



BOARD OF SELECTMEN

CALENDAR

FOR

TUESDAY, JANUARY 3, 2017

SELECTMEN'S HEARING ROOM

- Neil Wishinsky-
Chairman
- Nancy A. Daly
- Benjamin J. Franco
- Nancy S. Heller
- Bernard W. Greene
- Melvin A. Kleckner –
Town Administrator

1. **OPEN SESSION**

6:00 P.M.

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

2. **PROPOSED EXECUTIVE SESSION**
LITIGATION

For the purpose of discussing strategy with respect to litigation in the matter of Dawn Churchill Paes v. the Town of Brookline, et al, MCAD Docket No. 13BEM00204, and related matters.

3. **PROPOSED EXECUTIVE SESSION**
COLLECTIVE BARGAINING

For the purpose of reviewing and approving the Public Employee Committee (PEC) Agreement.

4. **PROPOSED EXECUTIVE SESSION**
COLLECTIVE BARGAINING

For the purpose of discussing strategy relative to Collective Bargaining negotiations.

5. **ANNOUNCEMENTS/UPDATES**

7:00 P.M. **Selectmen to announce recent and/or upcoming Events of Community Interest.**

6. **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. The full Policy on Public Comment is available at <http://www.brooklinema.gov/376/Meeting-Policies>

7. **MISCELLANEOUS**

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

- A. **Question of approving the Joint meeting minutes with the School Committee for October 13, 2016.**
Question of approving the minutes of December 13, 2016
Question of approving the minutes of December 20, 2016
- B. **Question of executing the First Amendment to the Town of Brookline School Space Lease for 62 Harvard Street.**
- C. **Question of accepting a gift from Chestnut Hill Realty for an amount up to \$10,000 for support in the creation of the zoning bylaw necessary to implement the Hancock Village MOA.**

8. **CALENDAR**

Review and potential vote on Calendar Items

9. **PAY-AS-YOU-THROW (PAYT)**

Further discussion and possible vote relative to the Pay-as-You-Throw (PAYT) system of trash collection including, but not limited to, the range of cart sizes and related pricing, options and costs for overflow trash and an exception system for residents and/or properties with physical limitations.

10. **SENIOR TAX EXEMPTION STUDY COMMITTEE**

Question of establishing the composition and scope of a committee to study proposed enhanced tax relief for senior

homeowners with modest incomes.

11. SANCTUARY CITY

Discussion of Brookline's Status as a "Sanctuary City" and Compliance with Federal Immigration Enforcement Policy.

12. ANNUAL TOWN MEETING/ELECTION

Question of setting the dates for the Annual Town Meeting and Town Election.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at Lgellineau@brooklinema.gov

RECORD OF THE REGULAR MEETING OF THE BROOKLINE SCHOOL COMMITTEE HELD ON **THURSDAY, OCTOBER 13, 2016** AT 6:30 PM IN BROOKLINE HIGH SCHOOL AUDITORIUM. STATUTORY NOTICE OF THIS MEETING WAS FILED WITH THE TOWN CLERK.

School Committee Members Present: Ms. Ditkoff (Chairman), Mr. Pollak (Vice Chairman), Mr. Chang, Ms. Charlupski, Mr. Glover, Dr. Jackson, Ms. Scotto, Ms. Stone, and Ms. Stram. Also present: Mr. Bott, Ms. Dunn, Ms. Gittens, Mr. Zimmerman, Mr. Lummis, and Ms. Coyne.

Others Present: Ms. Brewton, Mr. Kleckner, and members of the Board of Selectmen: Chairman Neil Wishinsky, Selectman Nancy Daly, Selectman Ben Franco, Selectman Bernard Greene, and Selectman Nancy Heller.

1. ADMINISTRATIVE BUSINESS

a. Calendar

Ms. Ditkoff called the meeting to order at 6:30 PM. She noted upcoming events on the calendar.

b. Consent Agenda

ACTION 16-69

On a motion of Mr. Pollak and seconded by Mr. Chang, the School Committee VOTED UNANIMOUSLY to approve the item included in the Consent Agenda.

- i. Past Record: October 6, 2016 School Committee Meeting

2. SUBCOMMITTEE REPORTS

a. Finance

Ms. Stram reported that the Finance Subcommittee will be meeting on October 17, 2016. The agenda will include review of FY 2017 Grant Awards, Public Schools of Brookline Scholarship Funds, the FY 2016 4th Quarter Financial Report, and the Financial Projection Plan and Approach.

b. Capital Improvements

Mr. Pollak reported that he will be setting a date for the November Capital Improvements Subcommittee meeting.

c. Curriculum

Ms. Scotto reported that the Curriculum Subcommittee will be meeting on October 19, 2016. The agenda will include a presentation of the draft Brookline High School Education Plan.

d. Government Relations

Ms. Stone had nothing to report at this time.

e. Policy Review

Dr. Jackson reported that the Policy Review Subcommittee met earlier today to discuss the proposed Public Schools of Brookline (PSB) Meal Charges Policy, Policy on Naloxone (also known as Narcan) Use in the Public Schools of Brookline (1st Reading on November 10, 2016), and a potential PSB Prohibition of Hazing Policy. The Subcommittee will continue to discuss these proposed policies at the next Subcommittee meeting on November 9, 2016. The agenda will also include review of a proposed PSB Discriminatory Harassment Policy and Procedures.

f. Additional Liaisons and Updates

There was nothing to report.

3. SUPERINTENDENT'S REPORT

Mr. Bott provided the following report:

Senior Leadership Priorities for 2016-17

The Senior Leadership Team met yesterday to discuss our priorities for the year in preparation for the School Committee Workshop on October 20. Each member of the team discussed the top priorities they are currently working on, additional priorities for the remainder of the school year and other items that may be longer term. As we continue to focus on getting to know the schools, the district, and how we operate, we are resisting the temptation to create long-term plans until we have a deeper understanding of the strengths we possess and the challenges we face. Over the next week, we will be summarizing the priorities we discussed so that we can share them with the School Committee and allow for a thoughtful discussion.

Townwide PTO/School Council Monthly Meeting

Today I held my monthly meeting with the PTO Presidents and School Council Co-chairs. The agenda of these meetings is jointly developed, with the parent leaders suggesting topics. Although we've only had two meetings, I very much enjoy working with this thoughtful group of leaders. I am impressed with their ability to balance their individual school needs with the broader perspective of the entire district. Today's agenda included a discussion on improved coordination with the district on software purchases for schools. We shared the portions of Section D(7) of the District Policy Manual that relate to PTO and school fundraising in an effort to help them become more familiar with the current policy. Our discussion focused on how to move a pilot effort, funded by a PTO, toward a district-wide program that is integrated into the curriculum approval and annual budget development processes. Other important items we discussed included the 9th school site selection, the process for BHS expansion, an update on contract negotiations, and follow-up to the BHS graffiti incident. For our November meeting we have already identified two agenda items: principal searches and the registration process/welcoming new families.

School Visits

With school only in session for two days since the October 6 School Committee meeting, I have not had the opportunity to complete many school visits. Today, however, I was able to spend time in the afternoon at Pierce administering the Benchmark Assessment System (BAS) to students in Mrs. Harvey's 4th grade class. I worked with two students and thoroughly enjoyed the time we were able to read together and to talk about their understandings. The BAS is an assessment that takes time to administer, but my time today reaffirmed my belief that it is a valuable tool for learning about individual students as readers.

4. PRESENTATIONS AND DISCUSSIONS OF CURRENT ISSUES**a. Enrollment Projections**

Deputy Superintendent for Administration and Finance Mary Ellen Dunn presented a report on Enrollment Projections (Attachment A). Ms. Dunn referred to her October 3, 2016 memo regarding Enrollment Projections and Reporting, District Boundary Update, Policy Revision Considerations, and Enrollment Projection as of October 1, 2015 (Attachment B).

Ms. Dunn provided an update on Enrollment Projections and School Boundaries (plan for future enrollment projections; redefining our school assignment boundaries, and maps of last year's student enrollment). She explained the redistricting process, which typically takes three years and noted student assignment considerations. Ms. Dunn referred to the maps of last year's student enrollment, which provide a sense of where the population is and what we would have to do to align our district maps. We have growth in all areas of the community except for the Lincoln district.

In response to a question from Ms. Charlupski, Ms. Dunn stated that their demographer is Ruth Quinn Burdell. Ms. Quinn Burdell has done this type of analysis for a number of districts. Ms. Charlupski recommended that *13. Minimize the impact of any change on current students (i.e., explore options such as the grandfathering of students and families)* be more specific. When possible and when desired by the family, we should attempt to keep siblings in the same school, both for the initial redistricting for the new school and in the long term. Ms. Ditkoff noted that there are other considerations that may come into play. The proposed Student Assignment Considerations are not rules and are not ranked; some may conflict.

Ms. Stone noted that the last redistricting effort included the School Committee's establishment of an ad hoc enrollment committee, which included School Committee members, public schools staff, at least one principal, and several members of the at-large community. This was important for accountability and transparency and for the level of knowledge the members brought to the process. The Committee sought broad input from the community. Ms. Stone expressed concern that the process for the 9th school redistricting be similarly inclusive of broad participation and input, informed by the analysis Ms. Dunn presented, but not determined by it. Ms. Dunn clarified that her intent is not to modify the current policy that has the School Committee as the decision maker.

She agreed with the need for a transparent process. Within a few months, the administration will be recommending that the School Committee establish a redistricting committee.

Ms. Ditzkoff noted that we would need to consider how potentially eliminating buffer zones would impact class size. Ms. Ditzkoff stated that it will be important to explain how pedagogical needs factor into the redistricting process. For example, we don't want a dramatic imbalance in the number of low-income children in a building, so considerations like that will be more important than strict geographic proximity. Dr. Jackson emphasized the importance of making sure that the policies and procedures for student assignments and transfer requests are transparent and understood. Ms. Ditzkoff stated that it would be helpful to note which information can and cannot be disclosed because of student confidentiality. In response to a question from Ms. Ditzkoff, Ms. Dunn stated that she will provide the charge for the demographer. Ms. Dunn stated that the Enrollment Report will be updated on an annual basis.

Mr. Pollak referred to the maps of last year's enrollment and noted how helpful it is to gain an understanding of where the children live, not just where they are enrolled. We have overcrowding at certain schools in both North and South Brookline. Today, there is more pressure around Devotion, Pierce and Lawrence. We expect several hundred more units and children from future development in South Brookline. Mr. Chang stated that it would be helpful to hear from the demographer on the state of the art. Ms. Scotto noted that projects that have been approved under Chapter 40B can go forward, even if we meet the 10% threshold. Ms. Dunn stated that the projected increase from new development is 183 students in School Year 2015-2016 and 312 (225 in South Brookline) students in School Year 2016-2017. Ms. Ditzkoff noted that the enrollment projection, which will be updated by the end of the year, will help inform our Capital Improvements Program priorities for the next five years.

5. JOINT MEETING OF THE SCHOOL COMMITTEE AND BOARD OF SELECTMEN: 9TH ELEMENTARY SCHOOL SITE SELECTION

a. Discussion and Proposed Vote to Select a 9th Elementary School Site

The Joint Meeting of the Board of Selectmen and School Committee was called to order. School Committee members present: Ms. Ditzkoff (Chairman), Mr. Pollak (Vice Chairman), Mr. Chang, Ms. Charlupski, Mr. Glover, Dr. Jackson, Ms. Scotto, Ms. Stone, and Ms. Stram.

Selectmen present: Mr. Wishinsky (Chairman), Ms. Daly, Mr. Franco, Mr. Greene, and Ms. Heller.

Staff present: Mr. Bott, Mr. Kleckner, Ms. Brewton, and other administrative staff.

Mr. Wishinsky opened the meeting and welcomed everyone. He talked about the extensive process thus far and noted that it is clear from the presentations that we can build a great school on each of the sites. Once we select a site, we will move forward to the Feasibility phase. Each site has pros and cons and choosing a site will require some level of compromise. Mr. Wishinsky described the robust public process to date, and the

ambitious timeline yet to come. The Board members have listened to and read all of the comments and take them very seriously. It is clear that we need a new school and the time has come to make a decision. Mr. Wishinsky described the format of the evening's presentation (Attachment C) and deliberations. After some updates, the Boards will have an in-depth discussion and then will proceed to a vote. The site that gets a majority of support of each Board will be the site selected. Each board is voting independently because each board has a critical role to play with distinct roles over the course of the building and financing process.

Ms. Ditkoff noted what an incredibly exciting moment this is – we haven't built a new school in Brookline in over 50 years. The Boards feel privileged to be part of this. Ms. Ditkoff provided an overview of the anticipated next steps after a site is selected: November 2016 – establish a School Building Committee and begin feasibility study part of project, duration five months; April 2017 – complete feasibility study; public presentations and hearings; May 2017 – present 9th school building project to town Meeting to begin process of attaining funding for schematic design phase; October 2017 – complete schematic design and public presentation and public hearings; seek funding for construction documents and construction. While each site has challenges, everyone is committed to making sure this will be a great school. Ms. Ditkoff expressed appreciation to the many people who contributed to this process, including Kara Brewton, Ben Lummis, Mary Ellen Dunn, Ray Masak, Alison Steinfeld, Melissa Goff, Mr. Kleckner, Mr. Bott, and our consultants from Civic Moxie and JLA Associates. Lastly, she thanked the Board members, with special thanks to Selectman Wishinsky. The Boards worked very well together and the level of cooperation is unprecedented.

Mr. Wishinsky then called on Jonathan Levi, Jonathan Levi Architects, and F. Giles Ham, Vanasse & Associates, Inc. to provide some additional information. Mr. Levi noted several examples of schools placed in close proximity to another, including examples in Weston, Newton, and Lincoln. This is a very common practice, and some believe it increases efficiency and provides advantages for students.

Mr. Ham referred to his October 7, 2016 memo, which provides a summary of their transportation review (Attachment D). He referred to maps showing current traffic at the sites and projected traffic at the sites with a new school. Mr. Ham presented two traffic proposals for the Baldwin site, one which would require modifying Woodland Road for two-way travel to accommodate bus parking queue storage for drop-offs and pick-ups. This would require a permitting process and availability of Soule for pick-up and drop-off. The Boards discussed the feasibility of this option.

In response to a question from Ms. Heller, Mr. Ham stated that the state controls the signal at the intersection of Hammond and Route 9, with the primary goal of processing the Route 9 traffic. The signal and timing have been reviewed many times. In response to a question from Ms. Charlupski, Mr. Ham stated that the potential impact of eliminating parking on Hammond from 7:30 AM to 9:00 AM would be marginal. In response to a question from Mr. Greene, Mr. Levi stated that the two-way Woodland

proposal poses a schedule and cost risk, with potential hurdles at the local and state levels.

Ms. Dunn provided an update on Enrollment Projections and School Boundaries. She explained the redistricting process, which typically takes three years, and noted student assignment considerations. Ms. Dunn referred to the maps of last year's student enrollment, which provide a sense of where the population is. The current projected increase from new development is 183 students in School Year 2015-2016 and 312 (225 in South Brookline) students in School Year 2016-2017, but this number will be updated. In response to a question from Mr. Wishinsky about whether the School Department would consider one 1,600 student school on the Baker site, Mr. Bott stated that any school we open will be an incredible school and that two schools at the Baker site would have their own unique culture and characteristics and would not be one "megaschool," because that would not make pedagogical sense.

Board members provided their thoughts on the sites, including the most important criteria, pros and cons, and preference.

Mr. Glover: The Boards will get behind whichever site is selected and are committed to making sure it will be a great school. We have significant need in both North and South Brookline, so all three sites are appropriate from a demographic standpoint. He considered walkability. The Village site is the most walkable. Baker is walkable to a lesser degree. This is a challenge for Baldwin and makes it the least desirable site in his mind. He likes the Village site, but believes it is problematic because of complexity of development, with the need to keep a supermarket. A supermarket operator might not think the site will provide a sufficient return on investment, given the relatively small size of the site. Baker has significant walkability and there is real need. The site is large enough to allow two schools to be separate communities. Investment in this site can alleviate much of the traffic issues. We would need to address concerns. He supports the Baker site.

Ms. Stone: We need to support the final decision even if it is not our personal preference because the need is great and she is confident that wherever the school is located, it will be a great school. She started her decision process by eliminating Baldwin. As the B-SPACE analysis also concluded, there are very few students living nearby so this would not be a neighborhood school and the redistricting needed to fill it might distort other elementary school attendance boundaries. She is not convinced that there would be willingness on the part of the Park and Recreation Commission to accommodate the high level of vehicular traffic at Soule that the school will require. The available public transportation is not useful for five- to ten-year-olds. Choosing Baldwin for the 9th school would also eliminate it as a possible expansion site for the high school, which she believes is a far better use of the site. Both Baker and the Village site could accommodate queuing, so she put aside traffic and focused on physical challenges. With pros and cons at both sites, she supports the Village site. The Village site draws off from three of the most crowded schools. She believes that building at the Village site

offers the best chance of keeping a supermarket at the site. The high price tag for the Village site is a concern, but it is possible that rent could offset some of the costs. The site could offer amenities for the neighborhood including a green buffer and gathering places. Queuing is a solvable problem. Takings and engineering could be very difficult, but we should not be afraid to take longer, if necessary, to do the right thing. Baker is workable, but vehicle access would require eliminating old growth trees abutting a nature sanctuary, objections that caused Amory to be dismissed as a site, and she feels growth at Baker should be expansion of the existing school, not a second elementary school.

Dr. Jackson: She would support any of the three sites for a great school. She weighed the various pieces of data, is taking a long-term view (the next 50 to 100 years), and is considering the potential of the sites. A school, when done well, can be a hub and a center of a community. She believes the Village site is the best site as a community school. She supports the continued existence of a grocery school at the site.

Mr. Pollak: He is very excited about the potential of each of the three sites and the wealth of possibilities for excellent education outcomes. He discussed the high level opportunities that each site offers. Village site-incredible positive investment in our community and making a better environment in the Village; redevelopment of existing land and worn out facilities for a well formed solution that addresses supermarket and school needs. Baldwin site-a very large campus; great promise for the community to derive greatly increased values from assets already in hand; agree that significantly fewer school children live near Baldwin and that is a concern; there is no elementary school near the site; a new school in the area may attract families that choose to live in Brookline because of the schools. Baker-an enormous asset with 11 ½ acres; adjacent to the sanctuary, a teaching and learning asset for sustainability and environment; much anticipated demand; a neighborhood school to families that live in the area, assuming all Hancock Village units will be built; significantly fewer delivery risks to producing an excellent outcome for the school and the neighborhood.

Ms. Stram: She will get behind any of the sites and believes we can build a great school. In looking at the options, she kept at the forefront, our goals and desired outcome, while not minimizing implementation risks and potential challenges. The site needs to address our enrollment pressures that are in both North and South Brookline. This is part of a package and won't be the only or last step. We want to maintain a commitment to neighborhood K-8 schools and keep in mind what kind of assets we will create or want to preserve. Her preference is for the Village site (maintaining a supermarket). Building in North Brookline needs to be the first step because that is where the need is most urgently felt. Building at the Village site can enhance assets such as providing parks and play space and may make it more likely that we preserve the supermarket at the site. Baldwin would be her second preference, because the site could draw from both North and South Brookline, and leverage and improve existing assets for outdoor play space. She views Baker as a future site for a smaller expansion and would want to preserve the forested land.

Ms. Daly: She would not be in favor of the Village site because of the significant legal hurdles and the concerns expressed by so many neighbors regarding the impact on their properties. Her strong preference is for the Baldwin site. The Baker site presents a quality of life issue (1,600 kids, some very young, on one site). We would need to alleviate the traffic concerns at Baldwin and she would recommend that we build a three-section school. More children may need to be bused, but it will be to a great school.

Mr. Franco: He would support any of the options. He considered traffic, the appropriateness of co-locating schools on one site, and ability to deliver a school. The Baldwin site has many issues. The complexity of the site could impact our ability to deliver a project on time and without significant complications. He has not heard evidence that co-locating two schools at Baker would have a negative educational impact. He has concerns about the Baker traffic and Article 97 issues, but noted that we control the site, which will help us to deliver the project on time. He supports the Baker site.

Mr. Greene: We have received many comments from the community and have read all of them. We also need to consider the experts' analysis and recommendations. All three options are difficult, but he believes the Village site is unreasonably difficult. Perhaps, we could pursue an option at this site in the future, but only after we have laid the foundation with agreements that address the complexity and risk. In looking at the JLA Matrix, the Baker site makes the most sense. Baldwin would also be a great option if we could work out access to the site. Baker has a number of issues. He would prefer Scheme A, which has a smaller profile, and would not create a feeling of a "megaschool." A new school should not be seen as a wing of existing Baker. He is leaning toward Baker as his preference, but we should think about other options, e.g., more than one school or a smaller school with a technology or environmental focus. It is very important that we make sure the community knows that we will build an excellent school and try to address concerns, regardless of which site is selected.

Mr. Chang: We need a school by 2020. Time is his biggest concern and he gave the most weight to schedule and cost factors. The Village site is least desirable. He would support either Baker or Baldwin. He hopes that regardless of which site is selected, we can work together to ensure that the 9th school is ready by 2020.

Ms. Charlupski: She will support whichever site is selected. We need a school as soon as possible. The Village site will take too long and is too complicated. She has visited both the Baldwin and the Baker sites. Baker, with 1,600 children at one site, does not make sense. It is too many students on one site without enough play space. Baldwin is the least expensive of the sites. She believes there will be collaboration and that the traffic issues can be mitigated.

Ms. Scotto: Once a choice is made, we all need to support it. None of the sites are ideal. All have issues that can be dealt with, but not necessarily overcome. Traffic issues are different at the sites and none of them will go away so that cannot be the deciding factor.

She considered which site will really work for children. Baker would have too many children in a space that is too small. Baldwin is smaller, but with more outdoor space. The drawback is the relatively small number of children living nearby, but this may change. The majority of children would be bused. Baldwin meets the criteria of building a school that really works for children and helps with enrollment. We would have to endure the cost of busing students for years. We could build a very good school at the Village site that will address the needs of North Brookline for many years. Rooftop green space is a concept used in many places. The Village site meets her criteria.

Ms. Heller: She will commit to whichever site is selected. Each site has complexities. She would eliminate the Village site, because it is too complicated and risky at this point in time. It would require negotiating with many different owners. It may be a viable site in the future. She visited both the Baker and Baldwin sites. We need to consider options for traffic mitigation. Placing a second elementary school on the site of an existing school does not make as much sense as placing it elsewhere in town. Baker may offer possibilities for future expansion on a smaller scale. She believes that the Baldwin site makes much more sense than Baker for a 9th school. The Baldwin site may require more busing initially, but we don't know about the future. It is closer to North Brookline and is a beautiful site. She is hopeful we will be able to collaborate with the Park and Recreation Commission.

Ms. Ditkoff: Traffic is bad and would need to get mitigated at every site. Each site has detractors who the Selectmen and School Committee have heard from and listened to. She did consider parity with other sites and supporters for the sites. Baldwin has a lot of supporters; Village, some; and Baker, not many. She does care about where there is need and there is current and projected need in both North and South Brookline. She considered where in town there is not only 40B growth but also where current zoning provides ability to build by right. Pedagogy is extremely important to her and she holds this constant across the sites. There were robust conversations about concept schools during the B-Space process. That is not what we are talking about now. A capital solution requires the ability to assign children. It is clear that this community wants neighborhood K-8 schools. She would not support placing all non-resident children in one school. We care about Brookline core values and will need to balance for economic and racial diversity. She is worried about affordability, given the need for two debt exclusions for the 9th school and high school and an operating budget override to open the building. Her first choice is for the Village site because it accomplishes multiple goals for the community. She likes the notion of upcycling properties; believes in smart growth; believes this would create an exciting opportunity for children; believes we can deal with school security; and likes that there will be more integration with and a centrally-located facility for the broader community. She agrees that the site is complicated, but noted that ownership of the other sites may make them better options for future expansion. Baldwin is at the lower end of the cost range; has a lot of constituent support relative to other sites; provides opportunities for exciting partnerships. Fewer children will be able to walk to the school, but we don't know the district-wide impact on busing because redistricting will include multiple factors

(including income status of students and effect on the boundaries of neighboring schools).

Mr. Wishinsky: He is relying on what the experts are telling us. Superintendent Bott stated that if we select Baker, we will not be voting for a "megaschool." We would have two schools with separate identities. He considered the risk of the sites. The Village site presents the most unknowns and is the most complex. He could support either the Baldwin or Baker site. Baldwin has a few more unknowns, but we could end up with a very successful partnership with Park and Recreation. Traffic is an issue at this site and is a risk, but there may be mitigation strategies, such as starting school earlier or other traffic patterns. If we choose Baker, we would need to be voting to create two schools with distinct cultures. He thinks choosing Baker is the best way to keep neighborhood schools in Brookline. He thinks that the site is big enough. Scheduling of recess is a surmountable problem. Baker offers the lowest level of unknowns. The loss of trees is an issue, but this would also occur at Baldwin. He would commit to working with the immediate community to attempt to mitigate the impacts of a new school. He believes that having a new school is a plus for a neighborhood.

Ms. Ditkoff noted that after the first round of preferences expressed, it is clear that the Village site has zero votes of support from the Board of Selectmen. According to the ground rules, this means it will not be chosen as the final site, so Ms. Heller moved to remove the Village site from consideration. Ms. Stone stated that she will support the outcome of tonight's vote, but noted that the Village site was the first choice of five members of the School Committee. Mr. Greene stated that the Village site may make sense in the future if we can address the complexities and ensure that a supermarket remains.

The majority of the School Committee voted against the motion to remove the Village site from consideration: 4 in favor of removing it (Mr. Pollak, Mr. Chang, Ms. Charlupski, and Mr. Glover) and 5 opposed to removing it (Ms. Ditkoff, Dr. Jackson, Ms. Scott, Ms. Stram, and Ms. Stone). The Board of Selectmen voted unanimously (Mr. Wishinsky, Ms. Daly, Mr. Franco, Mr. Greene, and Ms. Heller) to remove the Village site from consideration.

The Boards then continued to discuss the Baker and Baldwin sites. Mr. Pollak cautioned that we should compare the sites using the same assumptions, e.g., a 600- vs. an 800-student school. He suggested that we leave programmatic refinement to the feasibility stage. At that point we will have a better sense of enrollment. Ms. Charlupski noted the lack of transportation to the Baker site. Ms. Daly stated that Baldwin may require more busing, but it is in a better location to alleviate some of the North Brookline problem as well as the South Brookline problem. Baker is not convenient to many parts of town. Ms. Heller noted that "D" line is a ten-minute walk from Baldwin. Ms. Stone disagreed, noting that public transportation mostly works when children can take themselves. Baker offers a better solution for addressing demand while we wait for the impact of new development. Ms. Stone stated that this would not be a useful option for adults dropping

their children off before going to work. Mr. Glover agreed. Very few parents would use public transportation to get to Baldwin and students won't be traveling alone. Mr. Greene asked if a September 2020 opening is a hard date. Baldwin may be more feasible if we can extend the time period by a year. Ms. Stram stated that we are trying to pick a site for the long term.

The Chairmen called for a vote. The School Committee voted 6 in favor of the Baldwin site (Ms. Ditkoff, Mr. Chang, Ms. Charlupski, Dr. Jackson, Ms. Scotto, and Ms. Stram) and 3 in favor of the Baker site (Mr. Pollak, Mr. Glover, and Ms. Stone). The Board of Selectmen vote 2 in favor of the Baldwin site (Ms. Daly and Ms. Heller) and 3 in favor of the Baker site (Mr. Wishinsky, Mr. Franco, and Mr. Greene).

Since it was a split vote, discussion continued. Mr. Wishinsky stated that he would support either site, but prefers Baker. The Baldwin site has difficulties, but he believes that there are strategies that will help mitigate the impact. We could build a great school at the Baldwin site. Mr. Wishinsky stated that he would change his vote to Baldwin to break the tie. Mr. Franco stated that the School Committee members are the stewards of the educational quality of the school system and he trusts their knowledge. He will change his vote to Baldwin. Mr. Greene stated that solving the traffic issues at Baldwin may require additional time. He will support the Baldwin site. The three Selectmen who had voted for the Baker site (Mr. Wishinsky, Mr. Franco, and Mr. Greene) changed their votes to Baldwin, so Baldwin had the unanimous support of the Board of Selectmen (5-0).

A general statement of acclamation supporting the Baldwin site was made. Mr. Wishinsky and Ms. Ditkoff thanked everyone for their participation and reviewed next steps.

6. ADJOURNMENT

Ms. Ditkoff adjourned the meeting at 10:30 PM.

Respectfully Submitted,

Robin E. Coyne, Executive Assistant
Brookline School Committee



MINUTES

BOARD OF SELECTMEN

IN BOARD OF SELECTMEN TUESDAY, DECEMBER 13, 2016 6th 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 purpose of discussing the purchase, exchange, lease or value of real property located at 107-111 Cypress Street.

PROPOSED EXECUTIVE SESSION REAL PROPERTY

Proposed Executive Session for the purpose of discussing the purchase, exchange, lease or value of real property located at 107-111 Cypress Street.

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.

The Chair then stated the reason(s) for the Executive Session:

To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

On motion it was,

Voted To enter into Executive Session

Roll Call: Aye: Wishinsky, Daly, Franco, Heller, Greene.

The Board will reconvene in Open Session.

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ANNOUNCEMENTS/UPDATES

Selectmen to announce recent and/or upcoming Events of Community Interest.

Selectman Daly stated that there was a contentious meeting last night about the 9th School at Baldwin. It was a difficult meeting that began by reviewing the site selection process, shortly after that the meeting was shut down by the Fire Department for overcrowding. Residents have asked her to ask the Board if they would be willing to reconsider the site selection of the Baldwin School.

Chairman Wishinsky added that there was a long arduous process on the site selection that began years ago. The outcome will be a beautiful school that the town is committed to.

Selectman Heller agreed that this was an arduous process, and this site made the most sense. We will know more about the site once the feasibility study is released. This reaction is caused by the unknown; people are afraid of what it will be, but at this point we don't know what it will be.

Selectman Greene added that Baldwin School was not his first choice, but it is a choice that will work. It is incumbent on all of us to make the decision work.

Selectman Franco said that this decision comes after years of consideration. He asked that judgment be reserved until we know all the particulars.

Selectman Daly said she agrees with the other Board members, there were 16 public meetings, and the three site finalists were mentioned at Town Meeting. She understands the traffic concerns, and the Town will be working on mitigating that.

The BHS Expansion Committee will be meeting in early January. They will have a good jumping off point once the enrollment numbers are out. The committee will have an aggressive schedule.

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. 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.

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Question of approving the minutes of December 6, 2016.

On motion it was,

Voted to approve the minutes of December 6, 2016 as amended.

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

RESERVE FUND TRANSFER REQUEST * *item taken out of order*

Question of approving and transmitting to the Advisory Committee the request of Acting Fire Chief Robert Ward for a Reserve Fund Transfer in the amount of \$870,724.00 for the purchase of a 2016 Pierce Arrow XT 107' Aerial Ladder Truck.

Chief Ward stated that the committee met all week, and is unified on option 3, to purchase a new truck.

Selectman Daly noted that it is early in the fiscal year; there is no snow and ice use. She feels that the other options are only short term solutions that come at a significant cost. She asked if there are any plans in place to get a longer life span for these trucks.

Chief Ward replied that the use of the DPW washing shed will help as well as a new maintenance plan.

On motion it was,

Voted to approve and transmit to the Advisory Committee the request of Acting Fire Chief Robert Ward for a Reserve Fund Transfer in the amount of \$870,724.00 for the purchase of a 2016 Pierce Arrow XT 107' Aerial Ladder Truck.

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

CHANGE ORDER

Question of approving Change Order No. 002 in the amount of \$845.00 for work being performed by M-V Electrical Contractors, Inc. related to the Old Lincoln School Electrical Services Upgrade project.

Director of Public Buildings Charlie Simmons stated that this is for a minor change to the wiring panel.

On motion it was,

Voted to approve Change Order No. 002 in the amount of \$845.00 for work being performed by M-V Electrical Contractors, Inc. related to the Old Lincoln School Electrical Services Upgrade project.

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

FAÇADE IMPROVEMENT LOAN APPLICATION

Question of approving a Façade Improvement Loan Application for The Village Works in the amount of \$8,000.00.

Economic Development Director Kara Brewton stated that the facade loan program was designed to help businesses and to improve the streetscape of buildings in the commercial areas. Village Works is a collaborative work space in the arcade building, and there will be a second location in Brookline Village. This is a significant building, one of the oldest in Brookline Village. This loan has been approved by the Planning Board and the Preservation staff.

On motion it was,

Voted to approve a Façade Improvement Loan Application for The Village Works in the amount of \$8,000.00.

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

PERMIT TO SERVE ALL KINDS OF ALCOHOLIC BEVERAGES

Question of granting a Permit to Serve All Kinds of Alcoholic Beverages (non-sale) to Larz Anderson Auto Museum at 15 Newton Street for a Corporate Holiday Party to be held on Saturday, December 17, 2016 from 5:30PM-11:00PM.

On motion it was,

Voted to grant a Permit to Serve All Kinds of Alcoholic Beverages (non-sale) to Larz Anderson Auto Museum at 15 Newton Street for a Corporate Holiday Party to be held on Saturday, December 17, 2016 from 5:30PM-11:00PM.

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

CALENDAR

Review and potential vote on Calendar Items

RECREATION DEPARTMENT – PERSONNEL

Question of authorizing the filling of the Assistant Aquatics Director Position (GN-7) vacancy in the Recreation Department.

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Recreation Director Lisa Paradis stated that the former employee decided to resign in order to stay home with her children.

Selectman Greene spoke about the hiring process, and noted that when asked if steps are being taken to seek a diverse applicant pool, we hear the same response. We need to do a little more follow up on how successful are the efforts are to increase the diversity of the pool and of those who are hired.

Town Administrator Kleckner added that the performance management process is starting to keep track and quantify the results; training has begun to address this.

On motion it was,

Voted to authorize the filling of the Assistant Aquatics Director Position (GN-7) vacancy in the Recreation Department.

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

FINANCE DEPARTMENT – PERSONNEL

Question of authorizing the filling of the Senior Accountant (T-05) vacancy in the Comptroller Division of the Finance Department.

Comptroller Michael DiPietro stated that the current employee has received a promotion to another department. This is an important and vital position.

On motion it was,

Voted to authorize the filling of the Senior Accountant (T-05) vacancy in the Comptroller Division of the Finance Department.

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:

Advisory Council on Public Health

Cheryl Lefman is applying for reappointment. She has been working on emergency preparedness and community health, issues facing community regulations around marijuana, and supporting the Health Department staff. She would like to continue to work on a pesticide

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awareness campaign, and promotion of organic landscaping practices.

Nalina Narain is applying for reappointment. She works in Public Health at the State level on refugee and immigrant healthcare. She has been working on warrant articles related to tobacco and plastic bags that require further investigation on their public health implications.

Building Commission

Ken Kaplan is applying for reappointment. He has been on the commission for 15 years, and would like to continue working on the Runkle and Devotion School Projects.

Park and Recreation Commission

Wendy Sheridan is a new applicant. She has been involved in recreation and sports for many years, including youth lacrosse and youth hockey Town programs. She has coached sports teams at the High School level. She would like to work on outreach to all members of the community from children to seniors and provide opportunities to use open spaces and participate in recreation programs

Planning Board

Ben Olson is a new applicant. He is a local architect and has worked on many municipal, educational and private projects. He is interested in historic architecture and preserving open space and restoring historic buildings.

Tree Planting Committee

Liz Erdman is applying for reappointment. She has been learning about the history of trees in Brookline, and is working on a tree data base and an upcoming workshop that encourages residents to review what tree species would fit into a neighborhood design.

BOARDS AND COMMISSIONS - APPOINTMENTS

Question of making appointments/reappointments to the following Boards and Commissions.

Advisory Council on Public Health

On motion it was,

Voted to reappoint Cheryl Lefman to the Advisory Council on Public Health for a term ending August 31, 2019 or until a successor can be appointed.

Voted to Dr. Nalina Narain to the Advisory Council on Public Health for a term ending August 31, 2019 or until a successor can be appointed.

