



**WARRANT ARTICLE EXPLANATIONS
FILED BY PETITIONERS FOR THE
NOVEMBER 18, 2014 SPECIAL TOWN MEETING**

ARTICLE 1

Submitted by: Board of Selectmen

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 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: Board of Selectmen

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required.

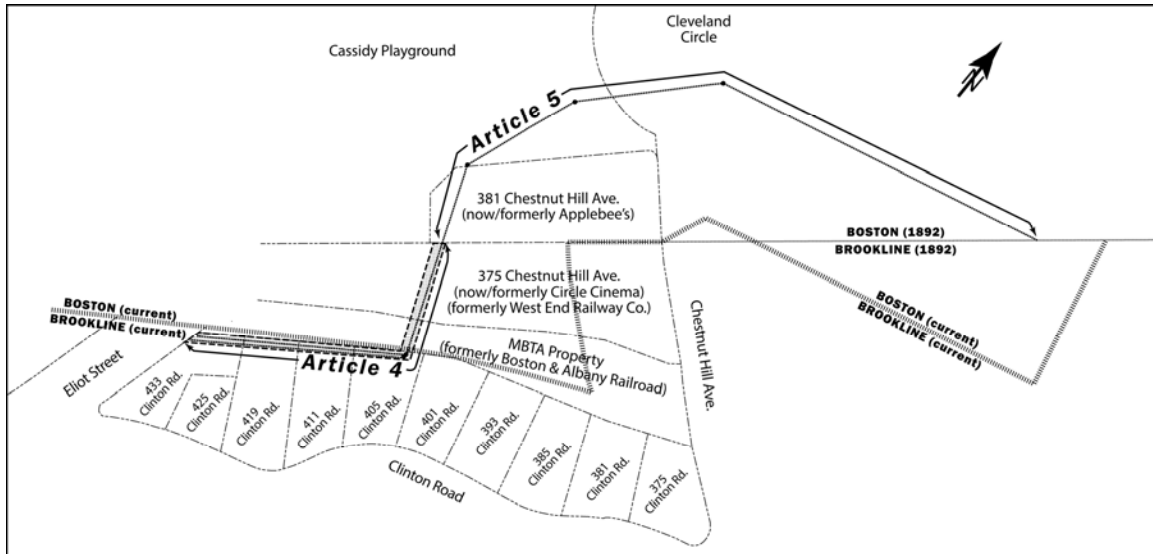
ARTICLE 4

Submitted by: Department of Public Works

In 1951 the Town extended the Village Brook Channel and sanitary sewer from Cleveland Circle to the end of Eliot Street. As part of this work, two 15 inch sewers which run in Eliot Street and behind the residences at 405, 411, 419 and 433 Clinton Road were abandoned in place. The flow that was handled by these pipes was redirected to a new existing 21 inch sewer pipe. The old pipes no longer in use connected to a City of Boston line. This connection was authorized, in part, by a special act of the legislature (Chapter 151 of the Acts of 1889). The Engineering Division researched office records and did not find any evidence that there were any connections in this section of the sewers. To confirm this conclusion, the Water and Sewer Division did a visual inspection of the two sewers and did not see any connections. It is the Engineering Division opinion that these sewers are not active and do not/would not serve any further useful purpose for the Town. Peter Ditto, Director of Engineering and Transportation will transmit a memorandum to the Board of Selectmen indicating the purpose for which the easement(s) served are no longer needed. By abandoning and extinguishing these easements in place, the

Town will have no further maintenance obligations and it will facilitate the proposed development of the former Cleveland Circle Cinema site as well as any landscaping for the four lots within Brookline that abut the site. The Town Engineer has notified the City of Boston of the Town's intent to abandon, extinguish and otherwise release its rights to the sewer in question.

The following map of the location of the several easements is provided for illustrative purposes only:

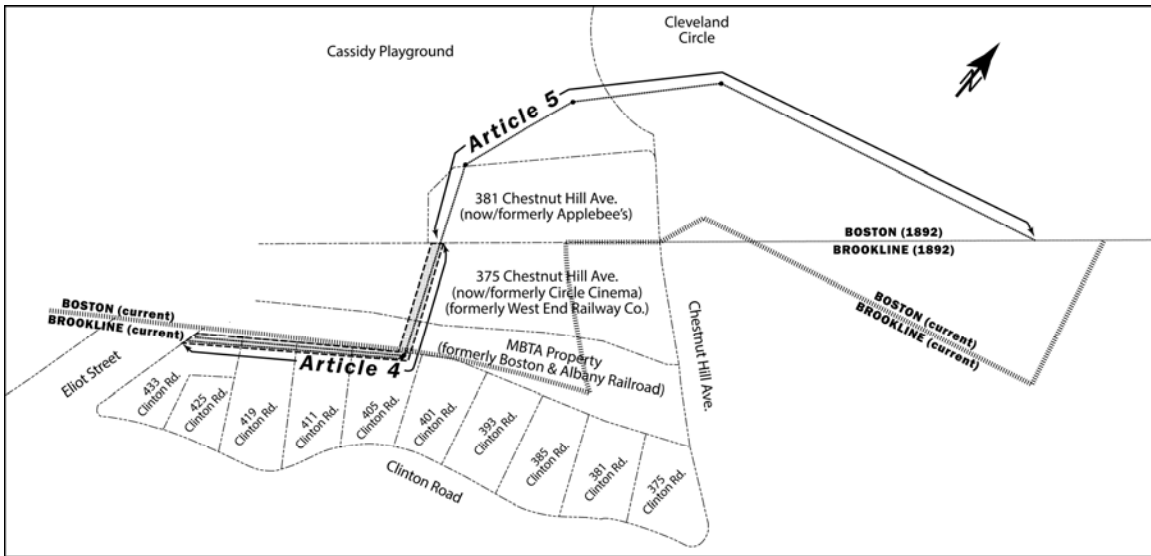


ARTICLE 5

Submitted by: Department of Public Works

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ARTICLE 6

Submitted by: Board of Selectmen

This Article, if approved by majority vote, will allow the Selectmen to carry out the terms of the Payment in Lieu of Taxes (PILOT) and Development Agreement between First General Realty Corp. and the Town of Brookline dated May 24, 2011 as amended on July 22, 2014 pertaining to the development of the parcels of land and buildings thereon that make-up the so-called former Cleveland Circle Cinema site at 375-399 Chestnut Hill Avenue. Copies of the Agreement and First Amendment are available for review on-line on the Town's web site through the Planning Department. If approved this article will also authorize the Selectmen to enter into any further agreement(s) or amendments, such as an Escrow Agreement outlining the terms upon which a portion of the Town's Sewer Easement that runs through the property would be released or any amendment to the existing Agreement(s) which would further benefit the Town with respect to the current proposed development of the site.

ARTICLE 7

Submitted by: Board of Selectmen and Alex Coleman

At the May, 2014 Annual Town Meeting, Town Meeting approved Article 31 by unanimous vote. Article 31, a citizen-petitioned article filed by Brookline resident Alex Coleman, called for the Town "to affirm its support for the prohibition of discrimination or harassment on the basis of gender identity and gender expression in employment, housing, public accommodations, credit and lending, and public education," and requested "the Legal Services Department [to] propose appropriate changes that are consistent with [the purpose of Article 31] to all relevant Town By-

Laws and that such changes be included in the Warrant for the November 2014 Town Meeting, or as soon thereafter as is reasonably feasible.”

Town Meeting also approved Article 10 at the May 2014 Annual Town Meeting, which sought to revoke Article 3.14 of the Town’s General by-laws and replace it with a new Article 3.14. The proposed new By-law identifies “gender identity or expression” as a “Brookline Protected Class.” In anticipation of the Attorney General’s approval of Article 10, this warrant article does not address Article 3.14. Should the Attorney General not approve Article 3.14, appropriate action will be taken at the Special Town Meeting to be held in May, 2015.

This warrant article seeks to effectuate the purpose and intent of Article 31.

ARTICLE 8

Submitted by: Police Chief

The 2013 Annual Town Meeting (ATM) considered and acted favorably on Warrant Article 14, which proposed certain changes to Article 8.5 of the Town’s By-Laws to make it explicit that it encompasses conduct that disturbs the peace and quiet enjoyment of a residential premises, and to increase the penalty for violation of the bylaw to \$100 from \$50. As reflected in the combined reports to Warrant Article 14 to the 2013 ATM, questions arose about the constitutionality of certain other language in Article 8.5 in light of court decisions since the bylaw’s passage that limited the reach and enforceability of identical language in the State statute addressing “disorderly conduct,” G.L. c. 272, Section 53. See, e.g., *Commonwealth v. Chou*, 433 Mass. 229 (2001); *Commonwealth v. Sholley*, 432 Mass. 721 (2000); *Commonwealth v. Feigenbaum*, 404 Mass. 471 (1989); *Commonwealth v. A Juvenile*, 368 Mass. 580 (1975); *Alegata v. Commonwealth*, 353 Mass. 287 (1967). The Moderator ruled that changes that would address these concerns would be outside of the scope of Warrant Article 14. Therefore, this warrant article is filed to now remedy the language of the by-law to make it constitutional under applicable case law. In addition, the By-Law amendments made by the 2013 ATM added “disturbing the peace” to the definition of “disorderly conduct,” and cases define the meaning of “disturbing the peace.” See, e.g., *Commonwealth v. Orlando*, 371 Mass. 732 (1977). This warrant article proposes to make a further amendment to Section 8.5.1 to place the public on notice of the case law definition of “disturbing the peace.”

