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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 21 863

SIX BROTHERS, INC. d/b/a BROOKLINE SUNOCO,
FAHD IQBAL, IPGG, INC. d/b/a ONE STOP MARKET,
SUKHJINDER GILL, COMM. AVE. GAS & SERVICE, INC.
d/b/a COMMONWEALTH MOBIL, and
EMILE HERAIKI,

Plaintiffs,

v.

TOWN OF BROOKLINE,
HEATHER HAMILTON as Chair of Brookline Select Board,
RAUL FERNANDEZ as Vice Chair of Brookline Select Board,
BERNARD GREENE as Brookline Select Board Member,
JOHN VANSCOYOC as Brookline Select Board Member, and
MIRIAM ASCHKENASY as Brookline Select Board Member,

Defendants.

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NORFOLK COUNTY

**COMPLAINT AND PRAYER FOR
DECLARATORY RELIEF PURSUANT TO M.G.L. c. 231A, § 1**

Overview

1. The Plaintiffs challenge the lawfulness of a newly-enacted General By-Law in the Town of Brookline that purports to prohibit the sale of tobacco products to anyone who was born after January 1, 2000. That By-Law must be overturned on two grounds. First, state law expressly preempts it. State law establishes twenty-one as the age at which persons can lawfully purchase tobacco products. The state statute contains an express preemption clause, which supersedes any conflicting local law, such as the Brookline By-Law at issue here. Second, on its face, the By-Law violates the Equal Protection guarantees set forth in the Massachusetts

Constitution by arbitrarily dividing the adult population into two classes with distinctly unequal rights. Under the Brookline By-Law, someone who turned twenty-one in the year 2020 may purchase tobacco products in perpetuity, whereas someone who turns twenty-one in the year 2021 will be prohibited from purchasing tobacco products in perpetuity. Exacerbating that inequity is the fact that, when the By-Law takes effect, adults who have already turned twenty-one earlier this year, and have begun lawfully purchasing tobacco products in Brookline, will see that right taken away. The Plaintiffs respectfully request that the Court vindicate their statutory and Constitutional rights by declaring Brookline's By-Law to be null, void and of no effect.

Parties

2. Plaintiff Six Brothers, Inc. d/b/a Brookline Sunoco, is a Massachusetts corporation with a principal place of business located at 454 Harvard Street, Brookline, Massachusetts ("Brookline Sunoco").

3. Plaintiff Fahd Iqbal, is the owner and operator of Brookline Sunoco and resides in Attleboro, Massachusetts.

4. Plaintiff IPGG, Inc. d/b/a One Stop Market, is a Massachusetts corporation with a principal place of business located at 321 Cypress Street, Brookline, Massachusetts ("One Stop Market").

5. Plaintiff Sukhjinder Gill, is the owner and operator of One Stop Market and resides in Saugus, Massachusetts.

6. Plaintiff Comm. Ave. Gas & Service, Inc. d/b/a Commonwealth Mobil, is a Massachusetts corporation with a principal place of business located at 850 Commonwealth Avenue, Boston, Massachusetts ("Commonwealth Mobil").

7. Plaintiff Emile Heraiki, is the owner and operator of Commonwealth Mobil and resides in Westwood, Massachusetts.

8. Defendant Town of Brookline, is a duly organized town in the Commonwealth of Massachusetts. Brookline has a town form of government, headed by an elected Select Board and a representative town meeting.

9. Defendant Heather Hamilton is the duly elected Chair of the Town of Brookline's Select Board, and a named defendant pursuant to M.G.L. c. 231A, § 8, M.G.L. c. 40, § 2, and Town of Brookline By-laws, Article 3.1, § 3.1.3.

10. Defendant Raul Fernandez is the duly elected Vice Chair of the Town of Brookline's Select Board, and a named defendant pursuant to M.G.L. c. 231A, § 8, M.G.L. c. 40, § 2, and Town of Brookline By-laws, Article 3.1, § 3.1.3.

11. Defendant Bernard Greene is a duly elected Member of the Town of Brookline's Select Board, and a named defendant pursuant to M.G.L. c. 231A, § 8, M.G.L. c. 40, § 2, and Town of Brookline By-laws, Article 3.1, § 3.1.3.

12. Defendant John VanScoyoc is a duly elected Member of the Town of Brookline's Select Board, and a named defendant pursuant to M.G.L. c. 231A, § 8, M.G.L. c. 40, § 2, and Town of Brookline By-laws, Article 3.1, § 3.1.3.

13. Defendant Miriam Aschkenasy is a duly elected Member of the Town of Brookline's Select Board, and a named defendant pursuant to M.G.L. c. 231A, § 8, M.G.L. c. 40, § 2, and Town of Brookline By-laws, Article 3.1, § 3.1.3.

14. The Attorney General of the Commonwealth of Massachusetts is not a named party; however, the Office of the Attorney General will be notified of this proceeding in accordance with M.G.L. c. 231A, § 8.

Facts

State Law – Twenty-One Is The Age At Which Tobacco May Be Purchased

15. On July 27, 2018, Governor Charlie Baker signed into law Chapter 157 of the Acts of 2018, “An Act Protecting Youth from the Health Risks of Tobacco and Nicotine Addiction” (the “State Tobacco Act”). The State Tobacco Act took effect on December 31, 2018. A true and correct copy of the State Tobacco Act is attached as **Exhibit A**.

16. Section 6(b) of the State Tobacco Act prohibits the sale of tobacco products (defined to include electronic cigarettes) to a person who is under twenty-one years of age.

17. Section 19 of the State Tobacco Act, however, provides an exception that allows tobacco sales to persons who attained the age of eighteen before December 31, 2018 in communities where, as of that date, no “municipal ordinance, by-law or other regulation... prohibited sales of tobacco products to persons under the age of nineteen, twenty or twenty-one....”

18. Section 22 of the State Tobacco Act clarifies the manner in which it preempts inconsistent state or local laws as follows: “This act shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law relating to the minimum sales age to purchase tobacco products; provided, that this act shall neither preempt, supersede nor nullify any inconsistent, contrary or conflicting local law in effect on December 30, 2018 that prohibits the sale of tobacco products to persons under the age of 19, 20, or 21 as applied to persons who attained the age of 18 before December 31, 2018. This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.”

19. The effects of Sections 19 and 22 are to preempt local laws that conflict with the sales of tobacco products to persons under twenty-one years of age, and to carve out an exception for persons having attained the age of eighteen on December 31, 2018, unless such persons having attained the age of nineteen, twenty, or twenty-one were already subject to a local law prohibiting sales of tobacco products to them at the time the State Tobacco Act took effect.

20. The State Tobacco Act has a lengthy legislative history. Bills S.2571 and H.4784, which eventually became the State Tobacco Act, emerged after numerous prior iterations, drafts and amendments and were the subject of extensive legislative commentary and debate.

21. The legislative intent behind the State Tobacco Act was to prohibit youth under the age of twenty-one from purchasing tobacco products, without infringing on the rights of adults, including eighteen-year-olds whose local communities permitted them to purchase tobacco products before the State Tobacco Act took effect. The legislative intent was to gradually establish a uniform statewide policy regarding the age at which tobacco products may be purchased.

22. Debating Bill H.4479, a predecessor to the State Tobacco Act, Rep. Kate Hogan noted that “[r]etailers must deal with a patchwork of laws throughout the Commonwealth.... This bill eliminates confusion by establishing one minimum age statewide.” Rep. Hogan further commented that “21 will be the age of everything allowed and under everything is prohibited... We want 21 to be that age....” True and correct copies of Excerpts from House Ways and Means Committee debate on May 9, 2018 regarding H.4479 of the 190th Session of the General Court are attached as **Exhibit B**.

23. Commenting on Bill S.2571, Sen. Jason M. Lewis stated that it is “consistent to have an age of 21 for [purchasing] alcohol, tobacco and marijuana. Many communities have already raised the age to 21 for buying tobacco, including our 3 biggest cities.... We need to create a level playing field for retailers.” Sen. Lewis further stated that “[o]n our local boards of health, many communities have put in place regulations to reduce nicotine use. This is in many ways positive, but also creates a patchwork of laws throughout the Commonwealth. Another goal of this legislation is to create consistency. First, it would raise the legal age of sale for all nicotine or tobacco products to 21, grandfathering in teens who are currently of legal age.” True and correct Excerpts from Senate Ways and Means Committee debate on June 28, 2018 regarding S.2571 of the 190th Session of the General Court are attached as **Exhibit C**.

24. At the signing ceremony for the State Tobacco Act, Governor Baker observed that, “There’s more than enough evidence to support ensuring that we have a statewide standard with respect to when the purchase and use of these [tobacco] products would be considered age appropriate.... At this time, it’s our view that a statewide approach is perfectly appropriate.”¹

25. Plaintiffs sell and/or purchase tobacco products and e-cigarettes in the Town of Brookline.

26. Pursuant to M.G.L. c. 64C § 2, tobacco retailers in the Commonwealth of Massachusetts must be licensed. The Plaintiffs have met all statutory requirements and are duly licensed to sell cigarettes and other tobacco products.

27. The Office of the Attorney General has promulgated regulations regarding the retail sale of tobacco products. By way of example, 940 C.M.R. 21.04(3)(a) and (b) require all

¹ See Massachusetts raises statewide tobacco buying age to 21, dated July 27, 2018, https://www.masslive.com/politics/2018/07/massachusetts_raises_statewide.html

tobacco retailers to implement and operate “a training program for all employees who handle exchanges of cigarettes, smokeless tobacco products, or electronic smoking devices regarding compliance with laws and/or local ordinances prohibiting the sale of such products to minors.” The Plaintiffs have met this regulatory requirement and have properly trained all relevant employees.

28. In addition, M.G.L. c. 270, § 6, grants authority to the Department of Public Health to regulate required signage to be posted by tobacco retailers in the Commonwealth of Massachusetts. Pursuant to this authority, 105 CMR 665.015(A)-(E) sets forth the signage requirements. By way of example, 105 CMR 665.015(A)(3) requires such signage to include “a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years old is prohibited.” The Plaintiffs have met this regulatory requirement and properly display signage in accordance with all relevant regulations and laws.

The Town Of Brookline Deviates From State Law Age Requirement

29. Article 8.23 of the Town of Brookline’s General By-Laws, entitled “Tobacco Control,” places certain additional limitations on the sale of and youth access to tobacco products within the Town of Brookline.

30. On May 19, 2020, the Town of Brookline convened its annual town meeting for the purpose of voting on the proposed budget as well as various proposed legislative initiatives. A true and correct copy of the Warrant notifying Brookline residents of the vote, excerpted to only include the relevant Article 27, is attached as **Exhibit D**.

