



# MINUTES

## BOARD OF SELECTMEN

### IN BOARD OF SELECTMEN WEDNESDAY, NOVEMBER 9, 2016 6<sup>th</sup> FLOOR HEARING ROOM

Present: Selectman Neil Wishinsky, Selectman Nancy Daly,  
Selectman Benjamin J. Franco, Selectman Nancy S.  
Heller, Selectman Bernard W. Greene

#### OPEN SESSION

Question of whether the Board of Selectmen shall enter into Executive Session for the purposes described in Agenda Items 2, 3, and 4 below.

*In Open Session- the Chair must state the purpose for Executive Session, stating all subjects that may be revealed without compromising the purpose for which the Executive Session was called.*

*To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;*

#### PROPOSED EXECUTIVE SESSION/COLLECTIVE BARGAINING

Human Resources Director Sandra Debow will appear to discuss strategy with respect to Collective Bargaining (Fire Department).

#### PROPOSED EXECUTIVE SESSION/LITIGATION

For the purpose of discussing litigation strategies in the matter of Prentice Pilot and Estifanos Zerai-Misgun v. the Town of Brookline et. al.

#### PROPOSED EXECUTIVE SESSION/LITIGATION

For the purpose of discussing strategy with respect to litigation in the matter of Town of Brookline et al v. MassDevelopment et al.

On motion it was,

Voted to enter into executive session.

Roll call: Aye: Selectmen Wishinsky, Daly, Franco, Heller, Greene.

#### ANNOUNCEMENTS/UPDATES

[Selectmen to announce recent and/or upcoming Events of Community Interest.](#)

*Selectman Heller stepped out*

#### PUBLIC COMMENT

Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.

*Up to fifteen minutes for public comment on matters not appearing on this Calendar shall be scheduled each meeting. Persons wishing to speak may sign up in advance beginning on the Friday preceding the meeting or may sign up in person at the meeting. Speakers will be taken up in the order they sign up. Advance registration is available by calling the Selectmen's office at 617-730-2211 or by e-mail at [SOrsini@brooklinema.gov](mailto:SOrsini@brooklinema.gov). The full Policy on Public Comment is available at <http://www.brooklinema.gov/376/Meeting-Policies>*

#### MISCELLANEOUS

Approval of miscellaneous items, licenses, vouchers, and contracts.

[Question of approving the minutes of November 1, 2016.](#)

On motion it was,

Voted to approve the minutes of November 1, 2016 as amended.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Bernard Greene

Absent: Nancy Heller

#### FIRE PERSONNEL *\*item taken out of order*

Fallon Ambulance Service will appear to present certificates to 19 Brookline Fire Fighters who arrived on scene where Fallon Ambulance Service responded to 9-1-1 calls for ST Elevation Heart Attacks. Fallon Ambulance presents these certificates as part of their receiving the highest level of commendation: American Heart Association's Mission Life Line Gold Award.

Chief Ward introduced Kevin Mont from Fallon. Mr. Mont noted that this is a nationwide award given by the American Heart Association acknowledging medical responders for their high quality care and recognition of heart attacks, and fast transportation to the hospital. Fallon

Ambulance was the only ambulance company to receive the Gold Award. He added it is an honor to recognize Brookline Firefighters as part of this team.

Dr. Schoenfeld added that this award and recognition is a source of pride for the community and shows how effective the public safety team is here in Brookline. The citizens are getting amazing care.

The Brookline firefighters recognized are:

Incident on 1/13/15:

Lt. Steven Gropman, FF Robert O'Connor, Jr., FF Joseph Mello, FF Daniel Breen

Incident on 2/18/15:

Lt. Todd Cantor, FF Dean Inchierca, FF F. Tarantino

Incident on 3/31/15:

Lt. Christopher Merrick, FF Richard Buckley, FF John Sullivan, Jr., FF James Kirby

Incident on 5/7/15:

FF David McCann, FF Ryan Buckley, FF James Clinton, FF Edward Gilbert, Jr.