ARTICLE 9

Submitted by: Fred Lebow

1. Emergency generators for the home are not considered as emergency generators unless they are used as emergency generators defined under the state building code. Home generators are considered standby generators or convenience generators and as such they are regulated under the noise bylaw. The definition currently does not define what an emergency generator is. It has to deliver power for life safety and installed under a higher standard than home generators.

2. Today the ANSI standard for Sound Pressure Level (SPL) meters is used less and less because none are produced in the USA anymore. They are mostly manufactured in Israel and Germany. Most acoustical engineers today use the IEC standard for SPL meters. By restricting their use in town would eliminate proper representation to its citizens by an acoustician. The standard today is heavily in favor of the IEC standard. Standards change all the time. However this allows the town or an engineer to use either. Both are acceptable in standard engineering practices.

3. Background Noise Levels at night is consistent with Section 8.15.6(d). Which states: "However, if fixed equipment is operated during night time hours, the night time Sound Pressure Level of the Fixed Plant Equipment must not exceed the average daytime Background Noise to Compensate for night time operations, which is assumed to be 10dBA below daytime Background Noise. See Definitions Section 8.15.3(c.)" Again this clarifies the definitions of the Noise bylaw. Also, it takes away the burden of not requiring the staff to take noise measurements at night.

4. The definition of portable means to some people that a machine able to move under its own power or auxiliary power is portable. This would include planes, ships, tanks, ect.ect. The only leaf blowers that are regulated under the current bylaw are leaf blowers that are carried on their back or hand with a sticker on it from the manufacture or the town. Leaf blowers that one would push by hand or that you would sit in do not have stickers on them as the manufactures do not provide dB ratings. They are louder than the ones that are carried and they would be considered as construction equipment. The town has no means of measuring this type of equipment for noise. They are used on large properties and not generally for single homes. The definition of portability does not change in any way the current implementation of the noise bylaw.

ARTICLE 10

Submitted by: Alan Christ

Article 8.16 of the Brookline Town By-Law, which outlines the town's residential recycling requirements, requires residential properties to set aside the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations. However, sections 8.16.5 and 8.16.6 of the by-law are currently limited to only residential properties. The proposed revisions to the language of Article 8.16 would explicitly include commercial properties throughout. This could substantially increase the amount of material taken out of the waste stream, and further reduce the town's carbon footprint. Extending Article 8.16 to include commercial properties is a logical proposal for several reasons:

1. *Commercial Recycling is Already Mandated as a Part of Massachusetts State Law:* Massachusetts State Law already requires businesses to recycle per 310 CMR Section 19.017 "Waste Bans", which regulates the disposal of restricted materials which includes but is not limited to aluminum, metal & glass containers, as well as recyclable paper and many other materials. Recent surveys in the town indicate that many businesses are not recycling.

Modification of Article 8.16 to include commercial properties simply brings the town in line with state law and underscores the town's commitment to enforcement of the state law at a local level by requiring private haulers to include provisions for commercial recycling.

2. *The Revisions to Article 8.16 Are Very Simple:* The proposed warrant article would only make two changes. It would add "and commercial" to the requirements for residential properties as outlined in Sections 8.16.5 and 8.16.6. In addition, in section 8.16.2, it would underscore that this requirement applies to both public and private haulers, to ensure that everyone complies.
3. *Other Communities Have Successfully Implemented Commercial Recycling:* Communities such as Cambridge, Somerville, Hingham, and Northampton have already implemented some form of commercial recycling into their by-laws. Cambridge and Hingham in particular have extensive commercial recycling by-laws with requirements for recycling collection and storage, education of local businesses, and the preparation of business recycling plans. Penalties are also defined for non-compliance with the guidelines.
4. *Commercial Recycling Benefits:* Commercial recycling can substantially increase the town's recycling rate, particularly given the Massachusetts DEP's documentation that 61.8% of the state's municipal solid waste in 2006 was estimated to be commercial, while only 38.2% was estimated to be residential (Per Mass DEP's "Overview: Solid Waste Management in Massachusetts"). Increasing the recovery of recyclable materials from the commercial sector will directly reduce greenhouse gas emissions, while also reducing methane emissions in landfills. Additionally, the use of recycled materials can reduce greenhouse gas emissions and other pollution from multiple phases of product production. At its April 2013 meeting, the Selectmen's Climate Action Committee added mandatory business recycling to the current Climate Action Plan.

To summarize, adopting commercial recycling in Brookline will underscore the town's compliance with state law with a minimal number of changes to town by-laws. The practice has successful precedents in other communities, and it will keep the town on a path towards reducing its carbon emissions.

ARTICLE 11

Submitted by: Thomas J. Vitolo

Tobacco use is the leading preventable cause of death in the United States.¹ Including deaths from secondhand smoke, tobacco use is responsible for more than 480,000 deaths

¹ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress. A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

annually.² Prolonged use of tobacco products is commonly associated with negative health outcomes such as cancer, respiratory and cardiac disease, negative birth outcomes, and increased susceptibility to infectious disease. The life expectancy for a smoker is typically 10 years shorter when compared to average lifespan of a nonsmoker.³ Tobacco use is a serious health problem that targets youth, as Centers for Disease Control surveys indicate that 16.0% of Massachusetts high school students under 18 years old currently smoke cigarettes.⁴

This warrant article proposes five changes to the existing tobacco control by-law. The five proposed changes are:

1. to define e-cigarettes as smokable tobacco products, and therefore subject e-cigarette purchasing and use to the same restrictions and regulations as other smoked tobacco,
2. to increase the percent of hotel rooms that are smoke-free from 90% to 100% smoke-free,
3. to expand the recently-passed prohibition of smoking tobacco products within 400 feet of Brookline High School by minors or school personnel to include smokeless tobacco products,
4. to completely prohibit self-service displays of tobacco products, and
5. to align with state law a number of definitions and fine schedules currently less stringent than the Massachusetts General Laws.

A more detailed explanation of each of these changes appears below.

Electronic Cigarettes

A growing concern for youth is the emergence of electronic nicotine delivery systems (ENDS). These devices are part of the fast-growing e-cigarette market and are shrewdly marketed as a safer alternative to cigarettes to conventional tobacco products.⁵ However, nicotine is the primary ingredient in ENDS and it is known to have negative impacts to the cardiovascular system.⁶ ENDS include other ingredients like lead, acetaldehyde and toluene, which are also harmful.⁷

ENDS can be found for sale in most retail locations that also sell traditional cigarettes and come in a wide variety of flavors that appeal to young people, such as grape, chocolate, piña colada, and cookies & cream. An additional concern raised about ENDS is that they may contain varying amounts of nicotine. The U.S. Department of Health and

² *Ibid.*

³ Jha P, Ramasundarahettige C, Landsman V, Rostrom B, Thun M, Anderson RN, McAfee T, Peto R. 21st Century Hazards of Smoking and Benefits of Cessation in the United States. *New England Journal of Medicine*, 2013;368(4):341–50.

⁴ CDC (2009), Youth Risk Behavior, Surveillance Summaries (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)).

⁵ Richtel, Matt. "E-Cigarettes, by Other Names, Lure Young and Worry Experts." *The New York Times*. The New York Times, 4 Mar. 2014. Web. 5 Aug. 2014.

⁶ Holly Feiock Heiberg, "E-cigarette Primer," Oregon Health Authority. September 20, 2013. <https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Documents/E-cigFactSheet.pdf>

⁷ Grana R., Benowitz N., Glantz S., "Contemporary Review in Cardiovascular Medicine: E-Cigarettes: A Scientific Review," *Circulation*. 2014; 129: 1972 – 1986.

Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General has determined that nicotine exposure during adolescence may have lasting adverse consequences for brain development unless the initiation of tobacco use can be prevented or delayed.⁸ According to the U.S. Centers for Disease Control and Prevention, electronic cigarette use among middle and high school students doubled from 2011 to 2012.⁹ The Town of Brookline must continue to make it difficult for minors to purchase tobacco and nicotine delivery products in order to prevent negative health outcomes commonly associated with addiction to nicotine.

E-cigarette devices are not regulated or approved by the US Food and Drug Administration (FDA) as an aid in smoking cessation.^{10,11} The concentration of nicotine in each e-cigarette varies from none to 4 to 24 mg; (light: 4-8 mg; medium: 12-16 mg; full strength: 16-24 mg) in each cartridge.¹² In a conventional cigarette, the nicotine content is about 1.89mg per cigarette.¹³ It takes about seven to twelve puffs to complete a conventional cigarette compared to an e-cigarette, which is about 300 puffs.¹⁴ Depending on brand, each END cartridge is designed to produce about 250-400 puffs, which is equivalent to about 1-2 packs of cigarettes.¹⁵ The use of e-cigarettes can lead to mouth and throat irritation, dry cough, and cardiovascular toxicity¹⁶. Repeated exposure to second hand vapor from ENDS may result in addiction and may increase the risk of ischemic vascular events like Lipoid pneumonia- lung inflammation.¹⁷

At the same time, and although ENDS are not yet clinically endorsed by the FDA as a smoking cessation tool, nascent research suggests that these products may serve a beneficial role as an additional treatment for smoking cessation. ENDS may serve as a safer alternative to conventional cigarettes and expose a user to fewer toxic chemicals.¹⁸ These advantages suggest that e-cigarettes have the potential to increase rates of smoking

⁸ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁹ Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print],

¹⁰ World Health Organization Study Group on Tobacco Regulation. *Tobreg scientific recommendation: devices designed for the purpose of nicotine to the respiratory system in which tobacco is not necessary for their operation*. In: *Report on the Scientific Basis of Tobacco Regulation: Third Report of a WHO Study Group*. Geneva, Switzerland: World Health Organization; 2009.