31. Article 27 of the Warrant proposed to amend Article 8.23 of the Town’s General By-Laws. *Id.* at 37. Specifically, the proposal would have prohibited the sale of tobacco or e-cigarette products to anyone born after January 1, 1976. *Id.* at 53 (proposing to amend section

8.23.5(d) to prohibit the sale of tobacco or e-cigarette products “to anyone born after 1/1/1976”).

A true and correct copy of the Warrant Article Explanations Filed by the Petitioners for the May 19, 2020 Annual Town Meeting, excerpted to only include the relevant Article 27, is attached as **Exhibit E**.

32. On April 14, 2020, Brookline Town Moderator Edward N. Gadsby, Jr. issued a Declaration of Recess and Continuance of Annual Town Meeting, rescheduling it for June 17, 2020.

33. Subsequently, a special town meeting was convened on November 17, 2020, at which the proposal to amend Article 8.23 of the Town’s General By-Laws was presented as Warrant Article 14. A true and correct copy of the Warrant for the First Special Town Meeting, excerpted to only include the relevant Article 14, is attached as **Exhibit F**.

34. Warrant Article 14 proposed substantially the same changes to the Tobacco Control By-Law, except that instead of prohibiting the sale of tobacco products to persons born after January 1, 1976, Article 14 proposed to prohibit the sale of tobacco products to persons born on or after January 1, 2000.

35. Warrant Article 14 also proposed to amend General By-Law 8.23.5(H) regarding required signage to state, “[t]he sale of tobacco or e-cigarette products to someone under the minimum legal sales age of 21 years of age born on or after 1/1/2000 is prohibited.”

36. In support of that adjustment to the proposed amendment, the Petitioners offered a revised explanation which was included in the Reports of Select Board and Advisory Board. A true and correct copy of the Reports of Select Board and Advisory Board, excerpted to only include the report on relevant Article 14, is attached hereto as **Exhibit G**.

37. At that time, the Town of Brookline Select Board consisted of Bernard W. Greene (Chair), Heather Hamilton (Vice Chair), Nancy S. Heller, Raul A. Fernandez, John VanScoyoc and Melvin A. Kleckner (Town Administrator). The Select Board characterized Warrant Article 14 as a petition that “would prohibit the sale of tobacco to anyone born prior to January 1[,] 2000.” *Id.* at 147. Upon information and belief, the description was intended to state that Warrant Article 14 “would prohibit the sale of tobacco to anyone born *after* January 1, 2000.” The Select Committee added the further characterization that “[i]f some[one] is allowed by law to purchase tobacco, they can still do so, but going forward that age limitation would increase.” *Id.*

38. Dr. Swannie Jett, the Town of Brookline Director of Public Health, spoke against Warrant Article 14 on the grounds that it was not properly vetted and that the Health Department had not had an opportunity to review the associated data. Dr. Jett also expressed concern that the amended Tobacco Control By-Law would not withstand legal challenge.

39. The Select Board voted to take no action on Warrant Article 14.

40. At the time, the Advisory Board consisted of thirty-two (32) Brookline residents, identified at **Exhibit G**, page i.

41. The Advisory Board described several changes associated with proposed Warrant Article 14, concluding with “the most controversial change,” which “would prohibit adults born after 1976 from purchasing tobacco, but would allow adults born before that date to continue to purchase tobacco unabated.” **Exhibit G**, p. 14-15.

42. The Advisory Board found that “[t]he wording of some provisions in the petitioner’s wording are arbitrary and vague, and the petitioners did not do basic research into how many businesses would be affected by the changes nor their economic impact. While the

petitioners are well intentioned, the major change proposed in this article (focused on prohibiting adults born after 1976 from purchasing tobacco) is a radically different approach from prior efforts that no other community or state is known to have attempted and, according to Town Counsel's office, is likely to be struck down by the Attorney General." *Id.*, p. 149.

43. The Advisory Board expressed four distinct sets of concerns regarding Article 14. First, the proposal would be ineffective inasmuch as adults looking to purchase tobacco "could simply buy through the internet, have someone buy it for them, or walk into Boston and buy it there. Giving Boston businesses a financial windfall at the expense of Brookline small businesses seemed highly unlikely to help adults in Brookline stop using tobacco." *Id.*, p. 151. Second, prohibiting the sale of tobacco to adults would likely contribute to an increase in black markets and criminal syndicates. Third, the Department of Health lacks the resources and personnel needed for enforcement. Fourth, the Advisory Board expressed reservations about "the most contentious part" of Article 14: "taking away the right of some adults – those born after January 1, 1976 – but not others to buy a legal product." *Id.*, p. 151.

44. The Advisory Board discussed the proposed amendment to Warrant Article 14 that would move the cut-off date to January 1, 2000, but concluded that it "would not change the fact that Brookline would be dividing adults into groups of people, some of whom would have less rights than others." *Id.*

45. Assistant Town Counsel Patty Correa wrote that "the proposed 'declassification' based on a birth date must pass... muster under the Equal Protection Clause. It is doubtful as to whether the '1/1/2000' date of birth change recommended by the subcommittee would be any different from a constitutionality aspect than the '1976' proposal." *Id.*, p. 152.

46. Furthermore, Ms. Correa expected "that the Attorney General's Office is likely to

find the birthdate restriction in the proposed article to be in conflict with [state law].” *Id.*

47. The Advisory Board voted, by a twenty (20) to six (6) margin, in favor of recommending no action on Warrant Article 14.

48. Despite reservations from the Select Board, the Advisory Board and Assistant Town Counsel, Brookline voters approved Warrant Article 14, in its amended form, thereby amending Article 8.23 of the Town’s General By-Laws to prohibit sales of tobacco or e-cigarette products to anyone born after January 1, 2000.

49. M.G.L. c. 40 § 32 requires pre-approval of a proposed by-law from the Attorney General to review and verify that a proposed by-law does not conflict with the Constitution or laws of the Commonwealth. Pursuant to this statute, the Town Clerk of Brookline sent a certified copy of General By-Law 8.23 to the Attorney General and requested approval.

50. By letter dated July 19, 2021 the Attorney General’s Office approved Warrant Article 14. The reviewing Assistant Attorney General did not discuss any Constitutional challenges to Article 14, but did consider whether it conflicts with Chapter 157 of the Acts of 2018. She concluded that it does not. A true and correct copy of that correspondence is attached as **Exhibit H**.

51. On or about August 27, 2021, the Town of Brookline caused the formal posting and notice of Warrant Article 14 pursuant to M.G.L. c. 40 § 32. Accordingly, and as confirmed in writing by the Town’s Public Health Department, the article became effective on August 27, 2021, and enforcement thereof may commence on September 27, 2021.

52. When confirming the above enforcement date for Warrant Article 14, the Town’s Director of Public Health, Dr. Swannie Jett, also noted the following: (i) business owners will be obligated to prevent sales of tobacco products to persons born on or after January 1, 2000; (ii) the

health department did not engage in any studies or analysis to evaluate the potential impact or effects of the new by-law; and (iii) the health department requested that the petitioners of the by-law consider staffing issues and budget requirements for enforcement of the new by-law, but those requests seemingly were ignored.

53. The Town of Brookline acknowledges, *inter alia*, that its own Public Health Department was not given the opportunity to perform any studies or analysis concerning Warrant Article 14 and how it might impact consumers or residents and business owners in the Town.

54. Stated simply, the Plaintiff business owners will be compelled to prohibit legal tobacco sales to any persons born on or after January 1, 2000, purely on the basis of their age, and even though such persons have enjoyed the right to purchase tobacco products in the Town of Brookline since turning 21 years old, post January 1, 2000 through the present date.

55. In effect, the Defendants are compelling the Plaintiffs to engage in conduct that is violative of Equal Protection rights for citizens of the Commonwealth of Massachusetts, as further described below.

COUNT I:
Declaratory Relief Pursuant to M.G.L. c. 231A
Regarding Preemption

56. This claim incorporates paragraphs 1-55 above.

57. There exists a true controversy between Plaintiffs and Defendants concerning, *inter alia*, the lawfulness of General By-Law 8.23, as amended by Warrant Article 14.

58. General By-Law 8.23, as amended by Warrant Article 14, is inconsistent, contrary or in conflict with the State Tobacco Act and, therefore, the State Tobacco Act preempts, supersedes and nullifies it.

59. Section 22 of the State Tobacco Act expressly preempts “any” local law “relating to the minimum sales age to purchase tobacco products” that is “inconsistent, contrary or conflicting” with the State Tobacco Act.

60. General By-Law 8.23, as amended by Warrant Article 14, is a local law relating to the minimum sales age to purchase tobacco products.

61. General By-Law 8.23.5(D), as amended by Warrant Article 14, is inconsistent, contrary or in conflict with the State Tobacco Act, which was intended to gradually create a uniform, *statewide standard* for age-restrictions on the sale of tobacco, without depriving anyone who had already attained the legal age for purchasing tobacco of the right to continue doing so. The purpose of the State Tobacco Act cannot be achieved in the face of General By-Law 8.23. The legislative intent to preclude local action is clear.

62. General By-Law 8.23.5(H), as amended by Warrant Article 14, is also inconsistent, contrary or in conflict with the State Tobacco Act’s provisions for required signage.

63. General By-Law 8.23, as amended by Warrant Article 14, was not in effect on December 30, 2018 and is subject, therefore, to preemption.

64. The Plaintiffs respectfully request that the Court declare General By-Law 8.23, as amended by Warrant Article 14, to be preempted, superseded and nullified by the State Tobacco Act.

65. Further, the Plaintiffs respectfully request that the Court declare their full legal rights and interests in making sales of tobacco products to persons who were born after January 1, 2000 and have attained the age of twenty-one.

COUNT II
Equal Protection

66. This claim incorporates paragraphs 1-65 above.

67. The Massachusetts Constitution provides that “all people are born free and equal and have certain natural, essential and unalienable rights,” including the right to equal protection of the laws. *See* Declaration of Rights, Article I, as amended by Article CVI.

68. General By-Law 8.23, as amended by Warrant Article 14, arbitrarily divides the adult population by birthdate, conferring substantially more rights on some adults than on other, similarly-situated adults. As a result, General By-Law 8.23, as amended by Warrant Article 14, arbitrarily compels the Plaintiffs to discriminate against its tobacco customers based on the date by which they attained the age of twenty-one. For example, the Plaintiffs are always free to sell tobacco products to someone born in late December 1999, but the Plaintiffs may never sell tobacco products to someone born in early January 2000 – even after that person attains the age of 70, 80 or 90 years old.

69. It is a longstanding principle of the equal protection jurisprudence that the “rights of all persons must rest upon the same rule under similar circumstances” and that “[d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.”

70. General By-Law 8.23, as amended by Warrant Article 14, is the first legislation of its kind in Massachusetts and represents discriminations of an unusual character.

71. The equal protection guarantees in the Massachusetts Constitution preclude the Town of Brookline from conferring certain rights on some adults, while refusing to recognize the same rights in other adults, based on nothing more than the date on which they reached the age of majority.