Incident on 9/13/15:

Captain Daniel Carroll, Curtis Stafford, David Munoz, Daniel Teahan

The Board congratulated Fallon Ambulance and the Brookline Fire Department for their service, and appreciate the great training the firefighters receive.

POLICE PERSONNEL *\*item taken out of order*

Question of appointing the following student officers as Probationary Police Officers effective November 9, 2016:

Grainne D. Maunsell  
Nicholas C. Goon  
Audrey K. Underwood  
Kerry C. Keaveney  
Christopher K. Elcock  
Brian Merrigan  
Michael J. Miczek  
Stephen E. Burke  
David A. Pilgrim  
Megan Keaveney

Superintendent Morgan reviewed the candidates' qualifications, adding that 6 of the candidates have previous experience with the Police Department in a civilian capacity. The candidates' went through a vigorous training and hiring process and succeeded outstandingly.

The Board congratulated the officers and recognized their dedication to public service, and acknowledged their family's support.

On motion it was,

Voted to appoint the following student officers as Probationary Police Officers effective November 9, 2016:

Grainne D. Maunsell  
Nicholas C. Goon  
Audrey K. Underwood  
Kerry C. Keaveney  
Christopher K. Elcock  
Brian Merrigan  
Michael J. Miczek  
Stephen E. Burke  
David A. Pilgrim  
Megan Keaveney

Town Clerk Pat Ward swore in the officers.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Bernard Greene  
Absent: Nancy Heller

*7:30 Selectman Heller arrived*

## GRANT

[Question of accepting a grant in the amount of \\$2,500.00 from FM Global, Fire Service Programs to continue to help fund the cost of installing smoke and carbon monoxide detectors in the homes of Brookline Seniors.](#)

Chief Ward reviewed this successful program, and said that the department was able to receive a grant to continue it.

Selectman Daly added that Brookline is an age friendly community, and thanked the department for their service to this population.

Chief Ward gave an update on a recent fire on Cypress Street. One resident was seriously

hurt, and recently released from the hospital.

On motion it was,

Voted to accept a grant in the amount of \$2,500.00 from FM Global, Fire Service Programs to continue to help fund the cost of installing smoke and carbon monoxide detectors in the homes of Brookline Seniors

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

#### GRANT

[Question of accepting a grant in the amount of \\$81,646.12 from the Executive Office of Public Safety to continue the Brookline Police SMART policing initiative.](#)

Superintendent Morgan stated that this grant will allow the department to use a software program that enhances data retrieval for police efforts.

On motion it was,

Voted to accept a grant in the amount of \$81,646.12 from the Executive Office of Public Safety to continue the Brookline Police SMART policing initiative.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

#### TEMPORARY ALL KINDS ALCOHOL SALES

[Question of granting two \(2\) All Kinds Alcohol Sales Licenses to Hellenic Association of Boston d/b/a Annunciation Greek Orthodox Cathedral of New England for the following events at 162 Goddard Avenue:](#)

##### Cretan Annual Dance

Saturday, November 12, 2016

8:00pm – 1:00am

##### Social Event

November 19, 2016

7:00pm – 1:00am

On motion it was,

Voted to grant two (2) All Kinds Alcohol Sales Licenses to Hellenic Association of Boston d/b/a Annunciation Greek Orthodox Cathedral of New England for the following events at 162 Goddard Avenue:

In Board of Selectmen  
Wednesday, November 9, 2016  
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Cretan Annual Dance  
Saturday, November 12, 2016  
8:00pm – 1:00am

Social Event  
November 19, 2016  
7:00pm – 1:00am

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

TEMPORARY WINE AND MALT ALCOHOLIC BEVERAGES SALES LICENSE

Question of granting a Temporary Wine and Malt Alcoholic Beverages Sales License to Larz Anderson Auto Museum for a Fashion Show to be held on Monday, November 14, 2016 from 5:30pm – 11:30pm at 15 Newton Street.