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Building Commission

On motion it was,

Voted to reappoint Ken Kaplan to the Building Commission for a term ending August 31, 2019 or until a successor can be appointed.

Tree Planting Committee

On motion it was,

Voted to reappoint Liz Erdman to the Tree Planting Committee for a term ending August 31, 2019 or until a successor can be appointed.

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

LONG-RANGE FINANCIAL FORECAST

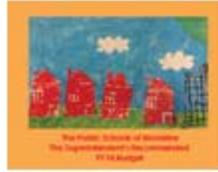
Deputy Town Administrator Melissa Goff will appear to present the Long-Range Financial Forecast.

Town Administrator Mel Kleckner stated that this is the first public hearing on the budget and the preliminary outlook of the operating budget for fiscal years FY18-FY23.

Deputy Town Administrator Melissa Goff gave a PowerPoint presentation.

Presentation highlights: (full presentation attached)

INVESTMENT IN SCHOOLS



- \$60M 6-yr plan
- Funds major renovations/additions to the High School
- Debt Exclusion assumed for portions of this project
- Debt Exclusions will be required for any future major elementary school project(s)
- The proposed Classroom Capacity account funds the rental/lease costs of off-site spaces for BEEP and Pierce and modulars at Baker

	Total	FY2018		FY2019		FY2020		FY2021		FY2022		FY2023	
		Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC
SCHOOL													
Furniture/Operate	920,000	90,000	A	100,000	A	110,000	A	120,000	A	130,000	A	140,000	A
Town School ADA Renovations	640,000	75,000	A	75,000	A	80,000	A	80,000	A	85,000	A	85,000	A
Town School Elevator Renovation Program	730,000	475,000	A										
Town School Energy Conservation Project	1400,000	75,000	A	180,000	A	180,000	A	190,000	A	195,000	A	200,000	A
Town School Energy Management System	1185,000	125,000	A	125,000	A	125,000	A	125,000	A	130,000	A	130,000	A
Town School Blk Envelope Renovation Proj	17000,000					1400,000	B			1800,000	A		
Town School Roof Repair/Rep Program	17300,000					2300,000	B					800000	B
Town School Blk Security / Life Safety Sys	1305,000	215,000	A	130,000	A	140,000	A	160,000	A	170,000	A	170,000	A
Town School Computer Replacements	100,000			100,000	A								
School Site In/Operate	600,000	600,000	A	50,000	A	50,000	A			100,000	A	100,000	A
High School Addition - Town Green (non Debt/Est)	34500,000	1,500,000	B	3500,000	B								
High School Addition (Debt/Est)	-			750	K								
Old School at Baker	1500,000	1,500,000	A	750	K								
School Studios (Veh and HS)	800,000												
Orinall School Rehabilitation	4400,000	400,000	A	4000,000	B								
Old Lincoln School Rehabilitation	350,000												
Classroom Capacity	7190,000	965,000	A	11450,000	A	1129,000	A	1031,000	A	911,000	A	915,000	A
School Total	91130,000	5,950,000		40925,000		5638,000		1707000		3462,000		2,940,000	

TOWN OF BROOKLINE



FY2018 – FY2022 LONG RANGE FINANCIAL PLAN

December 13, 2016

SUMMARY

- Enrollment growth in the Schools continue to put stress on the School budget.
- Employee Benefits and Collective Bargaining continue to put pressure on Town and School budgets
- Town budget \$71.6K deficit and the Schools have a FY18 deficit of approx. \$3.6M (structural deficit).
 - School Cost pressures: SPED, Steps, Collective Bargaining and Enrollment
 - Town Cost pressures: Collective Bargaining, Solid Waste and Recycling, Pension and OPEB funding
- Year 3 of Override funding for the Schools
 - \$1.29M allocated to schools

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PRIMARY ASSUMPTIONS

Revenue

- Raise Property Taxes to the maximum allowable under Prop 2 ½.
- Within the Property Tax projections, additional "New Growth" in FY18 from the Red Cab site (\$200K) and other smaller projects (\$1.65K) Out years growth from 28kl Place Circle Cinema site and 25 Washington St.
- An additional \$71K by FY18 for Lodging Taxes from the Red Cab site + \$7.5K from Circle Cinema
- Ch. 70 Aid + UGGA 2.5% increase assumed. Concern about State revenue growth

Expenditures

- Health Insurance rate increases of 5% in FY18 -20 + continued enrollment growth 30/10S/T.
- Pension- reset funding schedule based on valuation as of 1/1/16
- 2% Collective Bargaining increases in each FY
- Continued funding of OPEB's per the Town's funding schedule.
- All formal Financial Policies (CIP, Free Cash, Reserves) are continued.

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OVERRIDE ASSUMPTIONS VS. ACTUAL EXPERIENCE

▪ Revenue Assumptions:

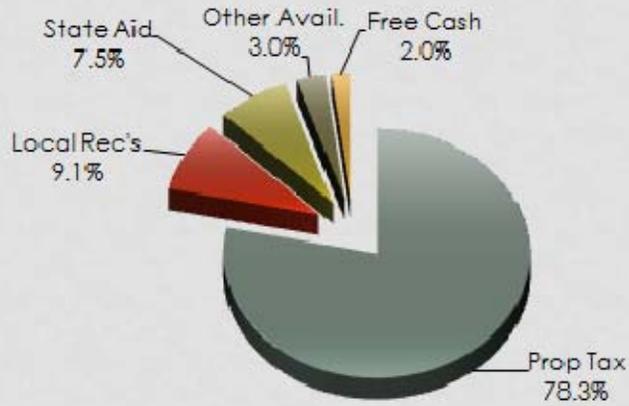
- State Aid: \$850K incr. in Ch. 70 Aid in FY16 +\$400K in FY17
Actual- FY16 =1.02M, FY17 =\$546K
- New Growth: FY17 \$2.745, FY18 \$2.7M
Actual – FY17 \$2.712, FY18 \$2.165 (projected)
Local Receipts: FY16, \$740K, \$300K FY17, FY18
Actual- FY16 =\$798KM, FY17 =\$268K
- Expenditure Assumptions:
- Health Insurance rate increase of 4%/yr
 - Actual- FY16 =9.3%, FY17 =5.7%
- Projected reduction in recycling contract
 - Actual – unanticipated increase in solid waste contract, unanticipated delay in PAYT program
- Projected shift of expenses to Rec Revolving Fund
 - Actual – Partial implementation
- School Enrollment decline projected
 - Actual - higher growth in enrollment, ELL, Special Education

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GENERAL FUND REVENUE COMPOSITION

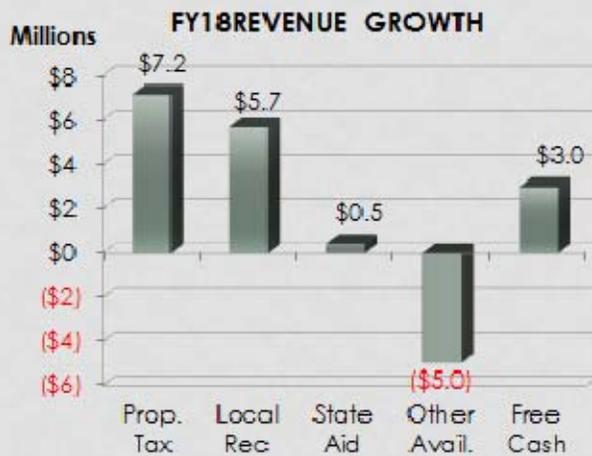
- In FY17, Property Taxes comprise more than ¾'s of the Town's General Fund revenue and nearly 80% of Operating Revenue



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GENERAL FUND REVENUE SUMMARY

- Total FY18 increase in revenue of \$11.4M (4.4%)



9 In the out-years, annual operating revenue increases of 3+%

LOCAL RECEIPTS

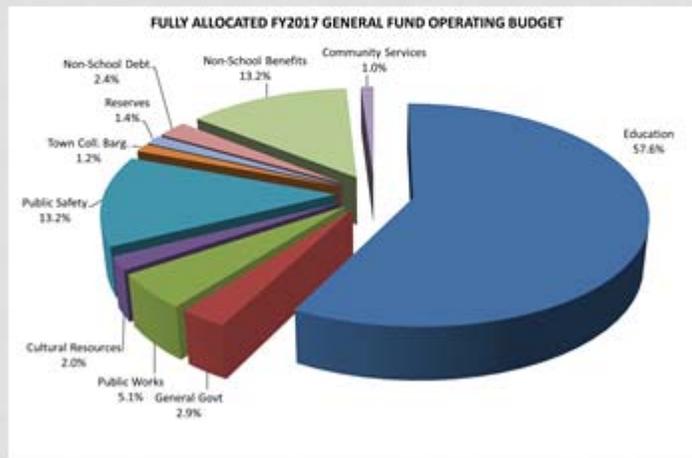
- In FY18, an increase of \$5.6M (23.4%) primarily due to conversion of Parking Meter Receipts to Local Receipts
- Increases in MVE (\$110K), Building Permits (\$100K), and Local Option Taxes (\$167K)

LOCAL RECEIPTS	2017	2018	2019	2020	2021	2022
Motor Vehicle Excise (MVE)	5,500,000	5,610,000	5,722,200	5,836,644	5,953,377	6,072,444
Local Option Taxes	2,638,500	2,805,910	2,993,738	3,053,613	3,514,685	3,734,979
Licenses & Permits	1,165,775	1,165,775	1,165,775	1,165,775	1,165,775	1,165,775
Parking / Court Fines	4,100,000	4,100,000	4,100,000	4,100,000	4,100,000	4,100,000
General Government	3,932,179	4,001,902	3,897,084	3,967,903	4,028,616	4,064,839
Interest Income	727,250	732,875	751,197	769,977	789,226	808,957
FILOT's / 121A's	890,000	916,800	983,636	1,010,509	1,030,719	1,051,333
Refuse Fee	2,650,000	2,650,000	2,650,000	2,650,000	2,650,000	2,650,000
Departmental & Other	2,232,994	7,420,388	7,447,517	7,475,269	7,503,658	7,532,700
TOTAL LOCAL REVENUE	23,836,698	29,403,650	29,711,146	30,029,689	30,736,056	31,181,028
\$ Increase	268,013	5,566,952	307,496	318,543	706,367	444,971
% Increase	1.1%	23.4%	1.0%	1.1%	2.4%	1.4%

In the out-years, avg annual increase of approx. 1%
 FY21 = local option increases from Waldo Durgin, 25 Washington

FULLY-ALLOCATED EXPENDITURES

- In FY17, expenses associated with Education comprise 58% of the Operating budget
- The next largest areas are Public Safety and non-School Benefits



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OTHER AVAILABLE FUNDS

- Municipal Modernization allows the Town to treat Parking Meter Receipts as a Local Receipt
- An overall decrease of \$5M (64.3%) if excluding Parking Meters this category is up \$105K for benefit reimbursements

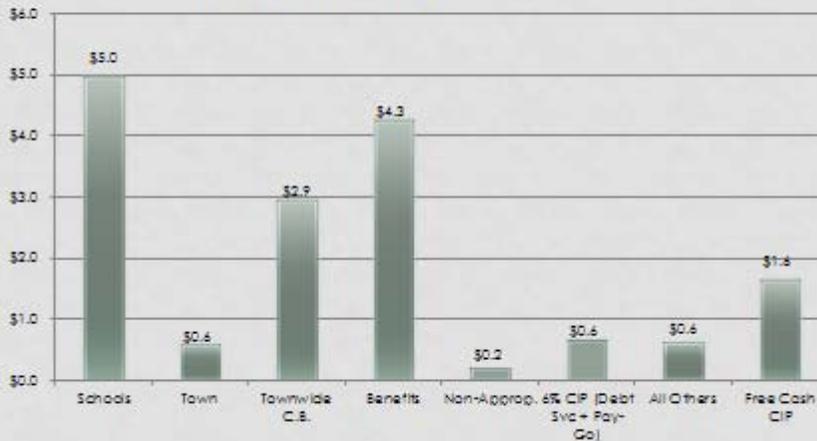
OTHER AVAILABLE FUNDS	2017	2018	2019	2020	2021	2022
Parking Meter Receipts	5,150,000	0	0	0	0	0
Walnut Hill Cemetery Fund	75,000	75,000	75,000	75,000	75,000	75,000
State Aid for Libraries	0	0	0	0	0	0
Golf Course Fund Reimbursement	182,098	188,252	193,613	199,245	206,467	214,146
Recreation Revolving Fund Reimbursement	375,900	396,392	414,849	434,295	453,406	484,053
Water and Sewer Enterprise Fund Reimbursement	2,057,070	2,135,556	2,217,719	2,303,717	2,393,737	2,487,974
Stabilization Fund	0	0	0	0	0	0
Tax Abatement Reserve Surplus	0	0	0	0	0	0
Capital Project Surplus	0	0	0	0	0	0
Sale of Town-owned Land Fund	0	0	0	0	0	0
TOTAL OTHER AVAILABLE FUNDS	7,940,067	2,795,200	2,901,181	3,012,256	3,133,610	3,261,173
\$ \$ Increase	(5,144,867)	(5,044,867)	105,981	111,076	121,354	127,563
% Increase	-1.1%	64.3%	3.8%	3.8%	4.0%	4.1%

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EXPENDITURE SUMMARY

- For FY18, est. total increase in expenditures of \$15.8M (6.1%)

FY18 Expenditure Growth (in millions)



In the out-years, annual increase ranges from 4.5% - 4.9%

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BENEFITS

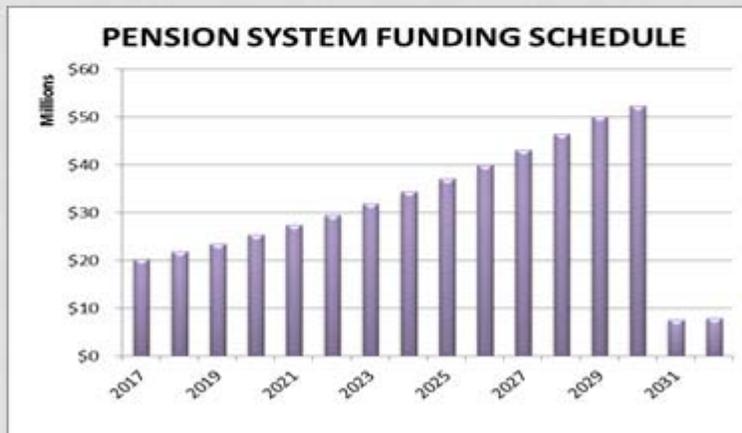
- Total estimated FY18 increase of \$4.2M (7.5%)
- Includes \$900K of Free Cash for OPEBs and Pension funds
- Assuming 5% for Group Health plus 40 enrollees
- Continuation of OPEB funding plan

	2017	2018	2019	2020	2021	2022
Pensions	19,718,677	21,409,185	22,823,218	24,582,486	26,512,211	28,599,420
Group Health	29,042,056	30,650,326	32,598,269	34,674,180	37,274,748	40,070,349
Retiree Group Health Trust Fund (OPEB's)	3,774,838	4,480,080	3,975,543	4,266,151	4,516,151	4,766,151
EAP	28,000	33,000	33,000	33,000	33,000	33,000
Group Life	145,000	148,625	152,341	156,149	160,053	164,054
Disability Insurance	16,000	16,000	16,000	16,000	16,000	16,000
Workers' Compensation	1,450,000	1,450,000	1,484,250	1,523,406	1,561,491	1,600,529
Public Safety 10D Medical Expenses	250,000	275,000	275,000	275,000	275,000	275,000
Unemployment Compensation	300,000	300,000	325,000	325,000	325,000	325,000
Medical Disabilities	40,000	45,000	50,000	50,000	50,000	50,000
Medicare Coverage	2,083,625	2,223,228	2,372,184	2,531,120	2,700,706	2,881,653
TOTAL	56,848,196	61,100,444	64,106,804	68,432,492	73,424,354	78,775,155
\$\$ Change	2,783,336	4,252,248	3,004,361	4,325,688	4,991,863	5,350,800
% Change	5.1%	7.5%	4.9%	6.7%	7.3%	7.3%

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PENSION FUNDING

- > Full funding date of 2030
- > Rate of Return decreased from 7.6% to 7.4%
- > Reflects adjustment to make up for CY2015 losses
- > FY18 increase of 1.59M (7.85%)



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DEBT SERVICE / TAX-SUPPORTED CIP

- All years of Forecast follow CIP Policies
- In FY18, the "6% Policy" total increases \$668K
- In FY18, new debt service for Corey Hill, Envelope/Fenestration, Carlton St. Footbridge, Tower #1, and Devotion School
 - Plan on Spring, 2017 bond sale
- In the out-years, Debt Service supports:
 - BHS (\$35M – Town share of project)
 - Driscoll School HVAC (\$4M)
 - Larz Anderson Park (\$8.4M)
- More detailed information included in the CIP presentation.

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Selectman Heller noted the pension benefits and asked if the recent boom in the Dow will have an impact on these funds.

Ms. Goff replied that these amounts are as January 2016, we have not seen results from the current market yet. Following the actuarial study that is done every two years, it will be adjusted.

Selectman Franco noted the November elections and local options related to marijuana tax, and asked if these potential revenues are part of this projection. He also added that the current retailer now faces legal implications due to the recent law.

Ms. Goff replied they are not currently in the assumptions and the State has no projections at this time. There is a reopener in the current agreement with the marijuana retailer.

Selectman Daly noted that the Schools face a \$3.6 million deficit after the recent override.

Ms. Goff replied that enrollment continues to increase, along with Special Education and ELL program enrollments.

Mary Ellen Dunn, Deputy Director of Finance and Administration in the School

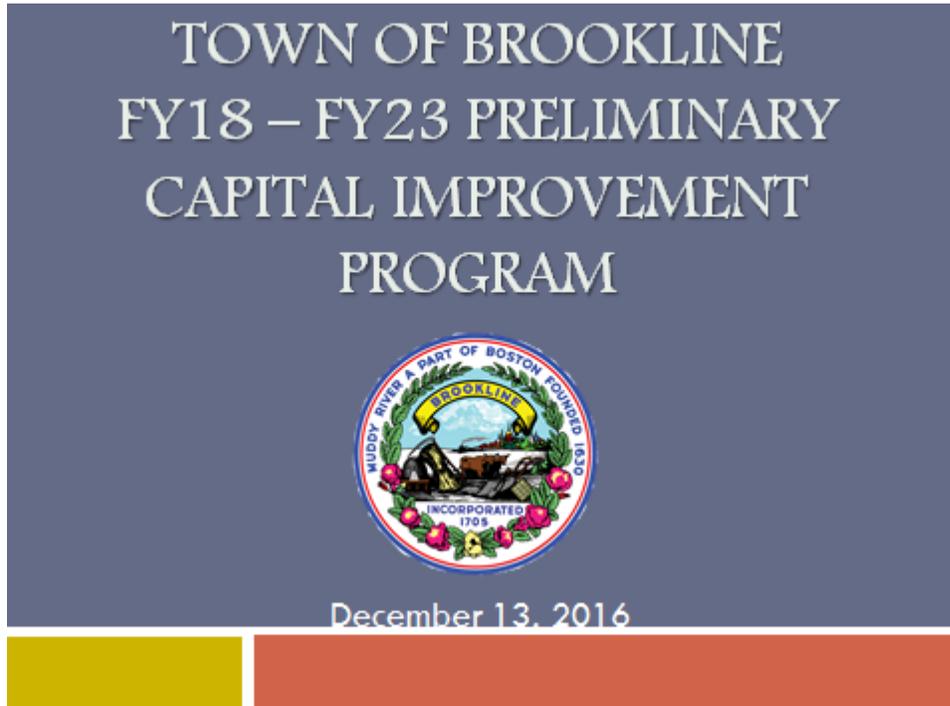
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Department added that they are putting together the budget for FY18 that is based on enrollment projections and built off of the previous budget.

PRELIMINARY CAPITAL IMPROVEMENTS PROGRAM

Deputy Town Administrator Melissa Goff appeared to present the Preliminary Capital Improvements Program.

Highlights:



HEADLINES

- **Balanced \$115.65M Six-Year CIP (FY18–FY23)**
- **\$1.5M for Schematic Design for the 9th School at Baldwin and High School Projects**
- **\$6.2M for Classroom Capacity (\$995K in FY18 + \$5.25 FY19-FY23) primarily for lease/rental costs associated with the School's short-term space plan**
- **Debt Exclusions will be required for any future major elementary school project(s) and for a portion of any BHS project**
 - **CIP supports \$35M of Town funding for BHS project --debt plan changed to reflect accelerated timeline**
 - **Cypress Field schedule accelerated to match HS timeline**
 - **Soule Athletic Field project also changed to reflect debt exclusion funding**
- **Even with the pressures caused by enrollment growth, continued investment in the Town's parks/ playgrounds, infrastructure, IT, and Fire stations**

CAPITAL IMPROVEMENT PROGRAM

- **“Capital planning and budgeting is central to economic development, transportation, communication, delivery of other essential services, and environmental management and quality of life. Much of what is accomplished by local gov'ts depends on a sound long-term investment in infrastructure and equipment.” – from ICMA's *Capital Budgeting: A Guide for Local Governments***

MAJOR PROJECTS

- BHS - \$1.5M for Schematic Design + \$35M of Town funding (FY18, FY19)
- 9th School at Brookline - \$1.5M for Schematic Design
- Larz Anderson - \$9M (FY19-21, Future Years)
- Classroom Capacity - \$6.2M (FY18-FY23)
- Coolidge Corner Library Renovations - \$647K (FY18)
- Brookline Reservoir Park - \$2.2M (FY18)
- Fire Sta. Renovations - \$1.7M (FY18-22)
- Carlton St./Monmouth Traffic Signal - \$334K (FY18)
- Robinson Playground - \$1.2M (FY20, 21)
- Fire Department's Engine #6 Replacement - \$625K (FY18)

CONTINUED MAJOR INVESTMENT

- Parks & Open Space - \$3.2M (non-project specific investment)
- Street & Sidewalk Rehab - \$21.6M
- Town/School Masonry/Fenestration - \$3.2M (reflects savings + reset schedule)
- Town/School Roofs - \$3.1M (reflects savings + reset schedule)
- Water & Sewer Infrastructure - \$4.5M -- enterprise fund
- Fire Apparatus - \$550K (out-years schedule to be reassessed based on current experience)
- Information Technology - \$1.1M
- Tree Replacement - \$1.4M
- Energy Conservation - \$1M

INVESTMENT IN SCHOOLS



- \$60M 6-yr plan
- Funds major renovations/additions to the High School
- Debt Exclusion assumed for portions of this project
- Debt Exclusions will be required for any future major elementary school project(s)
- The proposed Classroom Capacity account funds the rental/lease costs of off-site spaces for BEEP and Pierce and modulars at Baker

SCHOOL	Total	FY2018		FY2019		FY2020		FY2021		FY2022		FY2023	
		Amount	RC										
Elementary	920,000	90,000	A	100,000	A	110,000	A	120,000	A	130,000	A	140,000	A
Town School ADA Renovations	840,000	75,000	A	75,000	A	80,000	A	80,000	A	85,000	A	85,000	A
Town School Electric Rental Program	730,000	475,000	A										
Town School Energy Conservation Project	1400,000	75,000	A	130,000	A	135,000	A	140,000	A	145,000	A	150,000	A
Town School Energy Management System	1135,000	125,000	A	125,000	A	125,000	A	125,000	A	130,000	A	130,000	A
Town School Site Specific Remediation Proj	1700,000					140,000	B			180,000	A		
Town School Roof Repair/Rep Program	1730,000					230,000	B					300,000	B
Town School Sign Security / UV Safety Sys	1315,000	215,000	A	130,000	A	140,000	A	140,000	A	170,000	A	170,000	A
Town School Computer Replacements	200,000			100,000	A								
School Re-Use/Upgrade	600,000	300,000	A	30,000	A	50,000	A			200,000	A	100,000	A
High School Addition - Town School (non Debt/Est)	3650,000	1,300,000	B	3500,000	B								
High School Addition (Debt/Est)	-			750	K								
Old School in Berlin	1500,000	1,300,000	A			750	K						
School Studios (Vn and HS)	800,000												
Direct School Rehabilitation	4400,000	400,000	A	4000,000	B								
Old Lincoln School - New Buildings	330,000												
Classroom Capacity	7130,000	903,000	A	1165,000	A	123,000	A	103,000	A	942,000	A	915,000	A
School Total	9213,000	5,350,000		4,025,000		5,638,000		1,707,000		3,622,000		1,940,000	

INVESTMENT IN PARKS



- 14 individual park projects totaling \$16.7M over the 6-yr period
- An additional \$4.6M in other parks/open space accounts

Parks and Recreation	Total	FY2018		FY2019		FY2020		FY2021		FY2022		FY2023	
		Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC
Brookline Reservoir Park	214,000	2,200,000	B										
Cory Hill Park	700,000												
Cypress Playground/Soft Field	264,000			240,000	A	2,400,000	B						
Emerson Garden Playground	77,000												
Harry Coombs Rd. Playground	1,070,000			990,000	B								
Health School Playground Accessibility	1,020,000												
Kraft Rental Aft. Field Turf Reg.	1,078,000					990,000	A	990,000	A				
Linn Anderson Park	800,000			270,000	B	800,000	A	270,000	B				
Murphy Playground	890,000	70,000	A	820,000	B								
Rainway Park	623,000												
Robinson Playground	1,190,000					300,000	A	1,090,000	B				
Schock Playground	1,040,000							90,000	A	910,000	B		
Walter St. Playground	1,180,000												
Crigger Park	910,000												
Southern Athletic Fields	1,110,000			90,000	K	1,020,000	K						
Park/Playgrounds Re-Use/Upgrade	2,280,000	305,000	A	205,000	A	210,000	A	210,000	A	215,000	A	215,000	A
Towny Street Grounds Rehab.	1,170,000	560,000	A	125,000	A	340,000	A	145,000	A	170,000	A	175,000	A
Tennis Courts / Basketball Courts	700,000			200,000	A								
Comfort Stations	240,000							230,000	A				
Public Works - Parks and Playground Sub-Total	2,884,000	2,725,000		520,000		4,880,000		4,985,000		1,422,000		4,980,000	



INVESTMENT IN FIRE APPARATUS & FACILITIES

- Continues to modernize the Fire Department's fleet
 - ▣ Engine # 6 replaced in FY18
 - ▣ Rehab/ replacement program to be reassessed
 - Ladder 12 was scheduled for FY21, taken out of service
- Mechanical, Electrical, Plumbing (MEP) funding included for all stations

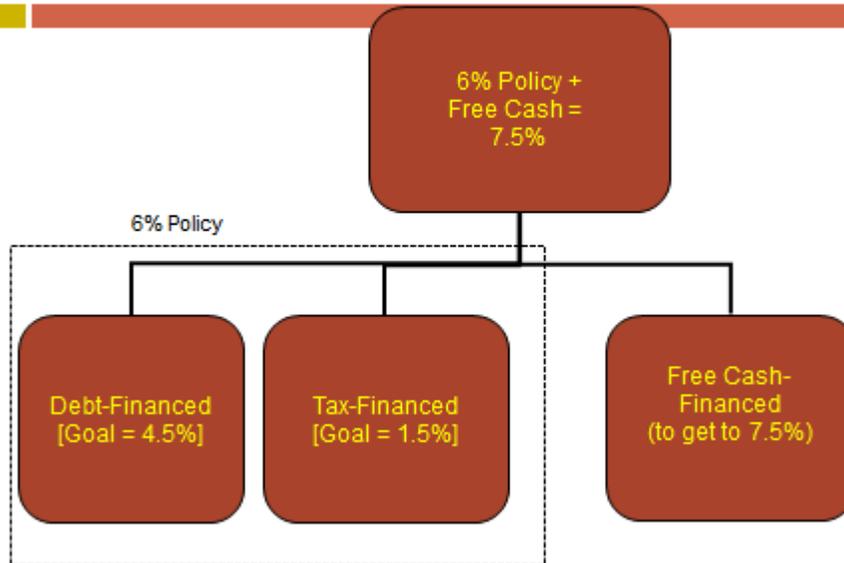
Total	FY2018		FY2019		FY2020		FY2021		FY2022		FY2023	
	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC
PUBLIC SAFETY												
Fire Apparatus Rehab	1,550,000	500,000	A			500,000	A					
Engine #6 Replacement	625,000	625,000	A									
Tower #1 Replacement	80,000											
CAD System Upgrade	27,000			27,000	A							
Fire Station Renovations	2,405,000	280,000	A	385,000	A		800,000	A	270,000	A		
Training & Maintenance Facility	4,500,000											
PPE Washers and Dryers	71,000	71,000	A									
Public Safety Total	10,223,000	1,026,000		655,000		500,000		800,000		270,000		-

INVESTMENT IN PUBLIC WORKS INFRASTRUCTURE

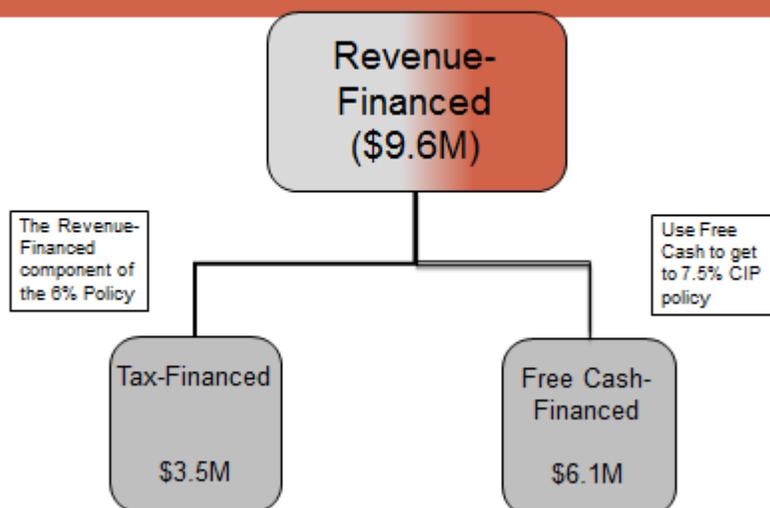
- Continues to follow the 2008 Override by increasing street and sidewalk funding by 2.5%/yr
- Continues to upgrade the Town's wastewater system

Total	FY2018		FY2019		FY2020		FY2021		FY2022		FY2023	
	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC
PUBLIC UTILITIES												
Transportation												
Traffic Calming - Delay Improvements	220,000	20,000	A	30,000								
Signal System Improvements	21,775			21,775	A							
Parking/Garage/Bus Stop/Signage	20,000	10,000	A	30,000	A	10,000	A	20,000	A			
Bus Lane/Bus Stop/Signage	2,000,000											
Down / Channel / HD / One Signal	20,000											
Carlan St / Massachusetts Turnpike Signal	22,000	22,000	A									
Public Utilities - Transportation/Sidewalk Total	4,002,975	52,000		270,775		100,000		272,000		200,000		200,000
Water / Sewer												
Street Rehabilitation - Town	14,180,000	1,070,000	A	1,700,000	A	1,700,000	A	1,700,000	A	1,800,000	A	1,800,000
Street Rehabilitation - State	11,022,564	1,600,000	C	1,600,000								
Waterline Repair	1,000,000	330,000	A	300,000								
Parking Lot Rehab	20,000											
Resurfacing Public Parks	50,000											
Sanitary Service Center Site Improvements	100,000											
Devle Park Rehabilitation	50,000											
Public Utilities - Water/Sewer/Sidewalk Total	26,322,564	2,000,000		2,670,000		2,600,000		2,600,000		2,700,000		2,700,000
Water / Sewer												
Engine #12 Truck Improvements	20,000			100,000	F							
Sanitary Sewer Improvements	1,000,000	300,000	F	100,000	F	100,000	F	200,000	F			
Water System Improvements	200,000	300,000	B									
Watermain System Improvements	1,000,000			100,000	B							
Watermain Rehabilitation	200,000											
Engine #12 Truck	20,000											
Public Utilities - Water / Sewer Sidewalk Total	3,240,000	600,000		270,000		100,000		200,000		-		-

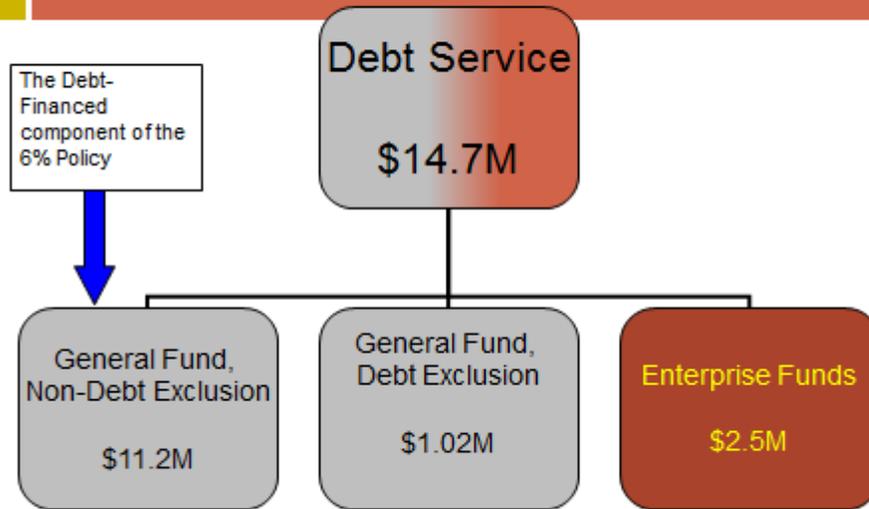
7.5% CIP FUNDING POLICY



FY18 REVENUE-FINANCED COMPONENT



FY18 DEBT-FINANCED COMPONENT



CIP FINANCING – FREE CASH

- The FY18-FY23 CIP follows the Town's Free Cash Policy:
 1. Budget Reserve – ¼ of the annual budget reserve fund ("reserve fund")
 2. Unreserved Fund Balance / Stabilization Fund – maintain at minimum of 10% of revenue
 3. Liability / Catastrophe Fund – maintain at 1% of net revenue
 4. CIP – bring CIP funding up to 7.5% from the 6% CIP Policy
 5. Affordable Housing Trust Fund – deposit if the fund balance is less than \$5M
 6. Special Use – augment funds related to fringe benefits, go toward unfunded employee benefit liabilities, and other one-time uses, including add'l funding for the CIP and AHTF

Certification	\$10,854,017	
1. Operating Budget Reserve	\$615,003	
2. Unreserved Fund Balance/Stabilization Fund	\$2,500,000	
3. Liability Reserve	\$203,644	
4. Capital Improvements	\$3,690,016	
5. Affordable Housing Trust Fund	\$576,803	
Sub-Total	\$7,585,466	
Amt available for Special Use (B6)	\$3,268,551	
6. Special Use:		
Additional CIP	\$2,368,551	
OPEB's	\$600,000	
Pension Fund	\$300,000	
Amount Appropriated	\$8,354,017	

\$6.1M of Free Cash for CIP

MULTI-YEAR CIP FUNDING SUMMARY (Gen Fund)

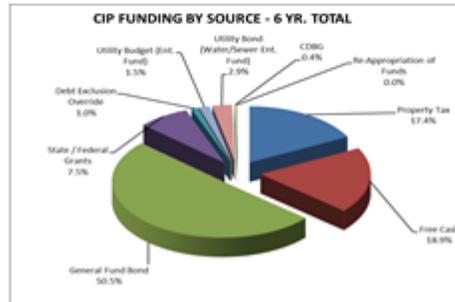
	2018	2019	2020	2021	2022	2023
6% Policy	14,760,065	15,255,474	15,834,855	16,338,623	16,988,996	17,534,576
Net-Debt*	11,241,628	12,062,725	12,659,219	13,267,307	13,825,559	14,364,220
% of Prior Yr Net Bar	4.10%	5.00%	5.04%	5.28%	5.03%	5.26%
Pay-as-you-Go	3,518,436	3,192,749	3,175,636	4,091,316	4,163,437	2,170,355
% of Prior Yr Net Bar	1.90%	1.00%	0.96%	0.72%	0.97%	0.74%
Free Cash	6,058,567	3,327,292	3,260,408	3,236,336	3,114,216	2,891,494
Debt Exclusion	1,020,800	4,505,739	4,469,139	3,517,539	3,517,539	3,517,539
TOTAL	21,839,432	23,088,505	23,564,402	23,112,499	23,620,751	23,943,609

CIP as a % of Prior Yr Net Bar 8.9% 7.6% 7.5% 7.5% 7.4% 7.3%
 CIP as a % of Prior Yr Net Bar w/ Debt Excl 9.3% 9.4% 9.3% 8.8% 8.7% 8.6%

* Defined as General Fund debt less debt supported by a debt exclusion.