72. The Plaintiffs are entitled to a declaration that General By-Law 8.23, as amended by Warrant Article 14, violates the Equal Protection guarantees of the Massachusetts Constitution.

73. The Plaintiffs, having had their rights – secured to them by the Massachusetts Constitution and laws of the Commonwealth – interfered with by General By-Law 8.23, as amended by Warrant Article 14, are entitled to an award of the costs of bringing this action and reasonable attorneys’ fees pursuant to M.G.L. c. 12, § 11I.

Prayer for Relief

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court award the following relief in their favor:

- (1) Enter a declaratory judgment to the effect that Chapter 257 of the Acts of 2018 is contrary to, preempts and supersedes Warrant Article 14 (amending Article 8.23 of the Town’s General By-Laws);
- (2) Enter a declaratory judgment to the effect that Warrant Article 14 (amending Article 8.23 of the Town’s General By-Laws) is contrary to protections guaranteed by the Massachusetts Constitution and its Declaration of Rights;
- (3) Set aside Warrant Article 14 (amending Article 8.23 of the Town’s General By-Laws) as null and void;
- (4) Order the Defendants to pay an award to the Plaintiffs for Plaintiffs’ costs in bringing this action and reasonable attorneys’ fees pursuant to M.G.L. c. 12, § 11I; and
- (5) Order such further relief as is deemed just and proper.

JURY DEMAND

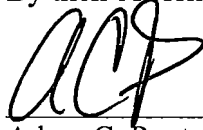
The Plaintiffs respectfully request a trial by jury on all issues so triable.

[Signature Page Follows]

Respectfully submitted,

Plaintiffs,
SIX BROTHERS, INC. d/b/a BROOKLINE SUNOCO,
FAHD IQBAL,IPGG, INC. d/b/a ONE STOP MARKET,
SUKHJINDER GILL, COMM. AVE. GAS & SERVICE,
INC. d/b/a COMMONWEALTH MOBIL, and
EMILE HERAIKI,

By their Attorneys,



Adam C. Ponte, Esq. (BBO #684720)

aponte@fletchertilton.com

Patrick C. Tinsley, Esq. (BBO #663648)

ptinsley@fletchertilton.com

Michael E. Brangwynne, Esq. (BBO #683279)

mbrangwynne@fletchertilton.com

FLETCHER TILTON PC

12 Post Office Square, 6th Floor

Boston, MA 02109

P: (617) 336-2280 / F: (617) 336-4480

DATED: September 17, 2021

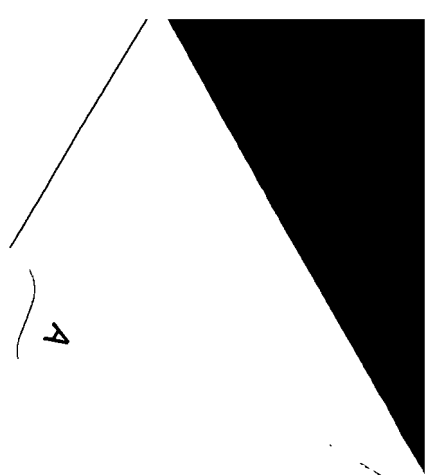


Exhibit A

Acts (2018)

Chapter 157

AN ACT PROTECTING YOUTH FROM THE HEALTH RISKS OF TOBACCO AND NICOTINE ADDICTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Section 1 of chapter 64C of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 3, the words “meanings:—” and inserting in place thereof the following words:- meanings:— “commissioner”, the commissioner of revenue;

SECTION 2. Section 10 of said chapter 64C, as so appearing, is hereby amended by striking out, in lines 46 and 50, the word “eighteen” and inserting in place thereof, in each instance, the following figure:- 21.

SECTION 3. Said section 10 of said chapter 64C, as so appearing, is hereby amended by striking out the eighth sentence.

SECTION 4. Chapter 71 of the General Laws is hereby amended by striking out section 2A, as so appearing, and inserting in place thereof the following section:-

Section 2A. No person shall use a tobacco product, as defined in section 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a public or private primary or secondary school or at a school-sponsored event.

Each school committee or board of trustees shall establish a policy regarding violations of this section. The policy may include, but shall not be limited to, mandatory education classes on the hazards of using tobacco products.

SECTION 5. Chapter 74 of the General Laws is hereby amended by adding the following section:-

Section 58. No person shall use a tobacco product, as defined in section 6 of chapter 270, within the school buildings or facilities or on the grounds or school buses of a public or private vocational school or at a vocational school-sponsored event.

Each school committee or board of trustees shall establish a policy regarding violations of this section. The policy may include, but shall not be limited to, mandatory education classes on the hazards of using tobacco products.

SECTION 6. Chapter 94 of the General Laws is hereby amended by striking out section 307C, as appearing in the 2016 Official Edition, and inserting in place thereof the following section:-

Section 307C. The department of public health may, in consultation with the attorney general and the department of revenue, establish regulations for persons engaged in the sale or shipment of a tobacco product, as defined in section 6 of chapter 270, to prevent the sale or delivery of tobacco products to a person under 21 years of age.

SECTION 7. Section 72X of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Using tobacco products, as defined in section 6 of chapter 270, by any employee of such nursing homes is hereby prohibited in all patient care areas.

SECTION 8. Chapter 112 of the General Laws is hereby amended by inserting after section 61 the following section:-

Section 61A. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:-

“Health care institution”, (i) an individual, partnership, association, corporation or trust or a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or (ii) a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. For the purpose of this section, a retail establishment shall be considered a health care institution if it operates at a health care institution or has a health care institution located on or within its premises; provided, however, that a retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution.

“Retail establishment”, a store that sells goods to the public.

(b) No health care institution shall sell or authorize the sale of tobacco products, as defined in section 6 of chapter 270, within its buildings or facilities or on its grounds.

SECTION 9. Chapter 270 of the General Laws is hereby amended by striking out sections 6 to 7, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the following 3 sections:-

Section 6. (a) As used in this section and sections 6A and 7, the following words shall have the following meanings unless the context clearly requires otherwise:

“Manufacturer”, a person that manufactures or produces a tobacco product.

“Person”, an individual, firm, fiduciary, partnership, corporation, trust or association, however formed, or a club, trustee, agency or receiver.

“Retail establishment”, a physical place of business or a section of a physical place of business wherein a tobacco product is offered for sale to consumers.

“Retailer”, a person that operates a retail establishment.

“Tobacco product”, a product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” shall not include a product that has been approved by the United States

Food and Drug Administration for the sale of or use as a tobacco cessation product and is marketed and sold exclusively for the approved purpose.

(b) No person shall sell or provide a tobacco product to a person who is under 21 years of age.

(c) No manufacturer or retailer shall distribute or cause to be distributed a free sample of a tobacco product in a retail or other commercial establishment; provided, however, that this subsection shall not apply to retail tobacco stores and smoking bars as defined in section 22.

(d) A person who violates this section shall be punished by a fine of \$100 for the first offense, \$200 for a second offense and \$300 for a third or subsequent offense.

(e) The department of public health may promulgate regulations to implement this section.

Section 6A. A person who sells tobacco rolling papers to a person under the age of 21 shall be punished by a fine of \$25 for the first offense, \$50 for the second offense and \$100 for a third or subsequent offense.

Section 7. (a) A copy of sections 6 and 6A shall be posted conspicuously in a retail establishment.

(b) The department of public health shall develop signage that shall disclose referral information for smoking cessation resources. Retailers shall conspicuously post such signage in their retail establishments.

(c) Whoever violates this section shall be punished by a fine of not more than \$50. Any person unlawfully removing a copy of the aforementioned signage on the premises of a retail establishment shall be punished by a fine of \$10.

SECTION 10. Section 22 of said chapter 270 is hereby amended by striking out, in lines 90, 276 and 281, as so appearing, the figure “18” and inserting in place thereof, in each instance, the following figure:-
21.

SECTION 11. Subsection (a) of said section 22 of said chapter 270, as amended by section 46 of chapter 55 of the acts of 2017, is hereby further amended by striking out the definitions of “Smoking” or “smoke” and “Smoking bar” and inserting in place thereof the following 3 definitions:-

“Smoking” or “smoke”, the inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

“Smoking bar”, an establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products as defined in section 6 for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the

appropriate authority in the city or town in which the establishment is located; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

“Tobacco product”, a tobacco product as defined in section 6.

SECTION 12. Said section 22 of said chapter 270 is hereby further amended by striking out, in line 249, as appearing in the 2016 Official Edition, the word “tobacco”.

SECTION 13. Said chapter 270 is hereby further amended by adding the following section:-

Section 27. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Child-resistant packaging”, packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C. 1471 to 1476, inclusive.

“Liquid nicotine container”, a package: (i) from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and (ii) that is used to hold soluble nicotine in any concentration; provided, however, that “liquid nicotine container” shall not include a sealed, prefilled and disposable container of nicotine in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

(b) No person shall knowingly sell, distribute or import for sale:

(i) a liquid or gel substance containing nicotine unless the substance is contained in child-resistant packaging; or

(ii) a liquid nicotine container unless the container includes child-resistant packaging as part of its design.

(c) A person who violates this section shall be subject to a civil penalty of \$250 for a first violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.

(d) Local boards of health, departments of public health, inspection departments or equivalent local authorities or their agents shall enforce this section through the noncriminal disposition of violations.

SECTION 14. Section 43A of chapter 272 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 4, the words “cigar, cigarette, or pipe” and inserting in place thereof the following words:- pipe or tobacco product as defined in section 6 of chapter 270.

SECTION 15. Section 206 of chapter 139 of the acts of 2012, as most recently amended by section 24A of chapter 118 of the acts of 2013, is hereby further amended by inserting after the word “designee”, in line 10, the following words:- , who shall serve as chair.

SECTION 16. Said section 206 of said chapter 139 as amended by section 166 of chapter 133 of the acts of 2016 is hereby further amended by striking out, in line 6, the figure “2017” and inserting in place thereof the following figure:- 2018.

SECTION 17. The commissioner of public health may promulgate regulations to restrict the sale of tobacco products to persons under the age of 21. The commissioner shall send a notice of proposed changes, including proposed draft regulations, to the house and senate committees on ways and means and the joint committee on public health not less than 90 days before filing any such draft regulations with the secretary of state.

SECTION 18. On the effective date of this act, a retail establishment, as defined in section 6 of chapter 270 of the General Laws, that sells a tobacco product, as defined in said section 6 of said chapter 270, shall conspicuously post a notice produced by the department of public health that states the minimum age for a person to purchase a tobacco product. The notice shall include the date that the minimum sales age to purchase tobacco products shall go into effect. Retail establishments shall continuously post the notice until January 1, 2022.