¹¹ Zuccotti, G., & Pflomn, J. (2012). *Electronic Cigarettes for Smoking Cessation*. *The Medical Letter on Drugs and Therapeutics*, 54(1404), 93-94.

¹² Trtchounian A., Talbot P. "Electronic nicotine delivery systems: is there a need for regulation?" *Tobacco Control*. 2011;20:47-52

¹³ [Kotz, Deborah . "Have cigarettes become more addictive? - The Boston Globe." *BostonGlobe.com*. *Globe* , 15 Jan. 2014. Web. 5 Aug. 2014.](#)

¹⁴ *Nicotine & Tobacco Research*. Jan 2013, Vol.15 Issue 1, p158-166. 9p. 2Charts, 1 graph

¹⁵ *Electronic Cigarettes*. *JAMA*. 2014;311(2):195. doi:10.1001/jama.2013.283624.

¹⁶ *Electronic Cigarettes*. *JAMA*. 2014;311(2):195. doi:10.1001/jama.2013.283624

¹⁷ *Electronic Cigarettes*. *JAMA*. 2014;311(2):195. doi:10.1001/jama.2013.283624

¹⁸ Tavernise, Sabrina . "Debate emerges on whether e-cigarettes spur use of tobacco - The Boston Globe." *BostonGlobe.com*. *NEW YORK TIMES*, 14 Feb. 2014. Web. 5 Aug. 2014.

cessation and reduce costs to quitters and to health services.^{19,20} A recent study on electronic cigarettes and smoking cessation found that e-cigarette users were more likely to report abstinence from tobacco use than either those who used nicotine replacement therapy (NRT) bought over the counter or used no smoking cessation aid.²¹ Even though the use of electronic cigarettes could assist with smoking cessation treatments; the user continues to inhale nicotine as well as a number of other potentially harmful compounds.

Evidence suggests that ENDS is likely to be a gateway device for nicotine addiction among youth.²² The percentage of student in grades 6 through 12 who had ever used ENDS increased from 3.3% to 6.8% from 2011 to 2012.²³ E-cigarettes may prove to be less deadly than smoked tobacco; however, use of e-cigarettes still damages the health of both the user and others nearby. Furthermore, in as much as the public decline in smoking is due to the denormalization of smoking due to prohibitions in a wide variety of public places, allowing the use of devices that look just like cigarettes in places where cigarette use is prohibited would represent a step backward in public health.

Hotels Smoke Free

Brookline began the transition to smoke-free hotel rooms in 1994, most recently increasing the number of rooms that must be smoke free to 90% in 1996. Brookline currently has two hotels that are permitted to have some smoking rooms under the existing by-law – the Holiday Inn at 1200 Beacon Street and the Courtyard Marriott at 40 Webster Street. Despite being permitted to allow smoking in some rooms, both hotels are 100% smoke-free. There are two other hotels currently under development – one at the former Red Cab site on Route 9 and the other at the former cinema at Cleveland Circle. Should this warrant article pass, both of these hotels would be required to be 100% smoke-free as well.

Tobacco products near Brookline High School

Town meeting recently prohibited the use of smoking products by minors and school personnel within 400 feet of Brookline High School. Unlike indoor smoking prohibitions, this wasn't driven solely by a concern for employees and other patrons breathing in second hand smoke. Rather, in addition to concerns about second hand smoking, the smoking prohibition near the high school was focused on “reduc[ing] the number of new student smokers”²⁴ and making “present smokers ... less likely to smoke.” Town Meeting readily agreed, passing Mr. Bermel's citizen petition overwhelmingly.

¹⁹ Hajek, P. (2013). Electronic cigarettes for smoking cessation. *The Lancet*, 382(9905), 1614.
doi:[http://dx.doi.org/10.1016/S0140-6736\(13\)61534-2](http://dx.doi.org/10.1016/S0140-6736(13)61534-2)

²⁰ Tavernise, Sabrina . "Debate emerges on whether e-cigarettes spur use of tobacco - The Boston Globe." *BostonGlobe.com*. NEW YORK TIMES, 14 Feb. 2014. Web. 5 Aug. 2014.

²¹ Jamie Brown et. al. "Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study," *Addiction*. Volume 109, issue 9, pp. 1531-1540. September 2014.

²² Fernandez, Elizabeth . "E-Cigarettes: Gateway to Nicotine Addiction for U.S. Teens, Says UCSF Study." *University of California, San Francisco*. N.p., 6 Feb. 2014. Web. 6 Aug. 2014.

²³ Stein, Rob. "Kids' Use of Electronic Cigarettes Doubles." *NPR*. NPR, 5 Sept. 2013. Web. 6 Aug. 2014.

²⁴ Nathan Bermel, "Petitioner's Article Description," *Brookline Annual Town Meeting Warrant Article 13*, May 27, 2014.

Currently, the prohibition applies only to smoking tobacco. It does not apply to the use of smokeless tobacco such as chewing tobacco, dipping tobacco, snuff, or snus. While the use of smokeless tobacco by students in front of BHS doesn't result in problems related to second hand smoke, it is unquestionably harmful to the students engaging in its use.

By including smokeless tobacco in the prohibition, current smokeless tobacco users will have fewer opportunities to use, and potential new users are less likely to be enticed. With the passage of this warrant article, the use of any tobacco products by minors or school personnel will be prohibited, not just smoking tobacco, further denormalizing the use of tobacco by young people.

Self-service displays

The town by-laws already prohibit tobacco vending machines. This by-law proposes extending the prohibition to all self-service displays. By moving all tobacco products behind the counter or into locked humidors, the opportunity for minors to shoplift tobacco products will be reduced.

Harmonization with state law

Brookline has been a leader in tobacco control for decades. One result of Brookline enacting tobacco control by-laws before similar state law was enacted is that when the state finally followed Brookline's footsteps, it oftentimes enacted state law that was more restrictive than Brookline's earlier local by-law. In cases where state law is more restrictive, the Town must enforce state law. This warrant article proposes to tighten up the definition of *employee*, *employer*, and *workplace* to match state definitions. Furthermore, it would increase the fine schedule to match state law. Finally, it removes the word "knowingly" from the by-law as it relates to violations – all violations will become enforceable, not merely ones deemed "knowingly."

Conclusion

There have been a number of tobacco related warrant articles in the past few years. Brookline has prohibited the sale of tobacco at educational and medical institutions, including university convenience stores and pharmacies. We've raised the age to purchase from 18 to 19, and then to 21. Town Meeting performed "housekeeping" on the by-law, removing antiquated language and aligning much of the by-law with state law. We've prohibited the smoking of tobacco by minors and school staff within 400 feet of our high school. This warrant article seeks to continue the dual trends of denormalizing the use of tobacco particularly but not exclusively for young people, and the gradual refinement of the tobacco control by-laws to ensure they align with state law and recent trends in tobacco use and policy. Passage of this warrant article will result in the treatment of e-cigarettes as smokable tobacco, finalize the transition to smoke-free hotel rooms, include smokeless tobacco in the high school buffer zone prohibition, reduce the opportunity for teenage shoplifting of tobacco products, and align Brookline's by-law with state law where appropriate. Unlike Brookline's groundbreaking tobacco legislation of the 1990s, none of these changes are remarkable or broad-reaching; rather, these changes are a gradual implementation of the best practices other communities and states have already implemented.

ARTICLE 12

Submitted by: Gordon Bennett

Introduction

On November 6, 2012, more than 70 percent of Brookline voters approved the “Law for the Humanitarian Medical Use of Marijuana.” (the Law) The Law took effect on January 1, 2013. In passing that Law, Brookline residents’ compassion for patients in pain was paramount.

Perhaps influenced by the Ballot question’s super-majority support, a little over a year later on November 19, 2013, Brookline Town Meeting passed three warrant articles that created a framework for the operation of an RMD in Brookline. From this warrant article’s perspective, the most important was article 7, which dealt with zoning. Rather than adopting Massachusetts Department of Public Health’s (DPH) five hundred foot buffer zones created to protect children, the article eliminated one whole category of safeguards (“any facility in which children commonly congregate”) and drastically relaxed a second (rather than a five hundred foot setback, a daycare now cannot be in the same building). The third category of setback for schools was maintained.

Brookline voters were never asked, and did not consent to these changes. Support for the Ballot question and medical marijuana in general, should not be construed as support for its subsequent de-facto regulatory reality. If left to stand, these zoning changes have the potential to seriously harm the neighborhood where an RMD is sited. Thus, we propose amending the General Restrictions for RMDs by adopting the Commonwealth’s standards for protection of children. This amendment conforms to the original goal of providing access to medical marijuana for critically ill patients. At the same time, this change strengthens Brookline’s family-friendly culture and maintains its “streetscape” walking neighborhood character.