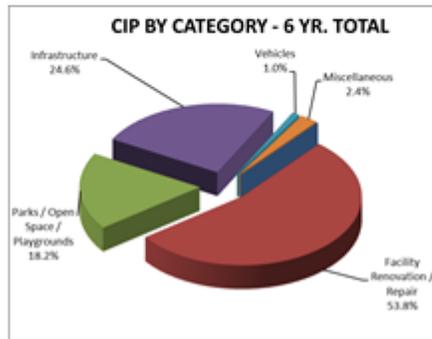
FINANCING SUMMARY

GRAND TOTAL BY SOURCE (in millions)	FY18	FY19	FY20	FY21	FY22	FY23	TOTAL	% OF TOTAL
Property Tax	\$3.51	\$3.17	\$3.15	\$4.06	\$4.12	\$2.14	\$20.15	17.4%
Free Cash	\$6.06	\$3.33	\$3.26	\$3.24	\$3.11	\$2.89	\$21.89	18.9%
General Fund Bond	\$3.70	\$43.51	\$6.10	\$3.29	\$0.97	\$0.80	\$58.37	50.5%
State / Federal Grants	\$1.44	\$1.44	\$1.44	\$1.44	\$1.44	\$1.44	\$8.64	7.5%
Debt Exclusion Override	\$0.00	\$0.09	\$1.02	\$0.00	\$0.00	\$0.00	\$1.11	1.0%
Golf Bond (Ext. Fund)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
Utility Budget (Ext. Fund)	\$0.30	\$0.79	\$0.30	\$0.30	\$0.00	\$0.00	\$1.69	1.5%
Utility Bond (Water/Sewer Ext. Fund)	\$0.30	\$3.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3.30	2.9%
CDRG	\$0.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.50	0.4%
Other	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
Re-Appropriation of Funds	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
TOTAL	\$15.81	\$55.13	\$15.27	\$12.13	\$9.61	\$7.27	\$115.65	100%



CATEGORY SUMMARY

GRAND TOTAL BY CATEGORY (in thousand)								
	FY18	FY19	FY20	FY21	FY22	FY23	TOTAL	% OF TOTAL
New Facility Construction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
Facility Renovation / Repair	\$6.39	\$41.21	\$5.52	\$2.76	\$3.91	\$2.40	\$62.19	53.8%
Parks / Open Space / Playgrounds	\$2.96	\$5.73	\$4.92	\$4.97	\$1.70	\$0.73	\$21.00	18.2%
Infrastructure	\$5.36	\$7.34	\$3.88	\$4.24	\$3.66	\$3.72	\$28.50	24.6%
Vehicles	\$0.68	\$0.00	\$0.50	\$0.00	\$0.00	\$0.00	\$1.18	1.0%
Miscellaneous	\$0.44	\$0.85	\$0.35	\$0.36	\$0.38	\$0.42	\$2.78	2.4%
TOTAL	\$15.81	\$55.33	\$15.27	\$12.33	\$9.64	\$7.27	\$115.65	100%



Discussion:

Chairman Wishinsky asked about the Carlton St./Monmouth St. traffic signal, and if there will be better signal coordination at the location.

Peter Ditto, Engineering Director replied yes.

Selectman Franco asked about the Gateway East project in particular a Section 108 loan, where the Town borrows against future CDBG funding. He asked how this is determined, by collateral and full faith in the credit of the Town? Ms. Goff replied yes.

Selectman Daly added that there are concerns that CDBG funding may be going down, and these allocations could be taking funding from other services and social related programs in efforts to fund the gateway East Project.

Ms. Goff replied that she understands those concerns, and they will be taking a look at the full assumptions.

Chairman Wishinsky asked about parking meters, and if there will be a technology upgrade.

Transportation Administrator Todd Kirrane said they are in the final stages of the passport parking program. He expects the program to go live sometime in January.

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Selectman Daly is glad to see funding allocated to professional services related to revamping the Town's Zoning Bylaw. She suggested looking at neighboring communities to review best practices.

Selectman Greene noted that the Bottled Water Committee was assured there would be funding in the CIP for certain projects and acquisitions to provide citizens with water access in public parks.

Ms. Goff replied that these funds are incorporated into individual budgets; she will ask that they are reflected in specific detail.

Selectman Daly asked about the Cherry Trees at the reservoir. Residents got together to raise funds to plant and save the trees.

Director of Engineering Peter Ditto replied that they have submitted a plan to the State requesting saving several significant trees; we have identified those we would like to see saved. They have not heard back from the State Agency yet.

Commissioner Pappastergion added that only a small area around the dam near the gatehouse would be affected.

Selectman Heller noted that they are facing a critical time that is putting a strain on staffing in the Planning and Building Department. She hopes there will be some ideas to address those issues going forward, given this bleak forecast.

Mr. Kleckner said that putting the cost of project management into a capital budget will include a component of that. The larger projects will need some help.

Selectman Daly asked about the Fire Alarm Call boxes. It seems that a lot of money is allocated to upkeep a system that is almost never used. Over a ten year period they were used 249 times, and most were false alarms.

Commissioner Pappastergion replied that the problem with the current system is it is antiquated and runs on a wire system. The DPW spends a lot of time maintaining the system. They brought in a consultant that made recommendations as to the best way to move forward with the current system, or how to replace it in kind, which would be very expensive. It was recommended to go to a wireless system and omit boxes in areas where they are no longer needed. The result is do we want to spend a capital investment on the system that is there when we need it or scrap them and rely on the master boxes. He thought it was prudent to insert the project into the budget plan. He added that the Police Department eliminated their call boxes years ago, but the Fire Department would like to keep them.

Selectman Franco added that he is concerned that the CIP is higher than recent years, and the out years are considerably constrained.

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PAY-AS-YOU-THROW (PAYT)

Public Hearing on aspects of a proposed Pay-as-You-Throw (PAYT) system of trash collection including, but not limited to, the range of cart sizes and related pricing, options and costs for overflow trash and an exception system for residents and/or properties with physical limitations.

Commissioner Pappastergion made a slide presentation to present the details of a proposed Pay-As-You-Throw Program.

This hybrid system provides residents with a wheel cart, one per household for an annual fee. There has been a lot of debate over the cart size and the current recommendation ultimately recommends variable sizes and variable pricing. Plastic bags will be available for use of overflow trash.

**What is a Hybrid Pay-As-You-Throw System
and What are the Benefits?**

- **Current system allows the collection of unlimited amounts of trash at a uniform flat rate (\$200 per year)**
- **Pure PAYT systems use custom pre-paid plastic bags for all trash collection**
- **With HPAYT residents are provided with variable sized wheeled carts (one per household) with a variable annual fee determined by the cart size**
- **Custom imprinted plastic bags would be available for purchase at retail establishments throughout the area for "overflow" trash when needed**
- **System provides equity when residents only pay for their own trash volumes**
- **Provides financial incentives to reduce trash and increase recycling allowing Town to reduce trash disposal costs currently at \$74 per ton**
- **Reducing solid waste limits amount of trash that is buried or burned providing environmental benefits**

What is Semi-Automated Collection and What are the Benefits?

- **Automated collection allows for the emptying of the carts using single person vehicles that employ a mechanical arm operated from the cab of the truck**
- **Semi-automated collection augments the use of side loader trucks with conventional rear loader trucks for picking up carts and bags in areas not accessible by the side loaders**
- **Due to efficiency of vehicles personnel reductions can be achieved through the elimination of 3 laborer positions at an annual savings of about \$170,000**
- **New equipment costs for 2 side loader packers and the wheeled carts will offset a portion of savings for the first 2 years. Total savings over ten years will approach \$1M by FY24.**
- **Use of automated trucks will reduce the potential for on-the-job injuries and lower worker's compensation claims**
- **According to the US Bureau of Labor Statistics, solid waste collection workers have the 5th highest civilian fatality rate in the country**

What Will Change with the New System?

- **Residents will make a selection of either a 35 gallon, 65 gallon or 95 gallon wheeled cart for each dwelling unit currently on Town Refuse Service. This cart is the only approved container used for household refuse**
- **Custom Imprinted Plastic Overflow Bags will be available for purchase at local retail establishments for those occasions when you may have extra amounts of trash. These will be the only approved bags that will be collected**
- **The current quarterly bill for Refuse Service will change depending on the size of the cart chosen by the resident**
- **Collection Days and Trash Routes will remain unchanged**
- **Yard Waste and Recycling Collection will continue unchanged from the current system at no additional cost**
- **Bulky Materials Collection (furniture, mattresses, appliances, TV's etc.) will be collected at no additional cost with one week advance notice**
- **Household Hazardous Waste drop-off will continue unchanged (seasonal/weekly)**
- **"Amnesty Collections" will be scheduled semi-annually to provide flexibility for residents to dispose of extraordinary trash stored over time**

Wheeled Carts



Established Goals for Determining Wheeled Cart Pricing

- **Create Incentives to Compel the Reduction of Solid Waste Generation and Increase Recycling**
 - Price 35 gal. carts below the current per unit cost of \$200
 - Price the larger 65 & 95 gal carts proportionately higher
- **Minimize the Use of Plastic Overflow Bags that could Impede the Automated Collection Process**
- **Avoid any Loss of Revenue Generated by the Current Refuse Fee**
 - Create small contingency to cover adjustments in initial cart selections
- **Be Responsive to Variations in Family Size**

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Wheeled Cart Pricing

Cart Size Gal	MSW Weight lbs	Disposal Cost	Collection Cost	Total Annual Cost	Estimated # of Units	% of Households	Refuse Fee Revenue
18	24	37	118	156	200	1.5%	31,200
35	46	72	118	190	8,100	61.4%	1,539,000
65	85	133	118	252	4,300	32.6%	1,083,600
95	124	194	118	312	400	3.0%	124,800
Bags Only				156	200	1.5%	31,200
					13,200		2,809,800

Overflow Bag Pricing

	Capacity lb	Disposal Costs			Bag Cost	Collection Cost	Total Cost	Recommended Retail Cost
		\$/ton	\$/lb	\$/bag				
30 gallon Plastic Bag	25	59	0.03	0.75	0.30	1.95	\$3.00	\$15.00 per roll (5 bags per roll)

Exceptions and Waivers

- **A Waiver from the use of a Waste Cart will be considered for residents who are unable to physically maneuver a cart to curbside on collection day and there is no able-bodied person within the household to move the cart**
- **A Waiver will also be considered when the geography of the building lot does not allow for the easy movement of a cart to curbside, such as multiple flights of stairs**
- **Application for Waiver may be requested by calling the DPW or downloaded from the HPAYT website and must be completed and submitted by the resident for consideration**
- **Once inspected and approved by DPW, residents will be given the option of using a small 18 gallon wheeled cart or custom imprinted plastic overflow bags available for purchase at local retailers**

Timeline and Target Dates

- **January 4th** **Official launch of HPAYT Website and Residents will receive Informational Flyer with January Refuse Bill. Residents may begin Cart Size Selection online or by phone**
- **January 9th** **Residents receive postage-paid Waste Cart Order Form for return to DPW via US Mail**
- **February 15th** **Final Day for Cart Selection
Cart Size will default to 35 gallon after this date**
- **April 17th** **Waste Cart Distribution begins and Overflow Bags are available for purchase at Local Retail Merchants**
- **May 1st** **HPAYT BEGINS WITH AUTOMATED COLLECTION**
- **May 15th** **Final Day for Old Barrel Pickup at Curbside**
- **June 15th** **Final Day to Change Waste Cart Size before July Billing**

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Selectman Daly asked what would happen if many residents on one street had a waiver; how would the trucks maneuver that? Would there be two trucks going out?

Commissioner Pappastergion replied that the driver will pick up the bags, or a rear loader would shadow the automated truck.

Selectman Heller asked about yard waste disposal. She uses old trash cans. Mr. Pappastergion replied that bags or containers could be used.

Selectman Daly asked about the waiver process, can someone get a waiver if they simply can't manage the totes for any reason, notably senior citizens.

Commissioner Pappastergion replied that the waiver lets you use bags; the only fee is the cost of the bags. An 18 gallon tote is an option it would hold one bags worth of trash.

Richard Benka gave a presentation. The information is based on the DPW's excel spreadsheets. He noted that this presentation is not in his financial best interest, but rather there is a concern for residents that would need the larger tote. The DPW is put in an impossible position to collect the current revenue, plus adding a cushion because they don't know what size totes most residents are going to pick. Also, as a town we have to deal with the legal constraints of the fee charges.

DPW PROPOSED PRICING

DPW had to deal with mutually inconsistent goals:

- Collect current revenue plus a cushion (\$200,000)
- BUT keep the vast majority of customers under current \$200
- Impose a large pricing gap between 35 and 65 gallon totes
- BUT have a legally justifiable fee structure

DPW's pricing methodology

- Ignores Recycling and Yard Waste Costs
- Is purportedly based on Municipal Solid Waste (MSW) disposal and collection costs
- •BUT – to meet its goals, DPW had to employ the fiction that every tote is filled to the brim
- Pricing thus based on MSW disposal amounts and costs that don't actually exist – almost 21,000 Tons vs. actual 9,100 Tons
- Result: prices based on “disposal costs” that are 230% of actual MSW disposal costs – \$700,000 of inflated fictional “costs” – costs disproportionately shifted to larger MSW totes

Reasonable Cost Allocation

- Fees must be “reasonable and proportional.” *Silva v. Attleboro*, 465 Mass. 165, 169 (2009)
- Assign costs equitably in proportion to actual cost incurrence

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- Use actual quantity of MSW to calculate disposal costs (43.89% of inflated fictional amount)
- Do NOT knowingly inflate MSW to 230% of actual costs to shift costs to large toters
- Do NOT base pricing on costs that don't exist
- DO account for real costs of Recycling and Yard Waste collection

Two Methods: Reaching DPW's \$2.8 Million Revenue Goal

MORE REASONABLE AND PROPORTIONAL

- Reduce MSW to actual amount and assign to toters on basis of equal % fill
- Assign Recycling costs to all users to make up revenue shortfall
- Still not fully allocated and proportional costs

MOST REASONABLE AND PROPORTIONAL

- Fully allocate costs, with MSW assigned to toters, as above, on basis of equal % fill
- Assign Recycling and Yard Waste costs to all users
- Exception: no Yard Waste for 18 gallon or bag users
- \$2.8 M revenue goal spread proportionally on allocated costs
- •Both still probably somewhat "underprice" small toters
- Small toters likely to be more "stuffed" – especially given goal of inducing those at the margin to downsize
- Recycling is not assigned any Administration/Overhead costs

PRICING COMPARISONS

TOTER SIZE	DPW (based on erroneous MSW tonnage)	MORE REASONABLE/ PROPORTIONAL (all toters and bags filled to same 43.89%; plus share of Recycling)	MOST REASONABLE/ PROPORTIONAL (fully allocated costs; no Yard Waste for 18 gal. or bags)
18	\$156	\$188	\$173
35	\$190	\$203	\$206
65	\$252	\$230	\$226
95	\$312	\$256	\$246
BAGS	\$156	\$188	\$172

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PRACTICAL IMPACTS OF NEQUITABLE “UNDERPRICING” OF SMALL TOTERS

- Encourages choice of small, underpriced totes -- “stuff ‘em”
- DPW revenue shortfall – more and more residents choose small totes that don’t pay their proportional share of costs
 - Take \$ from DPW? Schools? Public Safety?
 - Foreseeable – not qualify for Reserve Fund transfer
 - More bags used for overflows
 - Unpredictable location and timing – increased collection costs
 - Additional trucks, time and manpower
 - Overflows placed in blue bins
 - Policing costs; contamination and lower revenue
 - Illegal dumping
- Policing costs; adverse neighborhood impacts

Selectman Daly asked if he included the truck and employees into his assumptions.

Mr. Benka replied yes, he used the DPW figures and cost allocations.

Chairman Wishinsky asked in adjusting downward did you increase the number of folks selecting the larger tote; part of your rationale is to cut down on an incentive to take the smaller size.

Mr. Benka replied that doesn’t change the assumptions; the \$190.00 pricing underprices the cost of running the system.

Selectman Heller asked if he took into account the goal of increasing recycling and decreasing solid waste. When you try to estimate what people are going to do is difficult; isn’t it possible we can change things 6 months later if numbers are different than what we thought they would be?

Mr. Benka replied that we know at the starting point that the solid waste is overstated by 12k tons. If all the totes were filled to capacity it would actually be 9,100 tons.

Chairman Wishinsky added that he would like to drill down the numbers.

Public Hearing:

Stanley Spiegel said that the moderators committee decided that the difference between the 35 and 65 gallon totes would be about \$35.00 annually. He did express a concern with the waiver policy, and feels it is not appropriate for a town employee or official to make the judgement on

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whether a waiver applicant is handicapped or otherwise qualified for a waiver. Perhaps a doctor's note would suffice, but even that is questionable.

Regina Frawley, agreed with Mr. Spiegel, and added that senior residents usually don't fill an 18 gallon tote, and asked why they would need a waiver for health reasons, can't they just say they don't want to use the totes. She also stated that she picks up oak leaves, and has for years when there is no oak tree on her property, they are town trees, and why should she pay for the disposal of that. Under Mr. Benka's, recommendation she would pay for that.

John Dempsey, Chair of the Solid Waste Advisory Committee said this is the first time reviewing Mr. Benka's presentation. He supports the Commissioner and staff for their visions to increase recycling and decrease solid waste in an efficient and safer manner. After all the details are worked out good things will come of it. There will be a reduction in solid waste and the containers will be rodent proof to address public health.

A Littell Rd resident said that she contacted the Town of Natick to inquire on their PAYT system. She was told their system uses totes and bags and is not designed to make money but to keep the town cleaner, the totes and service are free and paid for through property taxes. Senior citizens do not pay for the bags. Bulk pick-ups are done on Mondays for a \$25.00 fee. She is also concerned with residents leaving the totes out on the sidewalks.

Jim Bales, Boylston Street said that the incentive is to pack as much as you can into the totes. He is not sure about the totes being rodent proof; lids do come off, and thinks that rodent control should be included in the assessment. He also thinks that folks may choose a tote larger than what they need, and also will miss the comradery with the guys on the trucks, losing that sense of community, and hopes that neighbors will not be policing each other.

Scott Cassel, Orchard Rd. said that he did research back in 1992 when PAYT was first considered, and has been involved in the program at the State level. He supports the Commissioner's recommendation and all his questions have been answered. He would like to review Mr. Benka's presentation; he feels some points don't add up. A PAYT system is designed to encourage composting and recycling, and to put a fee on the amount of garbage someone puts out. Recycling cost should not be incorporated into the analysis, if you charge for this you are not getting the message out.

Harry Friedman, TMM#12 said that he is a little unclear of the connection between the waiver system and small multi-unit buildings. If a building is too small to small for a property manager, and the property is billed as three separate households, what if there is only one able bodied person, how would the waiver system work. He hopes that in granting a waiver, stairs, and physical abilities are considered as well as the streetscape of the neighborhood.

Dr. Tommy Vitolo said that some households can do a better job recycling; still recycling rates in Brookline are pretty good. In general, a household that produces more trash will also produce more recycling, the cost is shifted inappropriately. DPW's approach is pretty reasonable and assigns costs proportionate to trash cost. The proposed rate structure now is families that throw

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out less pay less, this is important for seniors that produce less trash and everybody else in Brookline that produces less trash. Communities all over the commonwealth rolled out PAYT system. He added that he is not prepared to make a judgment on the better proposal, but feels Mr. Benka's plan does not seem appropriate.

Mark Yorra, Clinton Rd. said that he has a busy household with 4 children and feels that the program penalizes larger families, and hopes that some consideration will be applied. Families are paying huge property taxes, plus overrides. He thinks the amnesty period is a good compromise.

Ann McNulty, Claflin Rd. spoke about the streetscape and is concerned with what it will look like with all these totes. She asked about a multi-family building that disposes small amounts of trash, and would not fill a 35 gallon tote weekly. Could the building share the totes? A 4 unit building could share 2 totes and also share the cost? This would address the needs of the occupants and put out less, half full totes onto the street.

Kathleen Barret, West Roxbury Parkway said that she puts out only a small amount of bags each week, and is OK with the fee, but she does not want to police her neighbors on their practices.

The Board did not take a vote on this agenda item.

There being no further business, the Chair adjourned the meeting at 9:45 P.M.

ATTEST



MINUTES

BOARD OF SELECTMEN

IN BOARD OF SELECTMEN TUESDAY, DECEMBER 20, 2016 6th FLOOR HEARING ROOM

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

REMOTE PARTICIPATION

Pursuant to this Board's Authority under 940 CMR 29.10 (8), Selectman Heller will be participating remotely via telephone due to Geographic distance.

There is a quorum physically present and all votes taken will be recorded by roll call. Selectman Heller will be allowed to vote.

ANNOUNCEMENTS/UPDATES

Selectmen to announce recent and/or upcoming Events of Community Interest.

The Board and Town Counsel have asked various state agencies for relief due to the onslaught of 40b applications. The State replied and offered the following regulatory waivers:

1. Time to complete hearings and render decision.
2. Time to commence new hearings.

The State acknowledged that this community is facing an unprecedented amount of 40b project applications; it is the first time 10 applications are pending in one community. Hopefully there are enough units in the pipeline to reach the safe harbor mark.

Meeting updates:

The Diversity, Inclusion and Community Relations Commission is reviewing two new policies; the equal employment policy, and a complaint policy. The Commission is also working on fair housing, a meditation event at the Schultz gym, and an interfaith council to address the Town's Sanctuary City status in an effort to support refugees. These efforts will

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be coordinated with a member of the Public Health Advisory Committee that works in supporting refugees..

The MKL Committee is working on their celebration event.

The overnight parking ban will be lifted on December 24th, 25th, and 31st.

PUBLIC COMMENT

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

Public Comment Guidelines, adopted by the Board in May 2007, and amended May 14, 2013, are that (1) up to 15 minutes at the beginning of each meeting may be open to the public for public comment. (2) Each speaker is limited to 3 minutes for comment. (3) Each speaker may comment once every four meetings on a different topic. (4) Members of the Board will not comment or respond, unless there is a question of clarification. (5) Speakers must notify the Selectmen's Office (617)730-2211 by Friday to sign up for the next Tuesday's meeting so that we can schedule time.

MISCELLANEOUS

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

Question of approving the minutes of December 13, 2016.

The minutes were held.

EXTRA WORK ORDER

Question of approving Extra Work Order No. 1 in the amount of \$7,772.00 pursuant to DPW Contract PW/16-15 with Ronald A. Marini Corp., General Contractor, for the Putterham Library Landscape Improvements Project.

Erin Gallentine Director of Parks and Open Space said that this work order will complete and close out the Putterham Library Grounds Project. This is a passive park and is fully accessible with a reading garden. This was a successful project that was welcomed by the neighborhood.

On motion it was,

Voted to approve Extra Work Order No. 1 in the amount of \$7,772.00 pursuant to DPW Contract PW/16-15 with Ronald A. Marini Corp., General Contractor, for the Putterham Library Landscape Improvements Project.

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

CONTRACT

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Question of awarding and executing a contract in the amount of \$19,200.00 with Feldman Surveyors (engineering survey services) for the completion of an Existing Conditions Survey at Brookline Reservoir Park.

Director of Parks and Open Space Erin Gallentine said they are about to embark on the design review process related to the rehabilitation of Brookline Reservoir Park. The project will include repointing and repairs, improvements to the entrances, planting enhancements, and a comfort station.

Selectman Daly asked about the trees that need to come out.

Ms. Gallentine replied that this is related to the dam that needs to be in compliance. They have met with State officials at the site and submitted an engineering report on the overall conditions in relation to the assessment of the dam itself. No vegetation is allowed on the dam embankments, and the Town requested the State allow some time for them to come up with a strategy to save as many trees as possible. The trees in question are near the gatehouse.

Selectman Daly noted that the trees along Route 9 provide much needed screening and protection.

Selectman Greene asked about water access and improvements.

Ms. Gallentine replied that the project replaces the existing water fountain that will also have a bottle filling capacity.

Selectman Franco asked about future use of the gatehouse.

Ms. Gallentine replied that they are investigating the possibility of a comfort station there. They have met with the Preservation Commission for assistance in framing the request for proposals for design services.

On motion it was,

Voted to award and execute a contract in the amount of \$19,200.00 with Feldman Surveyors (engineering survey services) for the completion of an Existing Conditions Survey at Brookline Reservoir Park.

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

CONTRACT

Question of awarding and executing a contract in the amount of \$529,450.00 with Enterprise Equipment Co., Inc. for Elevator Upgrades at Town Hall and the Physical Education Building.

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Project Manager Ray Masak stated that this is a continuation of the elevator repair appropriation. The Town has worked with the contractor successfully in the past.

On motion it was,

Voted to award and execute a contract in the amount of \$529,450.00 with Enterprise Equipment Co., Inc. for Elevator Upgrades at Town Hall and the Physical Education Building.

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

DONATION

Question of accepting a donation in the amount of \$500.00 from the Korean Church of Boston for the Brookline Police Department's Youth Police Initiative Program.

Chief O'Leary noted that this is a generous donation that will be used for youth related programs.

Selectman Daly said she appreciates that this organization as a non-profit recognizes the Town's public safety services.

On motion it was,

Voted to accept a donation in the amount of \$500.00 from the Korean Church of Boston for the Brookline Police Department's Youth Police Initiative Program.

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

APPROPRIATION TRANSFERS

Question of approving the request of Assistant Town Administrator Austin Faison for two Appropriation Transfers in the amount of \$15,000.00 each for the Finance Department.

Assistant Town Administrator Austin Faison stated that this request is to fund services to assist the Human Resources Director in efforts to hire a new Finance Director. The funds will be supported by the unused salary accounts.

On motion it was,

Voted to approve the request of Assistant Town Administrator Austin Faison for two Appropriation Transfers in the amount of \$15,000.00 each for the Finance Department.

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

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LEASE

Question of executing the First Amendment to the Town of Brookline School Space Lease for 62 Harvard Street.

This item was held pending an update from the School Department.

EXTENSION OF HOURS

Question of approving the application of AL/VFW Inc., holder of an All Kinds of Alcoholic Beverages License, for a one-day Extension of Hours of their Liquor License from 11pm-1am on December 31, 2016 – January 1, 2017 for a New Year's Eve Celebration at 386 Washington Street.

On motion it was,

Voted to approve the application of AL/VFW Inc., holder of an All Kinds of Alcoholic Beverages License, for a one-day Extension of Hours of their Liquor License from 11pm-1am on December 31, 2016 – January 1, 2017 for a New Year's Eve Celebration at 386 Washington Street.

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

CALENDAR

Review and potential vote on Calendar Items

POLICE DEPARTMENT - PERSONNEL

Question of authorizing the filling of the following vacancies in the Police Department:

Senior Accountant/Audit Clerk (C-05)
E911 Dispatcher (T9 ETD)

Chief O'Leary stated that the current Audit Clerk employee is moving to the Comptroller's office. The dispatcher is taking a job in the probation department. He has a list from the last hiring process and will hire from that.

Selectman Greene spoke about hiring a diverse applicant pool, and noted that the paperwork has an omission of a source for potential dispatchers, Community Colleges. Many Community Colleges have law enforcement programs; this is a good area to pursue. He feels that expanded efforts should be made to increase a diverse applicant pool.

Chief O'Leary presented the Board with a video on the Brookline Police Department's

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hiring and training campaign. He thanked Nation Boston, a local media company for their work and continued support.

The Chief added that the Department reaches out to co-op students and interns from Northeastern and Newbury College. Their last 4 hires were: 1 African American male, 2 females, and 1 white male, the next candidate on the list is an African American male.

Town Administrator Kleckner added that the hiring process is more in-depth than what appears on the paperwork. He will invite the HR Director and the DICR Director for an update on the hiring process.

On motion it was,

Voted to authorize the filling of the following vacancies in the Police Department:

Senior Accountant/Audit Clerk (C-05)
E911 Dispatcher (T9 ETD)

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

COOLIDGE CORNER STUDY COMMITTEE **agenda item taken out of order*

Question of establishing the composition and scope of a committee to study proposed development projects at 1200 Beacon Street (“Holiday Inn”), 8-10 Waldo Street (including 5 Waldo Street), 12-18 Pleasant Street, and 16 John Street (“Waldo/Durgin”).

Chairman Wishinsky stated that there are 2 proposals for large projects pending. One is a project at the Waldo/Durgin garage; a proposed 21 story mixed use building. The developer is willing to engage with the Town on a project for a hotel, commercial and residential units.

Hopefully the outcome will be less than 21 stories.

Selectman Greene added, and hopefully with rental units less than the anticipated \$8-9k monthly rate.

The second proposal is at the Holiday Inn, 1200 Beacon Street site. The owner of this property expressed a desire to develop a mixed use building with commercial and residential space.

This committee will be similar to the Gateway East Project and the 111 Boylston/Red Cab site project, and will include representatives from the Housing Advisory Board and the Economic Development Board. A draft charge was submitted for the Board to

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review. Both developers will be present at an upcoming meeting on January 9th.

*Chairman Wishinsky left the meeting at 8:30 p.m. to attend another meeting.
Selectman Daly is Acting Chair*

JCHE PROJECT COMMITMENT REQUEST

Question of reviewing and approving the recommendation of the Housing Advisory Board that the Town of Brookline make a preliminary commitment of up to \$2.5 million to Jewish Community Housing for the Elderly (JCHE) for a 62-unit affordable housing project at 384 Harvard Street.

Housing Advisory Board (HAB) Chair Roger Blood stated that this request supports the Town's commitment to fund this project with Housing Trust Funds in the amount of \$2.5 million, 10% of the total project. This project meets HAB's highest priority of being a truly affordable housing development. This process is required in efforts to proceed with the application so JCHE can get into this funding round at the State level.

JCHE President Amy Schectman gave a brief PowerPoint updating the Board on the development at 384 Harvard Street. They have engaged with the neighborhood and made some revisions to the streetscape, notably on Williams Street, where setbacks offer additional planting beds and green space, and alterations to the shared driveway with the abutters.

On motion it was,

Voted that the Town of Brookline is making a preliminary commitment of up to \$2.5 million to Jewish Community Housing for the Elderly for a 62-unit affordable senior housing project at 384 Harvard Street. This commitment will be fulfilled by a combination of Brookline Housing Trust, HOME and/or CDBG funds, as appropriate. Conditions for the commitment include the following:

- Success in securing a Comprehensive Permit for the project;
- Success in securing non-Town funding resources adequate to develop and finance the project as proposed;
- The imposition of affordability restrictions in perpetuity; and
- Local preference in tenant selection, to the maximum extent permitted under law and by other funders.

This commitment will extend for two years following the approval by the Board of Selectmen.

The Board authorizes Board Chair Neil Wishinsky to sign a preliminary commitment letter.

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

CHANGE OF d/b/a

Public Hearing on the application of Shilpa Liquors, Inc., d/b/a Village Liquors & Convenience, Vijaykumar Patel, Owner, holder of a license to Expose, Keep for Sale and to Sell All Kinds of Alcoholic Beverages as a Retail Package Store at 294 Washington Street for a change of d/b/a from Village Liquor & Convenience to d/b/a Brookline Wine & Spirit.

The Manager of the establishment was present. He indicated that they thought the name was changed a while ago, and realized it was not once they received their license renewal notice. They are going forward with the name change at this time.

Public Hearing no speakers:

On motion it was,

Voted to approve the application of Shilpa Liquors, Inc., d/b/a Village Liquors & Convenience, Vijaykumar Patel, Owner, holder of a license to Expose, Keep for Sale and to Sell All Kinds of Alcoholic Beverages as a Retail Package Store at 294 Washington Street for a change of d/b/a from Village Liquor & Convenience to d/b/a Brookline Wine & Spirit.

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

CHANGE OF MANAGER

Public Hearing on the application of Rockland Food & Beverage, LLC, d/b/a Lully's Café, Kimberly Tobias, Owner, holder of a license to Expose, Keep for Sale and To Sell All Kinds of Alcoholic Beverages to Be Drunk on the Premises as a Seven Day Common Victualler at 111 Boylston Street, for a Change of Manager from Jaglo Garces to Kevin James Buchanan.

Attorney Angela Vastey noted that the applicant had a family event to attend. She represented the applicant and reviewed his qualifications. Mr. Buchanan has over 20 years of experience in the restaurant business.

Selectman Daly asked that the applicant contact Brookline's liquor officer to review the Town's alcohol regulations if he has not already done that.

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Public hearing: no speakers

On motion it was,

Voted to approve the application of Rockland Food & Beverage, LLC, d/b/a Lully's Café, Kimberly Tobias, Owner, holder of a license to Expose, Keep for Sale and To Sell All Kinds of Alcoholic Beverages to Be Drunk on the Premises as a Seven Day Common Victualler at 111 Boylston Street, for a Change of Manager from Jaglo Garces to Kevin James Buchanan.

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

COMMON VICTUALLER LICENSE

Question of approving the application of Caffe Nero Americas, Inc., d/b/a Caffe Nero, Michael Ford-Deegan, President, for a Common Victualler License at 1633 Beacon Street, seating capacity of 60 seats and hours of operation Sunday-Saturday 5:30am-10:00pm.

Attorney Angela Vastey reviewed the application. This café will have 60 seats and the hours are Sunday-Saturday 5:30am. -10:00pm.

Chairman Wishinsky returned 8:45 pm.

On motion it was

Voted to approve the application of Caffe Nero Americas, Inc., d/b/a Caffe Nero, Michael Ford-Deegan, President, for a Common Victualler License at 1633 Beacon Street, seating capacity of 60 seats and hours of operation Sunday-Saturday 5:30am-10:00pm.

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

FOOD VENDOR LICENSE

Question of approving the application of D & L 81 Enterprise LLC, d/b/a My Guy Pizza, Lysa Dao and David Ty, Owners, for a Food Vendor License at 8 Cypress Street (presently Sargut Firidin Enterprises, Inc., d/b/a Grano Neapolitan Pizza), hours of operation Sunday-Saturday 11:00am-10:00pm.

The applicant was not present. This item was held.

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2017 LICENSE RENEWALS

Question of renewing the following licenses for 2017:

Coin-Operated Amusement Devices
Common Victualler
Entertainment (Weekday/Sunday)
Food Vendor
Innholder
Liquor
Lodging House
Registered Marijuana Dispensary
Secondhand Motor Vehicles

Chairman Wishinsky began the license renewal process.

Coin-Operated Amusement Devices

All the paperwork has been submitted; there are no outstanding issues.

On motion it was,

Voted to approve renewal of 2017 licenses for Coin-Operated Amusement Devices as presented on the report dated December 2, 2016.

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

Common Victualler

All the paperwork has been submitted; there are no outstanding issues.

On motion it was,

Voted to approve renewal of 2017 licenses for Common Victualler as presented on the report dated December 15, 2016.

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

Entertainment

All the paperwork has been submitted; there are no outstanding issues.

On motion it was,

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Voted approve renewal of 2017 licenses for Entertainment as presented on the report dated December 12, 2016

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

Sunday Live Entertainment

All the paperwork has been submitted; there are no outstanding issues.

On motion it was,

Voted to approve renewal of 2017 licenses for Sunday Live Entertainment as presented on the report dated December 12, 2016.

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

Food Vendor

All the paperwork has been submitted; there are no outstanding issues.

On motion it was,

Voted to approve renewal of 2017 licenses for Food Vendor as presented on the report dated December 12, 2016

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

Innholder

All the paperwork has been submitted; there are no outstanding issues.

On motion it was,

Voted to approve renewal of 2017 licenses for Innholder as presented on the report dated December 2, 2016

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

Liquor

James Franco TMM#1 spoke about the renewal of Waxy's, 1032 Beacon Street on behalf of a constituent that has complained about the volume level and disturbances from this establishment.