SECTION 19. Notwithstanding subsection (b) of section 6 of chapter 270 of the General Laws, the prohibition on sales of tobacco products to persons under the age of 21 shall not prohibit such sales to persons who attained the age of 18 before December 31, 2018; provided, however, notwithstanding section 22, that a person who attained the age of 18 before December 31, 2018 shall be subject to any municipal ordinance, by-law or other regulation that prohibited sales of tobacco products to persons under the age of 19, 20 or 21 in effect on December 30, 2018.

SECTION 20. The center for health information and analysis, in collaboration with the division of insurance, the department of public health, the group insurance commission and the office of Medicaid, shall review the tobacco cessation benefits offered by each health insurance plan and compare the tobacco cessation benefits to the United States Preventive Services Task Force recommendations for tobacco smoking cessation in adults. The center shall provide a report of its findings on its website and also forward a copy of the report to the clerks of the house of representatives and the senate, the joint committee on public health, the joint committee on healthcare financing and the house and senate committees on ways and means not later than July 1, 2019.

SECTION 21. Notwithstanding any general or special law to the contrary, there shall be a special legislative commission established and governed by section 2A of chapter 4 of the General Laws to study and provide recommendations regarding the vaping industry.

The special legislative commission shall examine the use of vapes, juuls and other e-cigarettes, particularly among teens and young adults, and investigate how minors are achieving access to such devices. The special legislative commission shall also study the potential negative health effects of using different e-cigarette devices. The study shall include, but not be limited to: (i) considering ways to regulate the vaping industry; (ii) identifying opportunities to educate students on the dangers of e-cigarettes and related devices in comparison to regular cigarettes; and (iii) developing best practices for restricting the use of e-cigarette devices in and near schools.

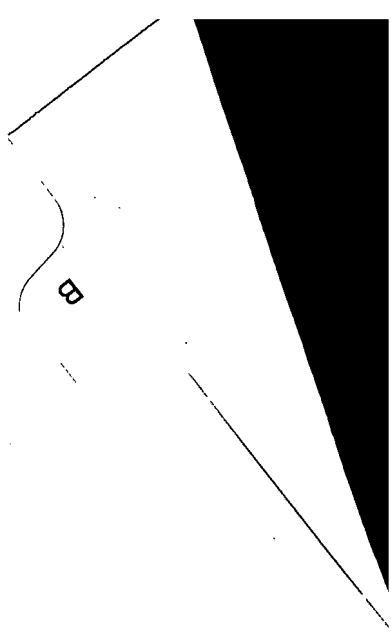
The special legislative commission shall consist of: the house and senate chairs of the joint committee of public health who shall be co-chairs of the task force; the speaker of the house of representatives or a designee; the president of the senate or a designee; the house minority leader or a designee; the senate minority leader or a designee; the commissioner of public health or a designee; and 8 persons to be appointed by the governor, 1 of whom shall be from the Massachusetts Cancer Action Center; 2 of whom shall be representatives from the Massachusetts Health and Hospital Association, Inc.; 1 of whom shall have experience as a school resource officer; 2 of whom shall be school administrators; and 2 of whom shall be representatives from the tobacco or vaping industry.

The special legislative commission shall submit its report and findings, along with any recommendations, to the house and senate committees on ways and means, the joint committee on public health and the clerks of the house of representatives and senate not later than January 1, 2020.

SECTION 22. This act shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law relating to the minimum sales age to purchase tobacco products; provided, that this act shall neither preempt, supersede nor nullify any inconsistent, contrary or conflicting local law in effect on December 30, 2018 that prohibits the sale of tobacco products to persons under the age of 19, 20, or 21 as applied to persons who attained the age of 18 before December 31, 2018. This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.

SECTION 23. This act shall take effect on December 31, 2018.

Approved, July 27, 2018



B

Exhibit B

Full Formal Session (255 bills)

Status: Normal
 Date: 05/09/2018
 Time: 11:00 AM
 Location: House Chamber
 Committee: [House Session](#)

All Floor Debate Bills on the Agenda

Show All bills TRACK SELECTED BILLS GENERATE REPORT

<input type="checkbox"/>	Bill #	Title	Sponsor	Last Action	Status	Progress	Track
<input type="checkbox"/>	HB4479	An Act to protect youth from the health risks of tobacco and nicotine addiction	House Ways and Means	2018-05-10 - Printed as amended version - see HB4486 View comparison to prior version	Passed in the House	50%	<input type="checkbox"/>

Rep. Kate Hogan (D)

I rise today in support of HB4479. I would like to thank Speaker Deleo. Thank you to the gentleman from Quincy. I would like to thank my staff. This bill seeks to reduce tobacco use and nicotine addiction by restricting access for anybody under 21 years of age. By raising the age, we prevent kids from starting the habit. This is critical to saving the lives of our young people. As the national healthcare leader, we have been leading and legislating for twenty years. We took significant steps to curb this use. In 2004, we banned smoking in indoor work places and bars. In 2016 we banned smokeless tobacco in sport venues. You can't even smoke at Fenway Park. We must take action again to protect our youth. Smoking is simply killing our kids. Data suggests that over 100,000 young people will die. If young people start smoking before 21, they become smokers for life. This was a profound and dramatic point of data. 98% of smokers try it before they are 18. If we are serious about stopping teen smoking, we must raise the minimum sales age to 21. A 2015 study found that raising the sales age to 21 would likely prevent or delay individuals from starting to use products. This is common for 14 year olds to interact with 18 year olds who can access tobacco. By raising the legal sale age, it would be harder for teens to get tobacco and vapor products and become addicted for life. This bill is critical for our economy. This is important. Retailers must deal with a patchwork of laws throughout the Commonwealth. Many municipalities have already done this. This bill eliminates confusion by establishing one minimum age statewide. We spend \$4 billion on smoking related healthcare costs. By increasing the age and decreasing the number of kids smoking, this helps limit our healthcare costs. In addition, the omnibus bill amends smoke free workplaces by including vapor product. This bans e-cigarettes and vaping. It's critical we stop the kids from vaping. This bill will ban healthcare institutions to selling vapes. This legislation is vital to preventing youth to becoming addicted to nicotine. This is also critical to creating one standard across the Commonwealth. With over 100 legislators, I hope you would join me in supporting this piece of legislation.

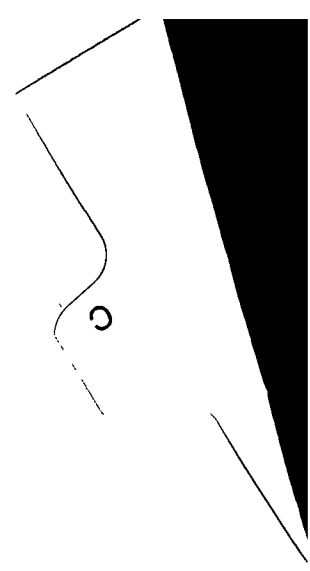


Exhibit C

Date: 06/28/2018

Time: 11:00 AM

Location: Gardner Auditorium

Committee: [Senate Session](#)

All Floor Debate		Bills on the Agenda					
Bill #	Title	Sponsor	Last Action	Status	Progress	Track	
<input type="checkbox"/> SB2571	An Act protecting youth from the health risks of tobacco and nicotine addiction	Senate Ways and Means	2018-06-28 - New text of HB4486 View comparison to prior version	Filed in the Senate	<div style="width: 20%;"><div style="background-color: #ccc; height: 10px;"></div></div> 20%	<input type="checkbox"/>	

Sen. Jason M. Lewis (D)

I'm delighted to rise to speak in support of this legislation which I think is one of the most important public health measures we will take up. This measure will reduce tobacco and nicotine use by our young people, to improve health outcomes, save lives, and reduce health care costs. Tobacco and nicotine use remains the leading cause of preventable death in the Commonwealth; we have not kicked the habit. You may be surprised to learn that tobacco use is responsible for more deaths than drug use, alcohol, car crashes and suicide combined. Tobacco use accounts for 4 billion dollars annually in health care costs in Massachusetts, that we are all paying in our premiums and taxes. Nicotine is a highly addictive drug, and has negative effects on the developing brain. 95% percent of users start before the age of 21. Everything we've done including excise taxes, awareness and cessation programs, has reduced cigarette smoking to 7% for teenagers and about double that for adults. The bad news is that the tobacco industry is always innovating and looking for ways to get more people addicted. The latest way is e-cigarettes which they are aggressively marketing to young people. They are using enticing flavors. The industry is also downplaying any health risks of e-cigarettes. I would acknowledge that for adult smokers, switching to e-cigarettes would be a harm reduction strategy. But everyone agrees that we don't want our young people using e-cigarettes and getting addicted, and dealing with the lifelong health costs. E-cigarette use has exploded over the last 5 years or so. In 2013 less than 5% of high schoolers were using, 2 years ago that number is 1 in 4. I hear anecdotally that vaping, Juuling or whatever the term may be now exceeds 40%. This is a very, very concerning trend. Our school officials are scrambling to find out what to do. They come in all kinds of flavors, and may have a nicotine content even higher than traditional cigarettes. E-cigarettes are not regulated federally, so we don't know what kind of harmful carcinogens or chemicals are in vape liquids. That's what our kids are using and getting addicted to. I fear that all the progress we've made fighting tobacco use is being reversed by what is now happening with e-cigarettes. On our local boards of health, many communities have put in place regulations to reduce nicotine use. This is in many ways positive, but also creates a patchwork of laws throughout the Commonwealth. Another goal of this legislation is to create consistency. First, it would raise the legal age of sale for all nicotine or tobacco products to 21, grandfathering in teens who are currently of legal age. This doesn't punish teenagers for possessing tobacco. For some people there are concerns about this. Their argument is if you 18 you can vote, you can serve in the military, well I've got several arguments for you. This is a proven strategy for reducing youth tobacco use. It gets tobacco products out of high school social networks. Currently 18 year-olds can supply younger teenagers. The institute of medicine projects the age raise would result in a reduction of tobacco use by 12%. There is no single age of adulthood in our society, we made decisions on a case by case basis. In Massachusetts you only have to be 16 years old when to get your drivers license, you have to 18 to vote or serve in the military, you have to be 19 to play for an NBA team, you have to be 21 to carry a firearm, to consume alcohol, to purchase marijuana, you have to be 21 to set foot in a casino, you have to be 21 or older to rent a car, you have to be 25 to run for congress, or 30 for senate. 18 is not the be all end all age of adulthood. I think its consistent to have an age of 21 for alcohol, tobacco and marijuana. Many communities have already raised the age to 21 for buying tobacco, including our 3 biggest cities. 71% of our constituents already live in an area where you have to be 21 to buy tobacco. We need to create a level playing field for retailers. The CDC reports in the surveys they've done that 74% of adults are in favor of raising the age, including current smokers. The next major provision deals with e-cigarettes, including them under the same sale age. It would prohibit the use of e-cigarettes in school grounds and workplaces, restaurants, etc. Lastly it would require child resistant packaging for e-cigarettes products. All of these provisions around e-cigarettes build on regulations promulgated in 2016 by the Attorney General, and regulations put in place by cities and towns. Major provisions of the bill would prohibit the sale of tobacco products in health care businesses like pharmacies. The harm caused by tobacco products is not consistent with the mission of health care institutions. This provision is already in place in cities and towns throughout the Commonwealth

