse to the feasibility of construction or to the operational or financial feasibility of the Project in the reasonable judgment of CHR, and as a result CHR decides in its sole discretion not to proceed with the Mixed Use Project or that the amendment/s prohibits CHR from proceeding with the Mixed Use Project as proposed then CHR shall so notify the Town in writing within forty-five (45) days of the conclusion of Town Meeting, and in such case this Agreement shall immediately become null and void and of no force and effect.
- b. All references to the “Town Meeting Approval Conditions” shall be construed as references to: (i) approval by Town Meeting and the Attorney General of the Proposed Zoning Amendment; (ii) authorization by Town Meeting of the acceptance of the 95-year Tax Certainty Agreement attached hereto as Exhibit E; (iii) authorization by Town Meeting for the Select Board to execute this Agreement and of any other documents or agreements necessary or appropriate for implementation of the Mixed Use Project; (iv) written confirmation from CHR to the Town that the Proposed Zoning Amendment as passed and approved by Town Meeting and the Attorney General will allow it to proceed with the Mixed Use Project, and in each case with challenge periods to all such Town Meeting actions having passed (which, in the case of the Proposed Zoning Amendment, shall be the challenge period under G.L. c. 40, Secs. 32 and 32A) with no challenges by unrelated third parties pending or, if any of such actions is challenged, the same having been finally disposed of in a manner favorable to the Town Meeting action, not later than June 1, 2021.
- c. All references to the “Special Permit and Other Required Approvals” shall be construed as references to such other special permits, variances, licenses and/or other approvals, including but not limited to the acceptance and approval of the Public Easement at a future Town Meeting and any additional special permits under the existing Zoning By-Law and Proposed Zoning Amendment, including building permits and certificates of occupancy, which are necessary, in CHR’s reasonable determination, to allow for the construction and operation of the Mixed Use Project, with all the appeal periods having passed, with no appeals pending or, if any such permit or approval is appealed, the same having been finally disposed of favorably to CHR not later than two

(2) years from the date of issuance of the permit or approval which is the subject of the appeal.

2. CHR agrees to request continuations of the public hearings on the 40B Project until all Special Permit and Other Required Approvals have been met.
3. Upon satisfaction of the Town Meeting Approval Conditions, i) CHR shall immediately record this Agreement with the Norfolk Registry of Deeds and/or Norfolk Registry District of the Land Court, as appropriate and at its own expense and shall provide evidence of such recording to Town Counsel; and ii) CHR and the Town shall execute the 95-year Tax Certainty Agreement and the Public Easement and CHR shall deliver the same to Town Counsel or a mutually agreed upon escrow agent to be held in escrow pursuant to mutually agreed upon conditions under the provisions of this Agreement (the "Escrow Agent"). In the event the Town Meeting Approval Conditions are not satisfied by June 1, 2021, this Agreement and the obligations set forth in the 95-year Tax Certainty Agreement and Public Easement shall become null and void and of no force and effect.
4. If CHR decides to apply for a Special Permit for the Site that includes less than 86,250 square feet of underground parking infrastructure ("Smaller Parking Area"), then CHR agrees to appear at a duly noticed public hearing before the Economic Development Advisory Board (EDAB) to review the financial feasibility of the Mixed Use Project with Smaller Parking Area prior to applying for a Special Permit. Based on the information presented by CHR 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 size of the building area (not including parking) is reasonable or not.
5. Upon satisfaction of the Town Meeting Approval Conditions, CHR agrees to use best efforts to diligently apply for all permits and approvals necessary to proceed with the Mixed Use Project subject to financing and economic conditions.
6. In the event that the Special Permit and Other Required Approvals are satisfied, CHR shall deliver notice thereof to Town Counsel or the Escrow Agent, as the case may be, who shall thereafter record with Norfolk Registry of Deeds and/or the Norfolk Registry District of the Land Court, as appropriate, the 95-year Tax Certainty Agreement and the Public Area Easement. In the event that the Special Permit and Other Required Approvals are not satisfied, or CHR does not proceed with the Mixed Use Project, CHR or the Town may deliver notice to the Escrow Agent who shall thereafter immediately return the original copy of the Tax Certainty Agreement and the Public Area Easement and simultaneously notify the Town that such original was returned to CHR. In such case where the Tax Agreement and Public Area Easement are returned to CHR, all obligations set forth in this Agreement shall become null and void and of no force and effect.

7. In the event that the Special Permit and Other Required Approvals are satisfied, CHR shall immediately deliver notice to the Zoning Board of Appeals with a copy to Town Counsel withdrawing its Comprehensive Permit application for the Property.
8. Voluntary Special Permit Conditions: CHR hereby acknowledges that the following conditions of the Special Permits for the Mixed Use Project shall be acceptable to CHR and shall not be grounds for objection to the Special Permits granted by the Brookline Zoning Board of Appeals:
 - a) The approved Special Permit plans are titled X, and dated Y. Related to these plans, the following use restrictions are noted:
 - i. The required 1,200 sq. ft. minimum retail or restaurant space on Pleasant Street shall be open to the general public without requiring a membership fee, so long as economically viable (Pleasant Street Retail Area). If this Pleasant Street Retail Area, or any portion thereof, remains vacant and not under agreement for more than a year, the space shall be made available to the Town of Brookline for an art gallery or other Town use approved in advance by CHR with a short-term Use and Occupancy Agreement not to exceed six (6) months, at a maximum fee to cover the property taxes, insurance, and utilities.
 - ii. The Residential Project does not include more than 132 market-rate units (hereinafter defined as units not subject to the requirements of Section 4.08 of the Zoning By-Law).
 - iii. The duration of overnight occupancy of the hotel rooms shall not exceed ninety (90) consecutive days as to each hotel room.
 - iv. Public meeting space in the hotel will be made available to the Town and Brookline community non-profits upon payment of related custodial fees, as scheduling permits. In addition to other arrangements mutually agreed to, the manager of the hotel building shall accommodate a minimum of 6 times per year reservation requests by Brookline community non-profits made more than six (6) weeks.
 - v. For all users of the Mixed Use Project, parking fees must be separate (unbundled) from any rental, lease, sale, employment, contract, or other arrangement that permits a user to occupy the building.
 - vi. In order to convert any of the parking area(s) to another use will require a modification to the Special Permit/s.

- vii. In addition to the one hundred and thirty two (132) Market Rate Units, eleven (11) residential units shall be provided on-site serving households earning up to 80% of area median income. In compliance with Section 4.08(5)(b) of the Town’s Zoning By-Law, these on-site units shall consist of six one-bedroom units and five two-bedroom units, all of which will shall meet the requirements of Zoning By-Law Section 4.08 and shall follow the Department of Housing and Community Development Local Initiative Petition (LIP) Guidelines, and adhere to all requirements necessary to ensure that these 11 on-site units are included on the State’s Subsidized Housing Inventory (SHI) and are permanently affordable.

- b) CHR shall make a payment to the Town’s Affordable Housing Trust Fund in the amount of \$3,275,000 for the buy-out of ten (10) of the twenty-one (21) required on-site affordable units (the “Partial Buy-Out”). Per Section 4.08 of the Town’s Zoning By-Law, this obligation shall be secured via a recorded legal instrument or letter of credit satisfactory to the Community Development Division prior to issuance of a building permit. Twenty-Five percent (25%) of the total Cash Payment will be made upon issuance of a non-appealable building permit with the balance due prior to the issuance of the Certificate of Occupancy. Early advances on the 75% final payment may be made on a mutually agreed upon basis between the Housing Advisory Board and CHR with incentives for early payments to be negotiated in good faith. Any unpaid balance 48 months following an appeal-free Special Permit shall accrue at an annual interest equivalent to the most recently published 10-year U.S. Treasury index.

As agreed to by the Housing Advisory Board on October 20, 2018, the Partial Buy-Out will serve as full compliance with the affordable housing requirements relating to on-site units under Section 4.08 of the Zoning Bylaw, subject to the following buy-out schedule:

Buy-Out for each Unit not provided on-site	Household Income 100% of Area Median	Household Income 80% of Area Median
1 Bedroom	Four units @ \$300,000 per unit ea. = \$1,200,000	Two units @ \$325,000 per unit ea. = \$650,000
2 Bedroom	Three units @ \$350,000 per unit ea. = \$1,050,000	One unit @ \$375,000 per unit ea. = 375,000

Other than the above onsite affordable unit 'buyout' provision, the proposed development will comply with all other provisions of Section 4.08 of the Zoning By-Law (Inclusionary Zoning).

- c) All illuminated exterior signage shall be designed and installed with the ability to be automatically dimmed after Midnight.
- d) CHR shall not commence demolition of any existing structure at the Site, until a building permit or permits of the proposed project is issued with evidence reasonably satisfactory to the Planning Director and Town Counsel, provided on a confidential basis, that financing is, or will be in place for construction of the entire Mixed Use project.
- e) Prior to issuing a Building Permit CHR shall provide evidence to the Building Commissioner that the following sustainable design elements have been incorporated into the Project: (i) LEED Silver Certifiable; and (ii) Energy Use Intensity ("EUI") building efficiency target ranges that are more efficient than otherwise required by the building code applicable to the Town.
- f) Two (2) years from the date the last Certificate of Occupancy for the Mixed Use Project is issued CHR shall provide a letter from a qualified licensed professional to the Building Commissioner that reports the EUI for the Mixed Use Project.
- g) Unless otherwise agreed to by Preservation Staff, prior to the issuance of a demolition or other building permit, the applicant shall provide historic documentation of the Durgin Garage at 10-18 Pleasant Street to Brookline Preservation staff.
 - i. This documentation shall include:
 1. background information: the historic and common names of the property, documentation of date of construction, complete stylistic and/or architectural description of the resource including documentation of changes that have occurred over time, description of architectural and/or associative significance using reliable sources, contextual information that equates the significance of the property, original and current function, ownership/occupancy history, and the name and biographical information of architect and/or builder.
 2. drawings, maps, and historic images: site plan showing footprint of the subject resource and surrounding buildings; sketch floor plans of existing conditions of all levels of each building, or copies of original plans if available (8 ½ x 11

format or digital format); if available, clear copies of historic photographs; USGS quad/topo map indicating location of property with UTM's;