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The Board noted that they received an email today at 5:30 pm, however that did not give them enough time to review the issues.

Town Administrator Kleckner responded that the license holder must have adequate notice of a complaint and possible suspension of a license. This license can be renewed and investigated. He will consult with the Building Commissioner about the status of the complaint that was related to mechanical equipment on the roof and other issues. If it merits, there will be a public hearing. He thanked Mr. Franco for bringing this to his attention and apologized that he was unaware of the complaint prior to this evening.

Selectman Daly requested that the DBA change in the agenda earlier tonight (Brookline Wine and Spirit) be reflected in the renewal list, once approved by the ABCC at the State level.

On motion it was,

Voted to approve the renewal of 2017 licenses for the sale of alcohol beverages as presented on the report dated December 13, 2016.

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

Lodging House

It was noted that some inspections were not completed, and expected to be completed by December 31st.

One lodging house has not submitted the renewal paperwork.

On motion it was,

Voted to approve the renewal of 2017 licenses for Lodging House as presented on the report dated December 14, 2016.

*with the conditions that;

1. the following lodging houses successfully pass inspections by Fire, Building and health departments no later than December 31, 2016:

1017 Beacon Street
1754 Beacon Street
58 Manchester Street
89 Marion Street
143 St. Paul Street
400 Heath Street
1023 Beacon Street
1047 Beacon Street

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1459 Beacon Street
50 Goddard Avenue

2. That the lodging house at 50 Goddard Avenue submit all required paperwork and payment of a \$50.00 late fee no later than December 31, 2016.

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

Registered Marijuana Dispensary (RMD)

All the paperwork has been submitted; there are no outstanding issues.

Selectman Daly noted that the condition of Police Details still applies.

On motion it was,

Voted to approve renewal of 2017 licenses for Registered Marijuana Dispensary to NETA.

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

Secondhand Motor Vehicles

It was noted that Swanson Automotive has not submitted the renewal application.

On motion it was,

Voted to approve renewal of 2017 licenses for Secondhand Motor Vehicles Classes 1 & 2 with the condition that Swanson Automotive of 666 Brookline Avenue submits all required paperwork and payment of a \$50.00 late fee no later than December 31, 2016.

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

BOARDS AND COMMISSIONS - APPOINTMENTS

Question of making appointments to the following Boards and Commissions:

Park and Recreation Commission
Diversity, Inclusion & Community Relations Commission

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Park and Recreation Commission

On motion it was,

Voted to reappoint John Bain to the Park and Recreation Commission for a term ending August 31, 2019 or until a successor can be appointed.

Voted to appoint Wendy Sheridan to the Park and Recreation Commission for a term ending August 31, 2019 or until a successor can be appointed.

Diversity, Inclusion & Community Relations Commission

On motion it was,

Voted to reappoint John Malcome Cawthorne to the Diversity, Inclusion & Community Relations Commission for a term ending August 31, 2019 or until a successor can be appointed.

Voted to reappoint Enid Shapiro to the Diversity, Inclusion & Community Relations Commission for a term ending August 31, 2019 or until a successor can be appointed.

Voted to reappoint Ginny Vaz to the Diversity, Inclusion & Community Relations Commission for a term ending August 31, 2019 or until a successor can be appointed.

Voted to appoint Emanuel Howard to the Diversity, Inclusion & Community Relations Commission for a term ending August 31, 2018 or until a successor can be appointed.

Voted to appoint Yvette Johnson to the Diversity, Inclusion & Community Relations Commission for a term ending August 31, 2019 or until a successor can be appointed.

There being no further business the Chair adjourned the meeting at 9:15 p.m.

ATTEST



TOWN OF BROOKLINE
Massachusetts

OFFICE OF TOWN COUNSEL
Joslin Ham Murphy, Acting Town Counsel
Patricia Correa, First Assistant Town Counsel
John J. Buchheit, Associate Town Counsel
Jonathan Simpson, Associate Town Counsel

333 Washington Street
Brookline, MA 02445
617-730-2190
Fax: 617-264-6463

MEMORANDUM

November 30, 2016

TO: Board of Selectmen
School Committee

RE: School Space Lease, 62 Harvard Street

FR: John Buchheit

CC: M.E. Dunn
C. Simmons
J.H. Murphy

On behalf of the School Department, I request that you execute the First Amendment to the Town of Brookline School Space Lease for 62 Harvard Street. This First Amendment and the original Lease are attached. The Amendment increases the space rented at this location from 4,604 square feet to 5,524 square feet allowing for one additional classroom (three classrooms to four classrooms). With this Amendment, the Town is now renting the entire third floor of the building.

The original Lease was executed by you in August 2015. The Lease is for a five-year term, but the Town, in its sole discretion, has the option to extend the Lease for two two-year terms. Therefore, the Lease can be a five, seven or nine-year lease at the Town's sole discretion. The cost of the Lease is based on the amount of square footage rented. This rent increases each year. In the current year, Year Two, the rent is \$28.83 per square foot. In Year Five, it is \$31.51 per square foot. In addition, the Lease requires the Town to pay its pro rata share of the building operating expenses, which include taxes, insurance, building management fees and other costs. For illustrative purposes, the cost

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figures for building operating expenses in the year prior to August 2015 are included at Exhibit C of the Lease. The Town's pro rata share of the building operating costs before the Amendment is .207 (4,604/22,222). With the Amendment, its pro rata share increases to .249 (5,524/22,222).

Thank you for considering the School Department's request.

FIRST AMENDMENT

**TOWN OF BROOKLINE
SCHOOL SPACE LEASE
(62 HARVARD STREET)**

This First Amendment is made on _____, 2016 to the Lease dated August 4, 2015 between the Landlord 62 Harvard Street LLC and the Tenant Town of Brookline, acting by and through the Public Schools of Brookline ("PSB") on behalf of the User Agency, the Public Schools of Brookline, for Premises located on the third floor the Building at 62 Harvard Street, Brookline, MA 02445.

WHEREAS, the Landlord and Tenant wish 1.) to increase the amount of space rented by the Tenant by one classroom for a total of four classrooms at the Premises and 2.) to ratify and confirm all other terms and conditions of the Lease.

THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree to amend the Lease as follows:

1. The parties agree that for the new space (fourth classroom), the Date of Occupancy and Completion Date shall be August 16, 2016 and that the buildout shall be substantially complete by the aforementioned date.
2. Upon the Date of Occupancy, Exhibit A of the Lease shall be replaced with the Exhibit A attached hereto; "USABLE AREA OF PREMISES" in Section 1.1 of the Lease shall be changed to 5,524 +/- ; ; and "ADDITION RENT" in Section 1.1 shall be changed to reflect a new pro rata share, which, as of the Date of Occupancy set forth above shall be 22.7 percent. Also, added to this "ADDITIONAL RENT" in Section 1.1 shall be the Tenant's contribution to the buildout (fourth classroom) as set forth in Section 4.1 and Exhibit A, attached hereto. This contribution shall be \$43,570.

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Board of Selectmen of the Town of Brookline and the School Committee of the Town of Brookline, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

By: Debra O'Boy

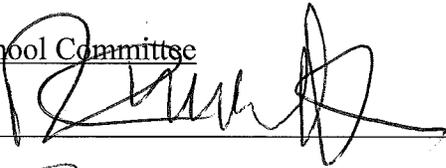
Printed Name: Debra O'Boy

Title: Manager

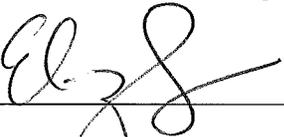
TENANT: TOWN OF THE BROOKLINE ACTING BY AND THROUGH ITS BOARD OF SELECTMEN AND SCHOOL COMMITTEE

Board of Selectmen

School Committee







Barbara Scott

Nella Chalupka



Approved as to Matters of Form:

_____, _____ Town Counsel
Town of Brookline

Exhibit A



Beth McDonald <beth_mcdonald@psbma.org>

Re: FW: 62 Harvard Floor Plan

Beth McDonald <beth_mcdonald@psbma.org>
To: John Buchheit <jbuchheit@brooklinema.gov>
Cc: Robin Coyne <robin_coyne@psbma.org>

Wed, Nov 30, 2016 at 3:09 PM

Hi John,

We have the First Amendment Lease ready with the Exhibit A. I am going to see if Daryl can come in and sign the lease. The School Committee has the item on their Agenda for their meeting tomorrow night, Thursday, December 1st. Would you be able to draft a cover memo for the School Committee and Selectmen.

Thanks,
Beth
[Quoted text hidden]

**TOWN OF BROOKLINE
SCHOOL SPACE LEASE**

1. SUBJECT MATTER AND TABLE OF CONTENTS

1.1 Subject Matter

Each of the references in this Lease to any of the following subjects incorporates the data stated for that subject in this § 1.1 and, unless defined elsewhere in this Lease, constitutes the definition of the listed subject.

DATE OF LEASE: ^{August 4} ~~July~~ ____, 2015

LANDLORD: 62 Harvard Street LLC

ADDRESS OF LANDLORD: 62 Harvard Street, Brookline, MA 02445

LANDLORD'S REPRESENTATIVE: Name: Daryl Dwan

Address: PO Box 1266, Dedham, MA 02027

(e) harvardstllc@gmail.com

(c) 508-451-1534

and/or such other persons as Landlord designates from time-to-time

TENANT: The Town of Brookline acting by and through the Public Schools of Brookline (PSB) on behalf of the User Agency, the Public Schools of Brookline

ADDRESS OF TENANT: Public Schools of Brookline, 333 Washington Street, 5th Floor, Brookline, MA 02445

TENANT'S REPRESENTATIVE: Name: Mary Ellen Dunn, PSB Deputy Superintendent of Administration and Finance.

Address: 333 Washington Street, 5th Floor

Brookline, MA 02445

(e) MaryEllen_Dunn@brookline.k12.ma.us

(t) 617-730-2424

and/or such other persons as Tenant designates from time-to-time, as set forth in § 4.4

USER AGENCY: Public Schools of Brookline

ADDRESS OF

USER AGENCY: 333 Washington Street, 5th Floor, Brookline, MA 02445

USER AGENCY'S REPRESENTATIVE: Name: Mary Ellen Dunn

Address: 333 Washington Street, Brookline, MA 02245

(e) MaryEllen_Dunn@brookline.k12.ma.us

(t) 617-730-2424

and/or such other persons as User Agency designates from time-to-time, as set forth in § 4.4

BUILDING (ADDRESS): 62 Harvard Street, Brookline, MA 02445

PREMISES: Portion of third floor of the Building as shown in Exhibit A, together with all of the Landlord's Improvements (as defined in § 4.1) made within the Premises pursuant to the provisions of this Lease.

LAND: Brookline Assessors' Map 36, Parcel 172 05-10.

USABLE AREA OF PREMISES: 4,604+/-.

RESERVED PARKING SPACES: Number: four unreserved

PERMITTED USES: Subject to the provisions of § 6.1, Tenant must use the Premises for the following purposes: School and Municipal Purposes and for no other purpose.

INITIAL TERM: The Initial Term begins on the Date of Occupancy, as defined in § 3.2, at 12:01 a.m., and continues until 11:59 p.m. of the date immediately preceding the fifth anniversary of the Date of Occupancy. "Term" includes the Initial Term and any extension term (Extension Term) unless otherwise expressly stated. "Expiration Date" means the last day of the Initial Term or of the then applicable Extension Term, and includes any effective date of termination of this Lease, unless otherwise indicated. Landlord has agreed to have the Premises ready for issuance of a Temporary Certificate of Occupancy on August 17, 2015.

BUSINESS DAY: Unless otherwise provided by this Lease, "business day" means any day other than Saturday, Sunday, or a designated holiday of the Commonwealth of Massachusetts on which the offices of the Town of Brookline are closed.

BASE RENT FOR INITIAL TERM:
Year One: \$28 per sf x Usable Area of Premises
Year Two: \$28.84 per sf x Usable Area of Premises
Year Three: \$29.71 per sf x Usable Area of Premises
Year Four: \$30.60 per sf x Usable Area of Premises
Year Five: \$31.51 per sf x Usable Area of Premises

ADDITIONAL RENT
Tenant will pay its pro rata share of certain costs, set forth in Exhibit B, represented by the ratio of the Usable Area divided by the total area of the Building, which is represented by the Landlord to be approximately 22,222 square feet. The pro rata share is 20.7 percent (4,604/22,222 = .207). The pro rata share may change based upon Tenant Leasing more or less space or changes that Landlord may make to the Building, or based upon adjustments made pursuant to Section 2.2(b), below. Upon request, Landlord shall provide documentation of the common charges set forth in Exhibit B. In addition, the Tenant will pay Landlord \$325,000 for the buildout of the space ("Landlord Improvements") as set forth in Section 4.1 below and as shown on Exhibit A

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If any amount payable to Landlord under this Lease is not paid when due or any check is dishonored, including payments for Base Rent and Additional Rent, Tenant shall pay to Landlord a late payment fee based on the highest amount permitted under M.G.L. c. 29 §29C.

RIDER, EXHIBITS, AND OTHER ACCOMPANYING DOCUMENTS

Exhibit A: Plan Showing Location of Premises within the Building

Exhibit B: Additional Rent

Exhibit C: Certain Costs for which Tenant Will Be Liable for Its Pro Rata Share

2. PREMISES; USABLE AREA

2.1 Premises; Appurtenant Rights

(a) Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord.
(b) As appurtenant to the Premises, Tenant, in common with other tenants and users of the Building (and subject to the rules of the Building, as set forth in § 6.4), has the right to use: (i) the common lobbies, malls, corridors, stairways, elevators, service areas, and loading platform of the Building; (ii) the pipes, ducts, conduits, wires, and appurtenant meters and equipment serving the Premises in common with other premises within the Building; (iii) common pedestrian walkways and landscaped areas; (iv) if the Premises include less than the entire floor area of any floor of the Building, the common restrooms, corridors, and elevator lobbies located on such floor and serving the Premises; and (v) all other areas in or about the Building from time-to-time intended for general use by Tenant and other tenants and users of the Building.

2.2 Usable Area

(a) For the purposes of this Lease, "Usable Area" means, with respect to the Premises or any space removed from or added to the Premises, the square footage determined by measuring the entire floor area of the Premises (or such other space) bounded by a line established by the predominant inside finish of the permanent outside Building walls that abuts the floor (not from the inside face of the windows) and by the interior surface of corridor walls or other demising walls. Deductions are not made for columns or other structural elements, or for partitions subdividing the Premises. Notwithstanding the foregoing, under no circumstances does the Usable Area include major vertical penetrations such as ventilation shafts, elevator shafts, stairwells, atria, or lightwells, and their respective enclosing walls, and it does not include vestibules, elevator-machine rooms, and other building-equipment areas, janitorial, electrical, and mechanical closets, loading platforms, common restrooms, and their respective enclosing walls, irrespective of whether Tenant occupies a portion of a floor, an entire floor, or an entire Building.

(b) Landlord warrants and represents to Tenant that Exhibit A is complete and accurate in all respects. If it is determined that Exhibit A is not accurate and that the Usable Area of the Premises is larger or smaller than depicted in Exhibit A by a factor of 1% or more, then, at the option of Landlord or Tenant, Landlord and Tenant must modify this Lease to state the actual Usable Area of the Premises and to adjust Rent upward or downward as the case may be to reflect the actual Usable Area.

3. RENT; DATE OF OCCUPANCY

3.1 Rent Payment

Tenant agrees to pay, and Landlord agrees to accept, Rent described in § 1.1. Equal monthly installments of Rent are payable on or before the 1st day of the calendar month for which Rent is due without offset and irrespective of any other covenant contained herein. If the Initial Term commences other than on the first day of a calendar month or ends other than on the last day of a calendar month, Rent for such fractional month is prorated. Notwithstanding the second sentence of this paragraph, if the Initial Term commences other than on the first day of a calendar month, Tenant pays the prorated Rent for such partial calendar month concurrently with the payment of the installment for the first full calendar month of the Initial Term.

3.2 Date of Occupancy; Commencement of Rent Obligation

(a) Landlord understands that time is of the essence and that it will work diligently to have the Premises ready for occupancy on August 17, 2015. Tenant will take occupancy of the Premises on August 17, 2015, provided the agreed upon improvements have been made and the Premises are clean and otherwise ready for occupancy. Nevertheless, the parties recognize the obligation of Tenant to pay Rent begins on the Date of Occupancy. The Date of Occupancy, if not August 17, 2015 is the earlier of (a) the 5th day after the Premises are available for Tenant's occupancy, or (b) the day Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses. The Premises are deemed available for Tenant's occupancy only when (i) Landlord substantially completes all of the Landlord's Improvements (as defined in § 4.1) in accordance with the provisions of this Lease, with only Punchlist Items (as defined in § 4.3) excepted, (ii) Landlord provides Tenant with a copy of any other report, drawing, and record required before occupancy by this Lease, and (iii) Landlord provides Tenant with the certificates of insurance that are required by § 8.2.

(b) Notwithstanding that Landlord meets all of the requirements set forth in the preceding paragraph for establishing the Date of Occupancy, the Date of Occupancy is not deemed to occur before the August 17, 2015 unless Tenant actually takes possession of the Premises and begins to use the Premises for any or all of the Permitted Uses before the Completion Date.

3.3 Tenant's Entry before Term without Charge

(a) With the prior approval of Landlord and after complying with the insurance requirements herein required during the Term, Tenant may enter the Building and Premises before the Date of Occupancy without payment of any additional sums in order to install telephone equipment, cabling, furniture, and fixtures, and otherwise to prepare the Premises for occupancy by Tenant. Landlord must not withhold or delay such approval, provided that Tenant coordinates Tenant's work with the construction of the Landlord's Improvements and any other work being performed by Landlord in the Building so as not to interfere with or increase the cost of such work of Landlord or delay the Completion Date. As a condition of granting such approval, Landlord has the right to require that a representative of Landlord accompany Tenant and Tenant's contractors, and Tenant agrees, on behalf of Tenant and Tenant's contractors, to comply with any and all reasonable directions given by said representative of Landlord. During this early prior to the Date of Occupancy, Tenant shall be subject to all of the covenants, conditions and indemnifications set forth herein, other than the obligation to pay Rent and Additional Rent.

(b) In order to assist Tenant with Tenant's preparation, move into, and occupancy of the Premises, Landlord must provide Tenant and Tenant's agents and contractors with all information concerning the Building's structure, systems, utilities, equipment, and services that Tenant reasonably requests and which Landlord possesses. Landlord must provide such information with reasonable promptness, whether before or after commencement of the Term.

4. IMPROVEMENTS BY LANDLORD

4.1 Landlord's Improvements

Landlord, at Landlord's sole cost and expense (except as otherwise specifically provided in this Lease), must furnish all labor and materials necessary to construct the agreed upon Landlord

Improvements to the Premises and to make any and all improvements or alterations to the Building and exterior areas that the Lease requires. The Landlord Improvements are shown on the plans attached hereto at Exhibit A, shall be substantially completed before the Date of Occupancy, unless otherwise agreed to in writing by the Tenant, and include the following: (i) installing ADA compliant girls and boys bathrooms on the Premises, (ii) constructing five (5) rooms and an office/administration area, (iii) constructing a common corridor, (iv) new windows, window shades, walls, doors, flooring and locks, (v) new paint on walls and ceilings, (vi) new HVAC system, (vii) new lighting, (viii) upgrades to fire alarm and sprinkler system to meet code, and (ix) agreed upon plumbing improvements set forth, in the attached plans. Notwithstanding the content shown on the plans, Landlord shall not bear any cost associated with the purchase of lockers, but shall install Tenant furnished lockers which shall be removed by Tenant as of the expiration or earlier termination of this Lease. Tenant shall pay Landlord \$325,000 toward the cost of Landlord's Improvements, 2/3 of which shall be paid by Tenant to Landlord on or before August 7, 2015 and 1/3 of which shall be paid to Landlord upon the earlier of Tenant taking occupancy of the Leased Premises or substantial completion of Landlord's Improvements indicated by a Certificate of Occupancy .

4.2 Plans and Changes

- (a) Notwithstanding any other provision of this Lease, if Tenant requests any change to the plans or to the Landlord's Improvements that causes an increase in Rent or requires Tenant to pay any additional sum to Landlord or to Landlord's contractors, Landlord must not make such change, and Tenant has no liability for any cost that Landlord or any other party incurs in connection with such change, unless and until Landlord and Tenant execute a written modification of this Lease, specifying such change and the additional rent or other payment that Tenant must make.
- (b) It is understood and agreed that Landlord and Landlord's architects and engineers are fully and completely responsible for all aspects of the design, engineering, and construction of the Landlord's Improvements. No comments on or approval by Tenant of plans or any other advice or opinions provided by Tenant concerning the design or construction of the Landlord's Improvements renders Tenant responsible for the design, engineering, or construction of the Landlord's Improvements, or invests Tenant with any responsibility for defects or other Building conditions.

4.3 Completion Date; Tenant Delays; Standard for Substantial Completion

- (a) Subject to Tenant Delays and any Force Majeure Event (as defined in § 15), Landlord must substantially complete all of the Landlord's Improvements so that it can receive a Temporary Certificate of Occupancy by August 17, 2015 (the "Completion Date"). If, at any time, it appears that this deadline will not be met, Landlord must notify Tenant immediately, in writing. Such notice must advise Tenant of each reason for delay and of the new projected Completion Date.
- (b) If a Force Majeure Event delays the Completion Date, then the Completion Date, as modified from time to time, must be extended by the actual number of days that a Force Majeure Event delays the Completion Date, but in no event can such extension of the Completion Date for Force Majeure Events exceed 150 days in the aggregate without Tenant's written consent, which Tenant has the right to withhold for any reason or for no reason, in Tenant's sole discretion.
- (c) If the Completion Date is delayed due to a Tenant Delay, then the Completion Date, as extended from time to time, must be extended by the actual number of days that such Tenant

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Delay delays the Completion Date. For the purposes of this Lease, "Tenant Delay" means any delay in the Completion Date that is directly and primarily caused by any of the following acts or omissions of Tenant, provided such act or omission continues for a period of more than two business days after receipt of notice from Landlord that such act or omission is likely to cause a delay in the Completion Date:

- (i) Tenant's request for work to the Premises not included in this Lease; or
- (ii) Tenant's request for a change in the work that Tenant previously approved; or
- (iii) Delays in the delivery, installation, or completion of any work that Tenant or Tenant's contractors perform; or
- (iv) Any failure by Tenant to perform any of Tenant's obligations under this Lease; or
- (v) Any act or omission by Tenant which interferes with construction of the Landlord Improvements, or any failure to make a required payment to Landlord.

(d) Such notice must be sent to Tenant in an envelope bearing the following notice printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

NOTICE OF TENANT DELAY – OPEN IMMEDIATELY

(e) The extension of the Completion Date for Tenant Delays is Landlord's sole and exclusive remedy for Tenant Delays, but in no event can such extension of the Completion Date for Tenant Delay exceed 150 days in the aggregate without Landlord's written consent, which Landlord has the right to withhold for any reason or for no reason, in Landlord's sole discretion .

(f) The Landlord's Improvements are substantially complete for the purposes of this Lease only when (i) Landlord performs the work it is required to perform, including complete installation of all structural and mechanical elements, walls, partitions, windows, floor and ceiling coverings, wiring, fixtures, life-safety systems, decorations, paint, and exterior improvements, with only Punchlist Items excepted, (ii) Landlord makes the water supply, sewage, heating, ventilating, air conditioning, and electric facilities available to Tenant in accordance with the obligations that Landlord assumes under this Lease, and (iii) Landlord has caused the Premises to be free of debris and construction materials, in a usable and tenantable condition, and cleaned.

(g) Subject to Tenant Delays and Force Majeure Events only, Landlord must cause the Landlord's Improvements to be substantially completed by August 17, 2015. Landlord must keep Tenant apprised of the progress of the work that Landlord performs under this Lease. If there is any delay in the progress of the work, Landlord must notify Tenant of such delay immediately, regardless of whether Landlord anticipates that such delay causes a delay in the Completion Date. Said notice must advise Tenant of all changes or adjustments in the schedule, the cause of each change or adjustment, and the corrective efforts, if any, that Landlord has made, proposes to make, or both.

(h) If the Landlord's Improvements are not substantially completed within 30 days after the Completion Date, as extended for Tenant Delays, a Force Majeure Event, or otherwise by agreement of Landlord and Tenant, Tenant has, in addition to any other remedies available to Tenant under this Lease, at law, or in equity, the right to terminate this Lease by giving Landlord a written Notice of Termination, which right Tenant must exercise within 30 days after this 30 day period in which case the Landlord shall return to Tenant the \$325,000 contribution to Landlord Improvements and this Lease shall terminate without further recourse to the parties hereto.

(j) Notwithstanding Tenant's consent to any extension of the Completion Date, Landlord must promptly complete all Punchlist Items, and in every event, Landlord must complete Punchlist Items no later than 30 days after the Date of Occupancy, subject to Force Majeure Events and

Tenant delays. For the purposes of this Lease, "Punchlist Items" means only items that do not materially impair Tenant's ability to use and occupy the Premises in accordance with the provisions of this Lease. On or before the Date of Occupancy, Landlord and Tenant must conduct a walk-through of the Premises and must identify, in writing, all Punchlist Items that Landlord must complete.

(k) The construction of the Landlord's Improvements must be (i) coordinated with any work being performed by Tenant, provided that such coordination does not materially interfere with Landlord's construction schedule, delay the Completion Date, or increase the cost of the Landlord's Improvements, (ii) completed in accordance with approved plans, if any, and in a good and workmanlike manner, (iii) performed and completed in compliance with all applicable laws, ordinances, codes, and regulations, and (iv) performed and completed at Landlord's sole expense (except those costs agreed to by Tenant set forth in this Lease) including the cost of all design work, materials, labor, and state and local permits. Approval by Tenant of plans or changes in plans, whether expressly given or resulting from Tenant's inaction, must never be construed as a waiver of any of the requirements of this paragraph.

4.4 Tenant's Representative, User Agency's Representative, and Authorized Representative
Tenant designates the individual named in § 1.1 as Tenant's Representative and as User Agency's Representative. Tenant designates Tenant's Representative as Authorized Representative, who has full power and authority to make decisions on behalf of Tenant with respect to matters pertaining to the design and construction of the Landlord's Improvements, except that Authorized Representative has no authority whatsoever to alter, waive, or modify any provision of this Lease, which must only be done in accordance with the provisions of § 16.3. Landlord must deliver the plans, if any, and any requests for changes or modifications to the plans to both Tenant's Representative and User Agency's Representative. Authorized Representative or Authorized Representative's successor must communicate to Landlord, in writing, Tenant's approval or disapproval of any plans and all other decisions relating to the Landlord's Improvements, and Landlord must rely only upon written communications received from such individuals unless Tenant otherwise notifies Landlord in writing.

5. LANDLORD'S COVENANTS

5.1 Ownership; Signatory Authority; Debarment; Pending Proceedings; Changes
Landlord warrants and represents:

(a) Landlord has record title to the premises (or if this Lease is a sublease, Landlord warrants and represents that Landlord holds a current and valid lease of the premises) of which the Premises are a part, and that there are no encumbrances affecting the Premises or Building that would prohibit or interfere with the construction of the Landlord's Improvements or the use of the Premises for the Permitted Uses (or the sublease of the Premises if this Lease is a sublease).

(b) Landlord's name appears in this Lease exactly as Landlord's name appears on Landlord's record title to the Premises if Landlord owns the Premises, or exactly as Landlord's name appears in Landlord's lease if this Lease is a sublease.

(c) Landlord has full legal capacity to enter into this Lease.

(d) If Landlord is not a natural person or natural persons, but Landlord is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), Landlord is validly organized and existing, Landlord is in good standing in the state, commonwealth, province, territory, or jurisdiction of Landlord's organization, and Landlord is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the Premises are located.

(e) The execution of this Lease is duly authorized, and each person executing this Lease on behalf of Landlord has full authority to do so and to fully bind Landlord.

(f) Landlord is not debarred or suspended from contracting with the Commonwealth of Massachusetts under any applicable debarment statute or regulation.

(g) Landlord knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law-enforcement agency against or affecting Landlord or Landlord's properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Lease or Landlord's ability to carry out Landlord's obligations.

5.2 Delivery of Premises; Compliance with Law

Landlord warrants and represents:

(a) Landlord must deliver the Premises to Tenant in good, clean, safe, and occupiable condition, and otherwise in accordance with the provisions of this Lease, and that the construction of the Landlord's Improvements and Building common areas to which Tenant has appurtenant rights, and the use of the Premises by Tenant for the Permitted Uses must be in full compliance with (i) all applicable overleases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes, and regulations (including, without limitation, those pertaining to accessibility for disabled persons) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance-rating body or bodies.

(b) Throughout the Term, Landlord must maintain the Premises in good, clean, safe, and occupiable condition, and otherwise in accordance with the provisions of this Lease, and the Landlord's Improvements and Building common areas to which Tenant has appurtenant rights, must be in full compliance with (i) all applicable overleases, (ii) all requirements of Landlord's mortgages and insurance policies, (iii) all laws, ordinances, codes, and regulations (including, without limitation, those pertaining to accessibility for disabled persons) of governmental authorities with jurisdiction, and (iv) all regulations of the Board of Fire Underwriters or any similar insurance-rating body or bodies. Irrespective of any provision of this Lease to the contrary, Landlord specifically disclaims any representation or warranty not expressly contained herein, including those related to zoning compliance for the Permitted Use and any implied warranty of habitability or fitness for the Permitted Use.

(c) If, at any time, any governmental authority with jurisdiction or the Board of Fire Underwriters or any similar insurance-rating body notifies Landlord or Tenant that all or any part of the Premises or Building was or is not constructed or maintained in compliance with any applicable law, ordinance, code, or regulation, and demands compliance, then Landlord, upon receipt of such notification, promptly must cause such repairs, alterations, or other work to be done so as to bring about the compliance demanded. Landlord has the right to defer compliance so long as Landlord contests the validity of any such law, order, or regulation in good faith and by appropriate legal proceedings, provided that such failure to comply must not in any way interfere with Tenant's use of the Premises for the Permitted Uses, subject Tenant or Tenant's

employees or invitees to any increased risk of injury to their persons or property, adversely affect any other right of Tenant under this Lease, or impose any additional obligation upon Tenant.

(d) To avoid any doubt, notwithstanding the terms of this Section 5.2, Landlord shall not be required to provide any custodial/janitorial services and shall not be required to address any damage to the Premises or Building caused by the negligence, waste or misuse by Tenant, its agents, employees, students, licenses and invitees.

5.3 Quiet Enjoyment

(a) Landlord warrants and covenants that as long as there is no Event of Default (as defined in § 9.1) by Tenant under this Lease, Tenant must have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of Landlord or any other person for whose actions Landlord is legally responsible, or by any person claiming by, through, or under Landlord.

(b) At reasonable times and without unreasonably interfering with Tenant's use, occupancy, and enjoyment of the Premises, Landlord and Landlord's agents have the right to enter the Premises to make repairs or to view the Premises. Landlord must give Tenant reasonable notice of such visits; provided, however, that Landlord has the right to enter the Premises at any hour and without notice in the case of an emergency affecting the Premises.

(c) Landlord has the right to enter for the purpose of showing the Premises to prospective tenants only during the last nine months of the Term. Landlord must notify Tenant (Landlord has the right to give such notice by telecopier (fax)) at least 24 hours before showing the Premises to prospective purchasers, tenants, or other parties. Landlord shall not show the Premises during school hours (currently 8 a.m. to 2:30 p.m. M-F).

5.4 Correction of Defective Work; Repair of Premises and Building

(a) During the Term, Landlord must promptly correct, repair, or replace any defective aspects of the Landlord's Improvements of which Landlord becomes aware after the Date of Occupancy (Latent Defects).

(b) Landlord must keep and maintain the Premises, including, without limitation, all equipment and fixtures that Landlord furnishes as part of the Landlord's Improvements (whether located within or outside of the Premises) in such good repair, order, and condition as the same are in at the beginning of the Term, reasonable wear and tear, damage that fire or other casualty causes (except as provided in § 7.1), and damage that Tenant's negligence, misuse, Tenant's breach of this Lease, or Tenant's willful misuse causes excepted (reference in this paragraph to "Tenant" shall include Tenant's agents, employees, contractors, subcontractors, invitees and students). Without limiting the foregoing, but subject to any additional or limiting provisions of Exhibit B, Landlord's obligations include repair of broken glass, doors, floor coverings, interior walls and partitions, ceiling tiles, plumbing and lighting fixtures, locks, fire protection equipment, heating, ventilation, and air conditioning equipment, and cabling. Landlord must make such repairs to the roof, foundation, exterior walls, floor slabs, and common areas and facilities of the Building, including finishes, as are necessary to keep them in good condition.

(c) Landlord must make routine non-janitorial/custodial repairs, corrections, and replacements to the Premises, to any of the Landlord's Improvements outside of the Premises, or to any other portion of the Building within five business days after Landlord discovers or Tenant notifies Landlord or Landlord's authorized representative of the condition requiring repair, correction, or replacement, or within such shorter time period as applicable law, code, or regulation requires,

all subject to Force Majeure Events and Tenant delays. A routine repair, correction, or replacement is any repair, correction, or replacement that is not an emergency repair, correction, or replacement as defined in § 5.4 (d).

(d) Landlord must make emergency repairs, corrections, and replacements to the Premises, to any of the Landlord's Improvements outside of the Premises, or to any other portion of the Building immediately upon Landlord's discovery of or Tenant's notice to Landlord or to Landlord's authorized representative of the condition requiring repair, correction, or replacement. An emergency repair, correction, or replacement is any repair, correction, or replacement that is required to remove an immediate threat to the life, health, or safety of any person or property upon the Premises or the appurtenant areas described in § 2.1.

(e) Landlord must complete all repairs, corrections, and replacements (i) at Landlord's sole cost and expense, except as provided by this § 5.4 and Exhibit B, (ii) in a good and workmanlike manner, (iii) with respect to repairs, corrections, and replacements of the Premises and the Landlord's Improvements only, with materials of equal or better quality than the original, and (iv) in compliance with all applicable laws, ordinances, codes, and regulations.

(f) In (i) scheduling and carrying out the repairs that this Lease requires, (ii) making any optional repairs, alterations, or improvements to the Building or Premises, and (iii) performing routine maintenance of Building systems, fixtures, or equipment, Landlord must make all reasonable efforts to minimize interference with Tenant's access to and use of the Premises. If any such repairs or maintenance by Landlord causes Tenant to be deprived of the use or quiet enjoyment of all or a material portion of the Premises for a period of more than five consecutive business days, subject to any delays caused by Force Majeure Events and Tenant delays, Rent for each succeeding day must be abated in proportion to the deprivation unless said repairs or maintenance are required due to damage caused by the negligence, breach of this Lease, or willful misconduct of Tenant or Tenant's agents or contractors and students.

(g) To avoid any doubt, notwithstanding the terms of this Section 5.4, Landlord shall not be required to provide any custodial/janitorial services and shall not be required to address any damage to the Premises or Building caused by the negligence, waste or misuse by Tenant, its agents, employees, students, licenses and invitees, all of which shall be Tenant's responsibility.

5.5 Delivery of Services and Utilities

(a) The Premises shall be separately metered for electricity and the Tenant shall be responsible for those charges. Electrical service must be of sufficient capacity to provide adequate power for electrical equipment to be installed as part of the building, plus power required to operate all of the Public Schools of Brookline's equipment, including but not limited to its computer network system

(b) The building should be wired to allow internet access and telephone service to the Premises.

(c) Landlord shall provide fully automatic HVAC systems capable of maintaining minimum winter temperatures of 68 degrees Fahrenheit and maximum summer temperatures of 78 degrees Fahrenheit throughout the Premises for the term of the Lease.

(d) Landlord shall be responsible for general maintenance and repair of the Premises.

(e) As set forth in §5.4, Landlord shall be responsible for all general maintenance and repair of the common areas of the Building.

(e) Landlord shall, at its sole expense, keep pedestrian access, walkways and building free of ice and snow.