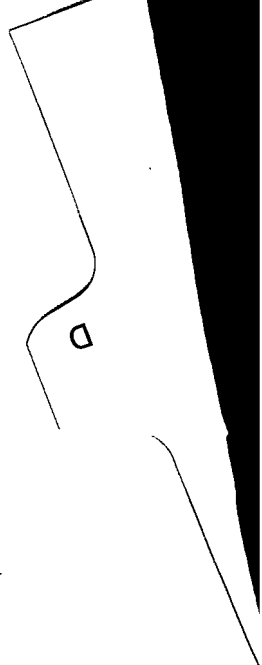


Exhibit D



WARRANT

THE COMMONWEALTH OF MASSACHUSETTS TOWN OF BROOKLINE ANNUAL TOWN MEETING

Norfolk, ss

To Any Constable of the Town of Brookline

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the Inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet at the High School Auditorium in said Brookline on TUESDAY, the NINETEENTH day of MAY, 2020 at 7:00 o'clock in the evening for the Annual Town Meeting at which time and place the following articles are to be acted upon and determined by the representative town meeting:

ARTICLE 1

Submitted by: Select Board

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

ARTICLE 2

Submitted by: Human Resources

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

this act allocated proportionately within the tax levy on all residential taxpayers. After the first year of such exemption, the total cap on the exemptions granted by this act shall be set annually by the select board within a range of 0.25 to 1 percent of the residential property tax levy for the town of Brookline. In the event that benefits to the applicants may be limited because the percentage established annually by the select board would otherwise be exceeded, the benefits shall be allocated by raising the total annual qualifying income percentage as required in section 1 as necessary to not exceed the cap. In the event the cap exceeds the need for the exemption, any undistributed amounts collected shall be returned to the town.

SECTION 4. A person who seeks to qualify for the exemption under section 1 shall, before the deadline established by the board of assessors, file an application, on a form to be adopted by the board of assessors, with the supporting documentation of the applicant's income and assets as described in the application. The application shall be filed each year for which the applicant seeks the exemption.

SECTION 5. No exemption shall be granted under this act for any year if an applicant otherwise meets all the qualifications in sections 1, 2, 3, and 4 of this act and also meets all the qualifications of the town of Brookline's Senior Tax Deferral Program for that year, including obtaining the written approval by all persons having a legal interest in the applicant's parcel as required by the town's Tax Deferral and Recovery Agreement. Applicants shall, in good faith, seek to qualify for the town's Senior Tax Deferral Program. A finding that an applicant has not done so shall be grounds for denying the property tax exemption provided by this act.

SECTION 6. This act (or only section 5 of this act) may be revoked by an affirmative vote of a majority of Town Meeting at any annual or special Town Meeting. Revocation of sections 1 to 5, inclusive, and sections 6 and 7, or section 5 only, shall take effect 30 days after an affirmative vote of Town Meeting.

SECTION 7. No exemption shall be granted under this act until the department of revenue certifies a residential tax rate for the applicable tax year where the total exemption amount is raised by a burden shift within the residential tax levy.

The General Court may make such amendments as are within the scope of the general public objectives of this petition. Or act on anything relative thereto.

Or act on anything relative thereto.

ARTICLE 27

Submitted by: Anthony Ishak, Kate Silbaugh TMM1, Maura Toomey TMM8, Nancy Daly TMM12

To see if the Town will amend Article 8.23 of the Town's General By-laws ("Tobacco Control") as follows (language to be omitted appearing in ~~strike through~~; language to be added appearing in **bold underline**):

ARTICLE 8.23

TOBACCO CONTROL

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, this by-law shall limit and restrict the sale of and public exposure to tobacco products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

- a. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.
- b. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of a tobacco product or component part thereof including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, menthol, mint, wintergreen, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.
- c. Cigar- Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.
- d. Component part - Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- e. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.
- f. Distinguishable - Perceivable by either the sense of smell or taste.

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

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

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

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

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

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

m. Food Service Establishment - An establishment having one or more seats at which food is served to the public.

n. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of

persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

o. Minor - A person under twenty-one years of age.

p. Retail Establishment - any store that sells goods or articles of personal services to the public.

q. Retail tobacco store- An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.

r. Self-Service Display - Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.

s. Smoke Constituent - Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

t. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.

u. Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes

and which is being marketed and sold or prescribed solely for the approved purpose.

v. Tobacco Product- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

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

SECTION 8.23.3 - REGULATED CONDUCT

a. Public Places

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

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles. The restriction

of smoking in taxi/livery vehicles applies to drivers as well as passengers. Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

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

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

b. Workplaces

(1) Smoking in workplaces is prohibited.

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

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

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

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise

discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

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

SECTION 8.23.4 - POSTING REQUIREMENTS

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

SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - No Entity otherwise permitted to sell tobacco products shall sell or offer to sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges. The Director of Public Health shall not issue any new tobacco sales permits to first-time permit applicants with businesses not licensed as of September 1, 2017. Holders of tobacco sales permits on the effective such date section may continue to use such permits. All such holders must apply for renewal of their permits according to the procedures of the Department. Those who fail to apply for renewal in a timely manner will **have** permits revoked . Any such action may be appealed to the Board of Selectmen within thirty (30) days.

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

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

d. Prohibition of Sales - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to **anyone born after 1/1/1976**.

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

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

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

h. Required Signage

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

2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at

retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone **born after 1/1/1976** is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

i. Tobacco Sales

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

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser **was born prior to 1/1/1976**.

3. All retail sales of tobacco or e-cigarette products within the Town of Brookline must be face-to-face between the seller and the buyer and occur at the permitted location, **which can be no greater than 2000 square feet**.

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

5. No entity shall sell or distribute or cause to be sold or distributed any Flavored Tobacco Product.

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

SECTION 8.23.6 - VIOLATIONS AND PENALTIES

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

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

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

d. Any entity violating any other section of this by-law shall receive a fine of \$300.00 for **the first two offenses then will have permit revoked on the third offense. They may appeal to the Department of Public Health if they show that source of violation was corrected and would not occur again.**

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

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

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued

by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

SECTION 8.23.7 - SEVERABILITY

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

Or act on anything relative thereto.

ARTICLE 28

Submitted by: Mariah Nobrega

LEGISLATION PROVIDING FOR RECALL ELECTIONS OF TOWNWIDE ELECTED OFFICIALS

To see if the Town will authorize and empower the Select Board, on such date and in such manner as required by the House Clerk, to file a petition for legislation to provide for recall elections of townwide officials in the town of Brookline, provided that the General Court adopts this bill precisely as set forth below. The General Court may make only clerical or editorial changes of form to the bill, unless the Select Board approves amendments to the bill before enactment by the General Court. The Select Board is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition as long as such amendments do not make it more difficult to recall officials.

AN ACT TO ALLOW THE TOWN OF BROOKLINE TO PROVIDE FOR RECALL ELECTIONS OF TOWNWIDE ELECTED OFFICIALS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, any holder of a townwide elected office in the town of Brookline may be recalled by the registered voters of the town as provided in this act.

SECTION 2. An initial recall affidavit may be filed with the town clerk signed under the penalty of perjury by at least five hundred registered voters of the town with their names and addresses, one of who shall be designated as the so-called lead petitioner for purposes of this act. The initial recall affidavit shall contain the name of the officer sought to be recalled, appearing as registered on the current voting list prepared under G.L. c.51, and 37A, the office from which removal is sought, and a statement of the grounds for recall. Within 24 hours of receipt, the town clerk shall submit the affidavit to the board of registrars of voters, which shall within seven business days, certify thereon the number of signatures, which are names of registered voters of the town. If the number of the signatures on the affidavit shall be found not to be sufficient, the petitioners will be provided with no fewer than five business days to remedy the deficiencies.

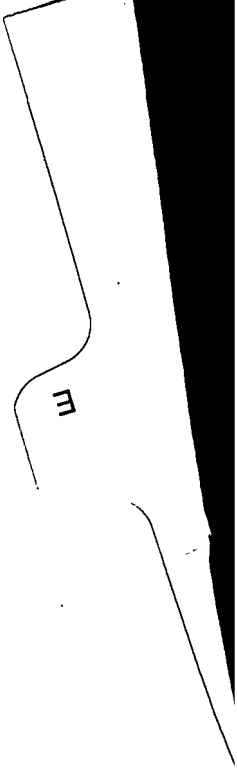


Exhibit E



**WARRANT ARTICLE EXPLANATIONS
FILED BY PETITIONERS FOR THE
MAY 19, 2020 ANNUAL TOWN MEETING**

ARTICLE 1

Submitted by: Select Board

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

ARTICLE 2

Submitted by: Human Resources

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

ARTICLE 3

Submitted by: Treasurer/Collector

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

ARTICLE 4

Submitted by: Select Board

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations.

ARTICLE 5

Submitted by: Select Board

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

The Moderator's Committee on Elderly Tax Relief spent nearly two years studying senior tax relief programs in other communities throughout Massachusetts and in other states. We were most impressed with the Sudbury program. For all of the above reasons, we believe that this proposed new Sudbury-modeled Brookline program has enormous potential for the Town and would provide welcome financial relief to a significant number of needy senior homeowners who are not being helped by the Town's current programs.

ARTICLE 27

Submitted by: Anthony Ishak, Kate Silbaugh TMM1, Maura Toomey TMM8, Nancy Daly TMM12

Tobacco is the only product that, when used as intended, will kill you. In an effort to protect all inhabitants, this warrant article proposes to reduce the potential impact of tobacco on future generations and stay ahead of tobacco's attempts to addict new users. This warrant article helps to prevent the future targeting of not only underage users but the extended social circle that can possibly provide increased access (NYTS 2018 study).