3. photographs of: overall site showing context and setting; each exterior elevation of subject property; detail images of significant character-defining features, such as windows, doors, eave details, porches, balconies, etc.; general views of all significant interior spaces; detail images of significant structural details if building is of a rare construction method (i.e. post and beam, balloon framing, mortise and tenon joinery, etc.). All photos must be identified with a list of the photographs indicating property name, address (city, county), date of photograph(s), and view; unmounted.
 - ii. All non-photographic documentation shall be submitted in 8 ½ x 11 format and printed on archivally stable paper (25% cotton bond or better) and provided in digital format (min 300dpi).
 - iii. All photographic documentation shall be provided in 5x7 or 8x10 format using archival quality (hand-processed and/or printed on Fiber-based paper or Resin-coated paper which has been washed with a hypo-clearing or neutralizing agent) paper meeting a 75 year standard, and provided in digital format (min 300 dpi).
- h) To ensure compliance with the Town's Transportation Demand Management Policy, the property owner shall be subject to traffic monitoring and annual reporting to the Town of Brookline, including the following features: (i) No later than thirty (30) days prior to the anticipated issuance of a building permit for the Proposed Project, a TDM plan shall be submitted to the Town, for review and approval by the Director of Transportation/Engineering and the Planning and Community Development Director (or designee); (ii) In connection with preparation of the TDM plan, CHR shall provide information as to its existing policies relating to employee transportation then in effect, and the mode use resulting from such existing policies; (iii) in connection with preparation of the TDM plan, CHR shall propose vehicular mode share goals for each user type; (iv) An annual monitoring and reporting program will commence after receipt of the final Certificate of Occupancy for the Proposed Project. If the final Certificate of Occupancy for the Proposed Project is issued between September 1 and February 29, the monitoring will take place during the months of September or October and a report provided to the Town no later than November 30. If the final Certificate of Occupancy for the Proposed Project is issued between March 1 and August 31, monitoring will

take place during the months of April or May and be reported to the Town no later than June 30; (v) The monitoring program will be based on traffic counts and employee surveys as to vehicle, transit, pedestrian, and bicycle usage to the Proposed Project. The monitoring program will provide detailed information on the travel modes to work and overall transportation characteristics by type of traveler (employee, visitor, etc.). The survey instrument to be used for mode share monitoring will be provided to the Director of Transportation/Engineering for approval prior to conducting the survey. The employee survey (which may be conducted through electronic means) will be sent out to all employees, with a goal of securing a 60 percent minimum response rate. A guest/visitor survey shall be conducted during normal business hours, with a goal of securing at least 200 guest/visitor surveys. Notwithstanding the foregoing, any annual monitoring requirements shall apply only to non-residential uses.

- i) In the event the employee vehicular mode share is greater than the target vehicular modes in the TDM plan, then the TDM plan shall be modified to incorporate any reasonable requests of the Director of Engineering/Transportation within sixty (60) days after he/she issues his/her determination. Failure to issue such a determination within sixty (60) days of receiving the Annual Report shall be deemed acceptance of the Annual Report and the existing provisions of the TDM plan. 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, and during such process the applicant will not be considered out of compliance with Section 5.09 of the Zoning By-law. Following the issuance (or deemed issuance) of the foregoing determination, the Building Department shall

use its best efforts to issue the annual permit for the Transportation Access Plan Agreement under Section 5.09 of the Zoning By-law with appropriate due diligence.

- j) The Project shall contain 14 underground parking spaces reserved for commercial merchant parking during the day and Brookline residents during the evening. In addition to these spaces, up to 33 underground parking spaces may be rented to users of abutting properties. Following the first annual TAPA report, and upon positive recommendation by the Transportation Division, additional spaces may be rented to offsite users.
- k) A Certificate of Occupancy for the Residential Project shall not be issued until the Hotel Project is [weather-tight].

9. Additional Voluntary Special Permit Conditions: In the event that any and all Town approvals required for improvements on public property and public rights-of-way are received, including the Town's acceptance of the Public Area Easement and the Board's execution of same when requested by CHR (the "Additional Public Benefits") then CHR agrees to the following additional Special Permit Conditions to provide the Additional Public Benefits in order to mitigate the impacts to the Town and the public from the Proposed Project :

a) On-site and off-site pedestrian and landscaping improvements equivalent to those shown and diagrammed on Exhibit A;

b) Additional pedestrian, bicycle, and traffic infrastructure mitigation may be required subject to further study and analysis during the Major Impact Project process. Such mitigation is anticipated by CHR to include the following: (i) providing a space on private property for a shared bicycle share station; (ii) funding such shared bicycle station for two years; (iii) providing 25% level concept plans for expanding the sidewalk on the east side of Harvard street from Beacon to Green Streets; (iv) providing 25% level concept plans for bike lanes on John Street between Babcock and Pleasant Streets

c) Enter into a Memorandum of Understanding with Revocable License and granting a license to CHR to: (i) install a landscaping irrigation system and landscaped area at the Coolidge Corner Branch of the Public Library on Pleasant Street as proposed on Exhibit X, and (ii) remove the 14 parking meters and hardscape at the municipal parking lot on the corner of John and Green Streets and provide landscaping (or equivalent funding to be determined by the Director of Public Works) in order to create a small park as proposed on Exhibit Y. The work required as stated above is currently estimated at \$300,000.

d) Prior to receiving a Certificate of Occupancy for the Residential Project CHR shall provide a permanent Public Area Easement to the Town totaling approximately 1,000 +/- square feet in the location on the Property as generally depicted on Exhibit E with terms and conditions that retain reasonable site control for CHR (the "Public Area Easement ");

10. Access Agreement:

a. No later than 60 days prior to applying for the Special Permit(s) for the Proposed Project, and using best efforts CHR shall offer an Access Agreement with the existing tenant of 279 Harvard Street subject to terms and conditions agreed to by CHR and the Brookline Booksmith or other similar commercial bookstore tenant operating its business at 279 Harvard Street (the "Adjacent Tenant") in order to facilitate a connection to the

proposed hotel from and through this commercial property that permits the Adjacent Tenant to utilize the connection for its customers and also to provide access for the hotel guests through the Bookstore to Harvard Street (“Hotel and Bookstore Access”). If an Access Agreement is signed by all required parties to pursue a Hotel and Bookstore Access, then plans submitted as part of the Special Permit shall reflect this Hotel and Bookstore Access.

- b. It is understood that the Adjacent Tenant shall be required to get any necessary approvals from the Landlord/Owner of 279 Harvard Street or any of its mortgagee(s) as may be required to utilize or accept the Access Agreement. CHR agrees to include a mutual cooperation clause in the Access Agreement requiring that CHR and the Adjacent Tenant shall at all times cooperate in good faith with respect to both the development of the Mixed-Use Project; and in obtaining all permits or other approvals necessary to utilize the Hotel and Bookstore Access, including, but not limited to, a special permit for use of a common entrance or exit.
- c. Any Access Agreement shall be registered at the Registry of Deeds for both properties and shall take effect at the time of a Certificate of Occupancy for the Hotel Project, and remain in place for a minimum of two years from Certificate of Occupancy.

11. Undertakings of the Town:

On _____, 2019 the Select Board voted favorable action on the Proposed Zoning Amendment, 95-year Tax Certainty Agreement and a Warrant Article related to the general authorization for this Memorandum of Agreement subject to the terms and conditions of this Agreement and shall convey its vote(s) and favorable report to the Advisory Committee and in the Combined Reports which shall be delivered to all Town Meeting Members. The Select

Board or its designee shall also file a Warrant Article for consideration at a future Town Meeting in order for the Board to accept the Public Easement offered by CHR. The Select Board shall also, to the extent appropriate, cooperate with CHR and shall encourage Town staff to cooperate with CHR in reviewing in a timely and expeditious manner any required permits and approvals for the Project. The Select Board shall support and undertake action necessary to obtain the approval of the Attorney General of The Commonwealth of Massachusetts of the Proposed Zoning Amendment by Town Meeting.

11. Miscellaneous:

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- a) It is the intent of the Parties that the obligations in this Agreement shall run with the land comprising the Property and be binding upon and inure to the benefit and burden of CHR and its heirs, successors and assigns during their respective periods of ownership of the Property and shall survive any transfer of the Property or any portion thereof. CHR agrees to provide a copy of this Agreement to any transferee of the Property or any portion thereof.
- b) Each of the Parties signing below hereby represents and warrants that it is authorized to enter into this Agreement and execute the same on behalf of, and to bind legally, such Party.
- c) All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 0 2445

with a copy to:

Town Counsel
Office of Town Counsel
333 Washington Street
Brookline, MA 02445

If to CHR addressed as follows:

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Ed Zuker, President
Chestnut Hill Realty Corp., Inc.
300 Independence Drive
Chestnut Hill, MA 02467

And a copy to:

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

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means. If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation: acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation, strikes, lockouts; actions of labor unions; condemnation, laws or orders of governmental or military authorities, requirement of statute or regulation, action of any court, regulatory authority, or public authority having jurisdiction; or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of CHR only, the term force majeure shall include the denial of, refusal to grant or appeals of any permit or approval of any public (including any required Town Meeting

approvals) or quasi-public authority, official, agency or subdivision and any litigation brought by a third party relating to such particular obligation.

- d) Failure by CHR to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until CHR fails to commence to cure, correct or remedy such failure within sixty (60) days of the receipt of written notice of such failure from the Town to CHR and thereafter fails to complete such cure, correction or remedy within ninety (90) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such ninety (90) day period, within such additional period of time as is reasonably required to remedy such default, provided CHR exercises due diligence in the remedying of such default and notifies the Town of the steps being taken to remedy the default.
- e) The Parties agree that time is of the essence with respect to the obligations of the Parties as set forth herein. Subject to market conditions and financing availability CHR agrees to use best efforts to diligently apply for the necessary special permits and then expeditiously as possible after the issuance of the Special Permit(s) for the Proposed Project to apply for all necessary building permit(s) and to diligently commence work on the Proposed Project. The Town agrees to request an expedited determination from the Office of the Attorney General with respect to any Proposed Zoning Amendment.
- f) The obligations of CHR do not constitute the personal obligations of CHR's employees, directors or officers and the Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. In no event shall CHR be liable for any incidental, indirect, punitive or special or consequential damages.
- g) Each Party agrees from time to time, upon not less than ten (10) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement (or, if not, specifying the respects in which the requesting party is not in compliance in reasonable detail), in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Property and any component of the Proposed Project. Upon full performance by CHR of its obligations hereunder, the Town, at CHR's request shall issue a statement in a form appropriate for recording with the Norfolk County Registry of Deeds and filing with the Norfolk Registry District stating that all of the terms of this Agreement have been satisfied.

- h) Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned.
- i) This Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts and the rights and obligations of the Parties shall be governed by Massachusetts law. Any action to enforce the terms of this Agreement shall be brought in Norfolk County Superior Court.
- j) If any provision of this Agreement or the application of such provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.
- k) This Agreement and the accompanying PILOT Agreement set forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Selectmen and CHR. The Parties do not intend for any third party to be benefited hereby.
- l) This Agreement and the accompanying PILOT shall be deemed null and void and of no force and effect if Town Meeting Approval Conditions are not met.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

CHR (all legal entities will be added)

Town of Brookline
Board of Selectmen,

By _____
President

Dated: _____

Dated: _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2019, personally appeared the above named _____, _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as Manager of _____, LLC.