(f) To avoid any doubt, notwithstanding the terms of this Section 5.5, Landlord shall not be required to provide any custodial/janitorial services and shall not be required to address any damage to the Premises caused by the negligence, waste or misuse by Tenant, its agents, employees, students, Licenses and invitees;

(g) Tenant shall be responsible for paying directly to the applicable service provider all separately metered utilities, cable, telephone and internet service.

(h) Landlord will treat commons areas for pests and/or cause other building tenants to do same as necessary and appropriate per its agreement with other building tenants. If a pest problem is caused or substantially exacerbated by the Tenant, Tenant shall be responsible for all (or a portion allocated to Tenant's conduct) of said costs of necessary treatment.

5.6 Hazardous Substance

(a) Landlord represents that Landlord has no knowledge of, and has not received any notice of, the current or past existence of any material, currently considered to be a Hazardous Substance, that is existing, deposited, or discharged on or from, or transported to, from, or across, or migrating toward or across the Premises, the Building, or the land upon which the Building is located. For purposes of this Lease, Hazardous Substance means (i) any "hazardous substance," "hazardous material," "toxic substance," "hazardous waste," "hazardous pollutant," or "toxic pollutant," oil, asbestos, urea formaldehyde foam insulation, or "solid waste," as presently defined or otherwise denominated as hazardous, toxic, or a pollutant or a special waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as modified from time to time (42 U.S.C. 9601 et seq.) (CERCLA), the regulations promulgated under CERCLA, and the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.); (ii) any additional substance or material that is incorporated in or added to the definition of "hazardous substance" for the purposes of such laws; (iii) a substance listed in the United States Department of Transportation Table (49 CFR 172.101, as modified) or by the Environmental Protection Agency (or any successor agency) as a hazardous substance (40 CFR Part 302, as modified); (iv) any hazardous waste or solid waste, as defined in the Resource Conservation and Recovery Act of 1976, as modified by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C.A. 6901 et seq.); (v) any material, waste, or substance that is (A) petroleum, (B) asbestos or an asbestos-containing material, (C) polychlorinated biphenyls, (D) urea-formaldehyde (UFFI) or UFFI-containing material, (E) radon, (F) designated as a "hazardous substance" pursuant to § 311 of the Clean Water Act (33 U.S.C. 1251 et seq.), or listed pursuant to § 307 of the Clean Water Act (33 U.S.C. 1317); (G) flammable explosive; or (H) radioactive material; and (vi) any additional substance or material that is considered to be a "hazardous substance," "hazardous material," "toxic substance," "hazardous waste," "solid waste," or regulated substance or material (including, without limitation, any asbestos-containing material) under any state, federal, or local law, rule, or regulation governing health, safety, natural resources, or the environment relating to the Premises, the Building, or the land upon which the Building is located, including, without limitation, G. L. c. 21E (being the Massachusetts Oil and Hazardous Materials Release and Prevention Act) and the definitions of oil and/or hazardous material promulgated thereunder, G. L. c. 21C, Title 5 of the State Environmental Code, G. L. c. 111, 150A, and any hazardous and inflammable substance regulated under G. L. c. 148. Each reference in this Lease to law, a rule, a regulation, etc., whether specific or general, is to law, a rule, a regulation, etc., that is currently in effect, as modified or supplemented.

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(b) Landlord agrees that Landlord must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about, or transported to, from, or across the Premises, the Building, or the land upon which the Building is located, provided, however, that this does not (i) prohibit Landlord from permitting other tenants or users of the Building from using any Hazardous Substance subject to the same provisions that are applicable to Tenant, or (ii) prohibit Landlord and Landlord's contractors from using necessary amounts of cleaning fluids, pesticides, gasoline, solvents, or similar supplies necessary to carry out Landlord's construction, repair, and maintenance obligations under this Lease, any of which constitutes a Hazardous Substance, provided that such use, including storage and disposal, by Landlord is in compliance with the manufacturers' instructions and recommendations for the safe use of such products, and with all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment, safety, or any Hazardous Substance.

(c) Landlord must promptly take or cause others to take all actions that are necessary to assess, remove, and/or remediate each Hazardous Substance that is on, under, or migrating toward the Premises, Building, or land upon which the Building is located (unless generated by Tenant), as and to the extent required by all laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance. Landlord must also take all actions required to prevent such Hazardous Substance from causing injury or damage to Tenant and Tenant's employees, agents, contractors, and invitees, or if injury or damage cannot be prevented, to minimize such injury or damage to the greatest extent possible.

(d) Landlord must indemnify, save harmless, and defend, under the direction of Town Counsel of the Town of Brookline, Tenant from all liability, claim, or cost (including reasonable costs of legal counsel and response costs as defined under CERCLA) resulting directly or indirectly from any Hazardous Substance (i) on or under the Premises, the Building, or the land upon which the Building is located before the Date of Occupancy, or (ii) after such date with respect to any Hazardous Substance that Landlord, Landlord's employees, agents, independent contractors, or invitees (that include, for the purposes of this § 5.6, any other tenant of the Building, but only if Landlord knowingly permits such tenant to carry out activities involving a Hazardous Substance in breach of Landlord's obligations in this § 5.6) release(s) or place(s) on or under the Premises, the Building, or the land upon which the Building is located. This indemnity survives termination of this Lease. Promptly upon discovery, Tenant must notify Landlord in writing of any facts or circumstances that give rise to any claim by Tenant.

6. TENANT'S COVENANTS

6.1 Use of Premises

(a) Tenant must use the Premises only for the Permitted Uses set forth in § 1.1, provided, however, that Tenant has the right to use the Premises for other purposes if such use (i) is compatible with the other uses of the Building, as determined by Landlord in Landlord's reasonable discretion, (ii) does not materially increase the amount of visitor or employee traffic to and from the Premises, (iii) does not materially increase Landlord's cost to provide the services (including, without limitation, repairs and maintenance of the Premises and Building)

that this Lease requires or any other services currently provided to tenants of the Building, and (iv) is otherwise compatible with all other obligations of Tenant under this Lease.

(b) Tenant must not cause or permit any nuisance in the Building and must not conduct any activity within the Premises or Building that interferes with the rights of other tenants, occupants or users of the Building.

(c) Tenant covenants and agrees that Tenant must not do or permit anything to be done in or upon the Premises or Building, or bring anything on the Premises or Building that increases the rate of insurance on the Premises or Building above the standard rate applicable to Premises occupied for the Permitted Uses, or that voids such insurance. Tenant agrees that if Tenant does any of the foregoing, Tenant must promptly pay to Landlord, on demand, any resulting increase as additional rent, or Tenant must cease all activities that cause the increase or the voiding.

6.2 Care of Premises

(a) Tenant must not injure, deface, or commit waste in the Premises or any part of the Building. Tenant must exercise reasonable care to ensure that all systems, fixtures, and equipment at the Premises are used only for their respective intended purposes and that the electrical, mechanical, and structural systems of the Building and the Premises are not overloaded. Tenant must notify Landlord promptly of any damage to the Premises, malfunction of a system or fixture, or any other condition that requires repair by Landlord.

(b) Tenant shall be responsible for placing all trash and rubbish in the dumpsters provided by Landlord.

(c) In addition to all other covenants and agreements of Tenant contained herein, Tenant hereby covenants with Landlord that Tenant during the term of this Lease and for such further time as it shall hold the Premises or any part thereof will pay all charges for heat, air conditioning, hot and cold, gas, electricity, telephones, and all other utilities services exclusively serving the Premises.

(d) Tenant shall provide typical custodial/janitorial services to the Premises.

(e) Tenant further covenants and agrees that if any of Tenant's work on or modifications or improvements to the Premises cause the need for other modifications or improvements to the Premises pursuant to any applicable law, Tenant shall be responsible for making such additional improvements and modifications at Tenant's sole cost and expense; to pay all municipal, county, or state taxes assessed against the leasehold interest hereunder, or against personal property of any kind on or about the Premises; to pay to Landlord all of Landlord's costs and expenses incurred by Landlord in making any repairs, improvements or alterations to the Premises requested or demanded by Tenant, except those improvements required of Landlord pursuant to this Lease.

(f) Tenant further covenants that it is authorized to enter into this Lease, and that the signatories on behalf of Tenant have been duly authorized and empowered to sign this Lease by a vote of all required municipal agencies, boards and commissions.

(g) Tenant covenants that it shall obtain and maintain all licenses, permits and approvals required for the Permitted Use.

6.3 Hazardous Substance

(a) Tenant agrees that Tenant must not cause or permit any Hazardous Substance to be used, generated, stored, or disposed of on, under, or about the Premises, or to be transported to, from, or across the Premises.

(b) Nothing in this Lease prohibits Tenant from using minimal quantities of cleaning fluid and office or household and art supplies that constitute(s) a Hazardous Substance but are customarily

present in and about premises used for the Permitted Uses, provided that Tenant's use, including storage and disposal of such cleaning fluid and office or household or art supplies, is in compliance with all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

(c) If Tenant or Tenant's employees, agents, independent contractors, or invitees cause(s) the release or threatened release of any Hazardous Substance from the Premises, Tenant must promptly notify Landlord and, without cost to Landlord, take such action, or cause others to take such action, as is necessary to assess, remediate, or remove any Hazardous Substance, as and to the extent required by all applicable laws, rules, regulations, judgments, decrees, orders, licenses, permits, authorizations, agreements, and other restrictions or requirements of governmental authorities relating to the environment or any Hazardous Substance.

(d) Subject to all limitations required by law, including without limitation M.G.L. c. 258, and after use of \$2,000,0000 general liability insurance and casualty insurance, if applicable, Tenant shall indemnify Landlord and hold Landlord harmless from and against all loss, liability, damage and expense, including reasonable attorneys' fees, suffered or incurred by Landlord, whether as Landlord under this Lease or as owner of the Building and Land containing Premises, arising out of any act or omission of Tenant, its agents, employees, contractors, licensees, sublessees, invitees or guests, from and after the date hereof (i) under or on account of a violation of any Federal, state or local law, regulation or ordinance relating to Hazardous Substance; (ii) with respect to the presence, release or spill of any Hazardous Substance; and (iii) with respect to any other matter affecting the Premises within the jurisdiction of the Federal Environmental Protection Agency and/or Massachusetts Department of Environmental Protection or its successor. The obligations and indemnification and exculpation provisions contained in this subsection (d) shall survive the expiration or earlier termination of this Lease. Promptly upon discovery, Landlord must notify Tenant in writing of any facts or circumstances that give rise to any claim by Landlord.

6.4 Compliance with Applicable Laws and Removal of Liens

Tenant must comply with all laws, orders, and regulations of federal, state, county, and city authorities, and with any of Landlord's rules and regulations that are set forth in this Lease or that Landlord establishes, provided that they do not conflict with the provisions of this Lease, and further provided that they are delivered to Tenant and to the User Agency in the manner required for notices. Tenant has the right to defer compliance so long as Tenant contests in good faith the validity of any such law, order, or regulation by appropriate legal proceedings and first gives Landlord appropriate assurance, reasonably satisfactory to Landlord, against any loss, cost, or expense on account of such deferral, and provided that such contest must not subject Landlord to criminal penalties or civil sanctions, loss of property, liens against property, or civil liability. Tenant must not cause or allow any liens of any kind to be filed against the Premises. If any liens are filed, within 15 days after receiving written notice of such filing, Tenant, at Tenant's sole cost and expense, must take whatever action is necessary to cause such lien to be bonded off or released of record without cost to Landlord.

6.5 Assignment and Subletting

(a) Tenant must not assign, sublet, mortgage, pledge, or encumber this Lease (the result of any such action being referred to as a "Transfer") without Landlord's prior written consent, which

consent shall be in Landlord's reasonable discretion. By valid written instrument, any transferee must expressly assume, for the transferee and the transferee's successors and assigns, and for the benefit of Landlord, all of the obligations of Tenant under this Lease. Following such transfer, Tenant has no further obligations of Tenant under this Lease.

(b) Any request by Tenant for Landlord's consent to a Transfer must include (i) the name of the proposed transferee; (ii) the nature of the transferee's business and proposed use of the Premises; (iii) complete information as to the financial conditions and standing of the proposed transferee; and (iv) the provisions of the proposed Transfer. Tenant must promptly supply such additional information about the proposed Transfer and transferee as Landlord reasonably requests.

Landlord also has the right to meet and interview the proposed transferee.

(c) Landlord must advise Tenant in writing whether or not Landlord consents to a proposed Transfer within 30 days of receiving Tenant's request for such consent. If Landlord fails to so notify Tenant within said time period, Landlord is deemed to have given Landlord's consent to the proposed Transfer.

(d) The express or implied consent by Landlord to any Transfer does not constitute a waiver of Landlord's right to prohibit any subsequent Transfer.

(e) As used in this Lease, "assign" or "assignment" includes, without limitation, any transfer of Tenant's interest in the Lease by operation of law.

(f) Notwithstanding any contrary provisions of this § 6.5, in connection with any proposed Transfer, Landlord has the right to cancel and terminate this Lease if Tenant's request is to assign the Lease or to sublet more than 80% of the Premises; or, if Tenant's request is to sublet a portion of the Premises only, to cancel and terminate this Lease with respect to such portion of the Premises for the proposed duration of the sublease. Landlord must exercise this right in writing within 30 days of receiving Tenant's request for Landlord's consent to a proposed Transfer, and in each case, such cancellation or termination must occur as of the effective date of the proposed Transfer. In such event, Tenant must permit Landlord to enter into a direct lease with the proposed transferee.

(g) Landlord acknowledges and agrees that the use or occupation of all or part of the Premises by an agency of the Town of Brookline other than the User Agency named in § 1.1, or the substitution of another agency of town government for the User Agency named in § 1.1, is not a Transfer, provided that the Premises continue to be used for the Permitted Uses. Nevertheless, Tenant must advise Landlord, in writing, if any agency of Brookline other than the User Agency named in § 1.1 uses or occupies all or any portion of the Premises, or if there is a substitution of any agency of Brookline for the User Agency named in § 1.1.

6.6 Alterations and Additions

(a) Tenant has the right to make non-structural alterations or additions to the Premises (Tenant Alterations), provided that Tenant must first obtain Landlord's prior written consent, which Landlord must not unreasonably withhold, condition, or delay. Without limiting the foregoing, Landlord has the right to withhold Landlord's consent to any proposed Tenant Alterations that would violate any law, ordinance, code, or regulation of governmental authorities with jurisdiction, or any regulation of the Board of Fire Underwriters or any similar insurance rating body or bodies, or that would materially and adversely affect the appearance or value of the Building, or the mechanical, electrical, sanitary, or any other system of the Building.

(b) As a condition to giving Landlord's consent to Tenant Alterations, Landlord has the right to require that Tenant remove all or a portion of Tenant Alterations and to restore the Premises to

its former condition at the expiration or earlier termination of this Lease, provided that Landlord must designate all such items to be removed at the time Landlord gives Landlord's consent.

(c) As a further condition for Landlord's consent, Landlord has the right to require that, before the commencement of the work, Tenant submit to Landlord, for Landlord's approval, plans and specifications that reasonably identify and describe proposed Tenant Alterations. Landlord must review Tenant's plans and specifications, and inform Tenant, in writing, of Landlord's approval or disapproval within ten business days after submission by Tenant. If Landlord disapproves, Landlord must identify, in writing, each reason for disapproval and identify, in writing, each modification that must be made by Tenant in order to obtain Landlord's approval. If Landlord fails to so inform Tenant of disapproval within ten business days after submission by Tenant or fails to so identify each modification that is necessary to obtain Landlord's approval, Tenant's plans and specifications are deemed approved.

(d) Tenant must (i) do all such Tenant Alterations at reasonable times and in such manner so as not to unreasonably disturb other tenants and users of the Building, (ii) complete all such Tenant Alterations in accordance with any plans and specifications that Landlord approves and in a good and workmanlike manner, with materials in quality at least equal to the then-present construction, (iii) cause contractors that Landlord approves to perform all such Tenant Alterations, provided that Landlord's approval is not required for any contractor that Tenant selects pursuant to applicable public bidding laws of the Commonwealth of Massachusetts, (iv) perform and complete all such Tenant Alterations in compliance with all applicable laws, ordinances, codes, and regulations of governmental authorities, and with regulations of the Board of Fire Underwriters or any similar insurance body or bodies, and (v) perform and complete all such Tenant Alterations at Tenant's sole expense, including the cost of all design work, materials, labor, and state and local permits. Landlord's approval of any plans and specifications, or changes in plans and specifications, whether expressly given or resulting from Landlord's inaction, must never be construed as a waiver of any of the requirements of this paragraph.

(e) At all times during the construction of any Tenant Alterations, Tenant must cause Tenant's contractors and any subcontractors to maintain Workers' Compensation insurance covering the persons employed in connection with such Tenant Alterations as required by law and, if the estimated construction cost of such Tenant Alterations exceeds \$25,000, to secure and maintain (i) commercial general liability insurance for the mutual benefit of Landlord and Tenant, with limits that Landlord reasonably establishes, to protect against the risks or nature of the construction to be undertaken, or with limits customarily carried in connection with similar work undertaken in buildings similar to the Building in the same locality, and (ii) such builders-risk insurance protecting the interests of Landlord and Tenant against damage resulting from such Tenant Alterations in amounts that Landlord reasonably deems necessary. Tenant must not permit Tenant's contractors or any subcontractor to commence any work until all required insurance coverage has been obtained, and certificates evidencing such coverage have been delivered to and approved by Landlord. Each insurance policy must be with a company authorized to do business in Massachusetts and must provide that Landlord be given at least 20 days prior, written notice of any alteration or termination of coverage.

(f) Landlord has the right to inspect the work as the work progresses and to require Tenant to remove any Tenant Alterations that do not conform to the approved plans and specifications. Tenant must not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant, and Tenant must promptly cause any such lien to be released of record or bonded off without cost to Landlord.

(g) All Tenant Alterations must remain the exclusive property of Tenant until Tenant vacates the Premises. At any time, at Tenant's sole option, Tenant has the right to remove any Tenant Alteration and restore the Premises to the same conditions as before the Tenant Alteration, reasonable wear and tear, and damage by fire or other casualty, excepted. Any Tenant Alteration remaining on the Premises after Tenant vacates the Premises becomes the property of Landlord without payment.

6.7 Yield Up at Termination of Lease

At the expiration or other termination of this Lease, Tenant must remove all of Tenant's effects from the Premises. Tenant must surrender and deliver up the Premises to Landlord in the condition in which Tenant is required to maintain the Premises, as set forth in this Lease, reasonable wear and tear, and damage by fire or other casualty, excepted. Any personal property of Tenant remaining upon the Premises after Tenant has surrendered possession of the Premises becomes the property of Landlord. If Landlord removes and disposes of any remaining property, Tenant agrees to pay the reasonable costs of removal and disposal, less any salvage value that Landlord actually recovers, provided that such claim is submitted to Tenant, in writing, within 30 days after Tenant vacates the Premises.

7. CASUALTY; EMINENT DOMAIN

7.1 Fire or Other Casualty

(a) If fire or other casualty damages the Premises or any other portion of the Building to which Tenant has appurtenant rights under § 2.1 (and that is necessary for reasonable access to or egress from the Premises, or for Tenant's use and enjoyment of the Premises, as this Lease contemplates), then, subject to the next paragraph, Landlord must proceed with diligence to establish and collect all valid claims that arise against Landlord's insurers, based upon any such damage and, subject to the then applicable building codes, zoning ordinances, and other legal requirements, Landlord must proceed with diligence to repair such damage or destruction and to restore the Premises and Building as nearly as practicable to their condition before such casualty, at Landlord's sole expense (but, provided Landlord has maintained the casualty insurance that this Lease requires, only to the extent of insurance proceeds that Landlord's insurers made available to Landlord by the insurer and any mortgagee of the Building). Notwithstanding the forgoing, Landlord has no duty to repair any damage to any Tenant Alterations unless the damage was caused by the negligence, breach of this Lease, or willful misconduct of Landlord.

(b) Notwithstanding the preceding paragraph, if either Landlord or Tenant determines, in Landlord's or Tenant's commercially reasonable business judgment, that Landlord cannot be expected to repair the damage to the Premises or to the Building within 120 days from the date of the fire or other casualty, due to the character of such damage, or if the remainder of the Term is less than one year, then either Landlord or Tenant has the right to terminate this Lease. Tenant also has the right to terminate this Lease if Landlord, having notified Tenant of Landlord's intention to repair the damage to the Premises or Building, as provided in this Lease, fails to complete such repairs within 120 days after a fire or other casualty, subject to delays for Force Majeure Events. If neither Landlord nor Tenant exercises a right to terminate this Lease, as provided in this § 7.1, a proportionate amount of Rent must be abated until the affected portion

of the Premises, Landlord's services, or both has or have been restored as required under this Lease

(c) The rights of Landlord and Tenant to terminate this Lease if there is a fire or other casualty are subject to the following notice provisions: Within 30 days after the occurrence of a fire or other casualty, Landlord must notify Tenant of Landlord's election to terminate this Lease in accordance with the preceding paragraph. Tenant must notify Landlord of Tenant's election to terminate this Lease in accordance with the preceding paragraph (i) within 30 days after the occurrence of a fire or casualty or (ii) within 30 days after the expiration of the 120-day period given to Landlord to repair the Premises if this Lease is not terminated and Landlord fails to complete such repair within said 120-day period. Any such termination of this Lease by Landlord or Tenant is effective no earlier than 30 days after the giving of notice. Unless so terminated, this Lease remains in full force and effect, subject, however, to other provisions of this § 7.1.

(d) If any damage to the Premises or the Building, or if Landlord's repair of either or both (i) renders any part of the Premises unfit for Tenant's use and occupancy or otherwise prevents Tenant's use and occupancy of such part of the Premises, or (ii) causes a material cessation or reduction in Landlord's services under this Lease, and (iii) Tenant continues to use and occupy the unaffected portion of the Premises, a proportionate amount of Rent must be abated until the affected portion of the Premises, Landlord's services, or both has or have been restored as required under this Lease.

7.2 Eminent Domain

(a) (i) If all of the Premises are taken by eminent domain; or (ii) if any of the Premises is taken by eminent domain and, in Landlord's reasonable opinion, it would be impractical or the award is insufficient to restore the remainder of the Premises; then, in any such event, this Lease shall terminate and all obligations hereunder shall cease as of the date upon which possession is taken by the taking agency and the Rent and Additional Rent herein reserved shall be apportioned and paid in full by Tenant to Landlord to that date and all Rent and Additional Rent prepaid for periods beyond that date shall forthwith be repaid by Landlord to Tenant.

(b) If there is a partial taking and this Lease has not been terminated pursuant to subparagraph (a) above, Landlord shall restore the Premises and the improvements which are part of the building to a condition and size as nearly comparable as reasonably practicable to the condition and size thereof immediately prior to the date upon which possession shall have been taken by the taking agency; provided, however, that Landlord's restoration obligation shall be limited to the net amount of the award actually received by Landlord, after deducting the reasonable costs of obtaining said award. If Landlord shall fail to complete such restoration within four (4) months after the date of commencement of such work, subject, however, to delays from any Tenant Delay or Force Majeure Events, Tenant shall have the right to terminate this Lease by giving Landlord thirty (30) days prior written notice of its election to do so, in which event this Lease shall terminate as of the thirtieth (30th) day after the date of Tenant's notice with the same force and effect as if such date were the date originally established as the expiration date hereof, unless Landlord shall have completed such restoration work within such thirty (30) day period. If the award is more than adequate to cover the cost of restoration and Landlord's expenses in collecting the award, any excess award shall be retained by Landlord provided taking agency has compensated Tenant for any and all moving and relocation costs while Landlord restores Premises. Notwithstanding the foregoing, within the sixty (60) day period after first receiving

notice of taking, Landlord will notify Tenant in writing as to whether restoration would be practical or the anticipated net amount of the award to be received by Landlord is sufficient for Landlord to complete the restoration provided in this subparagraph (b) ("Landlord's Taking Notice"). If Landlord's Taking Notice shall state that the award is insufficient or the restoration impractical, as aforesaid, either party shall have the right to terminate this Lease and all the unaccrued obligations of the parties hereunder by sending a written notice to the other party of such termination date no less than ten (10) days after its transmission; provided, however, that if the taking occurs prior to the last year of the Lease Term, Tenant may require Landlord to withdraw the notice of termination by agreeing to pay the cost of restoration in excess of the net award and by giving Landlord adequate security for such payment prior to the termination date specified in Landlord's notice of termination. If the Landlord's Notice of Taking states that the net award is sufficient and the restoration is practical, the Landlord shall include in its notice Landlord's estimate of the period of time required to complete the restoration.

(c) Abatement of Rent. Rent and Additional Rent shall abate to the extent and during the time the Premises are rendered untenable due to a taking. Such Rent and Additional Rent shall abate in such proportion as the part of the Premises rendered untenable bears to the total Premises, while such repairs are being made. Following the completion of restoration, if this Lease has not been terminated, the obligations of Landlord and Tenant under this Lease shall be unaffected by such taking except that there shall be an equitable abatement of the Rent in direct proportion to the extent of the Premises so taken.

(d) Landlord reserves, and Tenant hereby grants and assigns to Landlord, all rights which Tenant may have for damages or injury to the Premises or to the leasehold hereby created by any taking by eminent domain, except for damage or injury to Tenant's personal property, fixtures and equipment or for moving or relocation expenses, which may be separately awarded to Tenant by the taking authority. Tenant shall execute and deliver to Landlord such confirmatory instruments of this assignment as Landlord may from time to time request.

8. INDEMNIFICATION AND INSURANCE

8.1 Indemnification of Tenant by Landlord

Landlord must indemnify, save harmless, and defend Tenant from any and all liability, claim, or cost arising, in whole or in part, out of any injury, loss, or damage to any person or property while on or within the Premises, Building, or appurtenant areas if caused by any negligence, breach of this Lease, or willful misconduct of Landlord or Landlord's employees, agents, contractors, servants, or invitees. This indemnity and hold-harmless agreement includes indemnity against all costs, expenses, and liabilities that Tenant incurs in connection with any such injury, loss, or damage, or any such claim, or any proceeding brought thereon or in defense thereof, including, but not limited to, reasonable legal fees and expenses charged by private counsel that Tenant employs. This indemnity survives the Expiration Date.

8.2 Insurance Coverage to Be Maintained by Landlord

(a) At all times after the Date of Occupancy and during the Term, Landlord must keep in force a commercial general liability insurance policy insuring Landlord against all claims and demands for personal injury or damage to property that are claimed to have occurred upon or about the Premises, Building, or appurtenant areas. This policy must be written on an occurrence basis to

provide protection in an amount not less than \$2,000,000 combined-single-limit for personal injury, death, and property damage, with a so-called "broad-form" endorsement and contractual liability coverage insuring Landlord's performance of the indemnity agreement set forth in § 8.1.

(b) Landlord also must maintain casualty insurance for the Building (including all fixtures and equipment that Landlord installs, and all alterations and additions that Landlord makes) insuring Landlord against loss or damage that fire and other risks, which are customarily contemplated by "all-risks" endorsements of insurance policies, cause (with such additional endorsements as are necessary to include coverage for vandalism and malicious conduct, floods, boiler explosions, water damage from boilers, plumbing, etc., earthquakes, debris removal, and demolition), in an amount equal to 100% of the replacement cost of the Building (exclusive of foundations and footings) and the Building's fixtures and equipment.

(c) At all times during the Term, Landlord must maintain, and must cause Landlord's contractors and any subcontractors to maintain, Workers' Compensation insurance, as required by law, covering each person who is employed by Landlord, and by Landlord's contractors and any subcontractors, to provide labor, services, or both in connection with the Premises, the Building, the property on which the Building is situated, or in connection with any combination of two or more of the Premises, the Building, and the property on which the Building is situated.

(d) Landlord must take out each insurance policy with insurers qualified to do business in the Commonwealth, and each such insurance policy must have only such deductibles as are reasonable and customary.

(e) On or before the Date of Occupancy, Landlord must provide Tenant with a certificate of insurance, in a form reasonably satisfactory to Tenant, for each required policy of insurance, and must provide Tenant with a certificate evidencing renewal of each such policy at least 20 days before the policy's expiration. Landlord shall provide Tenant with a certificate of insurance providing that the policy must not be canceled, terminated, reduced, or changed in any material respect without at least 20 days prior written notice to Tenant.

Tenant shall pay to Landlord as additional rent all increases in insurance premiums caused by Tenant's change in use of Premises or modifications and improvements to the Premises after the Date of Occupancy.

8.3 Tenant's Self-Insurance

Landlord and Tenant acknowledge and agree that Tenant is self-insured and that this Lease does not require Tenant to procure or maintain insurance of any kind for payment of damages to Landlord or to any other party. Notwithstanding any other provision of this Lease, but subject to the provisions of § 13.1, the provisions of G. L. c. 258 and any successor statute govern Tenant's liability for injuries to persons or property.

8.4 Tenant's Personal Property; Assumption of Risk

All of the furnishings, equipment, effects, and personal property of every kind and nature of Tenant, and of all persons claiming by, through, and under Tenant, that, during the Term, are on the Premises or in the Building at the sole risk and hazard of Tenant, except for damage or loss caused by Landlord's negligence, breach of this Lease, or willful misconduct. If fire, water, or other casualty destroys or damages the whole or any part of such personal property, no part of such loss or damage is to be charged to or to be borne by Landlord unless such loss or damage is due to the negligence, breach of this Lease, or willful misconduct of Landlord.

9. DEFAULT

9.1 Event of Default by Tenant

Each of the following is an "Event of Default" by Tenant:

- (a) Tenant fails to pay, when due, any sum of money due to Landlord by Tenant under this Lease, whether such sum is an installment of Rent or any other payment or reimbursement, and such failure continues for a period of ten business days after written notice from Landlord.
- (b) Tenant fails to comply with any other obligation or covenant of Tenant under this Lease, and fails to cure such failure within 30 days after receiving written notice from Landlord specifying such failure, or for those failures that cannot be cured within such 30-day period, if Tenant fails to commence such cure within such 30-day period and thereafter fails to diligently pursue such cure to completion.
- (c) Any warranty, representation, or statement that Tenant makes in this Lease is incorrect or misleading in any material respect on the date made.

9.2 Remedies of Landlord

- (a) Upon the occurrence of an Event of Default by Tenant, in addition to the remedies described in § 9.3 and any other remedies available to Landlord at law or in equity, Landlord has the right to terminate this Lease upon not less than 30 days prior written notice to Tenant. Upon such termination, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, and Tenant must then quit and surrender the Premises to Landlord as provided in § 6.7, but Tenant remains liable for damages arising out of such Event of Default, as provided in this Lease.
- (b) Upon termination of this Lease by Landlord pursuant to this § 9.2, Tenant must immediately pay to Landlord Rent payable by Tenant to Landlord up to the Expiration Date, and Tenant remains liable for any breach of Tenant's obligations under this Lease occurring before the Expiration Date. In addition, Tenant is liable to pay Landlord, as damages, the aggregate of Rent remaining in the Term.
- (c) Tenant must pay Rent in the same manner, to the same extent, and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence, Landlord must credit Tenant with the net rents that Landlord actually receives from a reletting of the Premises. Net rents must be determined by deducting from the gross rents, as and when Landlord receives the gross rents from such reletting, the reasonable expenses that Landlord incurs or pays in terminating this Lease and the reasonable expenses that Landlord incurs or pays in connection with the reletting of the Premises that are allocable to the Term, including reasonable tenant fit out costs and allowances, brokerage fees, and attorneys' fees. In no event is Tenant entitled to receive any excess of such net rents over the sums that Tenant must pay to Landlord under this Lease. If Landlord terminates this Lease by reason of an Event of Default by Tenant, Landlord must take reasonable steps to mitigate Landlord's damages, including making reasonable efforts to relet the Premises for a period that is equal to, shorter, or longer than the Term.

9.3 Cure by Landlord

If Tenant fails to perform any of Tenant's obligations, agreements, or covenants under this Lease, and if Tenant does not cure such failure within 30 days after written notice from Landlord

specifying the failure or, for those failures that are incapable of being cured within such 30-day period, if Tenant fails to commence such cure within said 30-day period and thereafter to diligently pursue such cure to completion, Landlord, at Landlord's sole option, without waiving or limiting any claim for damages, and at any time thereafter, has the right to perform such obligation of Tenant, provided that Landlord, after notice to Tenant (including telephonic notice), has the right to cure any such failure before the expiration of the waiting period described above if the curing of such breach before the expiration of the waiting period is reasonably necessary to prevent injury or damage to persons or property, including Landlord's interest in the Premises or Building. If Landlord makes any expenditure or incurs any obligation for the payment of money in order to cure Tenant's failure to perform, such sums paid or obligations incurred, to the extent they are reasonable, are due from Tenant to Landlord as additional rent. Landlord must deliver to Tenant an itemized statement of all costs that Landlord incurs to cure Tenant's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Tenant must pay any additional rent due by reason of such costs with the second installment of Rent due after Landlord delivers such statement to Tenant.

9.4 Event of Default by Landlord

Each of the following is an "Event of Default" by Landlord:

- (a) Landlord fails to comply with any obligation or covenant of Landlord under this Lease and fails to cure such failure within 30 days after receiving written notice from Tenant specifying such failure, or for those failures that cannot be cured within such 30-day period, if Landlord fails to commence such cure within said 30-day period and thereafter to diligently pursue such cure to completion.
- (b) Any warranty, representation, or statement that Landlord makes in this Lease is incorrect or misleading in any material respect on the date made.

9.5 Remedies of Tenant

Upon the occurrence of an Event of Default by Landlord, Tenant has the remedies described in § 9.6, if applicable, given the nature of the Event of Default, and any other remedy available to Tenant at law or in equity. In addition, if the Event of Default by Landlord is of such a nature that the Event of Default materially interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and Landlord fails to fully cure or eliminate the cause or causes of such Event of Default within 30 days following written notice from Tenant stating that such an Event of Default has occurred(or, for those failures that are incapable of being cured within such 30-day period, if Landlord fails to commence such cure within said 30-day period and thereafter fails to diligently pursue such cure to completion), then Tenant also has the right to terminate this Lease by giving Landlord a written Notice of Termination that Tenant must give at least ten days before the Expiration Date stated in such Notice of Termination. Upon the Expiration Date, this Lease comes to an end as fully and completely as if the Expiration Date stated in such notice were the Expiration Date originally fixed, provided, however, that Landlord remains liable for any breach of Landlord's obligations under this Lease occurring before such Expiration Date, and Tenant is required to comply with the provisions of § 6.7.

9.6 Cure by Tenant

If Landlord fails to perform any obligation, agreement, or condition of Landlord under this Lease, including, but not limited to, failing to make any required repairs or to provide any Building services as herein required, after the period of time equal to any applicable Force Majeure Events and if such failure interferes with Tenant's use or occupancy of the Premises, in Tenant's reasonable judgment, and if Landlord does not cure such failure within 30 days after written notice from Tenant specifying the failure (or, for those failures that are incapable of being cured within such 30-day period, if Landlord fails to commence such cure within said 30-day period and thereafter fails to diligently pursue such cure to completion), Tenant, at Tenant's sole option, and without waiving or limiting any claim for damages, at any time thereafter has the right to perform such obligation for Landlord, provided that Tenant has the right to cure any such failure before the expiration of the waiting period described above (but after notice to Landlord, including telephonic notice) if the curing of such failure before the expiration of the waiting period is reasonably necessary to prevent injury to persons or property. If Tenant makes any expenditure or incurs any obligation for the payment of money in order to cure Landlord's failure to perform as aforesaid, such monies paid or obligations incurred, to the extent they are reasonable, are deemed paid or incurred on behalf of Landlord, and Landlord agrees to reimburse Tenant therefor or save Tenant harmless therefrom. Tenant must deliver to Landlord an itemized statement of all costs that Tenant incurs to cure Landlord's failure to perform, together with copies of all bills, invoices, receipts, and other documents evidencing such costs. Landlord must promptly pay any outstanding bills for labor, materials, or both, and, within 30 days of Tenant's demand, must reimburse Tenant for any amount that Tenant pays on behalf of Landlord.