As society incrementally increases tobacco restrictions, youth initiation has decreased. This is another step towards preventing underage users from starting and helping the most motivated demographics to quit (AM J Prev Med 2015 Dec; 49(6):939-44). Seventy percent of adult smokers want to quit (Morbidity and Mortality Weekly Report. 2017; 65 (52):1457-64) and this warrant article can increase their chances of success. Commonly known as Generation X, those born after 1976 have experienced the most education against the toxic effects of tobacco, but may have been exposed to it underage (90% of tobacco initiation occurs underage) at a time when they are most vulnerable to making bad decisions thus leading to addiction. Studies have frequently shown that brain development continues beyond the age of 21 (multiple studies, Neuropsychiatr dis treat 2013; 9:449-61) which is the current legal age to purchase tobacco. Under current law tobacco use may be initiated at a time when the brain has not fully developed to make the decisions that can impact us for the rest of our lives. However, smoking cessation before the age of 40 has been shown to reduce the risk of death to nearly the same level as non-smokers (N Engl J Med 2013; 368:341-50). The demographics that most frequently try to stop smoking are those under the age of 44 but they also have low success rates—this warrant article aims to help those groups that may have already experienced the full effect of education, want to stop this toxic habit, and allow them to regain years that might have been stolen due to a decision made when they were vulnerable. It also helps to close loopholes where frequent violators of current law can continue to profit without concern for possible loss of license. It helps strengthen the town Department of Public Health and allows those retailers that abide by the laws to have a level playing field. This warrant article is the next reasonable step to help our town defend itself against the tobacco industry's continued attempt to find new ways of addicting new, vulnerable users. It is with these reasons that the bylaw should be changed to prevent the sale of tobacco products to anyone born after January 1, 1976.

ARTICLE 28

Submitted by: Mariah Nobrega

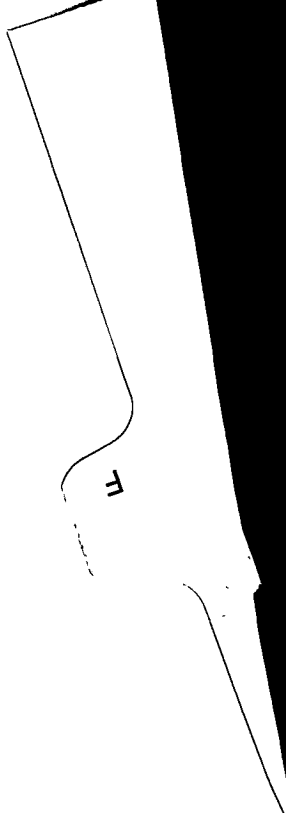


Exhibit F

WARRANT

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF BROOKLINE
SPECIAL TOWN MEETING

Norfolk, ss

To Any Constable of the Town of Brookline

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the Inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet at the High School Auditorium in said Brookline and via Zoom on TUESDAY, the SEVENTEENTH day of NOVEMBER, 2020 at 7:00 o'clock in the evening for the Special Town Meeting at which time and place the following article is to be acted upon and determined by the representative town meeting:

ARTICLE 1

Submitted by: Select Board

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

ARTICLE 2

Submitted by: Human Resources

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

ARTICLE 3

Submitted by: Select Board

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

SECTION 3. The exemption under section 1 shall be in addition to any other exemption allowable under the General Laws, except that there shall be a dollar cap on all the exemptions granted by this act equal to 0.25 percent of the fiscal year's total residential property tax levy for the town of Brookline with the total exemption amount granted by this act allocated proportionately within the tax levy on all residential taxpayers. After the first year of such exemption, the total cap on the exemptions granted by this act shall be set annually by the select board within a range of 0.25 to 1 percent of the residential property tax levy for the town of Brookline. In the event that benefits to the applicants may be limited because the percentage established annually by the select board would otherwise be exceeded, the benefits shall be allocated by raising the total annual qualifying income percentage as required in section 1 as necessary to not exceed the cap. In the event the cap exceeds the need for the exemption, any undistributed amounts collected shall be returned to the town.

SECTION 4. A person who seeks to qualify for the exemption under section 1 shall, before the deadline established by the board of assessors, file an application, on a form to be adopted by the board of assessors, with the supporting documentation of the applicant's income and assets as described in the application. The application shall be filed each year for which the applicant seeks the exemption.

SECTION 5. No exemption shall be granted under this act for any year if an applicant otherwise meets all the qualifications in sections 1, 2, 3, and 4 of this act and also meets all the qualifications of the town of Brookline's Senior Tax Deferral Program for that year, including obtaining the written approval by all persons having a legal interest in the applicant's parcel as required by the town's Tax Deferral and Recovery Agreement. Applicants shall, in good faith, seek to qualify for the town's Senior Tax Deferral Program. A finding that an applicant has not done so shall be grounds for denying the property tax exemption provided by this act.

SECTION 6. This act (or only section 5 of this act) may be revoked by an affirmative vote of a majority of Town Meeting at any annual or special Town Meeting. Revocation of sections 1 to 5, inclusive, and sections 6 and 7, or section 5 only, shall take effect 30 days after an affirmative vote of Town Meeting.

SECTION 7. No exemption shall be granted under this act until the department of revenue certifies a residential tax rate for the applicable tax year where the total exemption amount is raised by a burden shift within the residential tax levy.

The General Court may make such amendments as are within the scope of the general public objectives of this petition. Or act on anything relative thereto.

ARTICLE 14

Submitted by: Anthony Ishak, Kate Silbaugh TMM1, Maura Toomey TMM8, Nancy Daly TMM12

To see if the Town will amend Article 8.23 of the Town's General By-laws ("Tobacco Control") as follows (language to be omitted appearing in ~~strike through~~; language to be added appearing in **bold underline**):

**ARTICLE 8.23
TOBACCO CONTROL**

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, this by-law shall limit and restrict the sale of and public exposure to tobacco products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

- a. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.
- b. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of a tobacco product or component part thereof including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, menthol, mint, wintergreen, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.
- c. Cigar- Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.
- d. Component part - Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- e. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a

tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

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

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

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

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

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

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

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

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

including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

v. Tobacco Product- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

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

SECTION 8.23.3 - REGULATED CONDUCT

a. Public Places

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

or barber shops and meetings of government agencies open to the public.

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

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

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

b. Workplaces

(1) Smoking in workplaces is prohibited.

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

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

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to

accept a designated smoking position as a condition of continued employment by the employer.

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

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

SECTION 8.23.4 - POSTING REQUIREMENTS

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

SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - No Entity otherwise permitted to sell tobacco products shall sell or offer to sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges. The Director of Public Health shall not issue any new tobacco sales permits to first-time permit applicants with businesses not licensed as of September 1, 2017. Holders of tobacco sales permits on the effective such date section may continue to use such permits. All such holders must apply for renewal of their permits according to the procedures of the Department. Those who fail to apply for renewal in a timely manner will receive

~~written notification from the Department and then those have permits may be revoked or fines imposed after such procedure as set forth in the procedures of the Department. Any such action may be appealed to the Board of Selectmen within thirty (30) days. However, applicants who acquire a business that is the holder of a tobacco sales permit may apply, within sixty (60) days of such acquisition, for a tobacco sales permit such as that held by the previous owner of the business, only if the buyer intends to sell tobacco products and will be operating a substantially similar business, and subject to rules and requirements of the Health Department.~~

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

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

d. Prohibition of Sales ~~to Minors~~ - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to ~~a minor~~ anyone born after 1/1/1976.

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

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

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

establishments that operate on the property of an educational institution.

h. Required Signage

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

2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone ~~under the minimum legal sales age of 21 years of age~~ born after 1/1/1976 is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

i. Tobacco Sales

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

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is ~~21 years old or older~~ was born prior to 1/1/1976.

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

permitted location, which can be no greater than 2000 square feet.

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

5. No entity shall sell or distribute or cause to be sold or distributed any Flavored Tobacco Product.

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

SECTION 8.23.6 - VIOLATIONS AND PENALTIES

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

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

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

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

two offenses then will have permit revoked on the third offense. They may appeal to the Department of Public Health if they show that source of violation was corrected and would not occur again.

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

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

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

SECTION 8.23.7 - SEVERABILITY

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

Or act on anything relative thereto.

ARTICLE 15

Submitted by: Deborah Brown, Arthur Conquest, III, Bob Lepson, Nicole McClelland, Hadassah Margolis, C. Scott Ananian, Bettina Neufeind, Sean Lynn-Jones, David Lescohier, Bob Schram, Luciana Schachnik and Anne Greenwald

Increasing Disadvantaged Business Opportunities in the Town of Brookline, Massachusetts

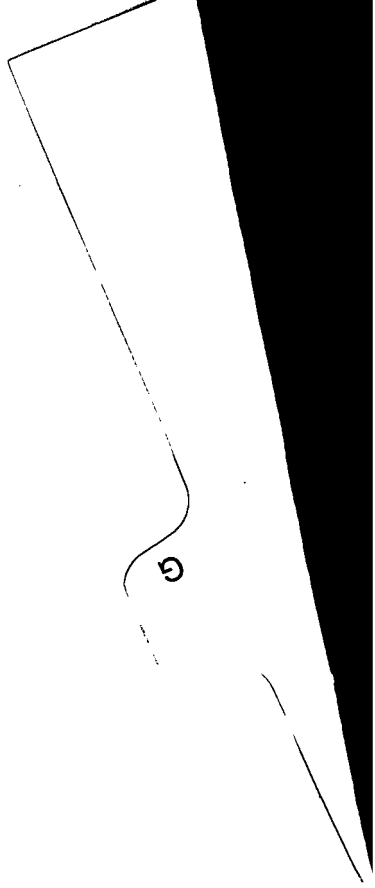
To see if the Town will amend the General by-laws:

ARTICLE 4.3 CONTRACTS – PROHIBITED ACTION,

ARTICLE 4.4 FAIR EMPLOYMENT PRACTICES WITH REGARD TO
CONTRACTS and

ARTICLE 4.5 DISCRIMINATION PROHIBITION WITH REGARD TO
CONTRACTS

ARTICLE 4.6 ESTABLISHING A MINORITY AND WOMEN OWNED BUSINESS
PROGRAM



5

Exhibit G



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECT BOARD
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held remotely via Zoom

Tuesday, November 17, 2020

at

7:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

SELECT BOARD

Bernard W. Greene, Chair

Heather Hamilton, Vice Chair Nancy S. Heller

Raul A. Fernandez John VanScoyoc

Melvin A. Kleckner, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445, 730-2328 Voice, 730-2327 TDD, or email at lgellineau@brooklinema.gov."