Notary Public
My Commission Expires:

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

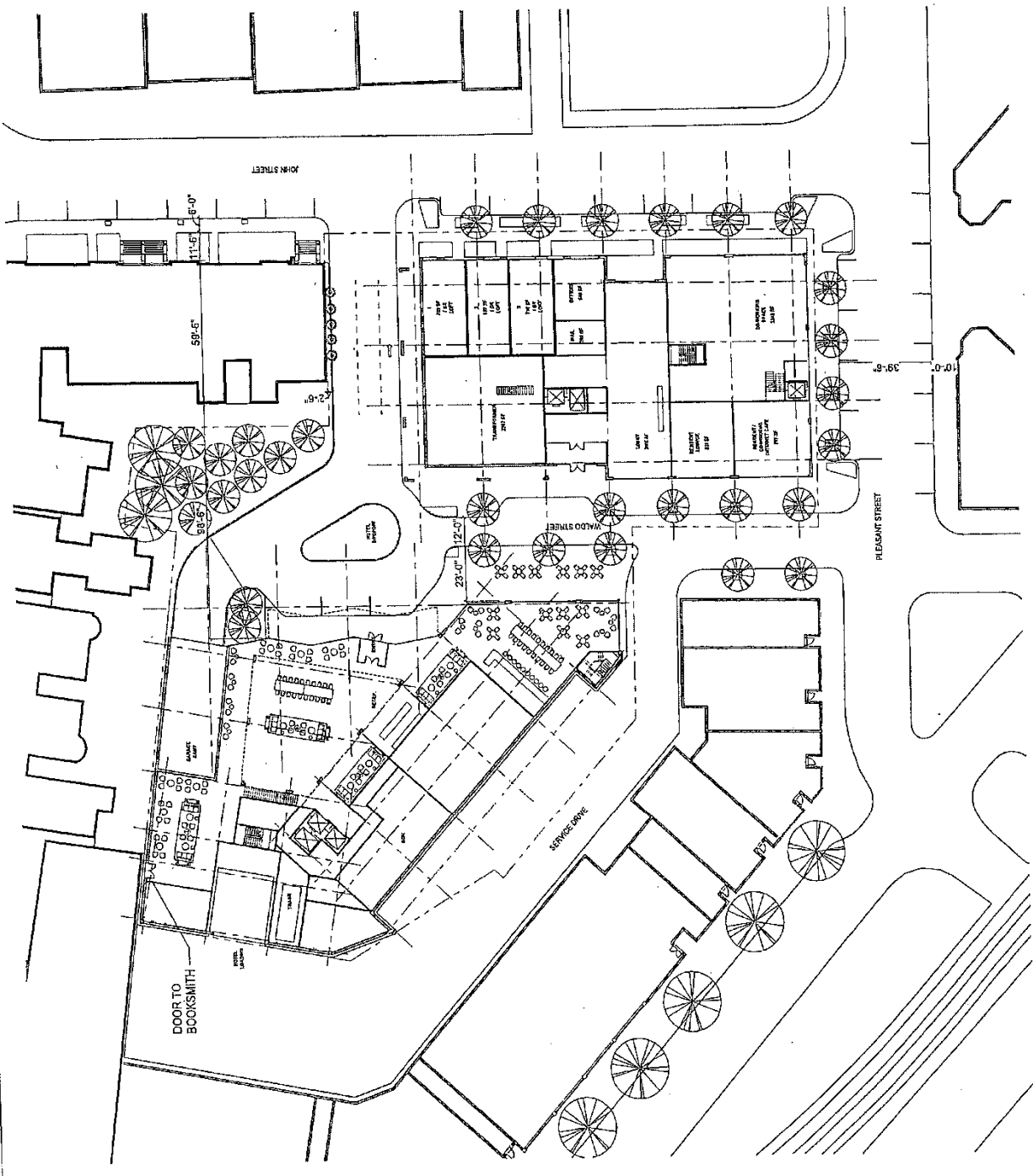
I hereby certify that on this _____ day of _____, 2019, personally appeared the above named _____, _____, and _____, personally known to me and who executed the foregoing as their free act and deed as members of the Board of Selectmen of the Town of Brookline acting on behalf of the Town of Brookline.

Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this ____ of _____, 2019.

Notary Public
My Commission Expires:

NOTE: FOLLOWING ARE DRAFT EXHIBITS AND/OR
PLACEHOLDERS TO BE REPLACED AND/OR ADDED TO
PRIOR TO FINAL EXECUTION.

Placeholder - Part of site & floor
 Exhibit A. All plans &
 concept elevations to be
 attached to describe "Project"



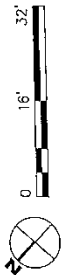
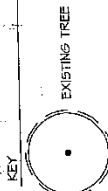
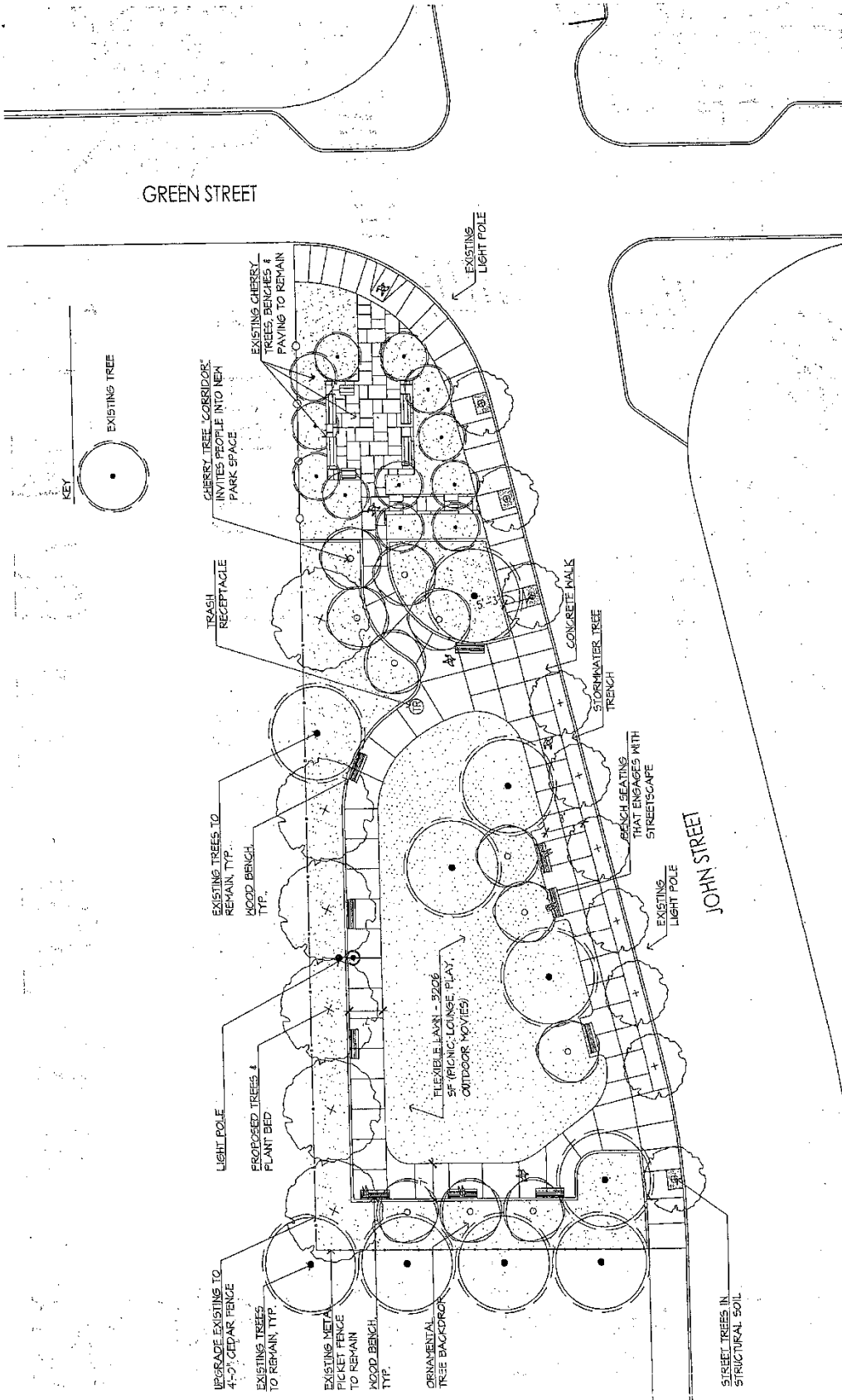
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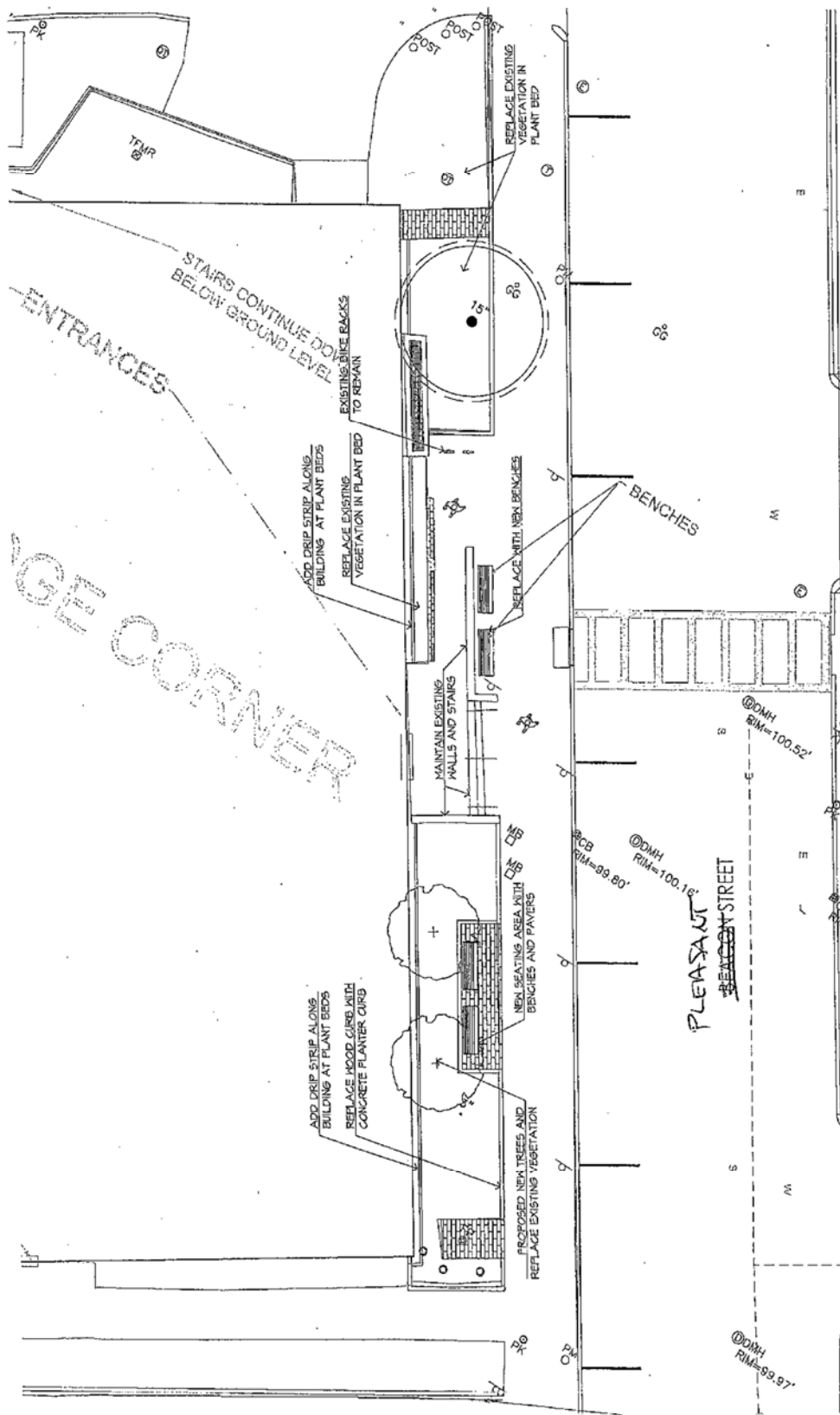
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pages



Placeholder
for
Exhibit X

JOHN STREET PARK : FLEXIBLE OPEN SPACE



Placeholder
for
Exhibit Y

COOLIDGE CORNER LIBRARY : FRONT ENTRANCE IMPROVEMENTS

ARTICLE 15

Submitted by: Select Board

This Article, if approved, will authorize the Select Board to enter into a Restrictive Covenant, entitled “Tax Certainty Agreement” and/or any related agreements. Once recorded, this Tax Certainty Agreement would run with the land and provide tax certainty for real estate taxes and excise hotel room taxes, for a 95-year term pertaining to the proposed development at the site described as 8-10 Waldo Street, 10-18 Pleasant Street and 16 John Street in Brookline.