On motion it was,

Voted to grant a Temporary Wine and Malt Alcoholic Beverages Sales License to Larz Anderson Auto Museum for a Fashion Show to be held on Monday, November 14, 2016 from 5:30pm – 11:30pm at 15 Newton Street.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

TEMPORARY WINE AND MALT ALCOHOLIC BEVERAGES SALES LICENSE

Question of granting a Temporary Wine and Malt Alcoholic Beverages Sales License to the Olive Connection for a Private Event to be held on Saturday, November 19, 2016 from 6:30pm-9:30pm at 1426 Beacon Street.

On motion it was,

Voted to grant a Temporary Wine and Malt Alcoholic Beverages Sales License to the Olive Connection for a Private Event to be held on Saturday, November 19, 2016 from 6:30pm-9:30pm at 1426 Beacon Street.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

TEMPORARY WINE AND MALT ALCOHOLIC BEVERAGES SALES LICENSE

Question of granting a Temporary Wine and Malt Alcoholic Beverages Sales License to Ted X Beacon Street/Ideas in Action, Anne Turner, Volunteer for a Party-Escape Velocity to be held on Friday, November 18, 2016 from 7pm-9pm at the Brookline Teen Center, 40 Aspinwall Ave.

On motion it was,

Voted to grant a Temporary Wine and Malt Alcoholic Beverages Sales License to Ted X Beacon Street/Ideas in Action, Anne Turner, Volunteer for a Party-Escape Velocity to be held on Friday, November 18, 2016 from 7pm-9pm at the Brookline Teen Center, 40 Aspinwall Ave.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

#### TEMPORARY ALL KINDS ALCOHOL BEVERAGES SALES LICENSES

Question of granting two (2) Temporary All Kinds Alcohol Beverages Sales Licenses to Pine Manor College for the following events at 400 Heath Street:

Corporate Dinner  
November 17, 2016  
6:00pm – 9:30pm

Holiday Party  
December 9, 2016  
6:30pm – 11:00pm

On motion it was,

Voted to grant two (2) Temporary All Kinds Alcohol Beverages Sales Licenses to Pine Manor College for the following events at 400 Heath Street:

Corporate Dinner  
November 17, 2016  
6:00pm – 9:30pm

Holiday Party  
December 9, 2016  
6:30pm – 11:00pm

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

#### CALENDAR

Review and potential vote on Calendar Items

9th SCHOOL AT BALDWIN PROJECT OVERSIGHT COMMITTEE *\*item taken out of order*

Question of approving the Charge of the Committee and a Slate of Membership.

Town Administrator Kleckner reviewed his memo:

With the 9th Elementary School project at Baldwin moving forward, it is important at this time to establish a “building committee” to facilitate its further study and design and to interface with the public and key stakeholders. Since this project will not be participating in the Massachusetts School Building Authority (MSBA) program, it is not necessary to follow the prescriptive composition or charge for building committees required by this agency. Rather, it is suggested that the Town follow a local process creating a Project Oversight Committee (POC) that has been used in the past. To date, the Building Commission, Board of Selectmen and the School Committee have formally endorsed this concept and appointed a member to serve as the co-chair of the POC.

Please find attached the proposed composition and Charge for a POC for the 9th Elementary School at Baldwin using the format and language from prior Town project oversight committees. The Superintendent and I have worked together and canvassed our respective boards to recommend the following slate of candidates for this committee pursuant to the Charge.

There shall be established a Building Committee for the 9th Elementary School at Baldwin. In keeping with recent practice on the Devotion School project, this committee shall be modeled using the MSBA Building Committee guidelines as a starting point. The Committee shall consist of a member of the Building Commission, Board of Selectmen and School Committee, each selected by their designated boards, who together shall serve as co-chairs of the Committee. The other members of the Committee shall be as listed below. The Board of Selectmen, working with the Town Administrator and staff, shall provide candidates to fill the Park and Recreation Commission representative and the two greater Baldwin neighborhood positions. The School Committee, working with the Superintendent and staff, shall provide candidates to fill the two school parent community positions. The Superintendent shall designate the school principal representative. The slate of members shall be ratified by the Board of Selectmen and the School Committee.