Recognized by the state as a build-out community, Brookline is a dense, urban area making setbacks vitally important. Surrounding communities have actually adopted even more restrictive buffer zones for RMDs than were originally foreseen in the state regulations. Using the five hundred foot buffer zone state standard, Newton includes “houses of worship or religious use.” Cambridge, also using the five hundred foot setbacks, established special overlay districts to restrict the areas in which an RMD could be sited. Amending Brookline’s By-Laws to be in accord with state standards still leaves Brookline with the least stringent buffer zones in the area.

1) Protecting Children

Children are protected under Massachusetts law. Along with those disabled by illness, their care and security must be considered. Indeed, the state’s RMD buffer

zones recognize and safeguard only children. No protection is afforded property owners, religious institutions, and other commercial ventures.

The Massachusetts criminal code acknowledges the increased risk to children of drugs and their exposure to those who have or would sell them. It protects areas where children congregate even beyond the crime of predatory sale to children. M.G.L. Chapter 94c, Section 32J, for instance, makes it a felony to distribute drugs near schools, parks, and playgrounds.

Concern about poisoning and overdose is an important motivation for buffer zones. Accidental ingestion is of particular concern given the menu of edibles and fizzy drinks. “Children’s Hospital see surge in kids accidently eating marijuana” is a headline from the May 21st, 2014 Denver Post. The article discusses how seven of the nine kids brought in this year have had to be admitted into the intensive-care unit of the hospital. As a point of reference, between 2005 and 2013 only eight children were admitted for unintentional ingestion. Currently, there is no maximum dosage limits so that the ingestion of a single brownie can be dangerously toxic to a young child. In Colorado, “marijuana exposures resulted in more ED evaluations, hospital admissions, and clinical symptoms than did ethanol exposures” (Wang, S., et al, “Pediatric Marijuana Exposures in a Medical Marijuana State” JAMA Pediatrics, 2013;167(7);630-633).

Creating a “safe zone” for children is the intent of the state regulatory standard. In addition to schools, daycare centers are included for this very purpose. As of this writing, Brookline has thirty seven. The regulations simply and pragmatically recognize that the area around an RMD is likely to be problematic. Large amounts of cash and marijuana must be transported through the immediate neighborhood when entering and exiting the store. Not all customers are driven by genuine medical need. In addition to being possible targets of crime, less scrupulous customers have strong financial incentives for resale as described below. Including daycare centers as part of the buffer zone protects young children.

“A facility in which children commonly congregate,” is the third, five hundred foot buffer zone category. The words are vague and open-ended for a reason: written to protect children, the regulations recognize kids can be found in far more places than can practically enumerated. As a community, Brookline has a long history of supporting families and children with its excellent schools, parks, libraries, and recreation opportunities. Brookline is also the home of numerous religious institutions, children-centric businesses including toy stores, clothes stores, a children’s bookstore, a puppet theatre, dance studios, etc. Daycare centers are required to go to playgrounds on a daily basis. This diversity of locales in which children can be found is the very reason the DPH included the language. It is deliberately expansive rather than restrictive.

The three state setbacks are germane. By including them, the Commonwealth recognized that, despite other protective regulatory measures, siting RMDs next to schools, daycare centers, and facilities where children commonly congregate will be harmful to our kids.

2) Diversion

Diversion of legal medical marijuana into the hands of youth and recreational users is a certainty. DPH chose to liberally interpret the Law's language of a sixty day supply purchase limit setting it at ten ounces. This amount of marijuana is enough to roll nearly one thousand joints, sufficient for a person to smoke an entire joint nearly every waking hour of every day for the entire two month period (0.3 to 0.5 grams per "joint", RAND Institute study).

In comparison, Colorado allows no more than two ounces for medical use in a person's possession at any one time and no more than one ounce for recreational use. New York does not allow possession of marijuana buds at all; patients are only allowed to consume marijuana through food, oils, pills, and vapors. Unlike other states, New York only permits marijuana to be dispensed at hospitals and has strict limits on which illnesses can be treated. Terence O'Leary, a New York State official said, "We're treating this like medicine in every way, shape or form, including how it's produced and how it's dispensed and how it's used." ("New medical marijuana law inches along in New York State", Buffalo News, August 30, 2014) Washington State allows possession of up to two ounces at any one time. By allowing ten ounces of marijuana in an individual's possession, Massachusetts heightens the risk of diversion.

Other factors increasing the risk of diversion include:

- Elevated potency. According to the National Institute on Drug Abuse, typical marijuana today is five to eleven times as powerful as forty years ago.
- Dispensary to "street" price spread. As a stated business policy, the RMD plans to sell marijuana at \$300 per ounce, "below market rates." With street prices around \$400 an ounce, the \$100 spread per ounce presents dangerous financial incentives.
- Lack of real-time tracking system.

Policing the public consumption of edibles will be especially difficult as the telltale sign of marijuana's pungent aroma will be absent. For example, "in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses. (California Police Chiefs Association White Paper on Marijuana Dispensaries, 2009)

Diversion is particularly dangerous for teenagers. In “Teenage kicks: cannabis and the adolescent brain” (Lancet Vol 381, March 16, 2013) researchers found that adolescent cannabis use is more damaging to cognitive abilities during adulthood than is adult use. From the article:

“The findings showed, first, that persistent cannabis use is associated with a statistically significant decline in cognitive ability. That is, the more persistent the cannabis use, the greater the cognitive decline. Second, the association between persistent cannabis use and cognitive decline was significantly greater for people who began using cannabis before, compared with after, 18 years. Third, if cannabis use started in adolescence (before 18 years), the cognitive deficit remained significant when people had stopped using for at least 1 year before testing. The results remained significant after adjustment for other possible confounding factors, including alcohol and so-called hard-drug dependence (eg, heroin, cocaine, or amphetamines), years of education, and diagnosis of schizophrenia.”

Diversion activity is expected to be highest closest to the RMD. In the February 2007 issue of the Journal “Pain Medicine” an article entitled “Mechanisms of Prescription Drug Diversion Among Drug-Involved Club and Street-Based Populations” states the data suggest “that there are numerous active street markets involving patients ... Many ... have been appropriately diagnosed ..., but are selling their prescription drugs for profit... In addition, there are many individuals posing as legitimate patients for the purposes of scamming ... or otherwise defrauding the system.” Mitigating diversion risk is not done at the state level alone but by local education, awareness, law enforcement and sensible, community-specific implementation of laws, including zoning safety standards, to minimize this risk.

Given the price gap, the ability to purchase ten ounces, the lack of a real-time purchase tracking system, difficult-to-identify edible products, and patient reselling, diversion into Brookline is a near certainty. An RMD in Brookline is likely to be a regional distribution center not only for legal medical use, but also for illegal recreational enjoyment. This is not what Brookline voters anticipated when they voted overwhelmingly for medical marijuana. The importance of distancing this activity from residences, neighborhoods, daycares and playgrounds as well as schools will maintain community spaces where families feel safe and businesses can thrive.

3) The DPH’s Reinterpretation of the Law, the Growth of Prescription Mills, and the Expansion of Medical Marijuana Users

In 2012, Brookline voted overwhelmingly to support critically ill patients. They did not vote for a single-use retail store serving hundreds of thousands of people sited near schools, daycare centers, and facilities in which children commonly congregate.

One of the regulatory changes that has altered the actual implementation of medical marijuana is the definition of diseases. The original petition language stated:

“a patient must have been diagnosed with a debilitating medical condition, such as cancer, glaucoma, HIV-positive status or AIDS, hepatitis C, Crohn’s disease, Parkinson’s disease, ALS, or multiple sclerosis.”

The DPH’s regulatory definition, however, is a:

“debilitating medical condition shall mean: cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient’s physician.”

The difference is subtle but critical. Rather than defining the list of debilitating conditions itself, the DPH relegates that decision to doctors. That change expands the pool of likely patients by a factor of ten.

Colorado’s experience is instructive. While not directly comparable, according to a June 2013 report from the Colorado Office of the State Auditor, only 8 percent of all the reported conditions are described as cancer, glaucoma, cachexia, or ALS. The non-listed condition of severe pain accounted for ninety-four percent (percentages do not add up to 100 percent because some patients have more than one condition). This suggests that the percentage of customers served as intended by the original Massachusetts legislation is more likely around 0.2 percent of the general population, rather than the 2 percent of the current population that DPH estimates. By making explicit the ability of a doctor to go beyond the original list, the DPH regulations enable an ever-growing list of conditions for which medical marijuana can be obtained.

Colorado is also instructive of what Massachusetts can expect regarding the statistics of physicians involved in this business. According to the same report mentioned above, in Colorado, just 12 physicians had certified half of the 108,000 registered patients and one had registered more than 8,400. Already in Massachusetts, commercially-minded physicians are following their Colorado colleagues in setting up specialty offices to provide access specifically to marijuana. The conflict of interest for doctors is clear. The best interests of patients are subordinated. (“Doctors open offices in Mass. to prescribe marijuana – Boston Globe, March 16, 2014) Charging \$200 to \$250 for an evaluation and a certificate, these physician-run prescription mills undermine the notion of a bona fide relationship.

With fewer RMDs statewide (currently only eleven of thirty-five that were to be opened according to the Law by 2013 have a provisional license) and a larger pool of patients accessing each RMD, the concerns for the host community and adjacent neighborhoods are intensified.

4) Neighborhood Impact

The analogy is often drawn between marijuana and liquor with the logical inference being that RMDs have little or no adverse impact. This inference is false:

- Brookline's RMD will serve a super-regional customer base.
- Market price and street price for liquor are equivalent.
- Marijuana is still illegal for recreational use creating inducements for illegal follow-on sales.
- Predominantly cash nature of the business.