The current proposed uses are a hotel and residential building, but future uses could potentially include ones exempt from taxation, such as would be the case if either building were used for university housing. Although no such use is currently contemplated, this Tax Certainty Agreement would ensure a full payment in lieu of taxes to the Town.

Reading the longer explanation for the related Waldo Durgin Overlay District Zoning Article will be helpful to understand how this article works in concert with other related articles.

ARTICLE 16

Submitted by: Chris Dempsey, TMM6

In 2016, the Massachusetts General Court enacted the Municipal Modernization Act. One of the provisions of that law authorized the creation of parking benefit districts (PBDs). Approving this warrant article would create a PBD in Brookline Village and an associated Brookline Village Parking Benefit District Advisory Board (BVPBDAB), which will make recommendations to the Select Board about rates and uses of funds, within the requirements of the law. The BVPBDAB is composed of residents and businesses representing the area in which revenues are raised, but the role of this Advisory Board is purely advisory; any rate changes and all expenditures must still be approved by the Select Board.

A PBD is a geographical area in which a portion of parking revenues generated in that area are used to finance area improvements through a dedicated fund. Communities such as Arlington (MA), Pasadena (CA), Austin (TX), and Boulder (CO) have all successfully employed versions of PBDs to better manage parking supply and to generate resources to support improvements to a commercial area.

Not all of the parking meter receipts collected in a PBD have to be returned to the PBD. The warrant article’s proponents are proposing only that *incremental* increases in parking revenues be dedicated in this way. All *existing* parking revenues would flow to the town’s general fund, as they do today. For example: today’s parking meter rate in Brookline Village is \$1.25 per hour. The BVPBDAB could recommend an increase in rates to \$1.50 per hour. In this case, \$1.25 would flow to the town’s general fund, as it does today, and \$0.25 would flow to the Brookline Village PBD account. These funds shall be placed in a distinct revolving account which shall carry over year-to-year.

PDBs do not include revenue from parking violations or parking permits, which would remain unchanged in this warrant article.

Revenue from the PBD would be spent in the area in which it is raised (i.e., Brookline Village) on improvements that enhance the accessibility and desirability of the district and that are not currently provided by the Town to the extent desired by residents and businesses in the district. The BVPBDAB shall recommend an annual budget, parking rates, and expenditures in the PBD to the Select Board for approval, will make recommendations related to parking/traffic operations and temporary or permanent physical changes to the Transportation Board and/or DPW as appropriate, and make recommendations related to public art to the Arts Commission.

The state law authorizing PBDs permits funds to be spent only on the following uses: “acquisition, installation, maintenance and operation of parking meters and other parking payment and enforcement technology, the regulation of parking, salaries of parking management personnel, improvements to the public realm, and transportation improvements, including, but not limited to, the operations of mass transit and facilities for biking and walking.” The BVPBDAB could recommend projects and improvements such as enhanced winter lighting, flowers and greenery, public art, and improvements for pedestrians and cyclists.

In summary, this article creates the Brookline Village BPD and the BVPBDAB, appointed by the Select Board. The BVPBDAB may recommend increases or changes to parking meter rates, any of which must be approved by the Select Board. Any incremental funds generated in the PBD shall be placed in a distinct revolving account, which shall carry over year-to-year. The BVPBDAB shall develop an annual budget and recommendations for expenditures within the PBD, which shall be approved by the Select Board.

Questions:

What about other commercial districts such as Coolidge Corner, Washington Square, St. Mary’s, and Putterham Circle?

No changes are being proposed for those areas at this time. Depending on the success of the PBD in Brookline Village, PBDs in those other commercial areas could be explored in the future. Any changes would need to be approved by Town Meeting.

Why does Brookline Village need a parking benefit district?

A PBD attempts to do two things: (1) better manage precious parking resources in commercial areas, and (2) raise revenue that can be reinvested in the vibrancy and vitality of a commercial district. A PBD engages residents and businesses on how to make parking easier and more efficient, and what enhancements to a district would deliver the most benefits.

While this article does not change the governance of meter rates or parking policies, it does attempt to provide business owners and residents with a more formal say in how funds are generated and spent. Under this article, the Select Board retains full authority to set parking meter rates. This warrant article also provides the Select Board the ability to spend resources dedicated to the PBD by Town Meeting (through this warrant article) according to the recommendations of the BVPBDAB. Town Meeting retains full rights to change this governance in the future.

How would the PBD Revolving Fund work?

The revolving fund would be listed in the special revenue fund section in the budget book under DPW, reporting every year to TM the fiscal year end and calendar year end balance, and a one line description of the fund. Budgets for this fund would be recommended by the BVPBDAB, approved by the Select Board, administered by the Transportation Division, and reported to Town Meeting.

How would expenditures from the PBD Revolving Fund work?

It is anticipated that the annual budget to the BVPBDAB and Select Board would be detailed like other Division-level budgets (personnel, services, supplies, other, capital), but within those subsets staff would have leeway. Some contracts that require bidding go to the Select Board, but many smaller contracts and expenditures do not and the Select Board does not want to or need to approve every expenditure (for example, staff could buy some chalk and banners for a public arts event in the district without requiring Select Board approval).

What expenditures would be allowed from the PBD?

Expenditures could include various improvements that enhance the vitality of the district. Some examples could include, but would not be limited to: sponsoring temporary or permanent public art in the district, piloting a new parking space tracking system that monitors and reports on parking space availability, renovating a pocket park, adding bicycle corrals, piloting additional seating furniture, wayfinding signs, parking signage, lighting on or lighting public ways, murals on or viewable from public ways, public trash receptacles, improving public walkways or public easements via hardscape materials or covered areas, bus stop amenities, pedestrian crossings, fencing or bollards on public ways or easements, stormwater treatment, ADA improvements to the public realm, adding outdoor seasonal plantings on or viewable from public ways, paying for town services to support a special event like closing a street or police detail or DPW installing banners or assisting with the safe installation of temporary or permanent public art, studies for parking management or ped/bike/parking/traffic counts, customer surveys, marketing and communications funding for the district, information kiosks for community events, electrical upgrades for periodic event use or public art/ tree lighting, sustainable technology like solar panel shade canopies, shared bike/scooter/car facilities, designated drop-off/pick-up areas, educational/ healthy living feedback projects, improvements to emergency communications infrastructure from public areas, historic information or displays, map displays for parking/ shopping/ civic/ cultural destinations, and activities or physical improvements that support state designated cultural districts.

ARTICLE 17

Submitted by: Neil Gordon, TMM1

Fourteen years ago, Town Meeting added Section 6.8.2 to the Town Bylaws, establishing a Select Board appointed committee, the Review Committee for the Naming of Public Facilities, to review all proposals for naming public facilities* (except for rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees).

The Naming Committee is charged with reviewing naming proposals and reporting its recommendations, presumably to the Select Board, the Advisory Committee and to Town Meeting, and is further authorized to initiate its own proposals for naming public facilities. Recommendations are subject to criteria established by the Naming Committee and approved by the Select Board.

The proposed amendment to Section 6.8.2 to the Town Bylaws adds an important point of view that is currently lacking in the statutory composition of the Naming Committee, and one that requires no further explanation. Because nearly all of the members of the Naming Committee are as designated by the Bylaw, the proposed amendment to Section 6.8.2 also seeks to allow (but not require) the Select Board to expand the Naming Committee to as many as seven members.

*In the past five years, the Naming Committee has met four times:

August 12 and October 22, 2014 - Question of renaming the field at Cypress Playground the Thomas P. Hennessey Fields at Cypress Street Playground.

August 16, 2016 - Question of naming a square near 126 Cypress St in honor of WWII veteran Walter F. Brookings, discussion of Judge Henry Crowley Park at St. Mark's Square, and discussion of Hickey Triangle.

April 4, 2018 - Review and public hearing on the renaming of the Devotion School, and review and public hearing on a resolution calling for consideration of renaming Washington Street.

ARTICLE 18

Submitted by: Commissioner of Public Works

In late 2018, the Parks and Recreation Commission established a Green Dog Subcommittee, comprised of both Commissioners and members of the public, to evaluate the Town's off leash dog program, known as the Green Dog Program. The program was initially established following a Special Town Meeting held by the Town of Brookline in May 2006, whereby Town Meeting voted to authorize the Park and Recreation Commission to establish an off-leash dog program on parkland, under their jurisdiction, in accordance with certain conditions. The Commission held 2 years of public meetings, conducted a pilot program and public survey and, with the help of many citizens, officially rolled out the Green Dog Program.

The Parks and Recreation Commission designates off-leash areas at specified parks and hours, subject to dog owner etiquette and compliance, registration, an annual fee and on-going evaluation. The Commission and Director of Parks and Open Space have established clear rules for participation in the program that are made available in multiple formats (web, print, signage etc..) for all dog owners to follow. In addition to providing an opportunity for dogs and their owners to exercise in the parks and connect with their neighbors, one of the goals of the program was to improve compliance with the leash law town-wide (which was at the time quite neglected) by allowing designated parks and times that dogs could legally run off leash. It was quite successful at the beginning and became a model for other communities. Over the years the Commission has added or removed parks, changed hours and amended the rules and regulations and listened to citizen ideas as they relate to the program.

There has, however, been a decline in compliance with the leash law, not only in Green Dog designated parks, but also in parks and playgrounds that do not allow dogs off leash, and the Commission is concerned about public safety, protecting the Town's assets from damage and overuse, and protecting the interests of all our public space users. There have also been increased complaints regarding off leash dogs that are neither members of the Green Dog Program nor belong to residents. These concerns led to the creation of the subcommittee charged with evaluating everything from the goals and objectives of the program to park conditions, complaints, staffing, fees, enforcement, rules and regulations, education, program benefits and communication plan, including signage. The changes proposed as part of this warrant article are the result of the committee's recommendations and review by Town Counsel's office. The intent is to 1.) clarify that dogs who run off leash in the designated off leash areas during off leash times must be registered and follow the established rules and regulations and 2.) allow appropriate DPW code enforcement personnel to enforce the leash law.