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Michael Sandman, 115 Sewall Ave., No. 4, Chair, Street.....	232-7125
Carla Benka, Vice-Chair, 26 Circuit Road	277-6102
Benjamin Birnbaum, 15 Feneno Terrace,	276-5944
Harry Bohrs, 27 Toxeth Street.....	566-3556
Clifford M. Brown, 9 Hyslop Road	232-5626
Carol Caro, 1264 Beacon Street, #2.....	739-9228
John Doggett, 8 Penniman Place	566-5474
Dennis Doughty, 57 Perry Street.....	739-7266
Harry Friedman, 27 Clafin Road	BE2-0122
Janet Gelbart 216 St. Paul Street #601.....	566-5616
David-Marc Goldstein, 22 Osborne Road	232-1943
Neil Gordon, 87 Ivy Street.....	(508)265-1362
Susan Granoff, 52 Vernon Street #1	731-0822
Amy Hummel, 226 Clark Road	731-0549
Alisa G. Jonas, 333 Russett Road	469-3927
Janice Kahn, 63 Craftsland Road.....	739-0606
Steve Kanes, 89 Carlton Street	232-2202
Bobbie M. Knable, 243 Mason Terrace.....	731-2096
Carol Levin, 61 Blake Road.....	731-0166
Pamela Lodish, 195 Fisher Avenue	566-5533
Donelle S. O’Neal, 68 Village Way.....	(857)243-3602
Susan Park, 27 James Street.....	(551)574-0690
David Pollak, 112 Lancaster Terrace.....	921-4418
Carlos Ridruejo, 16 Holland Road.....	901-5908
Lee L. Selwyn, 285 Reservoir Road	277-3388
Kim Smith, 22 Brington Road	277-1606
Claire Stampfer, 50 Sargent Crswy.	448-4201
Paul Warren, 71 Carlton Street.....	869-5430
Robert Weintraub, 112 Columbia Street.....	799-7481
Christine M. Westphal, 31 Hurd Road.....	738-7981
Neil Wishinsky, 20 Henry Street, No.2	739-0181
Lisa Portscher, Executive Assistant, Town Hall.....	730-2115

ARTICLE 14

FOURTEENTH ARTICLE

Submitted by: Anthony Ishak, Kate Silbaugh TMM1, Maura Toomey TMM8, Nancy Daly TMM12

To see if the Town will amend Article 8.23 of the Town's General By-laws ("Tobacco Control") as follows (language to be omitted appearing in ~~strike through~~; language to be added appearing in **bold underline**):

**ARTICLE 8.23
TOBACCO CONTROL**

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, this by-law shall limit and restrict the sale of and public exposure to tobacco products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

- a. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.
- b. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of a tobacco product or component part thereof including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, menthol, mint, wintergreen, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.
- c. Cigar- Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or

without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

d. Component part - Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

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

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

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

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

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

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

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

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

m. Food Service Establishment - An establishment having one or more seats at which food is served to the public.

n. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

o. Minor - A person under twenty-one years of age.

p. Retail Establishment - any store that sells goods or articles of personal services to the public.

q. Retail tobacco store- An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.

- r. Self-Service Display - Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.
- s. Smoke Constituent - Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.
- t. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.
- u. Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.
- v. Tobacco Product- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

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

SECTION 8.23.3 - REGULATED CONDUCT

a. Public Places

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

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

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

(4) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds. The Commissioner of Public Works shall erect and maintain

signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

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

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

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

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

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable for work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work. c. E-cigarette Usage - Locations Prohibited (1) In addition to

the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

SECTION 8.23.4 - POSTING REQUIREMENTS

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

SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - No Entity otherwise permitted to sell tobacco products shall sell or offer to sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges. The Director of Public Health shall not issue any new tobacco sales permits to first-time permit applicants with businesses not licensed as of September 1, 2017. Holders of tobacco sales permits on the effective such date section may continue to use such permits. All such holders must apply for renewal of their permits according to the procedures of the Department. Those who fail to apply for renewal in a timely manner will receive written notification from the Department and then those have permits may be revoked or fines imposed after such procedure as set forth in the procedures of the Department. Any such action may be appealed to the Board of Selectmen within thirty (30) days. However, applicants who acquire a business that is the holder of a tobacco sales permit may apply, within sixty (60) days of such acquisition, for a tobacco sales permit such as that held by the previous owner of the business, only if the buyer intends to sell tobacco products and will be operating a substantially similar business, and subject to rules and requirements of the Health Department.

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

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

d. Prohibition of Sales ~~to Minors~~ - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to ~~a minor~~ anyone born after 1/1/1976.

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

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

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

h. Required Signage

1. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by

the Town of Brookline that discloses current referral information about smoking cessation.

2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone ~~under the minimum legal sales age of 21 years of age~~ **born after 1/1/1976** is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

i. Tobacco Sales

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

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is ~~21 years old or older~~ **was born prior to 1/1/1976.**

3. All retail sales of tobacco or e-cigarette products within the Town of Brookline must be face-to-face between the seller and the buyer and occur at the permitted location, **which can be no greater than 2000 square feet.**

4. Original Cigar Package Price - All single cigars shall be sold for no less than two dollars and fifty cents (\$2.50). No person shall sell or distribute or

cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Brookline.

5. No entity shall sell or distribute or cause to be sold or distributed any Flavored Tobacco Product.

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

SECTION 8.23.6 - VIOLATIONS AND PENALTIES

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

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

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

d. Any entity violating any other section of this by-law shall receive a fine of \$300.00 for ~~each offense~~ the first two offenses then will have permit revoked on the third offense. They may appeal to the Department of Public Health

if they show that source of violation was corrected and would not occur again.

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

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

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

SECTION 8.23.7 - SEVERABILITY

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of the article filed for the Annual Town Meeting.

Tobacco is the only product that, when used as intended, will kill you. In an effort to protect all inhabitants, this warrant article proposes to reduce the potential impact of tobacco on future generations and stay ahead of tobacco's attempts to addict new users. This warrant article helps to prevent the future targeting of not only underage users but the extended social circle that can possibly provide increased access (NYTS 2018 study).

As society incrementally increases tobacco restrictions, youth initiation has decreased. This is another step towards preventing underage users from starting and helping the most motivated demographics to quit (AM J Prev Med 2015 Dec; 49(6):939-44). Seventy percent of adult smokers want to quit (Morbidity and Mortality Weekly Report. 2017; 65

(52):1457-64) and this warrant article can increase their chances of success. Commonly known as Generation X, those born after 1976 have experienced the most education against the toxic effects of tobacco, but may have been exposed to it underage (90% of tobacco initiation occurs underage) at a time when they are most vulnerable to making bad decisions thus leading to addiction. Studies have frequently shown that brain development continues beyond the age of 21 (multiple studies, Neuropsychiatr Dis Treat 2013; 9:449-61) which is the current legal age to purchase tobacco. Under current law tobacco use may be initiated at a time when the brain has not fully developed to make the decisions that can impact us for the rest of our lives. However, smoking cessation before the age of 40 has been shown to reduce the risk of death to nearly the same level as non-smokers (N Engl J Med 2013; 368:341-50). The demographics that most frequently try to stop smoking are those under the age of 44 but they also have low success rates—this warrant article aims to help those groups that may have already experienced the full effect of education, want to stop this toxic habit, and allow them to regain years that might have been stolen due to a decision made when they were vulnerable. It also helps to close loopholes where frequent violators of current law can continue to profit without concern for possible loss of license. It helps strengthen the town Department of Public Health and allows those retailers that abide by the laws to have a level playing field. This warrant article is the next reasonable step to help our town defend itself against the tobacco industry's continued attempt to find new ways of addicting new, vulnerable users. It is with these reasons that the bylaw should be changed to prevent the sale of tobacco products to anyone born after January 1, 1976.

MOTION OFFERED BY THE PETITIONERS

VOTED: that the Town will amend Article 8.23 of the Town's General By-laws ("Tobacco Control") as follows (language to be omitted appearing in ~~strike through~~; language to be added appearing in **bold underline**):

SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

d. Prohibition of Sales to ~~Minors~~— No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to a ~~minor~~ **anyone born on or after 1/1/2000**.

h. Required Signage

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

2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone ~~under the minimum legal sales age of 21 years of age~~ **born on or after 1/1/2000** is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a

person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

ii. Tobacco Sales

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser ~~is 21 years old or older~~ was born prior to 1/1/2000.

REVISED PETITIONER EXPLANATION

Tobacco is the only product that, when used as intended, will kill you. In an effort to protect all inhabitants, this warrant article proposes to reduce the potential impact of tobacco on residents of the town and stay ahead of tobacco's attempts to addict new users.

As society incrementally increases tobacco restrictions, initiation has decreased. This is another step towards preventing new users from starting and helping those that want to quit (AM J Prev Med 2015 Dec; 49(6):939-44). Seventy percent of adult smokers want to quit (Morbidity and Mortality Weekly Report. 2017; 65 (52):1457-64) and this warrant article can increase their chances of success. This warrant article aims to help those that may have experienced the full effect of education. This is an inexpensive, reasonable step to help our town defend itself against the tobacco industry's continued attempt to find new ways of addicting new, vulnerable users by incrementally phasing out the sale of tobacco over time. As written, it would not impact anyone with the present right to purchase tobacco and allows owners to adapt to a new business model incrementally. It serves as a standard for other communities and potential higher levels of government to build on. It changes the impression of the rite of passage for adulthood is the purchase of tobacco. An October article in the New England Journal of Medicine highlighted the 50th anniversary of the Surgeon General's Report stating, "Because the smoking rate among adults has fallen in recent years, and because smoking can be overshadowed by other emerging public health issues, it's possible to overlook the continuing toll of smoking on people in the United States." The conclusion of that article is, "It's time we recognize smoking for what it is — our country's longest-running and deadliest epidemic — and treat it with a commensurate sense of urgency."

Three numbers to know:

70% want to stop (CDC)

~75% in the Northeast want to quit

0 businesses closed due to flavored warrant article passed by the Town in 2019 (one closed in the summer of 2019 d/t Waldo-Durgin and 1 due to the Governor's order prior to the AG signing into law the town flavored restriction)
This is another step towards achieving a 0% tobacco use rate.

SELECT BOARD'S RECOMMENDATION

Article 14 is a petitioned article, which seeks to amend the Town's General By-Laws in order to provide additional restrictions to the Tobacco Control by-law. It would prohibit the sale of tobacco to anyone born prior January 1 2000. If some is allowed by law to purchase tobacco they can still do so, but going forward that age limitation would increase.

Dr. Swannie Jett, Director of Public Health spoke in opposition of the article because he felt it was not properly vetted. The Health Department has not had any opportunity to review associated data, and understand how this would affect Brookline. Brookline does not perform tobacco compliance checks. The information requested by the Advisory Council on Public Health was not provided in order for the Board of Health to support this article. He was also concerned whether this would withstand legal challenge and any cost implications needed to enforce these changes.

Members of the Board agreed that that tobacco is a health problem that not only affects the consumer but the community. This article does not address the underlying causes of why people smoke in the first place. The Board also expressed concerns about banning something from an adult that is legal to purchase. The Board also heard concerns from the business owners and felt this is not the time to add an extra burden to small business owners

The Select Board voted NO ACTION on Article 14.

ROLL CALL VOTE

Aye:	No:
Greene	Heller
Hamilton	Fernandez
VanScoyoc	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 14 is the latest in a series of efforts to reduce tobacco addiction. This article would make four amendments to Town By-Law sections 8.23.5 and 8.23.6.

By a vote of 6-20 with no abstentions, the Advisory Committee recommends NO ACTION on Article 14.