Due to the proposed RMD's unexpectedly large population pool, this concentrates the number of visits, the traffic, the parking requirements, the amount of cash coming into each location, and the amount of marijuana leaving each RMD. The neighborhood closest to the RMD bears a significant burden.

Brookline can expect a particularly high concentration of visits because of its proximity to Boston. Boston's Mayor Marty Walsh has stated that he is "dead set" against RMDs ("Mayor Walsh says he aims to block dispensaries", Boston Globe, April 9, 2014) and campaigned against the 2012 ballot question which authorized medical marijuana. He thinks it could lead to a spike in illegal drug activity. His implacable opposition makes it possible that Boston may not ever have an RMD during his term as Mayor.

Including Boston, Brookline's RMD pool of customers is approximately 700,000. Based on the Colorado experience, New England Treatment Access (NETA) state application, and DPH estimates, at least two percent of those individuals, approximately 14,000, will receive qualifying certificates. Using the average number of 2.5 visits per customer per month (NETA's assumption), a Brookline RMD can expect 35,000 visits a month. As the RMD is expected to be open 7 days a week, 9 hours a day, 365 days a year, the number of visits on average will be around 130 customers an hour. An increase of this magnitude raises the risk of traffic-related accidents and is problematic for the surrounding neighborhood. Furthermore, careful consideration must be given to the very real possibility that the RMD becomes a full-fledged retail store if the state eventually legalizes recreational marijuana.

The immediate neighborhood around an RMD has an increased risk of crime due to the large amount of cash carried in, and the high street value of the product carried out of that RMD. NETA's experience in Colorado is that the average customer buys 1.6 ounces of marijuana a month. This translates to nearly $\frac{3}{4}$ of a ton, or in dollar terms, around \$6,720,000 per month. The majority of these sales will be paid in cash because most finance companies refuse to do business with RMDs due to the Federal government classification of marijuana as a Class 1 drug.

While medical marijuana industry groups frequently cite studies suggesting no increase in violent crime in the vicinity of RMDs or in states that have legalized medical marijuana, it is also true that violent crime has been dropping nationally since 1990. In comparing twelve year trends of violent crime within each state pre and post adoption of medical marijuana with the national numbers over the same

period, in ten out of twelve states, violent crime rates fell less or actually rose compared with the U.S. as a whole. (American Thinker, April 23, 2014) This suggests that crime did increase on a relative basis in states with medical marijuana.

Further, local police recognize the possibility of crime and deploy more resources to the area around RMDs. This impacts their ability to perform other duties. Speaking in front of the Long Beach, California Planning Department on July 17th this year, Police Chief Jim McDonnell said:

“Our attempts to address the complaints and criminal activity in and around marijuana dispensaries proved to be a substantial burden on our already strained resources... At the same time we have been asked from a resource standpoint to address dispensaries, we’ve been directed also, and will continue to look at other serious issues ... So taking a step backward, the medical marijuana arena will negatively impact our ability to be able to address these and other issues.” (Long Beach Report – July 21st, 2014)

Brookline has the advantage of drawing on the experiences of others to understand more fully the impact of RMDs. A particularly relevant one, given the community’s similarity to Brookline, is Noe Valley / Mission area in San Francisco. It welcomed its first RMD in October of 2004 serving around 75 customers a day, less than one tenth of that expected in Brookline. By the summer of 2005, the neighborhood was complaining about cars, loitering, feeling intimidated, and observing open marijuana use, distribution and resale. By December 2005, the RMD was ordered to move by the San Francisco Board of Appeals. (The Noe Valley Voice, October 2004, July-August 2005, December-January 2005)

In Noe Valley the changes were rapid and dramatic. Nonviolent crime impacts the quality-of-life of a neighborhood. Proactive zoning buffering young children, playgrounds, and residences mitigates the exposure of families to the realistic risk of increased nonviolent crime.

Mark Kleiman, UCLA professor of Public Policy and an expert on the legalization of marijuana, advocates a 100 percent deliver model to alleviate local impacts rather than having full-fledged retail stores. (Los Angeles Times – December 4th, 2013) While this resolves many of the aforementioned issues, this is not the proposed licensee’s business model.

5) State Standard Buffer Zones Do Not Block RMDs from Brookline

Massachusetts law prohibits towns from banning RMDs. In a March 13, 2013 ruling striking down the town of Wakefield’s total ban on RMDs, Margaret Hurley in the Massachusetts Attorney General’s Office wrote:

“We conclude that a municipality may not completely ban such centers within its borders, we also conclude that municipalities are not prohibited from adopting zoning by-laws to regulate medical marijuana treatment centers, so long as such

zoning by-laws do not conflict with the Act (or regulations adopted to implement the Act), and are not “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.”

During the debate surrounding RMDs at Town Meeting last November, it was suggested that following the Commonwealth’s buffer zone standards would have led to an “effective ban” on RMDs in Brookline. Town Planning Department bubble charts show however, that if the proposed state regulatory “default” buffer zones are applied to Brookline’s General Business, Office, and Industrial Zones, there will be several areas in Brookline where an RMD can be sited. Thus, adopting the state standards will still enable an RMD in Brookline to serve critically ill patients, and can hardly be considered “arbitrary and unreasonable.”

6) Conclusion

With the most honorable of intentions, Brookline voted for medical marijuana in 2012. The contrast between Ballot question’s idealism and the sobering reality of the Law’s execution however, is overwhelming. Only a modern-day Casandra could have foreseen these results:

- Heightened risk to Brookline’s children, youth, and teenagers
- A Brookline RMD becoming a super-regional marijuana distribution center
- Boston Mayor Walsh’s implacable opposition to RMDs
- Extensive menu of edibles and fizzy drinks elevating risk to children and facilitating illegal public consumption
- Open-ended expansion of qualifying conditions
- Growth of doctor mills mocking bona fide physician – patient relationships
- Unexpected wave of customers causing traffic and parking issues
- Surprisingly high maximum ten ounce marijuana purchase quantity
- Increased risk of diversion because of RMD’s below market pricing
- Large magnitude of cash and marijuana introduced on Brookline’s streets
- Strained police resources

Given our now more nuanced understanding of the Law’s consequences and a new comprehension of the complexities surrounding an RMD’s impact on Brookline, it is reasonable, sensible, and prudent to adjust course to the pragmatic implications of the Law’s implementation.

Adopting the Commonwealth’s setback standards’ language for five hundred foot buffer zones for “a school, daycare center, or any facility in which children commonly congregate” does not block RMDs from Brookline. It still permits an RMD to be sited in Brookline while simultaneously protecting the children and neighborhoods of Brookline from concentrated exposure to the activity around an RMD.

The petitioners urge you to vote for this amendment to the Zoning By-Law.

ARTICLE 13

Submitted by: Bobbie Knable and Ruthann Sneider

Decisions by the Board of Appeals are of importance not only to the petitioner who seeks to carry out a project but also to abutters and other neighborhood residents, whose enjoyment of their property and sometimes the monetary value of that property may be affected by the outcome.

The intention of this by-law amendment is to insure that interested parties in cases brought before the Board of Appeals are provided information at crucial times during the Board's consideration of the appeal and when a decision on the appeal has been reached, and that members of the public have access to the public records of those appeals within a reasonable time.

Massachusetts General Laws, Chapter 40A, Sections 11 and 12, require that local Boards of Appeal adhere to certain "Notice Requirements", as follows (edited):

Section 12: "The Board [of Appeals] shall cause notice of such hearing [of a petitioner's appeal] to be published and sent to parties in interest as provided in section eleven."

Section 11: "Parties in interest'...shall mean the petitioner, abutters, owners of land directly opposite...and abutters to the abutters within three hundred feet of the property line of the petitioner...The assessors maintaining any applicable tax list shall certify to the permit granting authority...the names and address of parties in interest..."

"...where notice to individuals...is required, notice shall be sent by mail, postage prepaid. "

ARTICLE 14

Submitted by: Naming Committee

On August 12, 2014, the Naming Committee voted 4-1-1 to recommend to Town Meeting that the athletic fields at the Cypress Street Playground be named the "Thomas P. Hennessey Fields at Cypress Street Playground". The Committee added the provision that the name would terminate ten years after passage by Town Meeting. This followed a unanimous vote from the Park and Recreation Commission in support of the naming of the athletic fields, although the 10-year term limit was not part of the Commission's vote.

This change was recommended by former Selectmen Donna Kalikow, Joe Geller, Mike Merrill and Bob Allen who thought it was an appropriate site to honor the memory of Tom Hennessey. Mr. Hennessey's supporters have also established a 501c3 in order to provide scholarships in his name and to provide support for field maintenance. Tom Hennessey served as a member of the Board of Selectmen for two terms, including one as Chair and as a member of the School Committee for nine years, including two as Chair. He was also an outstanding athlete participating in football, basketball and track while at Brookline High School. He then went on to

play football at Holy Cross and was a member of the Boston Patriots from 1965-1966.

After hearing the testimony of several family, friends and colleagues, the Naming Committee agreed that naming the fields after Tom Hennessey was a fitting honor. Themes of integrity, humility and leadership were woven throughout all the stories retold by family and friends. It was clear that Tom Hennessey was an exemplary leader and role model. Naming the fields in his honor will serve as a reminder of the legacy of leadership and service for future generations to emulate.