The addition of the proposed language: **“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” is intended to clarify that dogs must be registered and have proof of registration in order to participate in the off leash program (Green Dog Program) and that a requirement of participation is compliance with the rules and regulations. The success of the program and protection of the Town’ capital assets depends upon respectful sharing of these public spaces and adherence to the rules.

Enforcement of the leash law has become a significant problem town-wide in public spaces. The subcommittee would like to see greater enforcement by the police department and enable code enforcement personnel within the Department of Public Works to be able to enforce section 8.6.7 of the dog control bylaw which relates to both the leash law and removal of dog waste. Under *Article 10.2: Prosecutions and Enforcement* section 8.6.7 has been included in Part VIII-Public Health & Safety. This allows the Commissioner of Public Works to assign Visitor Services and Code Enforcement personnel to assist with compliance and enforcement initiatives as needed. Clarification of the bylaw and the opportunity for DPW visitor services and code enforcement personnel to help protect the parks and public assets are recommended by the subcommittee and Park and Recreation Commission and supported by the Commissioner of Public Works.

ARTICLE 19

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

Tobacco is the only product that, when used as intended, will kill you. Most adults know this, so tobacco companies target youth and other vulnerable populations, in order to addict them as new consumers of their products.

By utilizing candy and sweet-like flavoring, tobacco companies conceal the harsh flavor and to a lesser extent detrimental effects of tobacco and nicotine. Users of flavored tobacco are more likely to start young and are less likely to ever successfully quit.

In an effort to prevent new tobacco starts, cities and towns have started to ban the sales of flavored tobacco products. San Francisco was the first city to do this, in 2017, and the town of Needham became the first in Massachusetts earlier this year.

This warrant article proposes a ban on the sale of flavored (including menthol) tobacco products in Brookline.

ARTICLE 20

Submitted by: Rebecca Stone, TMM 3

If approved by Town Meeting, this Warrant Article would make the Town of Brookline the first municipality in the country to provide free menstrual hygiene products in its public buildings. With this article, Brookline has a chance to be a leader, again, and to address an issue gaining recognition as fundamental to the just treatment of women and the goal of gender equity.

While some U.S.cities and states have mandated free menstrual hygiene products in public schools and/or prisons and homeless shelters, these policies address only a piece of the problem, focusing more narrowly on how affordability intersects with equity and access. This article embraces the

notion that affordability is just one aspect of the larger issue, and that gender equity in public health requires access for all to these basic public hygiene products.

The article is brought on behalf of a group of students at BHS who first raised the issue in the *Sagamore: Stigma around periods produces undue shame* (Spring 2017). The students contend that a natural bodily function regularly experienced by 52% of the population should be treated not as an issue only for those struggling economically, but the same way we treat other daily public hygiene needs: with free, accessible sanitary products. Tampons and pads are as necessary for public health and hygiene as toilet paper. They should be treated the same way.

Which restrooms? Because not all people who experience a period identify as female, the by-law would include all restrooms for the general public including, but not limited to, Town Hall, the Public Health building, Public Safety building, public libraries, and recreational facilities such as the Pool, the Putterham Golf Course and the Ice Rink at Larz.

What about schools? The School Committee would need to adopt the by-law or a similar measure for it to be in effect in the Brookline public schools. A bill is pending before the State Legislature that would require this of all MA public schools serving students in grades 6-12.

Cost: The most substantial cost of the by-law is the purchase and installation of dispensing machines in our public bathrooms. For that reason, the by-law has an effective date that will allow a phase-in across multiple fiscal years. Installation can be done by existing Town building staff, so the budget impact is principally the machine costs. Once machines are installed, bulk ordered supplies are far less expensive than typical retail and will be included in the budget for toilet paper, paper towel, and other products already provided in public restrooms.

BACKGROUND:

The average female-bodied person will have a menstrual period lasting 3-5 days, twelve times a year, for about 40 years. In the United States, having a period is the reality for 52 percent of the population, each of whom will use almost 17,000 tampons or pads over their lifetime. Having one's period can be physically painful or even debilitating, it is a time of heightened risk of infection, and even in the best of circumstances can easily disrupt one's day at school or work.

Historically, menstruation has been treated as a social taboo, a topic used to shame women and girls. In the United States, 36 states still tax tampons and pads as "non-essential" or "luxury" items (Massachusetts is one of the 14 states that has eliminated the "tampon tax"). Food stamps may not be used to purchase tampons and pads, nor does WIC -- the federal program supporting health and nutrition for mothers and babies -- cover these essential sanitary products.

The recently re-energized women's movement has begun to challenge these policies and practices. In the past few years, a national campaign to end the tampon tax has expanded the number of states making these products tax-free. In 2017, following local efforts in jails and detention centers, a federal statute established the requirement for free menstrual hygiene products in prisons.

While Brookline would be the first municipality in the U.S. to take the steps outlined in this warrant article, New York State and Illinois have both passed laws mandating free menstrual hygiene products in public schools grades 6-12, in homeless shelters, and in prisons. California has passed a statewide mandate for its grade 6-12 schools that qualify for Title 1 low-income funding. A

similar bill to those passed in NY and IL is now before the Massachusetts legislature and enjoys strong public support, so the PSB may face a state mandate regardless of its action on this article.

Menstrual equity has also become a global women's rights issue. Seoul, South Korea is the first city in the world to take municipal action, in 2018 announcing a pilot program to provide free menstrual products at ten public facilities around the capital. (This followed a public report that impoverished girls who could not afford to purchase pads were using the insoles of shoes in place of sanitary napkins.) In August, 2018, Scotland became the first nation in the world to guarantee free sanitary products to all students at schools, colleges, and universities. And the 2019 Academy Award for best documentary short subject went to *Period. End of Sentence*, a documentary about women in a rural village near Delhi, India, who start producing and distributing menstrual hygiene supplies to end the stigma surrounding menstruation.

ARTICLE 21

Submitted by: Kate Silbaugh, Neil Wishinsky

The apparent lack of discretion in Section 8.37.5, Subsection A.2., of the Town's General By-Laws to require information (including surveys, studies, or other data) prior to entering into a Host Community Agreement may set the erroneous expectation that every proposed Marijuana Establishment has the right to enter into a Host Community Agreement with the Town. This warrant article clarifies to applicants that the Select Board has discretion to begin evaluating a site proposal prior to executing a Host Community Agreement. Mass. Gen. Laws M. G. L. c. 94G, § 3(d) anticipates a negotiated HCA that includes specific conditions, and the Town is at a disadvantage in that negotiation if it is not able to require additional information that it deems relevant to the circumstances of an applicant or site.

Mass. Gen. Laws M. G. L. c. 94G, § 3(d). Section 3(d) of chapter 94G, states, in relevant part:

A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community which shall include, but not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center.

Updating General By-Law Section 8.37.5, Subsection.A.2 will clarify that the Town has the discretion to obtain the necessary information and data to determine if the site proposed by an applicant can be operated without violating Town By-Laws prior to entering into a Host Community Agreement. Delaying all assessment of feasibility to the licensing phase is unfair to the proposed Marijuana Establishment and may prevent other applicants from coming forward (including minority-owned, local-based, or other under-represented applicants) with more suitable applications during the lengthy State processes. In addition, delaying any assessment of feasibility of the site under the various By-Laws deprives the Town of a critical tool for setting conditions on operators, a tool that is expressly contemplated by the Cannabis Control Commission (CCC) in Mass. Gen. Laws M. G. L. c. 94G, § 3(d). Section 3(d) of chapter 94G, which counsels towns to incorporate conditions in the Host Community Agreement.

In response to the challenges surrounding the opening of a Marijuana Establishment in Leicester, Massachusetts, including the substantial underestimation of customer volume and traffic, the City of Lowell has begun requiring applicants to provide a traffic plan prior to considering a Host

Community Agreement. This warrant article does not require any study, but it clarifies that the Select Board has the discretion to request this kind of information. This proposed revision does not change the underlying substantive General By-law or Zoning By-Law, but clarifies to applicants the Town's authority to begin its investigation of suitability at the earliest stage in the process, and its authority to incorporate additional conditions in a Host Community Agreement based on information gathered, as anticipated by the Mass. Gen. Law. For example, an applicant's viability may depend on satisfactory resolution of any federal nexus with shared tenants, or an applicant's traffic study might rely on off-peak hours of operation; this warrant article clarifies that the Select Board has the discretion to incorporate those assumptions into the Host Community Agreement as anticipated by Mass. Gen. Laws M. G. L. c. 94G, § 3(d).

In December, 2018, Mederi, Inc. sued the City of Salem in Essex Superior Court for failure to enter into a Host Community Agreement based on an expectation of a right to an agreement. (*Mederi, Inc. v City of Salem, Kimberley L Driscoll in her capacity as Mayor of the City of Salem*, Essex Superior Court Department Case No. 1877001878). In a pre-trial ruling, the Superior Court determined that Mass. Gen. Laws M. G. L. c. 94G, § 3 requires an applicant to have executed an HCA with a municipality, but does not require a municipality to execute an HCA with any applicant. Rather, the Court found that the statute contemplates a negotiation, not a "ministerial act". The opinion notes that the CCC guidance on HCAs includes the following language:

The type and nature of the conditions included in an HCA are unlimited by Section 3(d) of Chapter 94G. Indeed, the only required prerequisite is that the HCA identifies the party responsible for fulfilling its respective responsibilities under the agreement. As such, the Commission is likely to take a broad view of acceptable conditions.

The Town of Salem, however had explicitly reserved its discretion to refrain from entering into a Host Community Agreement with any given applicant and to assess favorability characteristics in selecting among applicants for HCAs. This warrant article provides similar clarity, and gives the Select Board discretion to gather information that would strengthen its negotiations. The Court held that the appropriate standard for judicial review of a City's refusal to negotiate a particular HCA is the same standard applied to a final decision of an agency under Chapter 30A, meaning whether a decision is based on an error of law, or was arbitrary, capricious, or an abuse of discretion. See G.L. c 30A § 14(7). This review is limited to the administrative record. This warrant article permits the development of such a record.

ARTICLE 22

Submitted by: Francis G. Caro, TMM10

"Highway lighting," as used here, refers to a street lighting strategy that employs tall, widely-spaced poles to illuminate streets and sidewalks. Lights are designed to cast a light over a long distance. Lights are typically placed so that they extend over the street. Utility poles may be 150 feet apart. Street lighting may be 25 feet above the street.

"Pedestrian-friendly lighting," as used here, refers to a street lighting strategy that directs lighting to sidewalks. Lights are placed on relatively short poles that are placed relatively close together. Utility poles might be 75 feet apart with lights 15 feet above the sidewalk.

Brookline currently has pedestrian-friendly street lighting in the Beacon Street commercial areas. In this case, utility poles have two arms. A taller arm reaches out over the street; a shorter arm reaches out over the sidewalk. Brookline also has pedestrian-friendly street lighting on Washington Street in Brookline Village and on all of Harvard Street. In these cases, the light poles are closely-spaced and modest in height. The lighting is designed to illuminate both the streets and the sidewalks.