- 1 member of the Park and Recreation Commission
- 2 persons representing the school parent community (School Council or PTO)
- 2 persons representing the interests of the greater Baldwin neighborhood.
- The Town Administrator or designee
- The Building Commissioner or designee
- The Superintendent of Schools
- The Deputy Superintendent of Schools for Administration and Finance
- The Deputy Superintendent of Schools for Teaching and Learning
- A School Principal Representative

On motion it was,

Voted to approve the proposed charge and committee members for the 9th School at Baldwin Project Oversight Committee.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

### GRANT OF LOCATION

1. Public Hearing on the petition of Crown Castle NG East, LLC for permission to construct, and a location for, such a line of conduits and manholes with the necessary cables therein under the following public way:

Carlton Street – easterly side, conduit southerly from the Town Line a distance of 19 feet to a new manhole thence turning and running easterly a distance of 3 feet to an existing streetlight.

Applicant Kosta Jovanovic representing Crown Castle said that Crown Castle allows wireless carriers to operate in an efficient fashion. The current capacity in this location is maxed out, and they will be adding some electronics and an antenna to this location and feed it with fiber optic cable. The project should take 4-5 hours.

Public hearing:

Jim Franco TMM#1 said that there is a lot of activity in this area, and there was a recent electrical outage that caused damage to residents' personal property. He hopes that precautions are taken to avoid an outage.

On motion it was,

Voted to grant the petition of Crown Castle NG East, LLC for permission to construct, and a location for, such a line of conduits and manholes with the necessary cables therein under the following public way:

Carlton Street – easterly side, conduit southerly from the Town Line a distance of 19 feet to a new manhole thence turning and running easterly a distance of 3 feet to an existing streetlight.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

2. Public Hearing on the petition of NStar Electric Company d/b/a Eversource Energy for permission to construct, and a location for, such a line of conduits and manholes with the necessary cables therein under the following public way:

Cottage Street – conduit southerly approximately 287 feet northeasterly of Goddard Avenue a distance of 13 feet to 88 Cottage Street.

Sheila Gillis representing Eversource stated that this is related to service to a residence. The work will be done on the sidewalk, and there will be no interruption of service.

Selectman Franco noted the outage referenced previously, the outage caused damages to appliances etc. He hopes that safety measures are made to prevent this from happening again.

An Eversource representative addressed the incident that occurred a couple of weeks ago when an Nstar contractor took out a primary line, and there was no way to back feed, so they put in a generator, that caused some damages. There have been some claims submitted to Eversource.

Public Hearing: no speakers.

On motion it was,

Voted to grant the petition of NStar Electric Company d/b/a Eversource Energy for permission to construct, and a location for, such a line of conduits and manholes with the necessary cables therein under the following public way:

Cottage Street – conduit southerly approximately 287 feet northeasterly of Goddard Avenue a distance of 13 feet to 88 Cottage Street.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

#### BOARDS AND COMMISSIONS - INTERVIEWS

The following candidates for appointment/reappointment to Boards and Commissions will appear for interview:

##### Conservation Commission

Pamela Harvey

Pam Harvey is currently serving as an Associate member of the Conservation Commission; this position is a non-voting member. Ms. Harvey was employed at the Dept. of Environmental Protection, as an attorney related to policy and regulatory work around wetland matters. Now that she is no longer working in State Government, she would like to be appointed as a full member because there are no conflicts relating to her membership to the commission.

##### Diversity, Inclusion and Community Relations

Yvette Johnson

Yvette Johnson is interested in serving on the commission, and has been following their meetings. Ms. Johnson was employed as an auditor for the Commonwealth of Massachusetts and is familiar with fair housing, and fair credit regulations. She recently sat on the River Road Committee and is the Chair of the Village Tenant Association, and serves on the Brookline Improvement Coalition.

## WARRANT ARTICLES

Question of reconsidering the Board's vote on the following Warrant Articles for the November 15, 2016 Special Town Meeting:

Article 6 Plastic Bags  
Article 23 Consolidated Leaf Blower By-Law  
Article 24 Resolution Leaf Blower Control Officer  
Article 22 FAR

### Article 6 Plastic Bags

Co-petitioner Andrew Fischer reviewed some revisions to the Article that relate to product bags; the product bags would only pertain to supermarkets larger than 6,000k feet of retail space.