ARTICLE 15

Submitted by: John Harris

This is intended to repeal the authorization of a Brookline Taxi Medallion program enacted in the Fall 2008 Town Meeting, and amended in the Fall 2010 and Fall 2011 Town Meetings—in each case with very little debate.

In its Fall 2008 session, Brookline Town Meeting authorized the Board of Selectmen to seek approval from the Massachusetts legislature to sell a limited number of “Medallions,” one medallion to be placed on each taxi. The precise number of medallions issued by the town would be determined by the Transportation Board and approved by the Board of Selectmen.

A system of taxi medallions restricts the number of cabs and imposes the expense of buying a medallion for each and every cab on the road. Because of their (artificial) scarcity, medallions often become extremely expensive. In Boston and Cambridge, the price of a single medallion exceeds \$600,000; in Somerville, it exceeds \$350,000. A local bank official recently estimated that a Brookline medallion would exceed \$200,000. These prices are reflected in high cab fares.

If you have ever lived in Washington DC, you know there are plentiful taxis there, and the fares are a fraction of the cost in Boston. This is because Washington DC does not require taxi medallions.

A medallion system can be contrasted with a system of open licenses, in which anyone who meets certain relevant requirements: is of age, meets regulatory standards regarding driver training, licensing, and moral fitness; vehicle features, upkeep and safety; insurance coverage, etc.; and pays a modest registration fee, could enter the field and become a taxi owner and/or driver. Every other line of business serving the residents of Brookline—restaurants, supermarkets, pharmacies, doctors’ offices, daycare services, etc., that is regulated by the Town (to ensure high standards of health and safety for customers and employees), enjoys an open system of licensing, where any hardworking person can attempt to build a business and earn a living.

Those who advocate for taxi medallions would impose a system built around quotas, prohibitively high costs, and significant barriers to entry. This change would be deleterious to the citizens of the town, and once implemented, would be extremely difficult and expensive to undo.

The town sees the sale of medallions as a quick source of revenue to the town. But in order to gain the support of the town's taxi company owners, who initially vigorously opposed medallions, a three-tier system has been proposed. During the first tier, existing taxi owners would be given a certain number of medallions. In the second tier, existing owners would be permitted to purchase more medallions at a pre-determined discounted price. Both tiers would substantially reduce the expected windfall. It is only at the third tier that medallions would be offered at a market rate.

Until recently, taxi medallions have proven to be a prudent investment. Like any scarce good, the price increased over the years, sometimes astronomically. Since their initial issuance in 1938, the price of medallions in New York City, for example, rose faster than that of housing or gold. But the advent of competing services such as Uber and Lyft have left the market in turmoil. Recently, in Chicago, no one showed up to bid on a (rare) issuance of new medallions. The very real possibility exists that those who inadvertently purchase medallions at a market high may find themselves "under water."

And the town would receive a substantial financial benefit only in the initial sale of each medallion. The purchaser of a medallion acquires ownership rights to it, so the bulk of the proceeds of any subsequent sale accrue to the private owner, not to the town. To address this concern, it has recently been proposed that the town be paid a percentage of the resale price of previously issued medallions. Is this comparatively modest amount worth the negative effects of medallions?

Perhaps the most pernicious aspect of medallions is that the ownership rights they create entail, like those of any other form of property, may continue—quite literally—for centuries. Once established, a medallion system is extremely difficult to undo, because it would require buying back all of the outstanding medallions, and the owners will not easily relinquish their investment. And because only a finite number of medallions will be issued, a medallion system would replace an open market-based system with an oligopoly, which may last well beyond the lifetime of those of us now considering this matter. For a single, relatively small influx of cash for newly-issued medallions, the town is considering relinquishing an important part of its control over the taxi industry for decades or centuries to come. This will have substantial deleterious effects on the taxi customers of Brookline.

In a medallion system, a government agency decides how many taxis are allowed to operate. As well-meaning as they might be, the administrators of the system can never ascertain the optimum number of cabs on the street as well as the market.

The inevitable result of a medallion system is scarcity by design, since operators will only purchase medallions if they guarantee competitors will be restricted. The problem compounds over time, as existing medallion holders, and the banks that loaned them the money to purchase the medallions, put constant pressure on administrators to against issuing additional medallions. This will inevitably lead to a scarcity of cabs, and significantly higher fares. The Federal Trade Commission has consistently warned against taxi medallions for these reasons.

In addition to their legitimate operating expenses, including the cost of the purchase and upkeep of the vehicles, insurance, and fuel, under a medallion system owners must

amortize the price of the medallion itself. This adds a significant debt burden. At first, owners would be forced to increase the lease they charge to drivers—thus reducing the driver’s gross income. Eventually, the drivers would pressure the owners, and the owners would pressure transportation officials, to increase fares.

MEDALLIONS LEAD TO INEFFICIENCIES IN SERVICE due to arcane rules of enforcement. We have all hailed empty taxis and watched them drive by: they often are in a jurisdiction where they are allowed to drop off, but not pick up, passengers. When this happens, passengers are delayed, drivers are deprived of income, gas is wasted, and carbon is exhausted into the atmosphere. This is economically and environmentally irresponsible.

A ROBUST TAXI INDUSTRY WOULD GREATLY EASE BROOKLINE’S PARKING PROBLEM. Public transportation can never be so complete that it can carry people to their final destination down every last street in town—what transportation planners call the “last mile”—but a healthy taxi system, with modest fares, can. A low-cost taxi system makes living without a car possible, especially for those living in the densely-settled parts of Brookline, and greatly mitigates the need for parking spaces.

MEDALLIONS CREATE AN ISSUE OF SOCIAL EQUITY. Taxi ownership has conventionally been a stepping-stone to the middle class for ambitious people of limited means. Locally, many taxi drivers are immigrants some only recently arrived in the United States who in addition to paying their living expenses are trying to save for their children’s educations *and* send a portion of their earnings to their families back home. If a Brookline medallion sells in the \$200,000+ to \$600,000+ range, it is doubtful many of these drivers could ever qualify for the substantial loan they would need to purchase one. Most drivers would be caught in a noose, paying through the nose for a taxi they cannot reasonably be expected to one day own. They would in effect be forced to remain low-paid daily contract workers for their entire careers.

The drivers’ financial straits are compounded because **MEDALLION SYSTEMS MAKE CORRUPTION INEVITABLE.** Since only a few increasingly-wealthy medallion holders would own taxis, there would be many more drivers than medallionized vehicles. An investigative series in the Boston Globe in the spring of 2013 revealed that drivers in Boston often must bribe dispatchers to be issued keys for a 12 hour shift, in addition to paying their formal lease for their cab.

One wonders why taxis, which provide the public with a useful service, should be subject to a regulatory regime similar to that imposed on the liquor industry. We have wisely decided to regulate the number and location of establishments selling alcohol in our communities. With rare exceptions, a new restaurant or bar can only obtain a liquor license by purchasing an existing one. In this instance, society is better served by restricting trade. In contrast, there is no reason to limit the number of taxis, and every reason not to.

The taxi industry would be more appropriately regulated with a system like the one governing private drivers’ licenses or automobile registrations. The state issues a license to anyone who is of age and passes written and driving tests, and issues a registration to any vehicle that is ensured and that passes an inspection (and in both cases, pays the fee).

Placing a quota on the number of drivers' licenses or registrations would impose undue hardship on those prohibited from driving, and would have a devastating impact on the economy.

So too with taxi medallions. The Town can and should establish rigorous regulations regarding the vehicles (construction quality, size, safety features, accessibility, etc.), the training, licensing and moral fitness of drivers, and minimum levels of insurance coverage, but should not limit the number of cabs.

Finally, a robust taxi system would encourage more residents to forego car ownership, and save the expense of a car loan, insurance, fuel, parking, and upkeep, for vehicles that spend most of their lives parked and idle. Given Brookline's density, many citizens would be better served by walking, cycling, taking a bus or subway, renting a car hourly, daily or weekly for the occasional errand or long-distance trip—and when appropriate taking a taxi.

ARTICLE 16

Submitted by: David Lescohier

This article recommends that the transportation board and any other boards or committees reconsider changes to the taxi license regulations and the expected revenue for the Town from the sale of medallions.

The board of selectmen approved a modified three-tier plan for medallion pricing that consultant Richard LaCapra recommended in 2011. This modified LaCapra plan says that the Town will grant a certain number of medallions in the first tier, sets a price of \$65,000 - \$63,000 for the second tier, and envisions auctioning medallions in the third tier with an expected price of \$125,000.

As an alternative, this warrant article advocates that the relevant boards or committees act to limit undue maximization of additional revenue when it would thereby result in excessive sacrifice of the entirety of enumerated interests in chapter 317 of the acts of 1974 section 4A, as amended.

Specifically, this warrant article recommends stabilizing the currently deteriorating economics of taxicab companies due to loss of drivers and the inability to recruit qualified replacement taxicab drivers. This deterioration threatens the continuity of existing services. In order to reduce taxicab driver losses and enhance recruitment, town meeting therefore advocates that any boards with jurisdiction pursue all reasonable actions to promote improved working conditions and a more secure future for taxicab drivers.

EXPLANATION

BACKGROUND

If it were ever true that Brookline taxi medallions could be worth \$70,000, even \$65,000 to \$63,000, the currently approved figures, it is likely to be no longer true today. While the Town has been considering a transition to a medallion licensing system, the

assumptions underlying LaCapra's recommendation that the board of selectmen used to set the prices for the three-tier transition, have become no longer realistic or sustainable.