Background

This proposal is an outgrowth of concern about adequacy of street lighting for pedestrians brought to the BrooklineCAN Livable Community Advocacy Committee. To address the concern, BrooklineCAN volunteers surveyed sidewalk lighting conditions in much of north Brookline in the fall of 2015 And again in 2016. The surveys were conducted in the early fall when leaves were on the trees. Volunteers were aided by maps provided by the Information Technology Department that show the location of all light poles. The volunteers reported problems to the Department of Public Works. DPW responded promptly to reports of street lights that were not functioning. Problems stemming from street lighting above the tree canopy were discussed with both Engineering Division and the Town Arborist. DPW has made an effort to address the problems with tree pruning and installation of improved lights on existing poles. BrooklineCAN has focused particularly on Beacon Street outside of the commercial areas and Winchester Street between Beacon Street and the Senior Center as locations with unsatisfactory lighting for pedestrians in spite of DPW efforts to prune trees and install improved highway lighting.

Because installation of new lights in the public right of way is expensive and Brookline has many miles of streets, it is important for the Town to understand the extent of demand for improved pedestrian lighting and to invest in improved lighting where there will be the greatest benefit. If the proposed study leads the Town to extend pedestrian-friendly lighting to more streets, the proponents expect that the Town will do so incrementally as funds become available.

ARTICLE 23

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

I. Overview

This resolution calls upon the Town to fully electrify the Town's vehicle fleet by imposition of a moratorium on the purchase of new fossil fuel-consuming vehicles, in instances where a practical and affordable electrified alternative is obtainable. The resolution is immediately relevant for many of the Town's passenger cars, such as inspector cars, which can now be fully electrified practically and affordably as defined by the resolution. Full electrification may not be immediately practical or affordable for many other vehicles including garbage trucks, patrol cars, and SUVs, for which fully *Electric Vehicle (EV)* alternatives may not yet be available, practical, or cost-competitive. However, it may already be practical and affordable to partially electrify many of these vehicles, for example with hybrid patrol cars, hybrid pickup trucks, and hybrid vans. In the case of the pickup trucks and vans, it may be practical and affordable to purchase a conventionally fueled vehicle and retrofit or "upfit" that vehicle to electric or hybrid electric prior to use¹.

II. Climate rationale for vehicle electrification

¹ <https://www.cars.com/articles/plug-in-pickup-3-things-we-learned-driving-an-electrified-ford-f-150-1420701103098/>

Stopping climate change requires us to *simultaneously*:

- (1) **Electrify Everything** (so that we no longer burn fossil fuels locally).
- (2) **Clean up the electrical grid** (so all power is clean power).

This resolution addresses the electrification of transport, which accounts for about 25% of the Town's carbon emissions². Electrification of transport is limited by the production and demand for EVs. These are limits set by market forces and human psychology, not a lack of technological prowess of EVs. Nearly 90% of EV owners -- those who know the technology best -- say they will never buy another gasoline car³. A consumer education campaign and a consumer movement hold the key to electrification of transport.

The Town of Brookline can spur this movement and directly reduce its own carbon emissions by electrifying its Town fleet of more than 300 vehicles. **An electric car purchased today and powered by the Town's existing municipal electrical power reduces total carbon emissions per mile driven by 60-70% compared to an efficient hybrid car⁴. As the grid itself gets cleaner by at least 2% per year through 2029 and 1% per year thereafter⁵, and as Brookline potentially also buys even cleaner municipal power, that same electric car could eventually drive its first mile without any additional carbon emissions beyond those required for manufacturing.**

There is clear precedent among neighboring communities for fleet electrification. Newton has been taking advantage of the Mass EVIP program (\$7,500 discount on each EV) to buy 25 EVs⁶ and has plans to electrify its entire passenger car fleet of 42 vehicles. New Bedford has purchased more than 20 EVs⁷, and other municipalities around the state have purchased 1-3 EVs each^{9,10}. Three Mass communities, including Cambridge, piloted electric buses¹¹. A Town of Brookline fleet electrification policy that is ambitious, clear, and practical could also inspire residents and staff to buy their own EVs.

III. Budgetary impact

Budget overview. Transitioning the Town fleet to EVs should be roughly budget-neutral, with potentially higher costs in the near term and lower ones in the longer term. There may possibly be higher short-term costs in the first few years due to charger installation and higher purchase prices

² Source: Town of Brookline, Massachusetts Greenhouse Gas Inventory Overview, 2010. Includes not only municipal but also commercial and private vehicle emissions within the borders of the Town (excluding MBTA).

³ <https://insideevs.com/electric-car-owners-wont-return-to-gas/>

⁴ Based on comparison of Prius and Fusion non-plug-in hybrids to a Chevy Bolt EV, assuming local Eversource mix, using U.S. EPA "Beyond Tailpipe" Emissions and MPG values from EPA and Consumer Reports. <https://www.fueleconomy.gov/feg/Find.do?action=bt2&year=2019&vehicleId=40520>

⁵ The 2% annual increase in the renewable portfolio standard (RPS) is state law. <https://blog.greenenergyconsumers.org/blog/rps-res-in-plain-english>

⁶ <https://newton.wickedlocal.com/news/20180305/newton-to-use-275k-in-grant-funding-to-buy-electric-cars-charging-station>

⁷ <https://www.atlasevhub.com/wp-content/uploads/2017/06/Public-Sector-Fleet-EV-Procurement-Examples.pdf>

⁸ <https://www.government-fleet.com/130156/city-leases-10-low-cost-electric-vehicles>

⁹ <https://www.mass.gov/files/documents/2016/08/pz/ccc-ma-ev-policy.pdf>

¹⁰ <https://www.mass.gov/how-to/apply-for-massevip-fleets-incentives> and <https://www.mass.gov/doc/massevip-fleets-completed-projects-list-july-2018/download>

¹¹ https://www.mass.gov/files/documents/2018/04/30/Mass%20DOER%20EV%20school%20bus%20pilot%20final%20report_.pdf

of (some) EVs. There may also be lower costs in the medium to long-term due to savings on maintenance (detailed explanation below). Whether the Town will save on fuel costs depends on a number of variables, including the model of vehicle being replaced, the Town gasoline price, and the cost of municipal power. Currently it costs slightly more to ‘fuel’ an electric car than a Toyota Prius hybrid but less to fuel a hybrid cargo van than a standard one. Since the Town has some flexibility in deciding when to replace fleet vehicles, it could slow the vehicle replacement rate with a goal of maintaining budget neutrality. Alternatively, it could choose instead to accelerate replacement to achieve economies of scale and maximize capture of state incentives.

Beginning the transition in FY2020 would be helpful for climate reasons but would present some financial challenges. We envision that there are a variety of ways the Town could handle these challenges, including combinations of (1) swapping less expensive EVs (e.g., Nissan Leafs) for previously proposed vehicles (and using the difference for charger/outlet installation), (2) delaying purchases and instead installing chargers, or (3) using funds that turn out not to be needed elsewhere.

This budgetary analysis focuses on a comparison of the current “inspector” cars (Prius and Fusion hybrids) with fully electric alternatives, as well as comparisons of conventional pickup trucks and vans with hybrid versions of the same.

Current purchase costs (from the Mass VEH98 and VEH102 purchasing price lists)

\$25,000	Toyota Prius (seats 5)	Conventional	(non-plug-in hybrid)
\$26,000	Ford Fusion (seats 5)	Conventional	(non-plug-in hybrid)
\$18,000¹²	Smart EQ ForTwo (seats 2)	EV -- 63 mi city range¹³	
\$21,000¹²	Nissan Leaf (seats 5)	EV -- 151 mi range¹³	
\$27,000¹²	Chevy Bolt EV (seats 5)	EV -- 238 mi range¹³	
\$32,000	Ford F150/F250	Conventional	(non-hybrid)
\$37,000¹⁴	Ford F150/F250¹⁵ + post-market conversion¹⁶	Plug-in	hybrid (XL Hybrids)
\$29,000	Ford Transit Van	Conventional	(non-hybrid)
\$31,000¹⁴	Ford Transit Van + post-market conversion¹⁶	Non-plug-in	hybrid (XL Hybrids)

¹² Inclusive of Mass EVIP incentives of \$7,500 ea, available for up to 25 cars. It is possible that leasing may be a better value, as the separate \$7,500 federal tax credit can be readily passed through to the Town in a lease. *It is also possible that the Town may also be able to find a dealer that would pass through the federal tax credit in a purchase, which would put the Chevy Bolt EV at \$20,000 the Nissan Leaf at \$14,000, and the Smart EQ ForTwo at \$11,000.* This latter strategy has been adopted by Seattle (<https://www.atlasevhub.com/wp-content/uploads/2017/06/Public-Sector-Fleet-EV-Procurement-Examples.pdf>) and Alameda County, CA (<https://www.georgetownclimate.org/files/report/Capturing-the-Federal-EV-Tax-Credit-for-Public-Fleets%20-%20Case%20Study.pdf>).

¹³ EPA ranges are averaged across all seasons. **Winter range may be up to 50% lower on the coldest days.**

¹⁴ Inclusive of 80% upfit cost paid for by Mass DOER: <https://www.mass.gov/info-details/clean-vehicle-program-public-private-fleets>.

¹⁵ The F250 is not yet on VEH102.

¹⁶ XL Hybrids (<https://www.xlfleet.com/>) is one provider of post-market electrification..

A Nissan Leaf costs about \$4,000 less than a Prius. A Smart EQ ForTwo, which may be appropriate for some applications, costs \$7,000 less than a Prius. For some (or most) passenger applications, the Town could choose a Chevy Bolt EV (\$2,000 more than a Prius), as it has additional driving range before requiring charging. In addition, the Bolt has better battery thermal management than the Leaf (liquid vs air-cooled), and its battery may last longer, potentially making it a better investment.

Maintenance costs

EVs have very few moving parts. They can be driven for tens or hundreds of thousands of miles with nothing other than air filter replacements, fluid replacements, tire rotations, tire alignments, and tire replacements. These maintenance items are the only ones on the Chevrolet maintenance schedule for the first 150,000 miles for the Bolt EV¹⁷. EV brakes last longer because of powerful regenerative braking, which uses the motor to slow the vehicle and charge the battery. Electric motors require no maintenance, and at a cost of about \$1,000, they are less expensive than a catalytic converter. One study put Nissan Leaf EV maintenance at 23-29% lower than a Corolla and 14% lower than a Prius (either non-plug-in or plug-in hybrid)¹⁸, but the real savings may turn out to be much greater now that EVs have matured significantly in their technology. EV battery life is often the biggest concern about the long-term costs of owning an EV, but unlike cell phone batteries, car batteries have 5-10 year warranties and can function for hundreds of thousands of miles with no maintenance at all¹⁹.

Fueling costs

Electricity is relatively stably priced, and the Town currently pays \$0.18/kWh (\$0.09 generation²⁰ + \$0.09 supply/distribution²¹). In contrast, the Town’s fuel contract varies more from year to year. This year it is \$2.50 / gal and next year is \$2.04 / gal²².