Selectman Daly referred to the marine degradable language; she is concerned that it is indicated in the language when there is no product readily available to consumers at this time. A Co-petitioner has indicated that they would like to keep this language in the Article (8.33.2 a). This may prompt merchants to spend time researching for a product that is not available.

Selectman Greene replied that the materials do exist, and keeping the language in may encourage manufacturers to develop such a product.

Selectman Heller added that the Climate Action Committee is concerned about the marine degradable plastic bags, because it is not clear at this point if those materials would be harmful to animals. This committee recommended taking out the language referring to marine degradable plastic bags.

The Board made some revisions to Section 8.33.2.

Selectman Franco referred to section 8.33.2b, where it refers to section c; this is confusing to where section c is.

The Board revised 8.33.2.b to remove "*subsection c of*" in the first sentence.

On motion it was,

Voted to reconsider Article 6.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

1. On motion it was

Voted 2-3 Motion failed on Selectmen's Daly's revisions to take out:  
[*or a plastic bag that is compostable as well a marine degradable plastic bags*] in section 8.33.2a.

Aye: Nancy Daly, Nancy Heller  
Nay: Benjamin Franco, Bernard Greene, Neil Wishinsky

2. On motion it was,

Voted 5-0 Favorable Action on the revisions submitted by the petitioners with the Board's revision to 8.33.2.b to remove "subsection c of " in the first sentence.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

3. On motion it was,

VOTED: To amend the General By-Laws by revising the Article 8.33 as follows (additions are underlined and deletions are in ~~strikeout~~):

## ARTICLE 8.33 SUSTAINABLE PLASTIC BAGS REDUCTION

### SECTION 8.33.1 Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Director", the Director of Public Health Services or his/her designee.

"ASTM D6400", the American Society for Testing and Materials (ASTM) International "Standard Specification for Compostable Plastics".

"ASTM D7081", ASTM International "Standard Specification for Biodegradable Plastics in the Marine Environment".

"Checkout bag", a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

"Compostable plastic bag", a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable

by this section.

“Department”, the Brookline Department of Public Health.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.

“Product Bag” bags in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

“Reusable bag”, a bag that is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

“Reusable check-out bag”, a sewn reusable bag with stitched handles that is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material can carry 25 pounds over a distance of 300 feet.

“Retail establishment”, any retail store that satisfies at least one of the following requirements: (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

#### SECTION 8.33.2

- (a) If a retail establishment as defined in Section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being either a recyclable paper bag, a reusable checkout bag, or a compostable plastic bag that is compostable as well as marine degradable plastic bag.
- (b) If a supermarket, a retail establishment described in the definition set forth in section 8.33.1, with more than 6,000 square feet of retail space, provides product bags to customers, the bags shall comply with the requirements of being either a recyclable paper bag, reusable bag, or a compostable plastic bag. (a) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) The Director may promulgate rules and regulations to implement this section.

### SECTION 8.33.3 PENALTIES AND ENFORCEMENT

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Retail Establishment for the initial violation. (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court. (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

### SECTION 8.33.4

All of the requirements set forth in this by-law shall take effect December July 1, 20137. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

### Article 23 Consolidated Leaf Blower By-Law

Co-petitioner John Doggett reviewed some revisions to Article 23 from the Advisory Committee.

A key change is that the responsibility of compliance is now shared between the property owner and the contractor. The 5 acre provision has been reinstated, and section 8.31.9 has been deleted because it is duplicated in section 8.31.8.

On motion it was,

Voted to reconsider Article 23.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

On motion it was,

Voted 5-0 Favorable Action

- 1) That Article 8.15 (Noise Control) be amended by
  - a) Adding the following to Section 8.15.2 (b):
    4. Noise regulations concerning Leaf Blowers are found in Article 8.31.
  - b) Deleting references to leaf blowers in Section 8.15.6 (c) - Maximum Noise Level Chart; and
  - c) Deleting the text of Section 8.15.6 (f) and replacing it with the words “Text Deleted”;

and

- 1) That the current Article 8.31 (Leaf Blowers) be replaced with the following:

Article 8.31  
Leaf Blowers **Control**

SECTION 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this By-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

SECTION 8.31.2: DEFINITIONS

- a. “Leaf Blowers” governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.
- b. “Property Owner” as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor’s records.
- c. “Property Manager” shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.
- d. “User” means the person or entity using the Leaf Blower at the time of the violation.