The emergence of new smart phone-based modes of unregulated asymmetrical transportation is a likely contributing reason for the reduced demand for Brookline taxis, and therefore, the reduced value or potential value of Brookline taxi businesses, and logically, the potential value of Brookline taxi medallions.

Recently, because of the diminished prospects for taxi drivers in Brookline, a growing number of drivers have quit. The companies are having increasing difficulty recruiting replacement drivers with equivalent, satisfactory qualifications. As a result, there are fewer vehicles leaving the lot to serve the shrinking demand. The result is reduced revenue, but many fixed costs remain that the companies cannot sufficiently manage or reduce, creating a potential significant financial problems for Brookline taxicab companies.

The Brookline taxi market is unique. Comparisons to other communities are not very relevant. Mr. LaCapra's experience managing the medallion system in Boston is, for the most part, an irrelevant qualification for appraising the Brookline situation. A member of the moderator's committee on taxi medallions asked Mr. LaCapra for examples of any other communities, comparable or not, using the three-tier system he has recommended for Brookline. The hope was to learn from any experience that may be somewhat relevant to Brookline and to acquire information about possible pitfalls and successes. It turns out the recommended three-tier method is untried and unproven. The committee learned that no other community, to LaCapra's knowledge, has employed the three-tier strategy LaCapra recommended for Brookline.

POLICY RECOMMENDATIONS

This warrant article favors five policy outcomes:

First, reduce the number of dispatch services in Brookline to achieve economies of scale. It is unlikely that Brookline can support more than two efficient dispatch services.

About 10 years ago, Brookline, believing that competition would enhance the taxicab industry, attracted additional taxicab companies. Brookline traditionally had two companies providing dispatch services and now has four, hence the problem of small scale companies that are experiencing especially difficult challenges in the current market of shrinking demand, persisting fixed costs, and taxi driver loss. Thus, this warrant article favors companies providing dispatch services to between at least 40 to 75 taxicab or affiliate members. The incentive for the smaller companies should be to consolidate or merge. In an 80% telephone; digital; and now dedicated taxicab smart phone app dispatched market such as Brookline, dispatch companies with less than 40 - 75 taxis are unlikely to be cost-efficient.

Second, in order to improve the poor, some would say disgraceful, deteriorating working conditions involving long hours, decreasing pay, danger, and no benefits for Brookline's taxicab drivers; the relevant boards with jurisdiction should provide an affirmative

opportunity through an auction process for long-standing, loyal affiliated and shift-work drivers having good records, to acquire taxi medallions.

While the board of selectmen and advisory committee reports for warrant article 26 claim that the LaCapra proposed strategy promotes the opportunity for driver medallion ownership, this is not actually the case. There is nothing in the draft regulations (February 24, 2014) or the LaCapra report that would explicitly provide a realistic opportunity for the majority shift-work drivers to bootstrap themselves into owners.

On the contrary, under the draft taxi regulations, the proposed prices, and the planned distribution voted by the board of selectmen, the board in effect, has practically earmarked medallion sales only to established companies and affiliates. In order to become owners, taxi shift-work drivers would have to out-compete and out-bid established taxi companies. They could only do so in tier three as there is no allocation for them in tiers one or two. The claim that shift-work drivers, who are the overwhelming majority of drivers, would actually have an opportunity to become owners under the LaCapra plan, as adopted, and under the current draft taxicab regulations (February 24, 2014), is not creditable.

Third, in order to achieve resiliency, sustainability, and flexibility, initially manage the sale of medallions by conducting a series of incremental auctions of small blocks of medallions over time. In order to maintain stability and continuity of taxi services in Brookline during the transition, continue hackney licenses for the remaining fleet. The board should grandfather taxicabs continuing to operate with hackney licenses under current regulations, not obliging them to meet the proposed higher standards because they would not have access to the financing that a medallion may provide. The transportation board, using its discretion, may determine that it is in the best interest of the Town, consistent with maintaining continuity of service, to keep a reasonable number of hackney licenses in the inventory as hedge against the need to reduce the fleet, as the hackney licenses do not have property rights.

Price control is fraught with complication and difficulty. Whether it is apartment rents, broadcast licenses, microwave spectrum, oil exploration leases, mining rights, or taxi medallions, a strategy that relies on defining or prescribing prices frequently is, or becomes, unworkable. This is why this warrant article recommends replacing the three-tier LaCapra price setting mechanism with a simple, incremental auction process. It is generally better to let the buyer, who is best able to judge the risks and benefits of acquiring a property or right, to be the price decision maker.

The transportation board and board of selectmen, which inherently, are distant and out of touch from the realities of running a taxicab business, should not attempt to impose themselves on the management of taxicab businesses by setting the price of required medallion licenses with the aim of increasing the companies' balance sheet net worth. How and to what extent the companies may decide to borrow or otherwise increase debt in order to invest in their business should be up to the management of the taxicab businesses. The Town boards should regulate Brookline taxicab businesses, but not manage them. In the context of a transition from a hackney license system to a taxi medallion system, the fairest and most flexible and resilient way to realistically and

sustainably establish a value for the initial distribution of taxi medallions in Brookline is by auction.

Both the selectmen's and the advisory committee's discussions for Warrant Article 26, Spring 2014 claim that the taxi companies in Brookline have not, and cannot, modernize their dispatch system, introduce GPS, and eHail technologies. These generalizations are not consistent with experience or the current state of Brookline taxicab companies. The lack of medallions notwithstanding, companies already operate with digital dispatch systems. The companies are keeping the radios only for backup, have GPS, use tablets in the vehicles to display incoming requests and provide GPS, have eHail, and are testing and soon to deploy a smart phone app similar in concept to the apps employed by the unregulated competition.

Fourth, bolster the Town's fees in order to provide enhanced staffing for regulation and public safety.

Fifth, in order to maximize spending for improvement of the fleet, the board should call for payment of the medallion bid price at the time of approved sale or transfer to a new, subsequent owner (a lien) rather than at the time of first purchase from the Town.

DISCUSSION

In addition to recently attracting more competition by adding more companies, the Town of Brookline, unfortunately, has promoted the belief that medallions could cure the problems for the Brookline taxicab industry. The supporters claim that not only would medallions cure problems, but also simultaneously the sale of medallions would yield a large windfall (an estimated \$15 million) for the Town.

It is manifestly true that some communities have adopted medallions and others have not. Of note, generally communities that medallionized initially offered medallions for a nominal price, not an inflated, windfall-seeking price.

There is likely no compelling case for or against medallions. It is the case that communities with, or without, medallions have well managed, or poorly managed, taxicab systems. Medallions simply are not a magic bullet.

In the case of Brookline, the effort to medallionize has been an unfortunate distraction. While the Town has been seeking to medallionize, the strategic decision to bring additional taxicab companies into Brookline to enhance competition has weakened the industry, exacerbating the current decline. The Town has promised medallions as a cure repeatedly because drivers and the companies are asking for medallions and believe that they are a cure. Currently the drivers and taxicab companies are becoming desperate. They are grasping for medallions as their lifesaver.

Unfortunately, because of the events and delayed decision making over the past ten years, currently taxicab companies face less favorable economic conditions and less attractive realistic alternatives. Recently, the situation has seriously deteriorated and it seems that tough medicine and decisions are currently the only ones that remain. This is why this warrant article recommends reducing the number of companies and promptly

introducing, at least on a trial basis, a sale of some medallions through auction. Using an auction would prevent excessive medallion purchase prices. Excessive prices could end up risking possible future under water loans, which could become another nail in the coffin of the weakened Brookline taxicab industry. Further delay could be detrimental.

CONCLUSION

This non-binding warrant article is about stabilizing Brookline taxicab companies, maintaining services for the elderly and disabled, assuring continuity of services for Town residents, protecting the environment, and responsibly enhancing revenue for the town. In order to stabilize taxicab companies it is essential to attract and retain qualified taxicab drivers. Therefore, the transportation board should consider all reasonable actions to improve driver working-conditions. Brookline taxicab drivers aspire to a better life and a better future. The Town has repeatedly told drivers and the taxicab companies that medallions are a pathway to achieving their dreams for better conditions and a more secure future. Voting for this warrant article says that town meeting endorses transportation board and the board of selectmen efforts, decisions, and actions that lead to achieving the entire enumerated goals found in Chapter 317 of the acts of 1974, section 4A, as amended. However, achieving the entire enumerated goals will succeed only if accompanied by significant improvement in taxicab driver's working conditions that shore up retention and enhance recruitment of loyal, qualified taxicab drivers.

ARTICLE 17

Submitted by: Claire Stampfer and Heather Hamilton

Research in circadian biology, which studies daily 24-hour rhythms in physiology, metabolism, and behavior, has shown the importance of robust circadian rhythms to health. The natural circadian cycle is slightly longer than 24 hours, on average, and therefore to maintain normal circadian rhythm we need to reset our clocks daily. This reset of our circadian clock occurs when we are exposed to stable cycles of daylight during the day and to darkness at night. This rhythm can be disrupted by exposure to bright light at night. (1, 2)

Even low levels of exposure to light, particularly shorter wavelength blue light, can shift circadian rhythms, directly alert the brain and suppress melatonin production. (1) Melatonin is only produced at night and is the biochemical signal of darkness (2). Exposure to light at night after dusk interferes with our sleep by 1) directly alerting the brain and making it more difficult to fall asleep and have good quality deep sleep; and 2) altering the timing of circadian rhythms in sleep, hormones and other normal cellular functions that are circadian-dependent (1) Sources of nighttime light exposure include interior lighting and the screens of electronic devices, street lights, and glare from roadways and other properties..