9.7 Remedies Cumulative

Any and all rights and remedies of Landlord and Tenant under this Lease, at law, and in equity, are cumulative and are not to be deemed incompatible with each other, and Landlord and Tenant each has the right to exercise any two or more such rights and remedies simultaneously, to the extent permitted by law.

10. MORTGAGE PROVISIONS

10.1 Estoppel Certificate

Within 10 business days from receipt of a written request from Landlord or any mortgagee of the Building, Tenant must execute and deliver to Landlord a certificate in the form of the then-current *Commonwealth of Massachusetts Estoppel Certificate* that indicates any then-existing exceptions.

10.2 Subordination

Upon the written request of Landlord, Tenant must subordinate this Lease and its lien to the lien of any future mortgage(s) upon the Premises that is (are) held by a bank, insurance company, governmental agency, or other financial institution (or more than one), provided that Landlord and the holder(s) of such mortgage(s) executes and delivers to Tenant a *Commonwealth of Massachusetts Subordination, Non-Disturbance, and Attornment Agreement*. The word "mortgage," as used in this Lease, includes mortgages, deeds of trust, and all similar instruments, and all modifications, extensions, renewals, and replacements thereof.

10.3 Recognition

As a condition precedent to Tenant's execution of this Lease, Landlord must cause each bank, insurance company, governmental agency, or other financial institution, which is a holder of the lien of any existing mortgage upon the Premises, to join Landlord and Tenant in the execution and delivery of a *Subordination, Non-Disturbance, and Attornment Agreement*. The word "mortgage," as used in this Lease, includes mortgages, deeds of trust, and all similar instruments, and all modifications, extensions, renewals, and replacements thereof. If Landlord does not satisfy such condition precedent in the prescribed manner, then Landlord thereby represents to Tenant that there is no such existing mortgage, with the express understanding that Tenant relies on such representation as a material representation inducing Tenant to execute this Lease.

11. HOLDING OVER

If Tenant remains on the Premises beyond the expiration date or earlier termination of this Lease, such holding over shall not be deemed to create a tenancy at will. Rather Tenant shall be a tenant at sufferance only, at a daily rate equal to 150% the Base Rent, Additional Rent and other charges for the last year under this Lease. This paragraph does not create any right for Tenant to remain on the Premises after the expiration or earlier termination of this Lease, nor shall it limit any of Landlord's other rights as provided in the Lease or otherwise permitted by law. However, during said hold over period all other conditions of this Lease to be performed by Tenant shall continue in force.

12. FISCAL YEAR APPROPRIATIONS AND AUTHORIZATIONS

12.1 Tenant's Obligations Subject to Appropriations and Authorizations

The fiscal year of the Town is the 12-month period ending June 30 of each year. Appropriations and authorizations for expenditures by departments of the Town are made on a fiscal-year basis. The obligations of Tenant under this Lease, and under any modification, extension, or renewal of this Lease for any fiscal year, are subject to the appropriation and the allotment of sufficient funds to the User Agency.

12.2 Termination of Lease for Lack of Appropriations and Authorizations

If, for any fiscal year during the Term, sufficient funds for the discharge of Tenant's obligations under this Lease are not appropriated and authorized, or if, during any fiscal year during the Term, funds for the discharge of Tenant's obligations under this Lease are reduced, then Tenant has the right to terminate this Lease by 30 days advance written notice to Landlord without any liability whatsoever for damages, penalties, or other charges arising from early termination, and without further recourse to either party; provided, however, that Tenant must pay all Rent and any other charges due to Landlord for the period before Tenant's surrender of the Premises, and that Tenant must comply with the provisions of § 6.7 of this Lease.

13. PERSONAL LIABILITY

13.1 Liability of Tenant

No official, employee, or consultant of the Town or the Public Schools of Brookline is ever personally liable to Landlord, or to any successor-in-interest to Landlord, or to any person claiming through or under Landlord for or on account of any Event of Default by Tenant or failure by Tenant to perform any of Tenant's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Tenant under this Lease, or on any claim, cause, or obligation whatsoever under this Lease.

13.2 Liability of Landlord

No trustee, beneficiary, member, manager, partner, director, officer, shareholder, or employee of Landlord is ever personally liable to Tenant, or to any successor-in-interest to Tenant, or to any person claiming through or under Tenant for or on account of any Event of Default by Landlord or failure by Landlord to perform any of Landlord's obligations under this Lease, or for or on account of any amount that is due or becomes due under this Lease, or for the satisfaction of any judgment against Landlord under this Lease, or on any claim, cause, or obligation whatsoever under this Lease. Tenant must look solely to Landlord's interest in the Premises, the Building, and the land upon which the Building is located, and to the rents and profits derived from the Premises, the Building, and said land for the satisfaction of any claim or judgment against Landlord under this Lease. Notwithstanding the foregoing, nothing in this paragraph limits any right that Tenant otherwise has to obtain injunctive relief against Landlord, or to claim the proceeds of any insurance maintained by Landlord for Tenant's benefit or any condemnation proceeds to which Tenant is entitled under this Lease. In addition, nothing in this § 13.2 limits the recourse of Tenant on account of willful fraudulent conduct.

14. NOTICE

14.1 Notice

(a) Unless otherwise expressly permitted under this Lease, all notices or other communication required or permitted to be given under this Lease must be in writing, signed by a duly authorized representative of the party giving notice and given by hand delivery (including, without limitation, courier and overnight-delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested.

(b) Unless otherwise expressly stated in this Lease, notices must be addressed and sent to Landlord at the address appearing for Landlord in § 1.1 and to Tenant at the address appearing for Tenant in § 1.1, with copies to the Brookline Office of Town Counsel, 333 Washington Street, 6th Floor, Brookline, MA 02445.

(c) Under this § 14, Landlord and Tenant, at any time and from time-to-time, each has the right to designate a different address or different addresses to which notices must be sent.

(d) All notices given in accordance with §§ 14.1 (a), 14.1 (b), and 14.1 (c) are deemed given, for all purposes, (i) on the date shown on the receipt for delivery or (ii) as of the date notice is sent if delivery is refused or could not be attained.

14.2 Special Notice Where Failure to Reply Results in Consent or Approval

If the consent or approval of Landlord or Tenant is deemed under this Lease to be given to a request or submission following a period of non-reply, such consent or approval is effective only

if the outside of the envelope containing the request or submission bears the following legend with the appropriate time period filled in, printed in bold-face all-uppercase type at least one-quarter inch high (28-point font):

**NOTICE: THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN ____ DAYS RESULTS IN AUTOMATIC
APPROVAL.**

15. FORCE MAJEURE

Whenever this Lease requires performance on or by a fixed date, or within a fixed time or a reasonable time, if war, fire, flood, or other casualty, or strike, governmental regulation (including any delay in the payment of Rent caused by or resulting from an act or an omission of any branch, agency, or department of the government other than the User Agency), weather, or any other event that is beyond the reasonable control of the party whose performance is required (each a Force Majeure Event) delays performance, the time for performance must be extended for a period that is equal to the duration of the delay.

16. MISCELLANY

16.1 Extension

Tenant, at its sole option, can extend the Lease for two additional two-year terms (Extension Terms) under the same terms set forth herein, provided that Tenant notifies Landlord of its election to extend at least 180 days prior to the beginning of such extension period, with Base Rent as follows.

Year One: \$32.46 per square foot x Useable Area of Premises

Year Two: \$33.43 per square foot x Useable Area of Premises

Second Extension Term:

Year One: \$34.44 per square foot x Useable Area of Premises

Year Two: \$35.47 per square foot x Useable Area of Premises

16.2 Entire Agreement

This Lease contains all of the agreements between Landlord and Tenant with respect to the subject matter of this Lease and supersedes all prior writings and dealings between Landlord and Tenant with respect to this Lease.

16.3 Changes in Lease

The provisions of this Lease must not be modified in any manner except by a written instrument signed, sealed, and mutually agreed upon by all the parties to this Lease and approved as required by law. No such instrument is void for lack of a recital of consideration.

16.4 Binding Agreement

This Lease binds and inures to the benefit of the parties to this Lease and to their respective representatives, successors, and assigns. All provisions of this Lease must be construed as covenants running with the land.

16.5 Governing Law

This Lease must be construed and governed by the laws of the Commonwealth of Massachusetts. Landlord and Tenant agree to bring any Federal or State legal proceedings arising under this Lease, in which the Town of Brookline or the User Agency is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

16.6 Waiver

The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease does not prevent a subsequent act, that would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease is deemed to have been waived by any party unless such waiver is in writing and signed by an authorized representative of the party to be bound by such waiver.

16.7 No Broker

Landlord and Tenant each represents and warrants to the other that no broker, agent, commission salesman, or other person has represented Landlord or Tenant in connection with the procurement or consummation of this Lease.

16.8 Rights and Remedies not Exclusive

Unless otherwise expressly stated in this Lease, no mention in this Lease of any specific right or remedy precludes Landlord or Tenant from exercising any other right, having any other remedy, or maintaining any action to which Landlord or Tenant otherwise is entitled, either at law or in equity.

16.9 Accord and Satisfaction

Acceptance by Landlord of a lesser sum than Rent then due must not be deemed to be other than on account of the earliest installment of such Rent due, and any endorsement or statement on any check of Landlord or Tenant, or any letter accompanying any check or payment from either Landlord or Tenant to the other, must not be deemed an accord and satisfaction, and Landlord and Tenant each has the right to accept such check or payment without prejudice to such party's right to recover any balance due with respect to such payment or pursue any other remedy provided in this Lease.

16.10 Debarred or Suspended Contractors

Landlord must not accept bids or proposals from, or enter into any contract with, any person or firm for the construction (including but not limited to the Landlord's Improvements), repair, or maintenance of the Premises if such person or firm is debarred or suspended from contracting with the Commonwealth of Massachusetts, with the government of the United States of America, or with both under any applicable statute or regulation, or is subject to a stop-work order issued by any governmental authority with jurisdiction under any applicable statute or regulation. Landlord must require each person and firm with whom Landlord contracts for the construction,

repair, or maintenance of the Premises to agree with Landlord not to accept bids or proposals from, or enter into or continue any contract with, any such debarred or suspended person or firm, or from or with any person or firm subject to any such stop-work order, for all or any part of the construction (including but not limited to the Landlord's Improvements), repair, or maintenance of the Premises, and Landlord must strictly enforce each such agreement.

16.11 Time of Essence

Time is of the essence to this Lease and to each of its provisions.

16.12 Affirmative Action; Non-discrimination in Hiring and Employment

Landlord must comply with all federal and state laws, rules, and regulations promoting fair-employment practices or prohibiting employment discrimination and unfair-labor practices and must not discriminate in the hiring of any applicant for employment or demote, discharge, or otherwise subject any qualified employee to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, gender identity, as defined by chapter 199 of the Acts of 2011, or for exercising any rights afforded by law.

16.13 Severability

If any provision of this Lease is declared to be illegal, unenforceable, or void, then Landlord and Tenant are relieved of all obligations under that provision (or the application of that provision under circumstances in which that provision is illegal or unenforceable), provided, however, that the remainder of this Lease must be enforced to the fullest extent permitted by law.

16.14 Notice of Lease

Upon the request of Tenant, Landlord must execute and deliver to Tenant a recordable notice of this Lease.

16.15 No Agreement until Signed

No legal obligation arises with respect to the Premises or other matters covered by this Lease until this Lease is executed by Landlord and by the Town of Brookline and the Public Schools of Brookline and delivery is made by and to each.

16.16 Town or School Employees Barred from Interest

No official, employee, or consultant of the Town of Brookline or the Public Schools of Brookline must ever have any personal interest, direct or indirect, in this Lease or in Landlord, or participate in any decision relating to this Lease that affects the personal interest of such official, employee, or consultant, or that affects the interest of any corporation, partnership, or association in which such official, employee, or consultant is, directly or indirectly, interested.

16.17 Paragraph Headings

The paragraph headings in this Lease are for convenience of reference only and in no way define, increase, or limit the scope or intent of any provision of this Lease.

16.18 Counterparts

This Lease is executed in multiple counterparts, each such counterpart is an original for all intents and purposes, and all such counterparts together constitute one and the same Lease.

16.19 Rider, Exhibits, and Other Accompanying Documents

Each rider, exhibit, and other accompanying document is an integral part of this Lease for all lawful intents and purposes.

16.20 CORI Review

Pursuant to G.L. c. 71, s. 38R, Landlord shall conduct a state and national fingerprint based criminal history and CORI review of any current or prospective employee or volunteer who may have direct and unmonitored contact with children using or occupying the Premises or shared use areas.

16.21 Tenant's Exclusive use of Bathrooms

Tenant shall have exclusive use of the bathrooms on the Premises at all times during which Tenant is using the Premises.

16.22 Taxes

Landlord is responsible for all taxes on the Building and parcel. By the execution hereof, Landlord certifies, under penalties of perjury, that it has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

16.23.

Landlord's liability for repair and improvements shall always be limited to the cost of making such repair or accomplishing such maintenance or repair. Irrespective of any provision in this Lease to the contrary, in no event shall Landlord or Tenant ever be liable to the other for any consequential, incidental or indirect damages.

Landlord and Tenant have executed multiple counterparts of this document, under seal in accordance with the laws of the Commonwealth of Massachusetts, Tenant having done so by the Board of Selectmen of the Town of Brookline and the School Committee of the Town of Brookline, neither of whom incurs any personal liability as a result of such signature.

LANDLORD:

By: Debrah O'Boy

Printed Name: Debrah O'Boy

Title: Manager

TENANT: TOWN OF THE BROOKLINE ACTING BY AND THROUGH ITS BOARD OF SELECTMEN AND SCHOOL COMMITTEE

Board of Selectmen

Paul Walsh

Nancy Daly

Bruce

Barry J. A.

Nancy S. Miller

School Committee

Chris Leach

Alicia Chalupka

Bob

Rebecca Stone

Approved as to Matters of Form:

John J. Buchheit, Associate Town Counsel
Town of Brookline

Exhibit A

Exhibit B

ADDITIONAL RENT.

(a) Taxes. Tenant agrees that during the original term of this Lease and for such further time as Tenant shall hold the Premises or any part thereof, Tenant shall pay to Landlord as Additional Rent its pro-rata share of all taxes, betterments and assessments whatsoever, which may be payable for or in respect of the Building and Land containing the Premises, or any part thereof, during the term of this Lease, and for such further time as Tenant shall hold the Premises or any part thereof, Landlord hereby agreeing to furnish Tenant with copies of all bills for such taxes, betterments and assessments. In addition to the foregoing, Tenant shall be solely responsible for all personal property taxes of every nature imposed upon all fixtures, equipment and other personal property of every nature on the Premises. In the event that Landlord shall receive any abatement or refund of said taxes for any tax year for which Tenant shall have paid to Landlord any amount for said taxes, Tenant shall be entitled to receive from Landlord the amount thereof, less, however, the reasonable expenses (including without limitation reasonable attorney's fees) of Landlord incurred in obtaining such abatement or refund.

(b) Insurance. Landlord shall maintain policies of comprehensive general liability insurance and casualty insurance with limits for personal injury and property damage of \$2,000,000 each occurrence and \$2,000,000 in the aggregate. Landlord shall maintain and keep in force during the term of the Lease a policy or policies of insurance covering the loss or damage of the Premises. Insurance in addition to the aforesaid coverage, can be charged as Additional Rent, provided such additional insurance is represented in the current insurance line item shown in Exhibit C and is not in addition thereto. Tenant further agrees that during the original term of this Lease and for such further time as Tenant shall hold the Premises, or any part thereof, Tenant shall pay to Landlord as Additional Rent its pro-rata share of Landlord's total costs incurred for Landlord's casualty insurance on the Building and land containing the Premises as well as liability coverage as further described in §8.2 of this Lease, provided said cost is represented in the current insurance line item in Exhibit C and is not in addition thereto.

(c) Operating Expenses. Tenant further agrees that during the Initial Term of this Lease and for such further time as Tenant shall hold the Premises, or any part thereof, Tenant shall pay to Landlord as Additional Rent, its pro-rata share of the expenses provided in Landlord's Lease Price Proposal, attached hereto as "Exhibit C" ("Operating Expenses"). Landlord's Operating Expenses shall include all reasonable and customary expenses paid or incurred by or on behalf of the Landlord (whether directly or through independent contractors) in accordance with sound management practice, in connection with maintaining and repairing walkways, sidewalks, drives, parking areas, gas, water/sewer, electrical, and other utility connections, conduits, pipes and mains; snow and ice removal from the common parking areas, drives and walkway areas serving the Building; utility bills for common areas including elevators, exterior and interior lighting, electricity, fuel, gas, heating and cooling costs; costs and expenses related to landscaping and grounds maintenance; inspections and maintenance of common alarm systems, fire detection and suppression systems; security; exterior window cleaning and other cleaning services; labor, which, in accordance with sound management principles respecting the operation of the

Premises, Building and exterior common areas, are properly chargeable to the operation, maintenance and repair of the Premises, Building and exterior common areas; the maintenance and repair cost of equipment and systems for common use or for servicing common areas of the Building and Land;; commercially reasonable insurance deductibles; If Landlord incurs Operating Expenses for the Building or Property together with one or more other buildings or properties, the shared costs and expenses shall be equitably prorated and apportioned on a consistent basis between the Building and Property and the other buildings or properties.

Operating Expenses shall include all other reasonable and customary expenses, including without limitation, management fees, which would be considered as an expense of maintaining, operating, or repairing the Building and Property under sound accounting principles. Irrespective of the foregoing, the term Operating Expenses shall not include the following:

(1) Any cost or expense to the extent to which Landlord is paid or reimbursed (other than as a payment for Operating Expenses), including, but not necessarily limited to, (i) work or services performed for any tenant at the tenant's cost, (ii) the cost of any item for which Landlord is paid or reimbursed by insurance, warranties, service contracts, condemnation proceeds or otherwise, (iii) increased insurance or taxes assessed specifically to any tenant of the Property, (iv) charges (including applicable taxes) for electricity, water and other utilities for which Landlord is entitled to reimbursement from any tenant, and (v) the cost of any HVAC, janitorial or other services provided to tenants on an extra-cost basis after regular business hours;

(2) Salaries and bonuses of officers and executives of Landlord and administrative employees above the grade of property manager or building supervisor and Landlord's general overhead;

(3) The cost of any work or service performed on an extra-cost basis for any tenant of the Property (including Tenant);

(4) The cost of any work or services performed for any other property other than the Property;

(5) Interest on debt or principal amortization payments or any other payments on any mortgage or any other payments under any ground lease;

(6) Any fees, costs and commissions incurred in procuring or attempting to procure other tenants, including, but not necessarily limited to brokerage commissions, finder's fees, attorney's fees and expenses and entertainment cost and travel expenses and any costs of advertising or promotion of the Property;

(7) Any cost included in Operating Expenses representing an amount paid to a person, firm, corporation or other entity related to Landlord which is in excess of the amount which would have been paid on an arms-length basis in the absence of such relationship;

(8) Any costs of painting or decorating of any interior parts of the Building occupied or suitable for occupancy exclusively by a single tenant;

(9) The cost of any repairs, alterations, additions, improvements, changes, replacements or other items which under generally accepted accounting principles are properly classified as capital expenses;

(10) Any costs necessary to cure any violation of any law, ordinance or regulation applicable to the Property, not caused by the Tenant or to remediate any environmental condition not caused by the Tenant;

(11) Depreciation of the Building or any part thereof or any equipment therein;

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- (12) Replacement or contingency reserves or any bad debt loss, rent loss or reserves for bad debts or rent loss;
- (13) Expenses for renovating any tenant's space;
- (14) Legal or other professional fees relating to leasing, financing, tenant disputes or other services not related to the normal maintenance, cleaning or repair of the Property;
- (15) Costs, expenses and fees relating to solicitation of, advertising for and entering into leases and other occupancy arrangements for space in the Building, including but not limited to legal fees, space planners' fees, real estate brokers' leasing commissions and advertising expenses;
- (16) Costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Property, costs of any disputes between Landlord and its employees (if any), or outside fees paid in connection with disputes with other tenants or adjacent property owners;
- (17) Costs, expenses or judgments occasioned by casualty, injury or damage, to the extent that such costs, expenses or judgments are or are required to be covered by insurance to be maintained by Landlord under this Lease; and
- (18) Other expenses that do not relate to the maintenance, repair or operation of the Premises, Building or Land.

(d) Payment for Taxes, Insurance and Operating Expenses. Tenant's payment to Landlord for said taxes pursuant to paragraph (a) above and insurance pursuant to paragraph (b) above shall be paid in equal monthly installments at the same time and manner as the Base Rent. The amount of Tenant's monthly installments of Additional Rent for said taxes and insurance shall be increased or decreased, as the case may be, upon Tenant's receipt of an estimate by Landlord of said real estate taxes and insurance for the then current year. In the event said real estate taxes and/or insurance costs exceed the amount of Tenant's payments for that year, Tenant shall pay the balance within thirty (30) days following Landlord's billing therefore; in the event that said real estate taxes and insurance payments are less than the amount of Tenant's payment for any year, the excess of such payments shall be applied to Tenant's payments for the next succeeding year. Tenant's payments for Operating Expenses pursuant to paragraph (c) above shall be paid to Landlord within thirty (30) days following Landlord's billing for same. Taxes, Insurance and Operating Expenses shall be prorated for any partial billing period falling within the term of this Lease.

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Exhibit C

<i>Expense</i>	<i>Current Yearly</i>
Snow removal	5,114
Management / Maintenance	48,000
Insurance	10,824
Real estate taxes	100,596
Common Area Electric	960
Alarm monitoring & testing	2,200
Elevator electricity	374
Dumpster	9,142
Water/Sewer	4,551
Elevator maintenance	10,559
Common area cleaning	6,950



Chestnut Hill Realty

January 3, 2017

Mr. Mel Kleckner
Town of Brookline
333 Washington Street
Brookline, MA 02445

Dear Mel,

Thank you and your team for meeting with us on December 23, 2016.

This will acknowledge the offer by Chestnut Hill Realty to fund the cost of the Town's legal services (up to \$10,000) to support the creation of the zoning by-law necessary to implement the Hancock Village MOA.

This offer to the Board of Selectmen is pursuant to the "gift statute", so called, under MGL Chapter 44 Section 53A.

We look forward to working with you, your staff, the Board of Selectmen, other town boards and interested parties on the creation of the necessary zoning language and Warrant articles to be presented at the May 2017 town meeting to allow the development of Hancock Village as anticipated in the Hancock Village MOA.

Sincerely,

Marc Levin
Director of Development

617-323-2100
Management Offices
Fax 617-323-8888

Box 67396, Chestnut Hill, MA 02467-0004
chestnuthillrealty.com

617-323-8700
Maintenance Services
Fax 617-323-8889



**OFFICE OF THE TOWN ADMINISTRATOR
MEMORANDUM**

TO: Board of Selectmen
FROM: Melvin A. Kleckner, Town Administrator
RE: Pay-As-You-Throw (PAYT)
DATE: December 30, 2016

Please find attached a memorandum from the DPW Commissioner responding to comments received at the recent public hearing and making specific recommendations for implementation of a modified Pay as You Throw (PAYT) system. On Tuesday, we will prepare actual votes for the Board to take involving the fee schedule, an exception policy and other relevant provisions of the program. You will also receive a copy of an opinion from the Town's legal department, responding to a challenge by Mr. Stanley Spiegel on the legality of the proposed fee structure. Attorney Simpson has opined that the PAYT pricing structure as originally proposed is properly classified as a "fee" pursuant to the Emerson line of analysis. He further concludes that the proposed pricing proposal represents a legitimate attempt to incentivize residents to minimize their disposal of MSW, and he does not perceive a legal impediment to implementing it.

We believe that the Town has successfully balanced all of the concerns and issues raised about the program. I wish to highlight the following aspects of the program:

- 1.) The variable cart sizes reflect a practical solution to accommodate different household situations while retaining the automatic collection of trash through uniformly designed bins (as opposed to having excessive manual collection of overflow plastic bags).
- 2.) While not a pure PAYT system, the variable pricing schedule incentivizes more recycling, limiting the cost and the negative environmental consequence of burying/burning trash.
- 3.) The variable fee schedule is intended to generate the same amount of revenue as the current \$200 flat fee.

- 4.) An exception system based on the physical capacity of a household and/or property is responsive to the Town Meeting Resolution and provides those eligible households with an option to use plastic bags or a smaller sized bin (18 gallon).
- 5.) Two special collections scheduled at the most appropriate dates will provide residents with the opportunity to dispose of excess trash at no cost.

The Town of Brookline prides itself on providing exceptional public services using best practices. PAYT and automation represent this goal and we enthusiastically recommend your approval of its implementation at this time.

Thank you for your consideration.



TOWN OF BROOKLINE
Massachusetts
DEPARTMENT OF PUBLIC WORKS

Andrew M. Pappastergion
Commissioner

December 29, 2016

Board of Selectmen
Town Hall
Brookline, MA 02445

Dear Board Members:

Pursuant to the recommendations of the Moderator's Committee on Waste Disposal, released in May 2013, and in an effort to improve the efficiency of the municipal waste collection system and reduce the occurrence of lifting related worker injuries, the Department of Public Works has proposed the implementation of a "Hybrid Pay-As-You-Throw" (HPAYT) system utilizing the semi-automated collection of variable-sized wheeled carts similar to the current single stream recycling program. In order to move this program forward, the Board of Selectmen had previously voted to approve the concept of automated collection and authorized the purchase of two (2) side-loader refuse packers, while the more complex issue of cart size, pricing and implementation was studied to determine the best town-wide solution. In May 2016, the Board held the first of two public hearings to hear public comment on this issue followed by a second hearing on December 13, 2016 when the details of cart sizing and pricing, waivers and implementation were presented by the Department of Public Works.

Cart Pricing

In an attempt to address some of the arguments made by Dick Benka concerning the pricing structure for PAYT carts, I note that his analysis was based on the inclusion of all components of solid waste collection (MSW, yard waste and recycling) and considers the total disposal amount of MSW of 9,100 tons per year. His main point was that if you calculate the volumes in all carts under the DPW methodology the total amount of tonnage is about 20,000 therefore we are charging an excessive amount for disposal. His overall pricing is then reduced by the cost recovery percentage (about 75%) to yield the desired revenue of \$2.8M. The effect of this pricing structure is that the difference in cost between various cart sizes is only about \$20 versus \$60 under the DPW structure even though both methods yield the same revenue. This results in fees that are higher for the smaller carts and overflow bags and lower for the larger carts providing a dis-incentive for residents to reduce the generation of solid waste. Implementing such a fee structure would most probably reduce the variable cart system to a single sized cart system and would not achieve reductions in MSW tonnage town-wide.

The proposed DPW fee structure is based on the following guidelines:

- cart pricing should be based on the costs of MSW collection and disposal only and not include other components such as yard waste and recycling;
- pricing should create incentives to compel less MSW generation by favoring the use of the smaller carts;
- pricing must avoid any loss of revenue generated from the current refuse fee of \$200 per year.



The unit weight of household trash (MSW) can vary from 100 – 300 lbs. per cubic yard or from 0.5 – 1.5 lbs. per gallon. In the DPW analysis, a unit weight of 1.3 lbs. per gallon was used to achieve the desired revenue of \$2.8M. If the calculation was done using the actual MSW weight of 0.6 lbs. per gallon the same revenue would be achieved by increasing each fee by the ratio of the desired revenue divided by the actual revenue.

DPW Proposal

It is the recommendation of the Department of Public Works and the Town Administrator that the Board adopt a Hybrid Pay-As-You-Throw (HPAYT) and semi-automated solid waste collection system for all residents currently receiving Town waste collection as follows:

1. Variable sized wheeled carts of 35, 65 and 95 gallon capacity will be available for residents to choose from at \$190, \$252, and \$312 respectfully per year in place of the current flat fee of \$200 per year;
2. Custom imprinted 30 gallon plastic bags will be available for purchase at local retail establishments for a fee of \$15 per roll of 5 bags to be used for overflow refuse that does not fit within the selected cart;
3. Residents will be given ample time to select the appropriate cart size on a dedicated PAYT website, by mail using postage-paid postcards or by phone;
4. The collection and disposal of yard waste and recycled products will remain free and unlimited;
5. Accommodations shall be made for households where no occupants are able to maneuver a waste cart due to physical or geographical limitations by allowing the use of custom overflow bags without a cart or as an option, the use of a small 18 gallon cart that is lighter and easier to maneuver. Applications for Waiver must be filed and approved by the DPW;
6. The DPW will provide seasonal amnesty collections twice per year that will allow for unrestricted collection and disposal;
7. Households may opt out of municipal collection and contract privately with a waste hauler if deemed to be more cost effective;
8. Accommodations will be made to collect old barrels that residents wish to dispose of for two weeks after the implementation date of the new system at no charge.

The Town of Brookline prides itself on being at the vanguard of public policy and best practices in local government service delivery. The implementation of HPAYT with semi-automated collection is a reasonable and prudent approach to solid waste management and will provide our residents with a fair and equitable system that will ultimately lead to reductions in solid waste disposal for decades to come. The Department respectfully requests you approval and adoption of this system and is available to answer any questions.

Sincerely,

Andrew M. Pappastergion
Commissioner of Public Works

Cc: Melvin Kleckner, Town Administrator





TOWN OF BROOKLINE
Massachusetts

OFFICE OF TOWN COUNSEL

JOSLIN HAM MURPHY, *Town Counsel*
PATRICIA CORREA, *First Assistant Town Counsel*
JOHN J. BUCHHEIT, *Associate Town Counsel*
JONATHAN SIMPSON, *Associate Town Counsel*

December 30, 2016

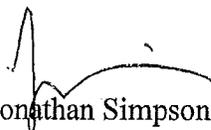
Stanley Spiegel
39 Stetson Street
Brookline, MA 02446

Re: PAYT Pricing

Dear Mr. Spiegel:

I have reviewed your letter to the Board of Selectmen regarding the Pay-As-You-Throw pricing proposed by the Department of Public Works, as well as the analysis performed by Dick Benka. Based on my research, I believe that the pricing structure, as proposed, satisfies the requisite legal requirements.

Sincerely,



Jonathan Simpson

Melvin Kleckner

From: Stanley Spiegel <sdspiegel@att.net>
Sent: Friday, December 16, 2016 11:34 AM
To: Joslin Murphy
Cc: Melvin Kleckner; Neil Wishinsky; Andrew Pappastergion; Richard Benka
Subject: Ruling on proposed refuse fees
Attachments: Fair trash cart pricing.pdf; 2018 Cart Pricing w Assumed Tonnage.pdf; 2018 Cart Pricing wActual Tonnage.pdf

Joslin:

Pursuant to our telephone conversation yesterday, in my capacity as a Town Meeting Member and as a member of the Advisory Committee, I am writing to request a ruling as to whether the DPW's proposed refuse fees, based on choices of trash cart size, satisfies the requirement that town fees be reasonable in covering the costs of services provided. The DPW fee structure is described fairly, I believe, in my attached memo to the Board of Selectmen; I am certain that you can obtain it in greater detail and perhaps greater accuracy from DPW Commissioner Andy Pappastergion. Two spreadsheets providing more information are also attached, one presenting the DPW cost analysis based on an unrealistic assumption of trash disposal tonnage, and one providing a cost analysis based on realistic trash disposal tonnage.

My contention is that the DPW fee structure is based on a fictitious amount of refuse collection (20,735 tons assumed, 9,100 tons actual), and that this has the effect of imposing greater fees than are reasonable and warranted based on actual trash discarded on residents who choose larger trash cart sizes, and lower fees than are reasonable warranted by actual trash discarded on residents who choose smaller trash cart sizes. (An obvious and on occasion stated reason for supporting such a fee structure is that it allegedly will incentivize more recycling by overcharging for larger trash cart sizes and undercharging for smaller size carts.) I am questioning the legality of such a distorted fee structure, regardless of any claimed good intentions, based as it is on an obviously inaccurate assumption that the Town discards more than double the trash than it actually does.

Thanks you for your consideration of my request.

Best regards,
Stanley Spiegel

Melvin Kleckner

From: Stanley Spiegel <sdspiegel@att.net>
Sent: Friday, December 16, 2016 10:47 AM
To: Neil Wishinsky; Nancy Daly; Ben Franco; Heller Nancy; Bernard Greene
Cc: Melvin Kleckner; Andrew Pappastergion; Joslin Murphy; Richard Benka
Subject: Fair trash cart pricing
Attachments: Fair trash cart pricing.pdf

To the Board of Selectmen:

It's one thing to charge residents for the trash that they actually discard, Pay-As-You-Throw or PAYT.

It's another thing to charge residents based on more trash than they actually discard. This is what the DPW pricing plan, in essence, proposes to do, Pay-More-Than-You-Throw or PMTYT.

The DPW pricing scheme assumes that the Town's trash carts will all be filled to capacity each week. This calculates to an annual trash output of 20,735 tons. But our actual trash output is only 9,100 tons, 43.9% as much. **So the DPW pricing is based on more trash than residents actually discard.**

A realistic, defensible approach is to assume that each trash cart is filled to only 43.9% of capacity, which will lead to the correct annual trash tonnage.

As an example, DPW assumes a 35-gal cart, fully loaded, contains 46 lbs of trash per week, when a realistic estimate is that it contains only 43.9% of this, or 20.2 lbs. Similarly, a 65-gal cart that holds 85 lbs when full will actually hold an estimated 37.3 lbs on average

The difference between the two is, on average, $37.3 - 20.2 = 17.1$ lbs more trash actually discarded per week in the 65-gal cart than in the 35-gal cart.

To get the true cost differential, multiply 17.1 lbs by 52 weeks per year (889 lbs), divide by 2000 to covert to tons (0.445 tons), and multiply by the disposal cost of \$59 per ton. The result is a cost difference of \$26.26.

Using pricing based on disposal costs for the actual amount of discarded trash, the 65-gal cart should cost only about \$26 more than the 35-gal cart.

Similar analysis shows that the 96-gal cart should be priced at about \$52 more than the 35-gal cart, and the 18-gal cart should be priced \$15 less. These results are consistent with Dick Benka's pricing analysis.

By incorrectly assuming fully loaded trash carts, the DPW plan results in much higher price differentials for different size carts, but these are based on more than twice the amounts of trash than are actually discarded.

The result is to overcharge residents using 65-gal or larger carts compared with residents using 35-gal or smaller carts. Regardless of whether there's a legal justification for doing this,

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the Board of Selectmen should not approve such a disproportionately unrealistic price structure.

To obtain fair total refuse pricing, one should add to the true trash disposal costs the uniform per-household costs of trash collection, recycle and yard waste collection and disposal, and hazardous waste disposal. For these costs, there are no known connections with trash cart sizes. **Dick Benka's analysis provides such realistic pricing.** (The claim that residents who discard more trash also put out more recycle may have it exactly backwards, since it's also claimed that those who recycle a lot discard less trash, and vice versa.)

By imposing overly large price differentials between cart sizes, the Town would be acting against its own interest in minimizing the use of plastic overflow bags. Incentivizing the use of the smaller trash carts by excessively raising the prices of the larger sizes will inevitably result in more overflow bags at curbside. This will cause both collection inefficiencies and sanitation issues, both of which should be avoided to the extent possible.

Finally, please note that the realistic pricing differentials calculated above were based on full cost recovery for trash disposal. However, it has been longstanding Town policy that refuse fees do not cover the full cost of refuse operations, most recently covering about 75% of the full cost. **Consistent with this Town policy, the price differential between the 35-gal and 65-gal carts, calculated above at \$26, should be no more than \$20, with similarly reduced price differentials for the other cart sizes.**

Respectfully submitted,
Stanley Spiegel
12/16/2016

**DRAFT
SENIOR TAX EXEMPTION STUDY COMMITTEE CHARGE**

1. To evaluate residential property tax relief for low and moderate income senior homeowners. The Committee may accomplish this by:

- Reviewing information about Brookline's residential taxpayers to understand the current, and possible future, composition of the residential taxpayer base, including the number of low and moderate income senior homeowner taxpayers;
- Evaluating the effectiveness and adequacy of statutorily available tax relief programs for low and moderate income senior homeowners and, as needed, offering improvements to the implementation of the programs in Brookline;
- Investigating the efforts of peer Massachusetts communities to provide residential tax assistance to seniors and determining the effectiveness and appropriateness of adoption of similar programs and policies by Brookline; and
- Considering the creation of innovative programs that could be implemented to assist senior homeowners with low and moderate incomes.