SECTION 8.31.3: LIMITATIONS ON USE

a. No Property Owner or **Property** Manager shall authorize **or permit** the operation of leaf blowers on property under their control, **or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower,** except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to **nonresidential property owners but only with respect to parcels of land that contain at least ~~two~~ five acres of open space.**

b. No Property Owner or **Property** Manager shall authorize **or permit** the operation of leaf blowers on property under their control, **or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower,** except between the hours of 8 (eight) A.M. to 8(eight) P.M.

Monday through Friday, and from 9 (nine) A.M. to 6(six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or **Property** Manager **or User** shall **operate or** authorize the operation of more than 2 (two) leaf blowers **on such property** simultaneously. This limitation shall **also** apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any **leaf blower and no person shall operate a** leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower and designating a noise level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any leaf blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non- refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

#### SECTION 8.31.4: REGULATIONS

- a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Board of Selectmen.
- b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

#### SECTION 8.31.5: DUTIES AND RESPONSIBILITIES OF TOWN DEPARTMENTS

##### a. Departmental Actions

All Town departments and agencies shall, to the fullest extent consistent with other laws, carry out their programs in such a manner as to further the objectives of this By-law.

##### b. Departmental Compliance with Other Laws

All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

##### c. Town Exemption

The Department of Public Works shall be exempt for day and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law.

##### d. Town Leaf Blower Equipment

Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

#### SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

(a) The Board of Selectmen, or its designee, may grant a special permit to a Property Owner or **Property** Manager:

- (i) for any activity otherwise prohibited under the provisions of this By-law,
- (ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it,
- (iii) when it can be demonstrated that bringing a source of noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A Property Owner or Manager seeking such a permit should make a written application to the Board of Selectmen, or its designee. The Town will make reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.

(b) The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit.

The following criteria and conditions shall be considered:

- (1) the cost of compliance will not cause the applicant excessive financial hardship;
- (2) additional noise will not have an excessive impact on neighboring citizens.
- (3) the permit may require portable acoustic barriers during night use.
- (4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.
- (5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.
- (6) If the Board of Selectmen, or its designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

#### SECTION 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines, **if any**, issued by the Board of Selectmen, or designee.

#### SECTION 8.31.8: ENFORCEMENT AND PENALTIES

a. This By-law may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

~~b. The Property Owner and/or Manager of any real property upon which a Leaf Blower is operated in violation of this By-law, or upon any abutting sidewalk or way in connection with such operation, shall be liable for all violations of this By-law. Any User in violation of this By-law other than the Property Owner or Manager shall be issued a written notice, whenever practical, notifying the User of the enforcement action to be taken against the Property Owner or Manager for the violation.~~

**b. Violations of this By-law shall be subject to the following penalties:**

**1)** For the first violation in each calendar year a written warning will be issued ~~to the Property Owner or Manager.~~

**2) For** second and subsequent violations ~~occurring on the same property under the same ownership or management~~ Property shall be issued to **in each calendar year, both** the Property Owner or **Property** Manager **and the User shall be fined** according to the following schedule **table below:**

- ~~1. \$100.00 for the second offense;~~
- ~~2. \$200.00 for the third offense;~~
- ~~3. \$300.00 for the each subsequent offense;~~
- ~~4. plus~~

	<b><u>Property Owner or Property Manager</u></b>	<b><u>User, if other than Property Owner or Property Manager</u></b>
<b><u>First Offense</u></b>	<b><u>Written Warning</u></b>	<b><u>Written Warning</u></b>
<b><u>Second Offense</u></b>	<b><u>\$50.00</u></b>	<b><u>\$50.00</u></b>
<b><u>Third Offense</u></b>	<b><u>\$100.00</u></b>	<b><u>\$100.00</u></b>
<b><u>Each Subsequent Offense</u></b>	<b><u>\$150.00</u></b>	<b><u>\$150.00</u></b>