Nighttime lighting can also cause disabling glare while driving that diminishes the field of vision. Glare is related to the intensity and direction of the light. Other organisms, such as insects, birds and plants, also have their rhythms disrupted by light at night, impacting delicate ecosystems.

White light contains all wavelengths of light. White light can be created artificially with different proportions of different wavelengths of light than occur naturally in sunlight.

Light enriched in the shorter, blue wavelength, is appropriate in the daytime and if an alerting stimulus is desired. For example, shorter wavelength blue enriched white light is appropriate in the morning and during the day for persons who work during the day. Shorter wavelength blue enriched white light generally has a higher Correlated Color Temperature, CCT. White light with proportionally less short-wavelength and more longer wavelength light, such as red-enriched light, generally has a lower CCT and, especially when coupled with lower intensity, would be appropriate in the evening after dusk to provide light that will minimize the alerting effects prior to sleep and minimize interruption of sleep. Lower CCT lighting in the lowest acceptable intensity can be used for street and other exterior lighting overnight and for interior lighting after dusk so that there is less disruption of normal sleep. Thus the need for different lighting during the day and night must be taken into consideration in municipal lighting design.

In summary, research on the effects of light on health is a relatively new and growing field. Enough is known currently for the American Medical Association to have developed a public health policy statement (1). The Town of Brookline is currently in the process of converting all lighting to LED lighting to lower costs and to decrease the carbon footprint of the Town. The purpose of this warrant article is to ensure that the Town of Brookline takes into consideration the health effects of different wavelengths, intensities and direction of lighting when purchasing LED lighting bulbs and fixtures and when locating fixtures and directing the light. We recommend that the Departments of Health, Building and Public Works work together to ensure that health is considered when Town lighting is selected.

References:

1.) Council on Science and Public Health Report 4. Light pollution: adverse health effects of nighttime lighting. American Medical Association House of Delegates Annual Meeting. June 2012, Chicago, IL.

2.) Adverse Health Effects of Nighttime Lighting: Comments on American Medical Association Policy Statement

Richard G. Stevens, PhD, George C. Brainard, PhD, David E. Blask, PhD, MD, Steven W. Lockley, PhD, Mario E. Motta, MD

Abstract: The American Medical Association House of Delegates in June of 2012 adopted a policy statement on nighttime lighting and human health. This major policy statement summarizes the scientific evidence that nighttime electric light can disrupt circadian rhythms in humans and documents the rapidly advancing understanding from basic science of how disruption of circadian rhythmicity affects aspects of physiology with direct links to human health, such as cell cycle regulation, DNA damage response, and metabolism. The human evidence is also accumulating, with the strongest epidemiologic support for a link of circadian disruption from light at night to breast cancer. There are practical implications of the basic and epidemiologic science in the form of advancing lighting technologies that better accommodate human circadian rhythmicity.

(Am J Prev Med 2013;45(3):343–346)

ARTICLE 18

Submitted by: Stephen Vogel, for The Acting for Economic Justice Committee of the Boston Workmen’s Circle

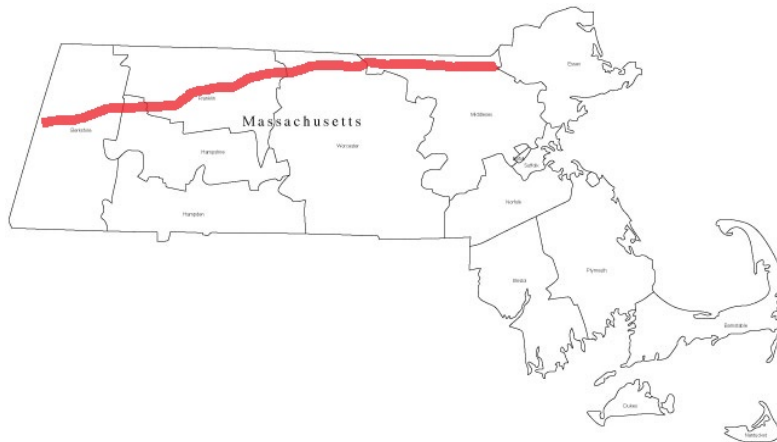
Purpose of Article is to urge the Town of Brookline to demonstrate support for the Massachusetts Domestic Worker’s Bill of Rights that passed earlier this summer. While the legislation applies to all Massachusetts towns, individual town resolutions help build awareness locally about domestic workers rights and reinforce the state-wide legislation. We ask Brookline to join other Massachusetts towns, such as Lynn and Somerville, that have already adopted similar resolutions in support of the rights and dignity of domestic workers.

ARTICLE 19

Submitted by: Carol Oldham and Ed Loechler

The Pipeline Project

Kinder Morgan and their subsidiary, the Tennessee Gas Pipeline (TGP) Company, LLC, have recently expressed interest in building a pipeline to carry natural gas into Massachusetts as part of their Northeast Energy Direct Project. The pipeline would enter MA in the western portion of the state cross much of northern MA from west to east, and terminating at Dracut (see map below of the approximate route).



The existing pipeline runs from Louisiana, South Texas and the Gulf of Mexico into Pennsylvania, and the proposed northeast extension would run into New York, New Jersey, Connecticut, Massachusetts and New Hampshire. Natural gas extracted by hydro-fracturing , which is commonly called “fracking,” will be infused into northeast sector of the TGP.

Why Oppose the Pipeline? Climate Change and the Hazards of Fracking

Natural gas is primarily composed of methane. When burned, methane produces ~30% less carbon dioxide (CO2) than either coal or oil. Because CO2 is the greenhouse gas primarily responsible for climate change, natural gas has been touted as an environmentally friendly alternative to coal and oil and termed a “bridge fuel” – the fuel of choice until our energy needs can be met by renewable sources.

Unfortunately, methane is also itself a greenhouse gas that is at least 30-times more potent than CO₂ itself. Furthermore, because methane is a gas, it leaks during production and distribution. Recently, the Cornell University biogeochemist Robert Howarth, who did seminal work on methane leakage from fracking facilities, published a meta-analysis of all available data on the overall rate of leakage, and concluded that "...shale gas (from fracking) and conventional natural gas have a larger GHG (greenhouse gas footprint) than do coal or oil, for any possible use of natural gas..." This conclusion prompted him to title his paper "A Bridge to Nowhere..." to indicate that natural gas is not a good interim fuel choice²⁵.

Much of the recent attention on the "advantages" of natural gas/methane has emerged because of its increased supply due to fracking. Unfortunately, fracking itself is a grave concern, given that the procedure involves high pressure pumping of hazardous chemicals deep into the earth, which results in ground water contamination and can lead to health hazards.

Our existing natural gas infrastructure is often antiquated, with pipes still in use from the 19th century, and leakage is rampant. According to the Conservation Law Foundation, 1,725 million cubic feet is lost through pipe leaks in MA each year, exacerbating the climate change issue.

Does Massachusetts Need More Natural Gas?

The New England States Committee on Electricity (NESCOE) recently commissioned a study to examine the demand for natural gas for electricity generation for the Commonwealth. This study took into account the currently planned coal-fired generation closures, and found that under a low demand scenario, the state's needs could be met with energy efficiency measures already planned for implementation²⁶.

Furthermore, the TGP would deliver more capacity than is needed to meet New England's projected energy needs under any demand scenario. Building such a massive pipeline for our region is like "trying to kill a cockroach with a sledgehammer" according to an executive whose company owns gas-fired power plants in New England, as stated in *The Wall Street Journal*.²⁷

Opposition to the Pipeline from Affected Towns

Brookline opposing the project will show solidarity with other towns that oppose this project. Many towns and homeowners along the route oppose the project due to concerns that range from human safety and property values to wildlife impacts and climate change. To date, 27 towns along the route or nearby it have passed resolutions opposing the pipeline project, with another 7 towns considering resolutions. Town officials have denied TGP access to survey town-owned land in Ashburnham, Athol, Dalton, Deerfield, Groton, Montague, Orange, Pepperell, Plainfield, Royalston, Townsend and Warwick.

The opposition to the pipeline has been growing, with Senator Elizabeth Warren penning an opinion editorial in the Berkshire Eagle about her opposition on August 12th. The Senator's piece read in part "I oppose the current Kinder-Morgan proposal and share many of the concerns that have been raised by Massachusetts families, businesses,

²⁵ Howarth, R. A Bridge to Nowhere, Energy Science and Engineering 2014 volume 2, issue 2, pages 47-60

²⁶ http://www.nescoe.com/uploads/Phase_III_Gas-Elec_Report_Sept_2013.pdf

²⁷ <http://online.wsj.com/news/articles/SB10001424052702304788404579519461682943726>

conservation commissions and towns about the pipeline's impact on their land and the environment. We must upgrade our energy infrastructure in ways that are consistent with Massachusetts' commitment to environmental conservation, clean energy, and energy efficiency."²⁸

ARTICLE 20

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.

²⁸ http://www.berkshireagle.com/columnists/ci_26322123/sen-elizabeth-warren-we-can-do-better-than