2. To develop appropriate policy recommendations, proposals for adjustment to local implementation of statutorily provided residential tax assistance programs for senior residential taxpayers with low or moderate incomes, suggestions for new tax assistance programs that would benefit senior residential taxpayers with low or moderate incomes, and drafts of warrant articles necessary to implement the committee's recommendations.

3. To provide to the Board of Selectmen by no later than August 3, 2017 a report of the information the committee has gathered and its recommendations.

4. In carrying out its charge the committee shall at all times be mindful that granting additional relief to low and moderate income senior homeowners will increase the burden on other groups of taxpayers.

The Senior Tax Work-off Exemption Program, championed by our Chief Assessor is an example of opportunities to provide relief. The Council on Aging and Board of Assessors both support the resolution. The Selectmen understand that any relief that would be provided would then shift the tax burden to another group; potentially shifting from seniors to struggling young families. There is a need for further study, which the Selectmen acknowledge and support, and the committee could look for modest relief that doesn't present a significant burden to another group of taxpayers.

The Selectmen support the study of this issue and look forward to gaining more knowledge on what tools available and what other communities are doing to support this vulnerable population.

Therefore the Board of Selectmen voted FAVORABLE ACTION on October 25, 2016 on the following motion:

Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including but not limited to our veterans, our residents who are visually impaired or have other disabilities, our children, and our seniors;

Whereas addressing the needs of Brookline's growing school population has resulted in one tax override within the last two years and may well result in two to three additional tax overrides during the next ten years;

Whereas Brookline's rapidly increasing property taxes are creating growing hardships for hundreds of Brookline's seniors with modest incomes who have owned and lived in their Brookline home for decades;

Whereas many of Brookline's senior homeowners with modest incomes no longer qualify for the Massachusetts Circuit Breaker Income Tax Credit because of Brookline's escalating residential real estate values during recent years and the declining residential real estate values in the western part of Massachusetts during the same time period;

Whereas Brookline's existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline's senior homeowners with modest incomes;

Whereas certain neighboring communities such as Sudbury and Newton currently offer innovative and more generous programs to their senior homeowners with modest incomes than does Brookline;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities (including but not limited to Sudbury and Newton) offer to senior homeowners with modest incomes, and to make policy recommendations and propose warrant articles for comparable new programs for Brookline and improvements to Brookline's existing senior homeowner property tax relief programs; and

November 15, 2016 Special Town Meeting

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Be it further resolved that said committee will first convene not later than February 1, 2017 and provide to the Board of Selectmen not later than August 15, 2017 a report, policy recommendations, and proposed warrant articles for consideration by the November 2017 Town Meeting;

Note: the Board vote differs from the current AC motion in the first whereas clause (bold and underlined)

Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including but not limited to our veterans, our residents **who are visually impaired or have other disabilities**, our children, and our seniors;

ADVISORY COMMITTEE’S RECOMMENDATION

SUMMARY:

Article 33 is a resolution that urges the Selectmen to establish a committee to study ways of enhancing tax relief for Brookline senior homeowners with modest incomes. Rising Brookline property values make it harder for Brookline seniors to qualify for the Massachusetts Circuit Breaker Income Tax Credit. Some of Brookline’s current programs for senior tax relief may need to be changed so that they provide relief to those who need it. These issues and programs should be studied further.

The Advisory Committee voted 21–0–6 to recommend FAVORABLE ACTION on an amended Article 33 motion that includes a new initial “Whereas” clause.

BACKGROUND:

The petitioner of Article 33 became very concerned about the impact of the May 2015 override, which funded public schools, on seniors with modest incomes. In addition to supporting the override campaign, she also started to think of ways to enhance tax relief for Brookline seniors, especially since more overrides will almost certainly be needed. The petitioner focused on the Massachusetts Circuit Breaker (CB) Income Tax Credit, created in 1999, which supports seniors 65 and older. As of 2015 CB tax credits provide up to \$1,070 based on income (up to \$57,000 for singles and up to \$85,000 for a couple); and property value (\$693,000—based on the state-wide average—and below). Property values statewide are significantly lower than they were in 2008, mostly due to declining property values in western Massachusetts. In Brookline, however, property values have continued to increase. This creates a particularly difficult situation for Brookline seniors: as Brookline’s property values continue to increase—often above \$693,000—fewer Brookline seniors are now eligible for CB tax credits. In 2009 a peak of 360 Brookline seniors qualified. In 2014, however, only 335 participated in the CB tax credit program—a decrease of 7%. The average support ranged from \$902 to \$1,050. The petitioner reached out to the State House, Brookline’s Assessor, and the Council on Aging, and also examined tax relief programs in Newton and Sudbury to see if Brookline can expand additional tax relief for seniors with modest incomes. The Board of Assessors, Brookline

Community Aging Network (BCAN), and the Advisory Council of the Council of Aging support a study of additional tax relief for seniors.

DISCUSSION:

The Advisory Committee is concerned about the financial needs of older people and their ability to pay property taxes. Brookline has some programs in place to address these concerns, and Town Meeting is consistently supportive of annual proposed tax relief credits for certain classes. It is a puzzle that all 30 Property Tax Work Off slots are consistently filled, but we see a decrease in participation in Circuit Breaker Tax Credits. Some seniors who are eligible may not be participating, but it is also possible that fewer seniors are eligible. Tax relief programs are often modest and very restrictive. It will be very worthwhile to have a committee studying tax relief for seniors and participation rates of various programs.

One option would be to consider changes to the relatively high (5%) interest rate that Brookline charges seniors who participate in the Town's tax deferral program. Newton, which ties the interest rate for similar programs to the Federal Reserve Discount Rate, will only charge 1% in FY2017. In addition, in Newton seniors qualify if their income is less than \$60,000 a year, whereas in Brookline the cut-off is set at \$55,000.

It also would be worthwhile to study other aspects of Brookline's senior tax deferral program, including the requirement that the holder of any mortgage on a senior's residence subordinate its loan to the lien that the Town imposes as part of its senior tax deferral program.

Other options might include studying Brookline's current residential tax and fee exemptions to identify additional possibilities to provide relief to seniors. Brookline, for example, offers moderate-income seniors a 20% discount on their water and sewer bills, but many condominium residents do not qualify because they do not have separate water meters. Other seniors do not qualify because their incomes and assets are higher than the limits established by the program. Newton has a similar program, but the discount is 30%.

Programs in other communities also may be worth studying. Sudbury, for example, has piloted a "Means Tested Senior Tax Exemption," and Sudbury Town Meeting just voted to continue this program. This program looks at town-wide property values, rather than state-wide averages. Sudbury's program caps property tax payments for qualifying seniors at 10% of their total income.

Currently there is no process to identify necessary changes in tax relief programs, except when a specific Warrant Article comes before Town Meeting. Each of our tax relief programs is more complex than it initially appears. We often do not know who participates (or doesn't) in existing programs—and why they participate.

The Advisory Committee is confident that a study committee will give us more knowledge about who participates in Brookline's senior tax relief programs and the possibilities for improving or expanding those programs. The Advisory Committee also

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recognizes that the Assessor's Office has much expertise on questions related to senior tax relief and could offer invaluable support to the study committee.

RECOMMENDATION:

The Advisory Committee by a vote of 21-0-6 recommends FAVORABLE ACTION on the following motion (an amendment to the original language of the Warrant appears in **bold**):

VOTED: That the Town adopt the following resolution:

Whereas the Town of Brookline has a long history of recognizing our common responsibility to care for deserving members of the community including, but not limited to, our veterans, our residents with blindness and other disabilities, our children, and our seniors;

Whereas addressing the needs of Brookline's growing school population has resulted in one tax override within the last two years and may well result in two to three additional tax overrides during the next ten years;

Whereas Brookline's rapidly increasing property taxes are creating growing hardships for hundreds of Brookline's seniors with modest incomes who have owned and lived in their Brookline home for decades;

Whereas many of Brookline's senior homeowners with modest incomes no longer qualify for the Massachusetts Circuit Breaker Income Tax Credit because of Brookline's escalating residential real estate values during recent years and the declining residential real estate values in the western part of Massachusetts during the same time period;

Whereas Brookline's existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline's senior homeowners with modest incomes; Whereas certain neighboring communities such as Sudbury and Newton currently offer innovative and more generous programs to their senior homeowners with modest incomes than does Brookline;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities (including but not limited to Sudbury and Newton) offer to senior homeowners with modest incomes, and to make policy recommendations and propose warrant articles for comparable new programs for Brookline and improvements to Brookline's existing senior homeowner property tax relief programs; and Be it further resolved that said committee will first convene not later than February 1, 2017 and provide to the Board of Selectmen not later than August 15, 2017 a report, policy recommendations, and proposed warrant articles for consideration by the November 2017 Town Meeting;

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November 15, 2016 Special Town Meeting

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(The Advisory Committee is aware that the Selectmen are offering a motion with a brief addition to the first "Whereas" clause of the resolution. Prior to Town Meeting's consideration of Article 33, the Advisory Committee may reconsider its recommendation in order to vote on including the language added by the Selectmen.)

XXX



**OFFICE OF THE TOWN ADMINISTRATOR
MEMORANDUM**

TO: Board of Selectmen
FROM: Melvin A. Kleckner, Town Administrator
RE: Brookline's Sanctuary City Status
DATE: December 30, 2016

At our meeting on Tuesday evening, the Board of Selectmen will discuss the status of prior Town Meeting resolutions (1985 and 2006) affirming Brookline as a "Sanctuary City" and to review the merits of the Police Department's policy of complying with the federal Secure Communities Act (now referred to as the Priority Enforcement Program). In addition to an overview of the PEP, we have included policies and ordinances from other Massachusetts communities for your reference, including Boston, Cambridge, Somerville, Newton and Amherst. The Chief of Police will be present at the meeting and will review the evolution of the Department's policies and practices and its current status.

We look forward to the Board's discussion and policy direction in this matter.

cc: Daniel O'Leary, Chief of Police
Lloyd Gellineau, Director of Diversity, Inclusion, and Community Relations

The Selectmen recommend FAVORABLE ACTION on the following vote:

VOTED: that the town adopt the following resolution:

BE IT HEREBY RESOLVED THAT:

The Town of Brookline become a sanctuary for refugees from El Salvador, Guatemala, and Haiti, and that they shall be afforded all rights and privileges offered and supplied to all people residing or working in the Town;

it is the policy of the Town that, to the extent legally possible, no department or employee of the Town will violate established or future sanctuaries by officially assisting or voluntarily cooperating with investigations or arrest procedures, public or clandestine, relating to alleged violations of immigration law by refugees from El Salvador, Guatemala, or Haiti or by those offering sanctuary;

the Town supports and appreciates its residents who may provide bedding, food, health and other settlement assistance, as well as friendship to refugees from El Salvador, Guatemala, and Haiti; and the Town will not participate in any form in the compounding of injustice against these refugees or in the Federal Government's persecution of those who in good faith offer humanitarian assistance to these refugees;

the Town supports all efforts intended to provide free, effective legal representation for any person residing in Massachusetts, who is seeking asylum in the U.S. because of fear of persecution in his or her homeland, including Mass. Senate Bill #1063 sponsored by Senator Jack Backman;

and that the Town Clerk shall communicate this resolution to all departments of the Town, the Massachusetts delegation to the Congress of the United States, our representative in the Great and General Court of the Commonwealth, the local and national Directors of the Immigration and Naturalization Service, and to President Ronald Reagan.

Brookline Town Meeting
November, 1985

RESOLUTION Reaffirming Sanctuary Status for Undocumented Immigrants:

Adopted by the Brookline Town Meeting in November, 2006

WHEREAS: The Town of Brookline has been built and enriched by generations of immigrants, and has a proud history since November, 1985, as a Sanctuary for refugees from El Salvador, Guatemala, and Haiti;

WHEREAS: There are now approximately 12 million undocumented immigrants in the USA who have been systematically denied the opportunity enjoyed by past generations of immigrants to become legal permanent residents or citizens of this country; over the past two decades, immigration policy has become even more restrictive and punitive and closed off avenues previously available for immigrants to obtain legal permanent residency, while the US-Mexico border has been further militarized;

WHEREAS: While borders have been closed off to people over the past two decades, they have been simultaneously opened up to trade and capital; these same "free trade" economic policies have increased poverty and decreased opportunities for people to make a dignified living and support their families;

WHEREAS: In 2005, record numbers of migrants seeking to support their families, with no means to migrate safely into the USA, perished in the desert along the US-Mexico border, while countless others died in the journey; and the migration experience has adverse emotional and psychological effects on families, kept apart for many years due to unjust immigration policies and backlogs in visa applications; and undocumented immigrants are especially vulnerable to workplace abuses and housing discrimination;

WHEREAS: Current US immigration policy does not reflect the standards of Brookline residents regarding what is just, humane and moral; and both undocumented and documented immigrants in the U.S. fuel our economy and those of their countries of origin;

WHEREAS: On December 16, 2005, the House of Representatives passed HR-4437, which would have drastic consequences for nearly all immigrants to this country, their families, their neighbors, and those who support them; and the US Senate has been considering a companion bill that contains many of the same counterproductive, misguided measures, including criminalization of immigrants and those who help them, further militarization of the border; turning police into immigration agents, and the erosion of cherished legal traditions such as due process; and the US Senate is also considering guest worker programs that would create a second-class citizenry without basic rights, disenfranchised and vulnerable to exploitation by unscrupulous employers;

WHEREAS: Much public discourse surrounding immigration has taken a tone ranging from irrational to racist, including the pejorative use of terms like "illegal" and "alien" to describe immigrants, with a dehumanizing effect that helps to justify policies criminalizing and excluding immigrants;

WHEREAS: Raids by the federal government, ranging from the highly publicized, nationwide workplace raids on April 17, 2006, that resulted in the arrest of 1,187 employees to the less widely known sweeps of homes such as occurred in Massachusetts on March 6, 2006, have

instilled fear and panic in immigrant communities and created environments that are ripe for intimidation, harassment and racial profiling;

WHEREAS: Following the raids in April of this year, the US Homeland Security Secretary announced plans to intensify such enforcement measures, an announcement that came in the midst of unprecedented numbers of immigrants demonstrating in defense of their dignity, against HR-4437, and for an opportunity to obtain legal permanent residency; and

WHEREAS: Numerous cities, including Maywood, Huntington Park, and Coachella, CA have recently declared themselves Sanctuary Cities, and cities from Cambridge MA (May 8, 2006) to Chicago and San Francisco have reaffirmed their earlier commitments as Sanctuaries,

THEREFORE, BE IT HEREBY RESOLVED THAT:

1. The Town of Brookline reaffirms its commitment as a Sanctuary Town, as declared by Town Meeting in November, 1985, and expands it now to include all undocumented immigrants from all countries;¹
2. The Town endorses the platform of the Keep Our Families Together Campaign, an initiative of the National Alliance of Latin American and Caribbean Communities that seeks to (a) enable immigrants who currently live and work in the United States to obtain Permanent Resident status and have the option to apply for citizenship; (b) increase the number of visas available in the quota system with a preference for family unification; (c) establish a limit of no more than six months for the processing and resolution of immigration applications; (d) facilitate the integration and participation of immigrants into the political, social and economic life of this country; and (e) enable future immigrants to enter the United States under a legal system that is just and respectful of human rights;
3. The Town calls upon the US Department of Homeland Security and the US Immigration and Customs Enforcement to declare a moratorium on immigrant raids, at least until the US Congress comes to an agreement on comprehensive immigration reform, so that the debate can be carried out in good faith rather than against a backdrop of fear, repression and intimidation;
4. The Town affirms the basic human rights and dignity of every human being;
5. The Town rejects the use of the word "illegal" to describe human beings and the use of the word "aliens" to describe immigrants, and hereby adopts the language "undocumented" when referring to those who do not have federally recognized resident status and "immigrant" to refer to those who have migrated to the US from another country;
6. The Town of Brookline urges the US Senate to defeat HR 4437 and urges the President to veto such legislation if approved by the Senate; and
7. The Town Clerk shall forward a copy of this resolution on behalf of the Town of Brookline to the Massachusetts Congressional delegation and to the President of the United States.

Memorandum

To: T.A. Melvin Kleckner
CC:
From: Chief Daniel C. O'Leary
Date: 11/23/2016
Re: Secure Communities

Sir,

The Secure Communities Initiative is a federal information sharing partnership between the Immigration and Customs Enforcement (ICE) and the Federal Bureau of Investigation (FBI) that helps to identify undocumented persons with criminal records without imposing new or additional requirements on state and local law enforcement. For decades, the Brookline Police Department (BPD) has shared fingerprints of all individuals who have been placed under arrest for criminal offenses to verify their true identity and to determine if they maybe wanted in other jurisdictions.

Under the Secure Communities Initiative, the FBI automatically sends the arrestees fingerprints to ICE to check against immigration databases. These checks would reveal if the arrestee is known to be unlawfully present in the United States, or is otherwise removable due to a criminal conviction. When ICE determines that an arrestee is removable, they will take action by prioritizing the removal of individuals who present the most significant threat to public safety as determined by the severity of the crime committed, criminal history, as well as those who have repeatedly violated immigration laws.

All prisoners taken into custody by the BPD are fingerprinted during the booking procedure. These fingerprints are electronically transmitted to the Massachusetts State Police (MSP) Identification Unit. The MSP will compare these fingerprints through the MSP Automated Fingerprint Indentation System (AFIS) criminal data base as well as transmit them to the FBI to be compared in the National AFIS criminal database.

CHIEF OF POLICE

November 23, 2016

The FBI will transmit these fingerprints to the Department of Homeland Security (DHS) in order for ICE to determine if the arrestee is removable based on their criteria. The length of time for this process will average for 2-3 hours.

When it is determined by ICE, that an arrestee is removable, ICE will file an emergency immigration detainer with the BPD. ICE will notify the BPD through the Criminal Justice Information System (CJIS). ICE will also fax a copy of the detainer to the BPD, at which point it is requested that a copy of this detainer be given to the arrestee, explaining that DHS is intending on assuming custody of the prisoner. This detainer would require this agency to retain custody of the arrestee for a forty eight (48) hour period commencing upon release on bail or arraignment.

In cases when the arrestee is arraigned in Brookline District Court (BDC), the detainer would be sent as part of the arrestee's document package, and the Norfolk County Sheriff's Office would take custody of the arrestee for the 48 period after arraignment.

In cases when the arrestee is bailed, the BPD would be responsible for ensuring that the arrestee is held for the 48 period. These instances are very unlikely to occur for several reasons including;

- The bail set by the Bail Commissioner would likely be unattainable by the arrestee after Bail Commissioner is informed of the DHS detainer.
- The arrestee may not wish to be bailed after they are advised that they will still be held after they pay the bail fee.

On most occasions, the arrestee will decide to wait for the next opening of court in order to be arraigned, which places the burden of holding the arrestee on the Sheriff's Office.

The BPD has been following this procedure since 2012, which under most circumstances eliminates the need for BPD initiated telephone requests to ICE Field Offices. Only in the rarest of incidences, based on the nature of the crime would BPD initiate telephone requests for information through ICE Field Offices.

Melvin Kleckner

From: Mark Morgan
Sent: Friday, December 02, 2016 12:54 PM
To: Melvin Kleckner
Cc: Daniel OLeary
Subject: RE: Sanctuary City Ordinances/Resolutions/Executive Orders ?

Mr. Kleckner,

Chief O'Leary asked for me to respond to your question on the differences between our existing BPD Policy and those of Cambridge, Somerville and Cambridge.

Our BPD Policy was written and issued two years prior (May 2012) to the other communities policies/orders/resolutions (May-June-July 2014) that were forwarded to me to review.

Our Policy as issued allows for the BPD to hold any person who is lawfully arrested for a criminal offense/criminal warrant in Brookline whose fingerprints are then electronically sent to the FBI data base and to compare against the existing data base for identification and criminal history purposes, something that is done with all arrestees, and if a we received a Federal Detainer via the Criminal Justice Information System we would hold the individual up to 48 hours. The other Cities policies allow for the release of an individual who was arrested on a minor criminal charge, with no past serious criminal history. There are exceptions allowed within these policies to hold subjects who fit this criteria, such as "public safety" concerns, I am assuming if you arrested a subject for a minor criminal offense but had reason to believe that the subject may have committed more serious offenses and need time to further investigate, you may honor the Federal Detainer. This is left up to the Supervisors of the police departments discretion.

We do not have a tracking protocol / procedure as the Boston & Cambridge policies establish to determine the number of persons held via detainers or released with detainers still outstanding.

In checking with the Brookline Police Prosecutor and the day shift Commanding Officer (who send our prisoners & paperwork to the Court), they report only a few individuals over the course of any year that have been arrested with detainers, and of that number, almost all have been held on state criminal charges pending court , not the detainer.

Brookline Court does not track detainer cases, only the associated criminal case.

Hope this is what you were looking for.

Mark

The substance of this message, including any attachments, may be confidential, legally privileged and/or exempt from disclosure pursuant to Massachusetts law. It is intended solely for the addressee. If you received this in error, please contact the sender and delete the material from any computer.



Furthering Public Safety and the Security of the Homeland

U.S. Immigration and
Customs Enforcement

ENFORCEMENT AND REMOVAL OPERATIONS (ERO):



Priority Enforcement Program

What is PEP?

- PEP builds upon enforcement priorities set forth in the November 20, 2014 Memorandum from DHS Secretary Jeh Johnson, entitled, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*.
- PEP begins at the state and local level when law enforcement officers book a person into custody and take their fingerprints, which are sent to the FBI for criminal background checks.
- The biometric data is sent by the FBI to U.S. Immigration and Customs Enforcement (ICE) to determine whether the individual is in the country illegally.



How is PEP different from the detainer process under Secure Communities?

- Under prior policy, detainers could be issued when an immigration officer had reason to believe the individual was a removable alien and fell within one or more enumerated priorities, which included immigration-related categories and having been convicted **or charged** with certain crimes.



How is PEP different from the detainee process under Secure Communities?

ICE may seek the transfer of any priority alien. However, under PEP, ICE may only seek the transfer of an alien in the custody of state or local law enforcement when the alien has been **convicted** of an offense listed in the following priorities:

- Priority 1(c), for which an element was active participation in a criminal street gang; or
- Priority 1(d), classified as a felony in the convicting jurisdiction, other than when an essential element was the aliens immigration status; or
- Priority 1(e), classified as an “aggravated felony” as defined in section 101(a)(43) of the Immigration and Nationality Act.



How is PEP different from the detainee process under Secure Communities, continued

- Priority 2(a), classified as three or more misdemeanor offenses, other than minor traffic offenses or where the essential element was alien's immigration status; or
- Priority 2(b), classified as a "significant misdemeanor", such as domestic violence; sexual abuse; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or another conviction resulting in a sentence of 90 days or more time to be served in custody, not included suspended sentences; or
- When, in the judgment of an ICE Field Office Director, the alien otherwise poses a danger to national security.

What forms will be used for notifications and transfers?

- DHS has replaced the now obsolete Form I-247 (Immigration Detainer – Notice of Action) with **new forms**:
- **Form I-247N** (Request for Voluntary Notification of Release of Suspected Priority Alien);
- **Form I-247D** (Immigration Detainer – Request for Voluntary Action); and



What forms will an LEA receive pursuant to PEP?

- **Form I-247N** (Request for Voluntary Notification of Release of Suspected Priority Alien)
 - Requests that state or local law enforcement notify ICE of a pending release during the time that subject is otherwise in custody under state or local authority.
 - Does **not** request or authorize the state or local authority to hold an individual beyond the point at which he or she would otherwise be released.



What forms will an LEA receive pursuant to PEP?

- **Form I-247D** (Immigration Detainer – Request for Voluntary Action)
 - Requests that state or local law enforcement voluntarily maintain custody of the subject for a period **not to exceed 48 hours** beyond the time when he or she would have otherwise been released from custody to allow ICE to assume custody.
 - There is no exception to the 48-hour period for Saturdays, Sundays, and holidays.
 - This request only takes effect if the LEA serves a copy of this form on the individual.





U.S. Immigration and
Customs Enforcement

Form I-247D

- Detainers may only be lodged where the subject:
 - (1) falls within Priority 1(a), (c), (d), or (e), or Priority 2(a) and (b); as previously described, **and**
 - (2) has a final order of removal or there is otherwise sufficient *probable cause* that he or she is a removable alien, such as:
 - Removal proceedings are already pending against the alien;
 - A biometric confirmation of the subject's identity and a records check of federal databases that indicate the subject lacks immigration status; and/or
 - Statements made voluntarily by the individual to an immigration officer and/or other reliable evidence that indicates the subject lacks immigration status.

Requests for Voluntary Notification and Detainers are NOT:

- Requests, requirements, or mandates, that state or local law enforcement agencies arrest the subject.
- Authorization for a law enforcement agency to hold or continue to hold the subject at the expense of the federal government.
- Intended to impact the state or local agency's decisions with regard to the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.



Offered by Councilor Josh Zakim

Jackson, LaMattina, Flaherty, McCarthy, Murphy, O'Malley, Yancey, Pressley, Baker, Linehan and Wu

CITY OF BOSTON



IN THE YEAR TWO THOUSAND FOURTEEN

AN ORDINANCE ESTABLISHING A BOSTON TRUST ACT

WHEREAS, The City of Boston seeks to ensure that all immigrants are able to fully participate in the civic and economic life of their neighborhoods and nurture and grow the spirit of unity in our City; and

WHEREAS, The City of Boston desires to provide opportunity, access, and equality for immigrants, and highlight the essential role immigrants have played and continue to play in moving Boston forward; and

WHEREAS, The federal government's Immigration and Customs Enforcement ("ICE") Secure Communities program uses local law enforcement data to identify suspected "criminal aliens" in local custody; and

WHEREAS, ICE issues civil immigration detainer requests which allow for prolonged detention during which ICE investigates the immigration status of suspected "criminal aliens" in local custody; and

WHEREAS, In other jurisdictions, honoring civil immigration detainer requests based on less than probable cause has been ruled a violation of the Fourth Amendment, exposing local law enforcement agencies to liability under 42 U.S.C. § 1983; and

WHEREAS, When local law enforcement officials indiscriminately honor all ICE civil immigration detainer requests, including those that target non-criminal aliens, immigrant residents are less likely to cooperate and public trust erodes, hindering the ability and effectiveness of Boston's police force; and

WHEREAS, A local Trust Act is necessary to establish the City's policy for responding to ICE's civil immigration detainer requests;

NOW THEREFORE,

Be it ordained by the City Council of Boston, as follows:

Section 1.

Definitions.

- (a) "Civil immigration detainer request" means a non-mandatory request issued by an authorized federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations to a local law enforcement official to maintain custody of an individual for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, and advise the authorized federal immigration officer prior to the release of that individual.
- (b) "Convicted" means a state of having been proved guilty in a judicial proceeding, unless the conviction has been expunged or vacated pursuant to applicable law.
- (c) "Eligible for release from custody" means that the individual may be released from custody because any of the following conditions has occurred:
- (1) All criminal charges against the individual have been dropped or dismissed;
 - (2) The individual has been acquitted of all criminal charges filed against him or her;
 - (3) The individual has served all the time required for his or her sentence;
 - (4) The individual has posted a bond, or has been released on his or her own recognizance;
 - (5) The individual has been referred to pre-trial diversion services;
 - (6) The individual is otherwise eligible for release under state or local law.
- (d) "Law enforcement official" means any City of Boston department, or officer or employee of a City of Boston department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

Section 2.

- (a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer request after that individual becomes eligible for release from custody.
- (b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer request for up to forty-eight (48) hours after that individual becomes eligible for release from custody, excluding Saturdays, Sundays, and holidays, if the individual meets any of the following criteria:
- (1) ICE has a criminal warrant for the individual;
 - (2) The individual has ever been convicted of a violent crime as defined in Massachusetts General Laws Chapter 140, Section 121;
 - (3) In the past ten (10) years, the individual has been convicted of a felony as defined in Massachusetts General Laws Chapter 274, Section 1;
 - (4) The individual is a current registrant on the Massachusetts Sex Offender Registry;
 - (5) The individual is identified in the federal government's consolidated Terrorist Watchlist.
- (c) Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual pursuant to this Section.

Section 3.

Reporting.

Beginning no later than December 31, 2015, and no later than December 31 of each subsequent year, the Boston Police Commissioner shall submit a report to the Clerk of the City of Boston, and the Clerk shall forward the report to the Mayor of the City of Boston and shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City

Council. The report shall include the following information for the preceding twelve (12) month period:

- (a) A statistical breakdown of the total number of civil immigration detainer requests lodged with the City's law enforcement officials, organized by the reason(s) given for the request;
- (b) A statistical breakdown of the total number of individuals that City law enforcement officials detained pursuant to Section 2(b), organized by the reason(s) supporting the detention;
- (c) The total number of individuals transferred to ICE custody; and
- (d) A statistical breakdown of the total cost reimbursements received from the federal government pursuant to Section 2(c), organized by individual case.

Section 4.

The provisions of this ordinance shall be effective immediately upon passage.

Filed in Council: June 27, 2014



CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

EXECUTIVE ORDER

May 22, 2014

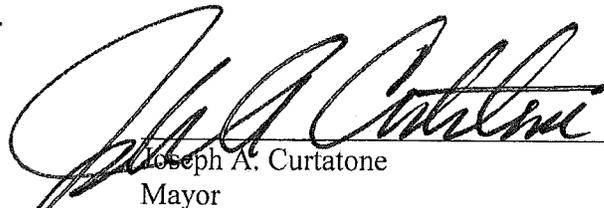
By the power vested in me as Mayor of the City of Somerville, it is hereby ordered the following Executive Policy be implemented immediately:

Executive Policy for Responding to ICE detainers.

The Somerville Police Department has the discretion to honor an ICE detainer request. A request will be honored only if one or more of the following instances are met and if detaining the person would not violate any federal, state, or local law or local policy:

- ICE has a criminal warrant,
- Somerville officials have a law enforcement or public safety purpose that is not related to the enforcement of civil immigration law,
- The individual:
 - has ever been convicted of:
 - a serious crime or violent felony as defined in Massachusetts General Laws
 - a felony punishable by imprisonment in state prison
 - is arrested and taken before a magistrate on a charge involving
 - a serious or violent felony as defined in Massachusetts General Laws
 - a felony punishable by imprisonment in state prisonand the magistrate finds probable cause to believe that the individual is guilty of a violent felony,
- is a current registrant on the Massachusetts Sex Offender Registry.

This Order shall take effect immediately.


Joseph A. Curtatone
Mayor



**City of Cambridge Policy Order Resolution
June 2, 2014**

- WHEREAS: The City of Cambridge, like the United States itself, has been enriched and built by generations of immigrants; and
- WHEREAS: The City of Cambridge has a proud history as a Sanctuary City, as declared on April 8, 1985, when large numbers of refugees fleeing the war in El Salvador arrived in Cambridge and were threatened with deportation; and
- WHEREAS: The City of Cambridge reaffirmed its status as a Sanctuary City on May 8, 2006, and formally adopted the language "undocumented" when referring to those who do not have federally recognized resident status and "immigrant" to refer to those who have migrated to the US from another country; and
- WHEREAS: The federal Secure Communities program is currently being used to identify undocumented immigrants in the custody of local agencies; and
- WHEREAS: Immigration and Customs Enforcement (ICE) is part of the United States Department of Homeland Security; ICE issues "detainer requests" pursuant to Title 8 U.S.C. Section 1226, and Title 8 U.S.C. Section 1357(d), which asks local authorities to hold individuals who have been ordered released from custody for up to 48 hours (after they have been ordered released), so that they can be taken into federal custody; and
- WHEREAS: There is no legal authority upon which the federal government may compel an expenditure of City resources to comply with an ICE detainer request; and
- WHEREAS: The Transparency and Responsibility Using State Tools (TRUST) Act, versions of which are pending before state and federal legislatures, aims to keep immigrants who pose no risk to society safe in their communities and with their families while also promoting trust between the immigrant community and local law enforcement; and
- WHEREAS: According to the Massachusetts TRUST Act Coalition, which includes State Senator Jamie Eldridge and former State Representative Carl Sciortino, ICE issued more than 5,000 detainers in Massachusetts from 2008 through 2011, and more than 75% of these detainers were placed on individuals who had no criminal conviction or history; several were issued on children under the age of eighteen; and
- WHEREAS: In April, 2014, a federal judge ruled that it is a violation of constitutional rights to hold an individual for immigration authorities without probable cause; and
- WHEREAS: As a result of this ruling, cities and counties nationwide are beginning to revise their policies regarding voluntary cooperation with ICE detainer requests; now therefore be it
- ORDERED: That the City Manager be and hereby is requested to work with the Police Commissioner to ensure that only in cases where immigration agents have a criminal warrant, or Cambridge officials have a legitimate law enforcement purpose not related

11. - 23

to immigration, will Cambridge Police comply with federal ICE detainer requests to hold persons solely for immigration purposes; and be it further

ORDERED: That the City Manager be and hereby is requested to report back to the council on this matter; and be it further

ORDERED: That the City Council does hereby go on record in joining the national TRUST Act movement to no longer hold immigrants in detention for the sole purpose of deportation; and be it further

ORDERED: That the City Council does hereby go on record in supporting the Massachusetts TRUST Act bill currently before the state legislature; and be it further

ORDERED: That the City Clerk be and hereby is requested to forward a suitably engrossed copy of this resolution to the Cambridge state legislative and Congressional legislative delegations.

 Cambridge Police Department	POLICY & PROCEDURES		No. 668.1
	Subject/Title: Secure Communities & ICE Detainers		
	Issuing Authority:  Robert C. Haas Police Commissioner		Review Date: June 9, 2014
			Issue Date: July 18, 2014
		Effective Date: July 28, 2014	Rescinds: G.O. #12-4 (revised)
References/ Attachments:		Accreditation Standards: 1.2.7 & 42.2.8 (a)	

I. PURPOSE AND SCOPE:

The Cambridge Police Department recognizes and values the diversity of the community it serves. Many of its residents have emigrated to this community from other countries and some may not be citizens or legal residents of the United States. The City and the Cambridge Police Department are committed to promoting safety and providing proactive community policing services to all who are located in our community. In furtherance of the department's Community Policing philosophy, all community members and stakeholders should know that they are encouraged to seek and obtain police assistance and protection regardless of their specific immigration and/or documentation status.

The Cambridge Police Department relies upon the cooperation of all persons, documented citizens and residents as well as those without a specific documentation status, to achieve our important goals of protecting life and property, investigating and preventing crime, as well as resolving recurring neighborhood issues. Assistance from the many various immigrant populations is especially important when an immigrant, whether documented or not, is the victim or witness to a crime. It is absolutely essential that these individuals do not feel uncomfortable or intimidated in coming forward with the requisite information and general firsthand knowledge to aid in investigating a particular crime. This type of mutual trust and cooperation is absolutely crucial in preventing and solving crime incidents, as well as maintaining public order, safety and security in the entire community.

As duly sworn police officers, members of this department are responsible for providing effective police services to everyone in the City of Cambridge in an equal, fair, and just manner. The Cambridge Police Department is concerned primarily for the safety and welfare of all individuals found within the territorial jurisdiction of the City of Cambridge. Thus, detection of criminal behavior is of primary interest and concern in dealing with any subject suspected of violating the law. Race, religion, gender, sexual orientation, age, occupation, immigration status or any other arbitrary characteristic pertaining to any specific individual have absolutely no bearing independently on any

decision for a Cambridge Police Officer to effectuate a stop or detention of an individual or affect an arrest.

The specific immigration status (or lack thereof) of an individual or group of individuals in and of itself is not and shall not be a matter of police concern or subsequent enforcement action. It is incumbent upon all officers and employees of the Cambridge Police Department to make an unyielding personal commitment to equal enforcement of the law and equal service to the public regardless of documentation status. Confidence in this valued commitment will not only protect an individual's rights and freedoms from being adversely affected but shall also increase the public's confidence in the police department's effectiveness and efficiency in protecting and serving the members of the entire community.