**3) Applicable** court costs for any enforcement action taken.

SECTION 8.31.9: ~~ENFORCEMENT~~

~~The Health, Building, Police and Public Works Departments shall have enforcement authority for this By-law. On complaint by any individual not an employee or agent of the Town, complainant is required at a minimum to provide her/his name and contact information as well as address of alleged violation for the complaint.~~

SECTION 8.31.10: ~~— EFFECTIVE DATE~~

The provisions of this By-law shall be effective as provided in M.G.L. c. 40, s.32

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

Article 24 Resolution Leaf Blower Control Officer

The Board noted that the Advisory Committee made some recommendations to Article 24. The recommendations refer to the shared responsibility of enforcement between the Police Department and the Department of Public Works. It also removes the responsibility of the Selectmen of appointing a designated position of enforcement.

Andrew Fischer added that this is a convoluted plan that prohibits police officers from giving out citations. The process appears to be cumbersome.

Neil Gordon PAX member stated that PAX voted no action on Articles 23 & 24.

On motion it was,

Voted to reconsider Article 24.

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

On motion it was,

Voted 5-0 Favorable Action

VOTED: That the Town adopt the following Resolution:

~~Resolution to Appoint a Leaf Blower Code Enforcement Officer~~ **With Respect to Administration of the Leaf Blower By-Law**

WHEREAS the Police Department is currently the sole **primary** enforcer of the Leaf Blower By- laws and is using valuable resources that do not directly concern public safety;

WHEREAS many Town residents have expressed concern about calling the Police to report violations of the Leaf Blower By-Law;

WHEREAS, accordingly, there are believed to be, ~~apparently,~~ many current leaf blower by-law violations that are not reported and therefore not resolved;

~~WHEREAS noise deemed excessive and/or annoying which is within the legal scope of the current and proposed By-law could be reduced through negotiation with the parties involved;~~

~~WHEREAS the Police Department estimates that about 30% of noise complaints involved exempt Town operations and 50% of leaf blower complaints originate from a small number of "hot spots" around Town, a more systemic approach working with Town Departmental~~

~~managers, residents, and landscape contractors might be more successful in reducing noise overall;~~

~~WHEREAS negotiating with neighbors and/or landscape service providers with a focus on education and best practices is likely to be productive in reducing noise pollution;~~

~~WHEREAS the Town and its contractors performing Town work are exempt from Leaf Blower By-laws;~~

WHEREAS the Department of Public Works has an environmental enforcement program, pursuant to which it is already enforcing other By-laws; **and**

WHEREAS a modest added expense may be required in order for the Department of Public Works to handle additional duties to administer the Leaf Blower By-law; ~~now, therefore, be it~~

**THEREFORE, be it RESOLVED** resolved, that **Town Meeting urges**

~~F the Board of Selectmen appoint a Leaf Blower Code Enforcement Officer, or equivalent officer, who should not be part of the Police Department, who reports to the Board of Selectmen or its designee, and whose duties to consider assigning additional duties to the Department of Public Works that would include:~~

1. ~~Take~~ **Taking** calls during Town Hall business hours;
2. ~~Investigate~~ **Investigating** and attempt **attempting** to resolve complaints with the parties involved;
3. ~~Work~~ **Working** with the landscape service provider community to build awareness of the leaf blower noise concerns, help further the use of best practices and promote use of protective equipment for operators;
4. ~~Liaise~~ **Working** with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. ~~Issue~~ **Issuing** warnings and citations as appropriate;
6. ~~Call~~ **Calling** on the Police Department for support and/or enforcement, as appropriate;
7. ~~Track~~ **Tracking**, monitor **monitoring** and report **reporting** periodically to the Board of Selectmen on complaint statistics and resolutions;
8. ~~Communicate~~ **Communicating** and educate **educating** Town residents as to their responsibilities to reduce leaf blower noise; **and**
9. ~~Recommending~~ **ing** regulation changes as appropriate.