The break-even gasoline cost for EVs to be less expensive to fuel than a Prius (non-plug-in) hybrid is about \$3.50/gal (at \$0.18/kWh). Currently, it is more expensive to fuel an EV than a Prius, but a Ford Fusion hybrid and a Chevy Bolt EV are relatively similar in fueling costs:

<u>Annual fueling costs (assumes 6,000 miles/yr, \$2.04/gal, \$0.18/kWh):</u>	
\$236	Prius \$0.04/mile (52 mpg)
\$292	Ford Fusion hybrid \$0.05/mile (42 mpg)
\$302	Bolt EV \$0.05/mile (0.28 kWh / mile)
\$324	Nissan Leaf \$0.05/mile (0.30 kWh / mile)
\$335	Smart EQ ForTwo EV \$0.06/mile (0.31 kWh / mile)
 <u>Annual fueling costs (assumes 6,000 miles/yr, \$2.04/gal, \$0.18/kWh):</u>	
\$532	Ford Transit Van \$0.09/mile (\$2.04/gal / 23 mpg ²³)

¹⁷ <https://my.chevrolet.com/content/dam/gmownercenter/gmna/dynamic/manuals/2017/Chevrolet/BOLT%20EV/Maintenance%20Schedule.pdf>

¹⁸ <https://www.sciencedirect.com/science/article/pii/S030626191731526X?via%3Dihub>

¹⁹ <https://www.fleetcarma.com/exploring-electric-vehicle-battery-life-degradation-developments/>

²⁰ Source: Town staff.

²¹ Estimate based on information from Town staff.

²² Source: Town staff.

²³ MPG source: EPA

\$422 Ford Transit Van hybrid (XL Hybrids) \$0.07/mile (\$2.04/gal / 29 mpg²⁴)

Although the transit van fuel savings are relatively modest, the savings would be more substantial for vehicles with lower fuel efficiencies, including medium- and heavy-duty trucks. In addition, if the Town were to harvest more of its own solar power, this might make it less expensive in the long-term to operate a fully electric vehicle, compared to a Prius, even at current gasoline prices.

Charger installation costs

In a fleet transition to electric, the Town will incur a one-time per parking spot cost for installing chargers. The Town has experience in charger installation, having installed chargers in public Town lots and having plans to install chargers on Beacon St. Currently, many passenger cars park in the upper Town Hall garage and in a lot adjacent to the Public Health building. Large vehicles park at 870 Hammond Pond. Several Fire passenger (non-operations) cars park on the street outside the central administrative offices. There is also a parking lot behind the main Fire/Police building used mostly for personal vehicles.

It is hard to estimate charger installation costs without a quote from an electrician for a specific project, but a reasonable range for Town Hall upper garage is \$2,500 to \$5,000 per electrified parking spot, inclusive of Mass EVIP incentives of \$2,500 (per vehicle, for charger hardware only)²⁵. Other charger installation projects, such as the lot adjacent to the Public Health building, may be more expensive due to the need to lay conduit underground. As a point of reference, the Town's three 2017 charger installation projects in Town public lots involved bringing conduit and power underground to the location, purchasing the charger units, installing the charger units, purchasing a 5 year communication plan per port, and purchasing a 5 year parts on-site labor warranty. The costs for these (externally funded) projects²⁶, which installed two charging spots each, were:

- Fuller Street (Level 2 Wall Mount): \$17,169.60 (existing power source)
(\$4,720 of which was infrastructure)
- Centre Street (Level 2 Bollard Mount): \$18,575.20 (existing power source)
(\$5,560 of which was infrastructure)
- Kent/Webster (Level 2 Bollard Mount): \$27,540.20 (power source upgraded as well)
(\$14,675 of which was infrastructure)

The remaining non-infrastructure costs in each case were for the chargers, which were expensive for these lots because they were smart chargers that are enabled for public smart phone payment and access (with annual service fee). For the Town fleet, it may be ideal to buy \$500-\$1000 non-networked chargers, although they would not enable usage to be tracked as readily.

²⁴ Source: XL Hybrids, 25% improvement in MPG.

²⁵ This ballpark cost estimate is derived from a conversation with Ted Steverman, Town Electrical Inspector, who estimated that \$2,500 to \$5,000 for the electrical infrastructure was appropriate for Town Hall upper garage, and that the final cost would depend on the scale of the project (*i.e.*, how many spots electrified at once). Notably, conduit in that garage can be run on the ceiling or walls, so what is frequently the most expensive part of charger installation (digging and laying conduit under asphalt or concrete) is not needed in this location.

²⁶ Source: Town staff

To enable EVs to be purchased and used while awaiting charger installation, vehicles could on a temporary basis (weeks to months) potentially be charged overnight in Town public lots, charged overnight at other Town-owned locations at which charger installation may be more expedient, fast-charged at existing publicly available fast chargers, or charged overnight from a conventional outlet.

IV. School bus and van electrification.

Separately from the proposed moratorium on certain internal combustion engine purchases, this resolution also calls for electrification of the school bus and van fleet, which is currently a contracted fleet, not owned or leased by the Town. This resolution does not advocate for any particular implementation timeline for the contracted fleet but instead merely encourages the Town and the Schools of Brookline to transition the existing contract fleet to an electric one as soon as is practical.

Three communities in Massachusetts participated in a Commonwealth-funded pilot with electric school buses and provided a detailed report on their experience²⁷, and all three communities, including Cambridge, are still operating them²⁸.

Currently, there is a significant premium for purchase of an electric bus, even with available incentives. Leasing programs are available that may render lease payments for an electric bus comparable to those for a diesel bus, after accounting for maintenance and potential fuel savings²⁹. Also, in the future there may be incentives available through the VW settlement funds or other sources for bus purchases³⁰.

V. FAQ (Frequently Asked Questions)

Q: What if the Town ends up not being able to capture federal or state incentives.

The 25% price premium built into this resolution is intended to protect the financial interest of the Town. It will function as a safety mechanism that kicks in when the cost to purchase an EV begins to outweigh the potential maintenance savings. If an incentive turns out to be (or becomes) inaccessible, rendering the cost of suitable EVs greater than 125% of that of a fossil fuel-consuming option, the Town would be able, even under the proposed policy, to purchase fossil fuel-consuming vehicles.

Q: What if maintenance savings aren't be realized, and/or the cost of battery replacement makes maintenance savings a wash?

There is risk with the status quo, as well as with electrification. The risk with the status quo is that the Town could miss out on much lower maintenance costs of EVs. This status quo risk may be a greater risk than the electrification risk.

²⁷ https://www.mass.gov/files/documents/2018/04/30/Mass%20DOER%20EV%20school%20bus%20pilot%20final%20report_.pdf

²⁸ <https://uspig.org/reports/usp/paying-electric-buses>

²⁹ <https://www.proterra.com/financing/>

³⁰ <https://uspig.org/reports/usp/paying-electric-buses>

Q: Police vehicles operate 24/7 and follow Michigan State Police standards. Would this result in a need to increase the fleet and/or not be practical?

This resolution would leave the decision of whether an EV is a *practical alternative* to the appropriate department head, in this case the Police Chief. If the Chief were to determine that obtainable BEVs, PHEVs, and non-plug-in hybrids were not practical, then under the proposed policy the department would be free to purchase non-EVs. If the Chief were to deem non-plug-in hybrids practical but BEVs/PHEVs not practical, the Town would be compelled, if operating under the suggested policy, to purchase the hybrids, assuming they added no more than 25% to the purchase price.

Q: Could this resolution, if adopted, result in fleet degradation due to constraints on the fleet purchasing budget?

A: The concern that this resolution could slow the replacement rate of vehicles in the fleet, thereby increasing maintenance costs, is a reasonable one.

One important thing to keep in mind about the 25% price premium is that it is not an average cost but rather an upper threshold. The average cost of purchased EVs relative to alternative non-EVs may be lower, the same, or 0-25% more expensive. The actual cost differential will to a large extent be a choice made by the Town administration (*e.g.*, a choice to buy Bolt EVs vs. Smart EQs). New Bedford and Newton have each acquired more than twenty Nissan Leafs, which are currently about \$4,000 less expensive than Priuses.

Just as there are less expensive and more expensive EVs, there are also less expensive and more expensive charging solutions. The least expensive charging solution, in the near term, would be to add standard outlets to the upper parking garage under Town Hall. A new Nissan Leaf plus a standard outlet installation is likely to be less expensive than buying a new Prius.

While electrifying the fleet is a climate necessity, there is no perfect way to electrify the fleet. If it turns out that this particular electrification strategy ends up delaying vehicle purchases due to budget constraints, that is something that can be addressed in the future by modifying the electrification strategy. Electrification could be slowed to save money, or it could be accelerated with additional funding.

Q: The Prius experience has shown that savings estimated by the manufacturer does not translate to how the Town uses the fleet (city driving, stop and go).

An empirical discussion of the Prius decision and outcomes should be grounded in firm data, which the petitioners do not possess. This explanation relies upon EPA estimates, which are one reasonable point of comparison. A 2019 Chevy Cruze is rated at 30 MPG (city), a 2019 Toyota Prius is rated at 48 MPG (city), and a 2019 Chevy Bolt EV is rated at 128 MPG equivalent (city). Using city-rated mileage, the use of EVs would save more on fuel costs than what this explanation projected in the above discussion of fuel costs using overall MPG.

Generally EVs perform very well in city driving, where they use regenerative braking to recapture kinetic energy. They also avoid wasted fuel due to idling, even when heating or cooling the cabin for prolonged periods of time.

ARTICLE 24

Submitted by: David Lescohier TMM11

Currently the supplier of the Town's electricity provides 20.5% from Green/Renewable sources.

A Green/Renewable electricity supplier receives one Renewable Energy Certificate (REC) for each megawatt hour (MWh) of electricity.

Under current state law the required percentage of renewable-sourced electricity for retail sale will increase by 2% per year through 2029, and then at 1% for following years. In 2050, without any action by the Town, the Town's supply will be approximately 60% from Green/Renewable sources.

The Warrant article would call upon Select Board to adopt a policy, in the Town of Brookline Financial Plan to request that the Advisory Committee recommend to Town Meeting year-by-year increases in appropriations to achieve 100% Green/Renewable by 2050, or earlier, if, in the future, the Brookline Climate Action Plan is revised:

- Under this policy, the Town will make year by year increases in appropriations for REC purchases of electricity that, otherwise, under current law, would still would be supplied from non-renewable sources in 2050.
- No change in the Town's current procurement is required. The current contract for electricity supply offers the Town the option of purchasing additional RECs.

The fiscal impact over FY 2021 - 2050 would be additional yearly increases of approximately \$40,000.

The Town of Brookline FY 2020 Financial Plan includes numerous comparable financial practices, e.g. the plan to fully fund the contributory retirement system by 2030 and the plan to reduce the unfunded liability in the post-retirement benefits trust fund as documented in the Financial Plan in Section IV, Non-Departmental, beginning on page 127.

The conversion to green energy is another long-term obligation, which, if it the Town doesn't take steps to begin addressing now, will have growing negative consequences deeply affecting coming generations.