II. FEDERAL SECURE COMMUNITIES [S-Comm] PROGRAM:

The Commonwealth of Massachusetts officially became part of the **Federal Secure Communities Program** on May 15, 2012. Under the *Federal Secure Communities Program*, fingerprints of persons arrested by state and local law enforcement agencies, in which those agencies (including the Cambridge Police Department) routinely submit these electronic prints to the FBI (via the State Police) for criminal justice database checks, and as part of that process are automatically shared with the Department of Homeland Security (DHS-ICE). Immigration and Customs Enforcement (ICE) then checks the local arrestee's (currently being detained) personal information against the DHS-ICE immigration databases. If ICE determines that it has an actionable interest in the local arrestee, the agency then determines what specific enforcement action, if any, to take based on DHS enforcement priorities (outlined below). If the local arrestee appears to have violated the federal immigration laws and the arrestee is deemed to fall within any of the enforcement priorities, ICE decides whether to issue what is known as a Detainer for the arrested individual. A Detainer, which is sent via fax, is an official request from DHS-ICE directed to the state or local law enforcement agency to notify ICE before it releases an individual arrestee so that ICE has the opportunity to arrange for the immediate transfer of the individual to federal custody in situations when gaining immediate custody is either impracticable or impossible.¹

Note: Once a state or local law enforcement agency voluntarily submits fingerprint data of an arrestee for the purposes of a record check to the federal government, no specific agreement or MOU with the individual state is legally necessary for one agency of the federal government (e.g., FBI) to share the data with another federal agency (e.g., DHS-ICE).

- A. **DHS Enforcement Priorities:** According to DHS: “[They] *must ensure its limited immigration enforcement resources are focused on the removal of those*

¹ 8 CFR 287.7(a) and 8 CFR 287.7(d). Federal law provides that an individual cannot be held on a detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the detainer expires.

who constitute [what they consider to be] the highest priorities, specifically individuals:

- a. Who pose a threat to public safety such as criminal aliens and
- b. National security threats as well as
- c. Repeat immigration law violators and
- d. Recent border entrants.²

Note: According to DHS, “the expenditure of resources on any cases that fall outside the enforcement priorities hinders [their] public safety mission by clogging immigration court dockets and diverting resources [...]”³

- B. S-Comm and Potential Impacts on Local Community Policing Efforts:** DHS-ICE and the Federal Secure Communities Program does not operate in a vacuum and local law enforcement must always be mindful that the resulting enforcement actions that are undertaken by ICE can run the risk that these actions can potentially have an adverse impact on the local police agencies and the long standing relationships that they have with their respective communities in what some stakeholders may conclude is a negative fashion. According to ICE, Secure Communities only entails the sharing of information known as “interoperability” between local law enforcement, the FBI and DHS. Any subsequent immigration enforcement action that is taken after that information is shared is not part of the Secure Communities Program, but instead is the result of an independent determination by ICE Enforcement and Removal Operations (ERO). Similarly, any action taken by the local law enforcement agency at the time of the arrest and prior to booking and submission of fingerprints to the federal databases is not part of the Secure Communities Program.

However, with this in mind, it is important to note that much of the criticisms of the S-Comm Program relate to the enforcement activities before (with the local police making an arrest) and after (with ICE Officials transferring custody of the arrestee) the actual information sharing of biometrics that defines the process takes place. While ICE has distinguished between Secure Communities’ “interoperability” function and the subsequent detention and/or removal of an individual via the ERO process, the distinction is often times lost on many community stakeholders, advocates and even some law enforcement officials. As a result, the Secure Communities Program is commonly viewed and perceived by many as the entire process that begins with an arrest by the local law enforcement agency and ends, often times, in deportation of the arrestee. To the community at large, especially urban inner-city, immigrant communities such as the city of Cambridge, local law enforcement agencies participating in the Secure Communities Program run the risk of being viewed by many as immigration agents, regardless of the actual limited role that they play in the process.

² <http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf>.

³ *Id.*

Therefore, it is imperative that the local community is informed and educated at the appropriate venues and community forums, at appropriate intervals, as to the specifics of the local law enforcement agencies' actual role in the S-Comm process so as not to jeopardize the trust, confidence and spirit of cooperation that the police department and the community at large have formed over the course of several years.

III. POLICY:⁴

The enforcement of the nation's civil immigration laws are the primary responsibility of the federal government. Accordingly, the Cambridge Police Department shall not undertake immigration-related investigations and shall not routinely inquire into the specific immigration status of any person(s) encountered during normal police operations.

This prohibition does not preclude the Cambridge Police Department from cooperating and assisting with federal immigration officials from the DHS Immigration and Customs Enforcement (ICE) Agency when formally requested as part of an on-going criminal investigation, or from notifying those federal officials in serious situations where a potential threat to public safety or national security is perceived. (refer to **Section IV. B.** of this directive).

Further, as of May 15, 2012, the Commonwealth of Massachusetts became an official participant of the Federal DHS-ICE Secure Communities Program. Therefore, whenever any Shift Commander is made aware of an ICE detainer (a.k.a. an "ICE Hold" or "Immigration Detainer") in the form of a fax from DHS-ICE pursuant to 8 CFR 287.7(a) and 8 CFR 287.7(d), the Shift Commander shall immediately inform the bailing Clerk or Assistant Clerk Magistrate of the existence of the federal ICE detainer. If the Clerk sets bail for the offense for which the individual was arrested, and that bail is likely to be satisfied by the arrested individual, the Department will evaluate on a case-by-case basis whether to maintain custody of the individual, pursuant to the ICE detainer, pending transportation to the Cambridge District Court for arraignment. However, federal law provides that the individual cannot be held on an ICE detainer for longer than 48 hours, excluding weekends and holidays. At the end of the 48 hour period, the ICE detainer shall expire forthwith.

IV. PROCEDURES:

- A. Inquiries into Immigration Status:** Consistent with the long-standing policy of this department and the City's position with respect to immigration status, officers will observe the following guidelines:

⁴ CALEA Std. 1.2.7 – *A written directive governs the use of discretion by sworn officers.*

1. A person's right to file a police report; participate in any police-community activities (i.e., community meetings, Sergeant Neighborhood Meetings, National Night Out, etc); or otherwise benefit from general police services shall not be contingent upon the individual providing proof of citizenship or any type of documented immigration status.⁵
2. Consequently, officers shall not question any person about his/her specific citizenship or immigration status unless that person is reasonably believed to be involved in one or more of the activities as identified in **Section IV. B.** of this directive.
3. Officers shall not request passports, visas, resident alien cards (i.e., "green cards"), or travel documents in lieu of, or in addition to, driver's licenses and other standard forms of identification. Such documents shall only be requested when standard forms of identification are unavailable or when the officer is proceeding under **Section IV. B.** of this directive.

Note: An exception to the above could occur if an operator of a lawfully stopped motor vehicle presents what appears to be a valid Foreign Country's Driver's License in which the license is valid in this state for only one (1) year and requires the operator to produce proof to the investigating officer of the most recent admission date to the United States so as to effectively toll the one year time period (e.g., Form I-94 or Passport with the entry stamp).

B. Notification to Federal Immigration Authorities: In furtherance of the department's Community Policing philosophy, Cambridge Police Officers shall not participate in any federal civil immigration related investigations of any immigrant or foreign national, except when the immigrant or foreign national.⁶

1. Is **arrested** for any **violent felony** including but not limited to:
 - Murder,
 - Assault with intent to Murder,
 - Assault & Battery by means of a Dangerous Weapon,
 - Assault by means of a Dangerous Weapon,
 - Armed Burglary,
 - Rape, (or any Sexual Assault-based Offense)
 - Mayhem, or
 - Armed Robbery;
2. When a Cambridge Police Officer acquires reliable information that the individual in police custody has been **convicted** in a court of competent jurisdiction of **any violent felony**;
3. Is **arrested** for any **terrorism-related offense**, or is otherwise *reasonably suspected* of involvement in any terrorist and/or subversive activities;

⁵ CALEA Std. 42.2.8 – The agency has a written directive concerning identity crime and procedures for:
a. Taking identity crime reports;

⁶ Also refer to Policy #561 – Foreign Nationals and Officials for further procedural requirements.

4. Is **arrested** for any offense involving the entry or fraudulent assimilation or **trafficking of individuals** into the United States, or is reasonably suspected of participating in an *organized venture* to bring or fraudulently assimilate undocumented foreigners in this country; **OR**
5. Is **suspected** based upon the legal standard of **probable cause** (basis of knowledge and veracity) of **participating in criminal street gang activity involving violence and/or distribution of illegal drugs.**⁷

C. Immigration and Customs Enforcement (ICE) Requests for Assistance:

1. The U.S. Bureau of Immigrations and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions to Title 8, U.S. Code dealing with illegal entry into the United States by foreign nationals.
2. Cambridge Police Officers shall not directly participate in any such ICE tactical operations solely for the civil enforcement of federal immigration laws as part of any Detention or Arrest Team unless:
 - It is in direct response to a request for assistance on a temporary basis for “Officer Safety” purposes; or
 - For the assistance in the apprehension of any individual who is also wanted on a Massachusetts issued Warrant Management System Warrant (WMS) that remains in full force and effect at the time of the request.
3. Any detention by a member of the Cambridge Police Department during the request for assistance by ICE should be based upon a reasonable belief that the detained individual is either involved in criminal activity other than a civil violation of federal immigration laws or is wanted by the Commonwealth of Massachusetts on a WMS Active Warrant.

D. Processing of an ICE Detainer: Once an ICE detainer has been transmitted to the department via ECC following the submission of the fingerprints to the NCIC database, the following procedures will be observed with respect to the processing of the ICE detainer:

1. *Responsibilities of the Booking Officer:* Once the Booking Officer secures the faxed copy of the ICE detainer from ECC, the officer will:
 - a. Immediately confirm that the individual in custody (detainee) matches the individual named in the detainer.

⁷ A “criminal street gang” is a formal or informal organization, association, or group, consisting of three or more individuals, whose members or associates, individually or collectively, engage in or have engaged in the commission, attempted commission, facilitation or solicitation of criminal activity. A “gang member” is an individual who law enforcement assigns a total score of ten (10) points or more by utilizing the uniform “10 Point Assessment System” (see attached appendix). A “gang associate” is an individual who law enforcement assigns a total score of two (2) points or more by utilizing the uniform “10 Point Assessment System.”

- b. Immediately notify the Shift Commander of the receipt of the detainer, and whether the identity of the detainee matches the individual named in the detainer.
 - c. Reflect the fact that an ICE detainer was received in response to the submission of the detainee's fingerprints in the "RIGHTS" dropdown section of the booking system. This entry must include a "YES" that there is an ICE detainer in effect and must include pertinent information regarding the reason for the detainer, the date and number of the detainer, as well as any other relevant information.⁸
 - d. The detailed information relative to the ICE detainer is to be entered into the "DETAILS" space within the "RIGHTS" section of the booking form.
 - e. A copy of the ICE detainer will be made part of the booking package and be retained as part of the department's official record. To that end, the Booking Officer will ensure that a copy of the ICE detainer is provided to the Records Management Unit to be stored in a secure file.
 - e. The Booking Officer will also provide a copy of the ICE detainer to the Shift Commander.
 - f. Ensure that a copy of the ICE detainer accompanies the paperwork that is transmitted with the reports that are sent to the Cambridge District Court.
 - g. The Booking Officer shall promptly provide a copy of the ICE detainer to the individual being detained to allow that individual the opportunity to review the ICE detention process. The ICE detainer contains a "Notice to the Detainee" about the detention process in six different languages. If the individual speaks a different language from those provided on the notice, the Booking Officer shall utilize the AT&T Language Line to ensure that the individual receives the required notice in a language that the individual fully understands.
2. *Responsibilities of the Shift Commander:* Upon being notified that an ICE detainer has been sent in response to the submission of a detainee's fingerprints into the NCIC database, it will be the responsibility of the Shift Commander to:
- a. Verify with the Booking Officer that the identity of the individual named in the ICE detainer matches the identity of the detainee.
 - b. When notifying the Bail Commissioner, advise the Bail Commissioner of the existence of an ICE detainer.
 - c. Notify the Command Staff and the other Shift Commanders via the Shift Ops Briefing that an ICE detainer was received.
 - d. Forward a copy of the ICE detainer to the oncoming Shift Commanders until the individual being detained is released from department custody. The Shift Commander who had last oversight and upon release of the

⁸ The Booking Officer will not enter the ICE detainer as a charge within the QED Booking System.

- detainee shall forward to the Professional Standards Unit a packet of information that includes a copy of the detainer, the booking sheet and the incident report. A file will subsequently be maintained by the Professional Standards Unit on all ICE detainers received in response to an arrest made by this department.
- e. If it appears that an arrestee is subject to being held solely on an ICE detainer (i.e., bail is set and likely to be posted), the Shift Commander, in consultation with the Duty Chief or the on duty Deputy Superintendent or Superintendent, will evaluate on a case-by-case basis the grounds for detention before the ICE detainer is actually honored. Where appropriate, the Shift Commander will also consult with the ICE agent seeking detention to clarify any factual issues.
 - f. The following guidelines will be adhered to when evaluating whether an ICE detainer will be honored:
 - i. An ICE detainer based on a warrant of arrest for removal proceedings or an order of deportation or removal from the United States will be honored by the Department.
 - ii. An ICE detainer based on a conviction for illegal entry, illegal re-entry after a previous removal or return, or a documented finding of immigration fraud will also be honored.
 - iii. An ICE detainer based on a prior felony charge or conviction will be honored if the documented charge or conviction demonstrates a significant risk to public safety. This would include, but is not limited to, crimes of violence, sexual assault and/or abuse, the unlawful possession and/or use of a firearm, and the distribution and trafficking of a controlled substance.
 - iv. The Department will also honor an ICE detainer based on a documented, significant risk to national security, border security or public safety.
 - v. The Department, however, will not honor an ICE detainer based solely on misdemeanor charges and/or convictions or for the initiation of removal proceedings where the arrestee has been previously served (i.e., before arrest) with a notice to appear beyond the date of arrest for which the arrestee is in the Department's custody.
3. *Responsibilities of the Police Prosecution Unit:* It will be the responsibility of the Police Prosecution Unit to notify the Court Clerk's Office of the existence of an ICE detainer as part of the initial notification to the court on any detainees appearing before the court.
 4. *Responsibilities of the Professional Standards Unit:* The Professional Standards Unit will prepare an audit report on a semi-annual basis, indentifying the number of incidents when an ICE detainer was received in

response to an arrest that was made by this department. The audit report will include the following data at a minimum:

- a. Total number of incidents that involved an ICE detainer being received in connection with an arrest over the six-month period under review.
- b. A brief summary of each case involving an ICE detainer being received.
- c. A review as to whether each of the incidents was in accordance with this directive.
- d. Any recommendations or suggestions in terms of any procedural changes that should be made as a result of the audit/review.

E. ICE Detainers Not Involving Other Criminal Charges: When a member of this department, through an encounter, becomes aware of the existence of an ICE detainer when no other criminal charges exist for an individual, the officer is to immediately notify his/her supervisor, and adhere to the following guidelines:

1. If the reason for the detainer is of sufficient severity (refer to **Section III. B.** of this directive) to constitute a felony, the supervisor may decide to detain the individual.
2. In such circumstances, the confirmation and notification procedures described in this directive will be followed.
3. If the reason does not rise to this level, the supervisor must instruct the officer to gather as much information as possible from the individual, including the current address, work address, and other relevant information.
4. The officer will complete a QED incident report of the encounter.
5. Under no circumstances, is the officer to seek out and detain an individual who is wanted on an ICE detainer without prior approval from the Shift Commander.

**ARTICLE V.
HUMAN RIGHTS COMMISSION AND ADVISORY COUNCIL**

Sec. 12-50. Policy of the city.

(a) It is the policy of the city to see that each person regardless of race, color, religious creed, national origin, sex, age, disability, ancestry, sexual orientation, or gender identity or expression, shall have equal opportunity in or access to employment, housing, education, and public accommodations; to assure that each person shall have equal access to and benefit from all public services and licensing; to protect each person in the enjoyment of his/her civil rights; and to encourage and bring about mutual understanding and respect among all persons in the city by the elimination of unlawful discrimination.

(b) Policy of the city regarding housing practices:

- (1) It is the policy of the city to follow all of the provisions set forth in M.G. L. Chapter 151B (the Massachusetts Anti-Discrimination Law) and 42 U.S.C. § 3601, *et. seq.* (the Federal Fair Housing Act, as amended) regarding non-discrimination in housing practices." (Rev. Ords. 1973, § 2-282; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05; Ord. No. X-201, 04-03-06; Ord. No. A-44, 09-15-14)

(c) Policy of the city regarding immigration status:

- (1) Newton is a welcoming and inclusive city for all. Immigration status shall have no bearing on a person's treatment by officials and employees of the city. There is no expectation that officials and employees of the city will report persons to federal immigration authorities based on immigration status.
- (2) Interactions with federal immigration authorities by the Newton Police Department will be in accordance with the *One Newton: Foundational Guidelines for Community Policing to Promote Safety for All*.

One Newton: Foundational Guidelines for Community Policing to Promote Safety for All

One Newton is a policy that affirms the City of Newton as a welcoming and inclusive community for all. An important component to make that pledge a reality is our commitment to "community policing". The Newton Police Department has and will continue to operate without consideration of race, ethnicity, national origin, immigration status, religion, sex, age, disability, sexual orientation, gender identity or expression in the decision to pursue a case. The decision to search, arrest or charge an individual rests on reasonable suspicion of unlawful behavior. In order for police to best protect the community, the channels of communication must be open so that individuals feel safe to report alleged crimes and to provide information when asked about a possible crime. Trust, understanding of each other, and open two-way communication are essential elements of both community policing and maintaining Newton as a safe city for all. While there is no clear legal definition of "Sanctuary City", our current police practices are in keeping with those of a number of surrounding communities that have designated themselves as such.

The Newton Police Oath of Office that is taken upon a recruit officer's entry into the ranks swears definitively three things:

1. That the new officer, "... will bear true faith and allegiance to the Commonwealth of Massachusetts and will support the constitution thereof."
2. That the new officer will, "... faithfully and impartially discharge and perform all the duties incumbent upon me as a Police Officer in the City of Newton, agreeably to the rules and regulations of the constitution and laws of this commonwealth."
3. That the new officer, "... solemnly swear that I will support the constitution of the United States."

To that end, the Newton Police Department's priority has always been to establish and maintain the peace as it serves its residents and guests by enforcing the laws of the Commonwealth of Massachusetts and upholding the rights of all as delineated in the United States Constitution. The Department reaffirms these principles in General Order #406 the subject of which is, *Commitment to Unbiased Policing*. The policy outlined in this order reads in part; *It is the policy of the Newton Police Department that all police-initiated actions, which includes all investigative detentions, traffic stops, arrests, seizures of persons and/or property, will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution, Article 14 of the Massachusetts Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions, which support probable cause or reasonable suspicion. Officers shall not consider race, ethnicity, national origin, religion, age, gender, gender identity or sexual orientation as the only criteria in establishing either reasonable suspicion, probable cause, or as a basis for requesting consent to search.*

Officers may take into account the reported race, ethnicity or national origin of a specific suspect or suspects in the same way they would use specific information regarding age, height, weight, etc. about specific suspects relating to specific unlawful incidents. Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

The decision to detain an individual is based on the nature of the suspected offense. Individuals are not stopped by the Newton Police Department to ask them about their immigration status. Individuals are not held by the Newton Police Department only because of their immigration status. Civil infractions do not lead to detention, regardless of an individual's immigration status. The Newton Police Department may detain an individual in cooperation with Immigration & Customs Enforcement (ICE) if the individual was suspected of terrorism activity, of committing a felony, or of posing a safety risk to the public.

The Newton Police Department policy protects the safety of all residents in our community regardless of immigration status through sound policing. To add additional transparency and accountability, the Police Department will produce a yearly report documenting the number of individuals, if any, detained on an ICE hold or administrative warrant or transferred to ICE custody.

The City will monitor any changes in federal directives and will be prepared to resist any efforts to change our approach to community policing. We urge subsequent city officials to affirm these guidelines.

Amherst, MA

Related policies:

#01: Arrest

#90: Consular Notification

GENERAL ORDER

INDEX III

NUMBER: #92

AUGUST 30, 2011

IMMIGRANT COMMUNITY MEMBERS

I. POLICY PURPOSE

The Amherst Police Department acknowledges that the enforcement of federal immigration laws is the duty of the United States Bureau of Immigration and Customs Enforcement (ICE) which has primary jurisdiction to enforce Title 8 of the U.S. Code dealing with lawful presence in the United States. Immigration issues have recently been a very contentious topic within this country. There are factions within the country which believe that immigration laws should be enforced fully by local law enforcement, and others which believe that local law enforcement and local governments should not be involved in immigration enforcement. The Amherst Police Department does not have the resources nor the authority to enforce immigration laws. It is not within the mission of this department to enforce immigration laws. This policy is designed to clearly state the position of Amherst Police Department in protecting the safety, rights and property of every person within the town of Amherst, regardless of their immigration status.

II. POLICY STATEMENT

The Amherst Police Department shall treat all persons in an equal, fair and respectful manner, regardless of their race, gender, religion, sexual orientation, age, occupation, national origin, or immigration status. This shall be the case regardless of whether the person is a crime victim, suspect, witness, or simply a person in need of police services. Skin color, language, accent, or other individual traits shall not be considered an element in building reasonable suspicion or probable cause, unless these descriptions are pertinent in developing a suspect, such as when we rely on witness or victim recollection of a suspect, and they use such descriptions of skin color, language, accent or other individual trait. Skin color, language, accent, or other individual traits will not be used as a basis for disparate treatment by individual sworn or unsworn personnel of the police department. A person's right to file a report, participate in police-community activities, or otherwise benefit from police services shall not be contingent upon citizenship or immigration status. We value the diversity of our community, and strive to maintain partnerships and positive relationships with the community to improve the quality of life of all persons who visit or call the town of Amherst home.

III. POLICY

The Amherst Police Department does not have the authority to enforce federal immigration laws, unless it is granted by the federal government, which it currently is not. If ICE or another federal agency come into our community to effect an arrest warrant on an individual, and request our assistance, the shift

commander will may authorize this assistance, which would be limited to locating an address, keeping the peace and traffic if necessary. Such assistance will be fully documented in a CAD entry.

In regards to sweeps or concentrated efforts, the Amherst Police Department will assist the ICE, or any other federal law enforcement agency, upon specific request of that agency and upon the approval of the Chief of Police or, in their absence, a Captain. Such assistance will be limited to support services such as traffic control and efforts to keep the peace in specific areas impacted by federal operations. The Amherst Police Department will not independently conduct sweeps or other concentrated efforts to detain or identify suspected undocumented aliens. Such assistance will be documented in an incident report.

A. **INQUIRIES OF IMMIGRATION STATUS:** We rely on the cooperation of our community to ensure our success in preventing and solving crime. To that end, Amherst Police personnel will not make an inquiry into the immigration status of crime victims, witnesses or others who request our assistance. We do not use the threat of immigration status/deportation as leverage with victims, witnesses or suspects. Amherst Police personnel will only make inquiries regarding immigration status of a person when that person is:

1. a viable suspect in a serious criminal incident (felonies or misdemeanor physical batteries) and criminal charges are imminent and this information will be needed for court complaint documentation or
2. an arrest has already taken place and the individual is at the police station being booked for a crime where the officer has jurisdiction and probable cause to arrest for a Massachusetts Statute or Town of Amherst by law violation. The Amherst Police Department booking process shall include inquiries regarding place of birth and citizenship status for all persons under arrest. All individuals arrested and processed at the Amherst Police Department shall have their identification information queried against the National Crime Information Center (NCIC) as well as Massachusetts Warrant Management System (WMS). Should an ICE warrant, criminal deportation order or detainer be indicated, the officer in charge of the shift shall contact ICE. This responsibility shall not be delegated. Note that an Immigration Detainer is not an arrest warrant and does not provide probable cause for arrest. An Immigration Detainer is an official request from Immigration and Customs Enforcement to another law enforcement agency (LEA)—that the LEA notify ICE prior to releasing an individual from local custody so that ICE can arrange to take over custody. Detainers are requests, not commands. When someone is in custody, and an Immigration Detainer is within the NCIC system, ICE shall be notified. However this does not mitigate our responsibility to allow for bail or consulate notifications as per existing policy and law.
3. Exceptions to this rule shall only be allowed where an officer is investigating violations of specific criminal statutes and has reached the point of reasonable suspicion as to the true identity of the suspect.

B. **ICE NOTIFICATION OF IMMIGRANT CRIMINALS:** To ensure the overall safety of our community, it is important that we use all resources to prevent crime and combat crime and disorder in our community. We also want to maintain the strong and positive relationships that our personnel have built with immigrant community members within their sectors. Therefore, it is important to understand that notification to ICE is a tool that is only used for undocumented alien criminals. We rely on the

Massachusetts Department of Corrections to notify ICE of undocumented immigrants who have been convicted of felonies under the existing agreement between the Commonwealth of Massachusetts and the Department of Homeland Security under their 285(g) agreement.

C. PROCEDURES FOR IMMIGRATION COMPLAINTS: Citizens wishing to report immigration violations shall be referred to the U.S. Immigration and Customs Enforcement public toll free tip hotline at 1 866 DHS-2-ICE, (1 866 347 2423). They should be notified that the Amherst Police Department does not have the authority to enforce federal immigration laws.

D. BASIS FOR POLICE CONTACT: Persons suspected of only being an undocumented alien alone shall not be the basis for police contact, investigation, detention, or arrest. Detention based on the belief of illegal presence or a civil immigration violation is prohibited. As we are mandated by law to act upon any arrest warrant, we will make a lawful custody of a confirmed and legal criminal deportation order or ICE warrant that is entered into the NCIC database system, and the appropriate ICE office will be notified. An Immigration Detainer is not a warrant and does not have probable cause for arrest.

E. IDENTIFICATION REQUESTS: Officers investigating persons for violations of Massachusetts Criminal or Town of Amherst Laws may request driver's licenses and other pieces of standard identification, such as a Commonwealth of Massachusetts Identification Card or valid college identification card. Unless the person being investigated for a violation of MGL or Amherst law cannot produce the above mentioned acceptable forms of identification, an officer shall not request passports, visas, or travel documents. What is important to understand is that passports, visas, or travel documents will not be requested in the field in lieu of, or in addition to, those acceptable forms of identification listed above when the acceptable forms of identification can be produced. However, it is recognized that in the town of Amherst both foreign and out of state resident students rely on their passport or visa to prove age and identity, and they will often carry these documents on their person and provide them when a request for identification is made. Officers will not be in violation of this policy if a passport or visa is produced in such circumstances. An exception to this is when an officer is investigating violations of specific criminal statutes such as document forgery and has reached the point of reasonable suspicion as to the true identity of the suspect, a request for passports, visas or travel documents can be made.

F. CERTIFICATE OF ALIEN REGISTRATION: Section 1304 (e), Title 8, U.S. Code provides: "Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100.00 or be imprisoned not more than thirty days, or both." This Federal Statute shall not be enforced by the Amherst Police Department.

G. CONTACT DISPOSITION: The disposition of each police contact such as warning, citation, or arrest, shall not be affected by immigration status.

H. PASSPORT SEIZURE: Passports may only be seized if they are contraband, the fruits or instrumentalities of a crime, evidence of a violation of state criminal law (such as forgery of a passport.

important

or identity theft), evidence of federal criminal law (such as forgery of a passport or human trafficking), or illegally possessed. Passports seized for these purposes should be processed like any evidence in conformance with the department's policy entitled # 48 Property and Evidence. Once the case has been adjudicated, the passport should be forwarded to the originally intended owner, or the Department of State, Lost or Stolen Passport Section, 1111 19th Street NW, Room 500, Washington, DC 20522-1705.

I. **U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT NOTIFICATION:** The Law Enforcement Support Center for ICE is located at 188 Harvest Lane Williston, VT 05495 and may be contacted via phone at 802 872 6020 or via NLETS at VTINS07SO. The Boston ICE Field Office can be reached at 617 565 3100. Additionally, the Duty Agent for Massachusetts can be contacted at the 24-hour ICE Dispatch Line of 800-973-2867.

J. **NOTIFICATION OF FOREIGN NATIONAL'S DETENTION OR ARREST:** We will adhere to those mandates regarding consular notifications as detailed in policy #90, Consular Notifications.

K. **PRISONER TRANSFERS:** Other agency officers taking custody of persons arrested by the Amherst Police Department such as when being picked up by another police department, or being temporarily housed by the Hampshire County Jail, shall be informed of any known or suspected citizenship status violations as well as any steps taken by the Amherst Police Department up to the time of the transfer.

IV. **VICTIMIZATION AND U-VISA CERTIFICATION:**

The relationship between police and immigrant communities is often a strained one. Immigrant's mistrust of law enforcement is based on their experience with the police in their native country, existing language barriers, and cultural differences. It is also known that undocumented immigrants are vulnerable to criminals as many undocumented immigrants cannot open up bank accounts without proper identification, thus they tend to have large sums of cash at their homes and on their person. When victimized, they often do not report crimes as they are afraid that they will be deported. The federal government developed a program that allows for victims to feel safe when reporting a crime, which is called the U-Visa Certification program. The U-Visa program grants temporary four year legal status to immigrant victims. The U-Visa Certification program was introduced as part of the Victims of Trafficking and Violence Prevention Act of 2000 and its intent was to:

1. strengthen the ability of law enforcement to detect, investigate and prosecute cases of domestic violence, sexual assault, human trafficking and other crimes and
2. offer protection to victims of such crimes.

A. **ELIGIBILITY:** To be eligible for a U-visa, immigrant victims must meet four statutory requirements and they must include a certification from a certifying official or agency that they have been, are being, or are likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity. The law requires that a person who is eligible for a U-visa must:

1. have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity;
2. possess information concerning such criminal activity;

3. have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
4. have been the victim of a criminal activity that occurred in the United States or violated the laws of the United States.

The U-visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, or prosecution of certain qualifying criminal activity. The Chief of Police of the Amherst Police Department may, under very strict U-Visa guidelines and after consultation with the District Attorney's Office, certify as part of a U-Visa Application an immigrant victim's cooperation with the Amherst Police Department. Law enforcement officials who sign certifications do not confer any immigration status upon the victim, but rather enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Only DHS has the discretion to grant or deny U-visa status to the victim.

A victim who received certification and was granted a U-visa has an ongoing obligation to provide assistance. Law enforcement officials may notify the United States Citizen and Immigration Services directly for cases in which victims are no longer helpful. However, such notification is appropriate only when the victim's lack of cooperation is not reasonable.

As a victim's cooperation is essential to detect, investigate and prosecute crimes, Amherst police officers should be aware of its availability and applicability within this community. Please see appendix #1, *UVISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS* for helpful information.

B. OUTREACH AND COMMUNITY NOTIFICATION: It is important that the immigrant community know that this agency is a resource for assistance, not deportation. It is also important that the community understand that the Amherst Police Department has no authority to enforce immigration laws, so as to not be unjustly accused of a dereliction of our duty. To accomplish this notification, officers will be encouraged to discuss this policy with community members within their sectors. The Administrative Division will make this policy available through Community Policing/Outreach Events, the Records Department, and by posting it on the department website and other online resources.

APPENDIX 1

U-VISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS

Purpose of the U-visa

• The U-visa facilitates the reporting of crimes to law enforcement officials by immigrant victims of crime, including domestic violence, sexual assault, human trafficking and other crimes listed in the U-visa statute.

Benefits of the U-visa

• This type of visa strengthens law enforcement agencies' ability to detect, investigate, and prosecute crime while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.

Who is eligible for a U-visa?

To be eligible for a U-visa

- an individual must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities;
- the individual must possess information concerning the criminal activity;
- the individual must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local official in the detection, investigation, or prosecution of the criminal activity; and
- the criminal activity must have occurred in the United States or its territories and possessions or violated U.S. laws.

U-visa Qualifying Criminal Activity

• U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law.

• The term *any similar activity* accounts for the wide variety of state and federal criminal laws that may have names different from the criminal activity listed in the statute but are comparable in nature and elements to the enumerated criminal activity.

Status of Crime Perpetrator

• A victim may qualify for a U-visa certification regardless of whether there is any familial relationship between the victim and the perpetrator. The perpetrator may have any immigration or citizenship status such as U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.

Certification Requirements

- A certifying official must complete U.S. Citizenship and Immigration Services (USCIS) Form I-918, Supplement B. A certifying official is the head of a law enforcement agency or a person(s) with supervisory responsibility designated by the head of the agency to provide certifications.
- The certification is necessary to establish eligibility for the U-visa, but by itself does not grant immigration status to the victim. To obtain a U-visa, a victim must meet certain eligibility requirements, in addition to obtaining a U-visa certification. USCIS has sole authority to grant or deny a U-visa.
- The certification should provide specific details about the nature of the crime being detected, investigated, or prosecuted, and describe the petitioner's helpfulness in the case.
- U-visa certification does not require that law enforcement investigate the criminal activity beyond reporting of the crime. The certification attests only to the U-visa petitioner's willingness to be helpful or past or present helpfulness in detection, investigation, prosecution, or investigation efforts.

Assessing the Helpfulness of the U-visa Applicant

- If a U-visa petitioner filed a police report and is willing to assist—or has assisted or cooperated—with detection, investigation, or prosecution of criminal activity, a certification may be provided even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.
- Law enforcement officials may issue a certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and identifies a person as a victim of criminal activity. The investigation need not be complete prior to issuing a certification.
- Congress intended to allow victims to obtain U-visa certifications at very early stages of crime detection—during investigations into criminal activity.
- To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance when reasonably requested, as the statute specifies.

SCHEDULE FOR 2017 ANNUAL MEETING

- JANUARY 3 (Tues.) BOARD VOTES ON TM AND ELECTION DATES
- JANUARY 26 (Thur.) POST NOTICES FOR WARRANT OPENING DATE
(By-Laws say 14 days before opening of warrant)
- FEBRUARY 9 (Thur.) OPENING OF WARRANT
- MARCH 9 (Thur.) CLOSING OF WARRANT
(By-Laws say 75 days before TM)
- MARCH 14 (Tues.) BOARD TO REVIEW AND SIGN WARRANT
(By-Laws say "...as soon as practicable thereafter signed")
BOARD TO REVIEW ARTICLES
- MARCH 15 (Wed.) SEND TO TAB
- MARCH 21 (Tues.) *BOARD TO REVIEW ARTICLES*
- MARCH 22 (Wed.) RECEIVE BACK FROM TAB FOR PROOFING
- MARCH 23 (Thur.) RETURN PROOF BACK TO TAB FOR AD
(To be published in March 31st Tab)
- by MARCH 24 (Fri.) POST / ADVERTISE / DISTRIBUTE WARRANTS
(Posting is required to be done at least 14 days before an ATM. That date would be May 10. **Signed warrant to Town Clerk.**)
Advertising/Distribution – mail to TMM's, publish in newspaper, posted on website – is required to be done only 15 days before an ATM. That date would be May 11.)
- MARCH 28 (Tues.) *BOARD TO REVIEW ARTICLES*
- APRIL 4 (Tues.) *BOARD TO REVIEW ARTICLES*
- APRIL 11 (Tues.) *BOARD TO REVIEW ARTICLES*
- APRIL 18 (Tues.) *BOARD TO REVIEW ARTICLES*
- APRIL 25 (Tues.) *BOARD TO REVIEW ARTICLES*
- APRIL 28 (Fri.) BEGIN TO SEND RECOMMENDATIONS TO SELECTMEN FOR REVIEW AND COMMENT
- MAY 2 (Tues.) TOWN ELECTION
- MAY 4 (Thurs.) FINAL COMMENTS ON RECOMMENDATIONS DUE
- MAY 5 (Fri.) REPORT SENT TO TIMMY FOR PRINTING
- MAY 8 (Mon.) MAIL COMBINED REPORTS (INCL. CIP/ANNUAL REPORT)
(By-Laws say 15 days before Annual TM)
- MAY 23 (Tues.) TOWN MEETING
- MAY 25 (Thur.) TOWN MEETING
- MAY 30 (Tues.) TOWN MEETING (if necessary)
- JUNE 1 (Thurs.) TOWN MEETING (if necessary)