~~And be it further:~~

~~RESOLVED that:~~

~~The Department of Public Works work closely with the Leaf Blower Code Enforcement Officer or equivalent officer to adopt practices and equipment standards that adhere as near as practical to the Leaf Blower By-Laws.~~

Aye: Neil Wishinsky, Nancy Daly, Benjamin J. Franco, Nancy Heller, Bernard Greene

Article 22 FAR

Deputy Town Administrator Melissa Goff stated that the petitioner has revised the article and offered additional explanation.

Chairman Wishinsky stated that these revisions are intended to solve a problem that has been observed in single family district homes relating to unfinished attic and basement space, and restrictions added. This Article could be applied to T districts, and 2 families. The petitioner only submitted language that refers to single family home districts. He added that this is a complicated Article.

Petitioners expanded explanation:

This submission includes the option of a divided vote on Article 22, providing a format for a separate vote by Town Meeting on the question of whether the exemptions in Section 5.22 of the Zoning By-Law (allowing FAR to be exceeded) should apply in T, F and M Districts, where the base FAR (even without the exemptions) is already high.

The First Vote includes changes to the Zoning By-Law proposed by the Moderator's Committee to address core issues, including abuse of the By-Law through the construction of "unfinished" spaces in "basements" and "attics" that add to bulk without being subject to any abutter notice or design review. The First Vote would thus introduce special permit review, including notice to abutters and the requirement of consistency with the scale of the neighborhood, for the construction of space that exceeds the otherwise-allowable FAR. This would effectively treat the construction of both "finished" and "unfinished" spaces uniformly, in recognition of the fact that both types of spaces contribute equally to building bulk, and also treat uniformly all such construction and additions to new and existing buildings. The First Vote would also introduce a special permit requirement for exterior modifications in connection with basement and attic conversions, again assuring notice to abutters and consistency with the neighborhood, and treating basement and attic conversions consistently with other conversions and additions, which already require a special permit. It includes the Planning Department's recommendation that all conversions result in no more than 130% of FAR, and includes changes assuring consistency of language within the By-Law. (See Petitioner's Explanation).

What the First Vote does not include is By-Law changes that would eliminate the application of the Section 5.22 exemptions (which allow buildings at 120%, 130% or, now, even 150% of the otherwise-allowable FAR) in T, F and M districts. The Second Vote, if approved, would eliminate those Section 5.22 exemptions in T, F and M districts. The divided vote poses the issue if Town Meeting wishes to address the T, F and M issue separately.

On the one hand, as set forth in the report of the Moderator's Committee to the May 2016 Town Meeting, the base FAR in T, F and M Districts is already high, and, for example, the Section 5.22 exemptions would potentially allow the density of properties in T Districts to increase even more, to 200% or 250% of the current density, with corresponding impacts on

population, school population, congestion, and so on. The actual incursions of incompatible buildings in T Districts have in recent years led to proposals for downzoning and for Neighborhood Conservation Districts. Although the base FAR in those districts would remain the same until rezoned, the potential to significantly exceed that FAR would be eliminated by the Second Vote.

On the other hand, the Moderator's Committee recognized that elimination of the Section 5.22 exemptions did not address the very high base FAR limits in T, F and M districts, and that eliminating the exemptions would potentially make some homes non-conforming and affect some individuals seeking to expand their homes. Since Article 22 was filed, several existing homes in T Districts that have applied for building permits for conversions would be affected by the elimination of the Section 5.22 exemptions.

Therefore, a divided vote is attached. If only the First Vote is passed, the Section 5.22 exemptions would continue for homeowners in T, F and M District exemptions but there could be substantial increases in density in those districts. If the Second Vote is also passed, the exemptions would be eliminated in T, F and M districts, reducing the potential increases in density, but existing homeowners would not be able to utilize Section 5.22. The decision is ultimately for Town Meeting, and this submission is an effort to facilitate that decision.

The Board did not offer a motion to reconsider.

There being no further business, the Chair adjourned the meeting at 9:05 p.m.

ATTEST