References:

Paris Agreement:

https://unfccc.int/sites/default/files/english_paris_agreement.pdf

Brookline Climate Action Plan:

<https://www.brooklinema.gov/702/Climate-Action-Plan>

Intergovernmental Report:

<https://www.ipcc.ch/sr15/>

National Climate Assessment Report:

<https://www.globalchange.gov/nca4>

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

Preparation: In preparation for this review, the Town’s Chief Diversity Officer, working in conjunction with all Department Heads and the Town Administrator's office, shall identify and summarize equity, diversity, and inclusion initiatives and reviews undertaken by the Town and its departments to date relative to Equity Goals, and the relative success thereof.

Scope of Work: Upon engaging the independent consultant contemplated by this Resolution, said consultant shall perform the following tasks:

- a. Further define Equity Goals for the Town, including appropriate additional areas of focus;
- b. Identify national and regional best practices for a municipality that is pursuing the above Equity Goals, and specifically racial equity, across all levels of its operations;
- c. Develop metrics and indicators specific to Brookline that will help identify progress in terms of Equity Goals;
- d. Identify available data and indicators in the Town of Brookline, in conjunction with the Town Administrator’s office and Department Heads relative to Equity Goals,
- e. Identify additional data and indicators that would need to be collected going forward; and
- f. Identify highest priority action steps to be taken in the next 12-36 months and the estimated budget impact of pursuing those action steps.

3. Timeline: As stated above, 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). Annual reports shall be presented to Town Meeting each November thereafter, with sufficient time to include new efforts to increase equity and inclusion into the following year's budget cycle.

4. Responsibility: As stated above, the consultant will report jointly to the Town Administrator and the Town Chief Diversity Officer, and progress will be presented regularly to the Select Board and Commission on Diversity, Inclusion, and Community Relations as the supervising bodies. An ad-hoc task force with representation from relevant staff and elected commissioners / board members would receive monthly reports and provide advice and guidance to the process. The Public Schools of Brookline and the Brookline School Committee are encouraged to communicate their system-wide equity and inclusion plans and milestones to this task force, and have

representation on this task force, in order to facilitate a town-wide approach and coordinate efforts as appropriate.

ARTICLE 27

Submitted by: Mike Offner

The purpose of this article is, in part, to acknowledge the findings of the Massachusetts Civil Service Commission decision issued on February 14, 2019, in the case of Alston, Gerald v. Town of Brookline, which can be found within:

<https://www.mass.gov/lists/recent-civil-service-commission-decisions>

The purpose of this article is also to promote healing, reconciliation, self-reflection, peace, and forgiveness throughout our community and to help to bring forward-looking, community-building, optimistic closure to a painful part of our history.

ARTICLE 28

Submitted by: Cornelia van der Ziel, TMM15

Legislation similar to this bill has been filed in the Massachusetts State Legislature by former State Representative Byron Rushing (D – Suffolk) every 2 years for the past 34 years. These efforts have had the support of the Massachusetts Commission of Indian Affairs but never made it out of committee. The bill is attached. It sets up a commission to study the state flag and seal for possible change and to report its recommendation to the state legislature for their approval.

The seal has changed several times since the 1629 Seal of the Governor and Company of Massachusetts Bay. The original seal is shown in the accompanying flyer. The Native is depicted as saying, “Come Over and Help Us”, implying that the Native Nations had requested help from Europeans. This stands in stark contrast to the actual events, including huge loss of life from disease, starvation, and the outright slaughter of Native populations. This was followed by enslavement or servitude in Pilgrim households under the guise of saving Indigenous People’s souls. Native peoples were also sent to the Caribbean Islands as slaves. Rather than actually helping the Native populations, it could be said that the European colonists “helped” themselves to the land inhabited by these peoples.

The current seal and flag, designed by Edmund Garrett and adopted in 1898, contain an image of a Native man whose body and dress are a composite of multiple Native men. The face comes from a photograph taken of a Chippewa chief from Montana. The proportions of the body come from a Native skeleton disinterred in Winthrop. The belt is patterned after that worn by Metacomet who led the first Native war against English colonization. He was subsequently beheaded, and his head was displayed on a pike for more than 20 years. Garrett noted that, “The bow is an accurate representation of one taken from an Indian shot and killed by William Goodnough in Sudbury in 1665.” The downward pointing arrow, used in both the current seal and the one from 1629, indicates a “pacified” Native American. The threatening sword over the Native man’s head is purported to be modelled after Myles Standish’s broadsword. Standish is known to have ambushed and killed four Massachusetts warriors after he had summoned them to a meeting. The motto has

various translations, but it is commonly translated as “By the sword we seek peace, but peace only under liberty.”

Sources:

New England Magazine, Vol.23 (1900-01), “The Coat of Arms and Great Seal of Massachusetts” Archives related to the State seal and flag provided by the Secretary of State and the State Library special collection at the Statehouse, Boston

Modell of Christian Charity, John Winthrop (First Governor of the Massachusetts Bay Colony)
William Penn Letters of Jeremiah Evarts, 1829

ARTICLE 29

Submitted by: Mariah Nobrega

The goal of this resolution is to raise Town Meeting Member awareness of the disparity between the demographics of the membership of Town Meeting Members and the town population overall. TMMs are elected to represent a precinct, which is intended to spread TMMs across the geography of the town, but there is no formal mechanism for ensuring TMMs are representative of the people of the town in other, important ways that may provide a greater diversity of thought and experience, and ultimately enrich and improve the decisions made by Town Meeting.

This resolution responds directly to one of the seven priority areas identified by the Brookline People of Color (POC) Coalition and discussed at the Brookline Summit for Racial Equity, held in February 2019 (“Increase diversity on Boards and Commissions and remove barriers to running for office.”) Specifically, Town Meeting is an important feeder for participation in other Town boards, committees and commissions. Therefore, increasing diversity of Town Meeting should support the diversity of all of these Town bodies.

The intent of the warrant article is not to remove anyone from Town Meeting; rather, the idea is that as natural attrition leads to turnover of TMMs, that TMMs proactively seek candidates who would help increase the diversity of TM by focusing on which Brookline Protect Classes are underrepresented.

This is likely to require going beyond the personal networks of TMMs. Using the example of racial diversity: in “The Person You Mean to Be: How Good People Fight Bias” by Dolly Chugh, she describes a study in which people were asked with whom they regularly discussed important matters. They used this data to calculate each individual’s “egocentric social network analysis”. What the researchers found is that 75% of white people had networks composed exclusively of white people, and the average white person’s network was about 91% white. What this means is that for most TMMs, their network is exclusively white people, which no doubt has reinforced the composition of Town Meeting.

This resolution also includes a clause to also encourage the moderator to explicitly consider Brookline Protected Classes in his deliberations, for example in deciding the order of speakers or who he calls on from the floor. Greater diversity of speakers is also backed up by research; a 2010 Science publication entitled “Evidence for a Collective Intelligence Factor in the Performance of Human Groups” (DOI: 10.1126/science.1193147) found that collective intelligence, which the authors define in part as “the equality in distribution of conversational turn-taking”, was a much

better predictor of successful group problem-solving than either the average intelligence of the group or the maximum individual intelligence.

ARTICLE 30

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

One of the more basic amenities to improve the quality of life for members of a community is the availability of some form of outdoor swimming in green space where all ages can come together for sports, relaxing and other forms of recreation. In years past, this option was available naturally in ponds, lakes and rivers. As increasing numbers of people moved to urban areas, municipalities increasingly took on the responsibility to artificially provide those opportunities. In the early part of the twentieth century, hundreds of public outdoor pools were built throughout the country. Some wealthier urban communities, however, preferred the option of relying on private clubs and pools in private yards.

Ironically, while Brookline apparently was the first municipality in the United States to build a public, albeit indoor, pool, in the late 1800s, we did not continue to progress in this area. While most of our neighboring comparable communities now have public outdoor swimming facilities (for example, Needham, Newton, Natick, Wellesley, Waltham, Watertown, Milton, Belmont, Norwood, Framingham, Hingham) and our closest neighbor, Newton, has both a pool complex and a lake, Brookline has none. For those residents in Brookline who do not have pools in their backyards, nor have paid to join private clubs, the local options are less than satisfactory: While the installation of sprinklers in neighborhood parks provide children with some form of outdoor water play, it is far from ideal. And when the temperatures soar, and other forms of outdoor exercise are not healthy to do – for either children or adults - the idea of going inside a muggy hot building to swim is far from enticing. Moreover, our indoor pool is old, lacking many of the amenities and accommodations that more modern pool facilities can provide to improve the experience for the young, old and disabled, including zero depth entry, play features, surrounding areas for play and relaxation, and the ability to provide formal therapeutic activities.

The upfront cost of construction exists, but is manageable. Hingham has just completed a feasibility study for their new pool complex, and it is estimated to cost \$10 million, and Belmont recently completed a major renovation of its pool complex, at a cost of approximately \$4.5 million. Such price tags, while not a drop in the bucket, are easily comparable to the cost of many Town projects, while producing a substantial overall improvement in the quality of life for residents of all ages.

The ongoing operation of the pool will also require annual expenditures, but other municipalities have minimized these costs by charging both seasonal and daily fees for residents, with higher daily fees for non-residents. For example, the Town of Wellesley maintains Moses Pond as part of its Fields and Facilities within its Recreation Department. Rates range from daily non-resident (\$25) to a full season family pass (\$100 early and \$170 regular price). The Pond is staffed with lifeguards (supplying summer employment opportunities for young people), and is open from early June through mid-August. Moses Pond provides a welcoming, affordable, and healthy space for residents of all ages throughout the warm weather, with swim lessons, picnic area, showers, and other amenities that are well used by residents as well as non-residents.

At the time of the writing of this warrant article, the Town is considering the purchase of Newbury College properties, and there have been some suggestions made to use a portion of that land for an outdoor pool. But other options for locations also exist. Currently, the Department of Public Works makes use of an area of Larz Anderson for storage of equipment and trucks and is unattractive at best. The repurposing of that land for a pool would be more in line with the goals of Article 97 to use parkland for recreational purposes, and would offer beautiful green space in an area of the park near the entrance that is underutilized. With creative design, the co-locating of both outdoor pool facilities and the outdoor skating rink could transform the area into a multi-month and multipurpose outdoor recreational complex. There also are other potential sites that could be identified, such as underutilized land near the parking lot at the Putterham golf course. The purpose of this Warrant article is to enable the Town's Department of Parks and Open Space to consider various options, with the goal of moving forward with a feasibility study following this initial analysis.

For all those of us who were fortunate to have grown up in communities that offered outdoor swimming opportunities, our experiences provided many of the highlights of growing up. And as we age, the importance of having such opportunities becomes equally important. The combination of swimming, fresh air and community is one of the of the best sources of well-being that can be provided to residents of all ages. Passage of this resolution gives the Department of Parks and Open Space the authority to begin the work to provide this benefit to the Town's residents.

ARTICLE 31

Any reports from Town Officers and Committees are included under this article in the Combined Reports. Town Meeting action is not required on any of the reports.