BACKGROUND:

Over the last several years, Brookline has increasingly restricted the sale of tobacco products by raising the minimum age for purchasing and by restricting the types of establishments that may sell the products. Sales outlets are now licensed, and the number of licenses is capped.

The four proposed changes in the petitioner's warrant article would 1) prohibit the transfer of tobacco licenses to a new owner when the current business owner sells their business; 2) restrict retail tobacco sales to properties of 2,000 square feet or less; 3) establish a 3 strikes rule on retailers; and 4) in the most controversial change, it would prohibit adults born after 1976 from purchasing tobacco, but would allow adults born before that date to continue to purchase tobacco unabated.

The Town of Brookline has been a leader in efforts to both reduce tobacco use and establish tobacco restrictions, most aimed at preventing youth from accessing and using tobacco. These successful efforts include-

- Prohibiting smoking inside restaurants (1995);
- Prohibiting sales in pharmacies (2011);
- Prohibiting sales to under 21 years of age (2012, 2014);
- Expanding regulation of e-cigarettes (2014);
- Creating a no smoking buffer zone around the High School;
- Restricting flavored tobacco products;
- Limiting tobacco sales permits (2017); and
- Banning flavored tobacco (2019).

The evidence is clear and well known that smoking is hazardous to one's health, and that nicotine is addictive. The petitioner stated that the smoking rate in Brookline is 6.8% (or approximately 3,200 smokers). The rate for high school students who smoke is lower still, at 5% (or approximately 100 youth smokers in town). Most smokers take up the habit and become addicted when in the teens, and according to the petitioner, it is rare for someone over the age of 25 to begin smoking.

The petitioner is concerned about stopping tobacco use in young people before they struggle with addiction. He also wants to help smokers 45 and under who want to quit,

studies have shown that smokers who quit below the age of 45 can eventually recover their health. And many in this age range want to quit anyway.

The petitioners' purpose is to remove products that in his opinion should not be on the market in the first place.

DISCUSSION:

The wording of some provisions in the petitioner's wording are arbitrary and vague, and the petitioners did not do basic research into how many businesses would be affected by the changes nor their economic impact. While the petitioners are well intentioned, the major change proposed in this article (focused on prohibiting adults born after 1976 from purchasing tobacco) is a radically different approach from prior efforts that no other community or state is known to have attempted and, according to Town Counsel's office, is likely to be struck down by the Attorney General.

The specific changes (and the issues with those changes the Advisory Committee found in the petitioner's warrant article) are below.

First proposed change in section 8.23.5:

This would strike language at the end of subsection a. That would have the effect of eliminating notice from the Town to businesses who sell tobacco that they need to renew their license, or failed to renew their license in a timely manner. Failure to "renew in a timely manner" would now result in having their license to sell tobacco revoked. Businesses would only have 30 days to appeal.

It would also eliminate the ability of a business owner to transfer the tobacco license to a new owner of the business, even to a relative. That license would therefore be eliminated, further reducing the number of tobacco licenses in Town.

Advisory Committee concerns:

- 1) Does not define "timely manner", although existing language in the By-Law section does not define it either.
- 2) Existing language in the By-Law does not automatically allow a new owner to sell tobacco. The existing language allows a new owner to apply to have a license. This chance to even apply would be eliminated.
- 3) It is unclear as to what the financial impact would be to small business owners who sell their business, knowing that one asset, the license, could not be included in the valuation price and agreement. One owner of a gas station estimated a 20/80% revenue split between tobacco and food sales. He noted that most people who buy tobacco also buy other items, such as milk and other food products, so the loss to a business would likely be more than just the cost of a tobacco product.

4) By adopting the change, when a business is sold or transferred to a relative, the permit ceases to exist, which would affect the value of the business. Given the hardships small businesses are having with the COVID-19 pandemic, this seemed unfair.

Second proposed change in section 8.23.5:

This would change add language at the end of subsection 1.2 that would restrict tobacco sales to locations no larger than 2,000 square feet.

Advisory Committee concerns:

- 1) The limit on the number of square feet proposed seemed to be completely arbitrary and unjustified.
- 2) The language does not define whether it is the building size, the lot size or the store size. For example, does the 2,000 square foot limitation (in regards to gas stations) include the area of the gas pumps and service bays? The petitioner stated his intent was for only the interior sales area of stores, but the language is vague and undefined.
- 3) The main petitioner did not check to see how many businesses are 2,000 square feet or less, and how they would be affected. The only business he could state that would be affected was Stop and Shop.
- 4) It was unclear whether the Town could be sued by Stop and Shop, if they claim an arbitrary square footage was used to single them and only them out.

The Advisory Committee heard from the petitioner that Town Counsel's opinion was that in order to adopt this change, it would have to be done through the Zoning By-Law, so the petitioner has dropped this proposed change.

Third proposed change in section 8.23.6:

This would change section 8.23.6 subsection d by creating a "three strikes" license revocation rule for license holders who are found to have violated the By-Law.

Advisory Committee concerns:

The petitioner's intention is that violations remain on the establishment's record in perpetuity. So, for example, if a store had two violations, and the owner sells his business to a new owner and the new owner stays free of violations for 10 years and then gets one violation, the new owner would their license.

According to the Town Administrator's office, there have only been 4 recent violations, and none since 2017, all for sales to a minor. Two of the four stores cited are now closed. The three-strikes rule will probably have no practical effect, as the remaining stores' overall compliance record is very good

Under current regulations, there can be a hearing by the Select Board at any time, and they can take action including suspension or revocation under current policy, even for one violation. The proposed provision seemed to be a solution looking for a problem.

Fourth proposed change in section 8.23.5:

This would change the language of subsections **d**, along with minor changes in **h.2** and **i.2**. It would prohibit anyone from selling tobacco to adults born after January 1 1976 – that is, to anyone under the age of 45 in 2020, or age 46 in 2021, etc.

Advisory Committee concerns:

1) From a practical viewpoint, this seemed to the Committee that this change would be gradually eliminate the legal sale of tobacco products in Brookline, but nowhere else. Adults looking to purchase tobacco could simply buy through the internet, have someone buy it for them, or walk into Boston and buy it there. Giving Boston businesses a financial windfall at the expense of Brookline small businesses seemed highly unlikely to help adults in Brookline stop using tobacco. As a further indication of the futility of eliminating a product in one just one jurisdiction, according to a representative from NECSEMA (New England Convenience Store & Energy Marketers Association, Inc.), when Massachusetts passed the flavored tobacco ban, sales in New Hampshire grew substantially.

3) Prohibiting adults from buying a product they wish to have has not been a successful social policy, as witnessed by the failure of Prohibition in the 1920s and the failure to eliminate marijuana sales by criminalizing its sale and use. Where there is a demand, there will be a supply. Crime syndicates make over a billion dollars smuggling cigarettes from Canada and selling them cheaply on the streets, without any tobacco taxes being paid to the government.

4) The Health Department, who would be tasked with more work to enforce a much broader age restriction, is already overburdened. They do not have the personnel to do this. Add the strain of dealing with the pandemic and due to lack of Town staff in the Health Department, enforcement of this part of the law would be unlikely to happen. As noted below, neither the Director of Public Health nor the Advisory Council on Public Health (ACPH) were contacted about these proposed amendments, and were not offered any chance to vet them.

5) The committee found that the most contentious part of this is the taking away the right of some adults – those born after January 1, 1976 - but not others to buy a legal product.

The Committee discussed an amendment introduced by a member of the Human Services subcommittee (which held the public hearing on Article 14) to change the date from 1976 to 1/1/2000. That would not disenfranchise anyone who currently can legally buy tobacco. For those who are currently too young to buy, they would simply never get the legal right to buy tobacco in Brookline. It would also ease the financial impact to the businesses.

The petitioner indicated that he would accept this proposed change. This amendment would not change the fact that Brookline would be dividing adults into groups of people, some of whom would have less rights than others.

Dr. Swannie Jett, Director of the Health and Human Services Department, told the Advisory Committee that the petitioners did not reach out to him to get feedback from him or his department. He argued that a regional approach is needed, and discussed the undue burden this would place on his department, noting that there is no funding for the staff needed to enforce this. He urged that the Town not go forward with this proposal.

Assistant Town Counsel Patty Correa wrote that *“the proposed “declassification” based on a birth date must pass “rational basis” muster under the Equal Protection Clause”*. It is doubtful as to whether the “1/1/2000” date of birth change recommended by the subcommittee would be any different from a constitutionality aspect than the “1976” proposal.

Jonathan Shaer, Executive Director from NECSEMA wrote to the Committee, viewing this part of the warrant article as illegal, stating *“Finally, the proposal is illegal under MLSA [minimum legal sales age] 21 legislation from 2018. Section 22 reads “This act shall preempt, supersede or nullify any inconsistent, contrary, or conflicting state or local law relating to the minimum sales age to purchase tobacco products” ”*.

In a subsequent memo, Assistant Town Counsel Correa, (in regards to the above reference to section 22), wrote-

“My expectation is that the Attorney General’s Office is likely to find the birthdate restriction in the proposed article to be in conflict with it.

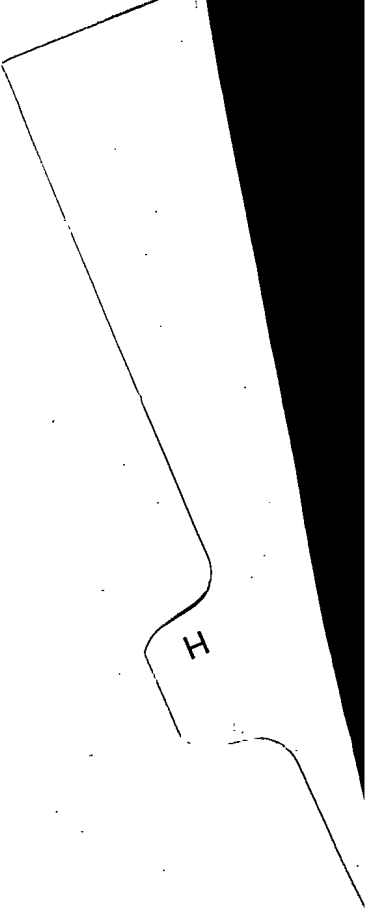
SECTION 22. This act shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law relating to the minimum sales age to purchase tobacco products; provided, that this act shall neither preempt, supersede nor nullify any inconsistent, contrary or conflicting local law in effect on December 30, 2018 that prohibits the sale of tobacco products to persons under the age of 19, 20, or 21 as applied to persons who attained the age of 18 before December 31, 2018. This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.”

RECOMMENDATION:

We all share the same goal of moving our society away from tobacco products. But the difficulty of achieving that goal through the action of a single jurisdiction, the economic impact on small businesses, and the questionable legality of restricting the sales of a legal product to adults all represented barriers to achieving the goal through implementation of Article 14.

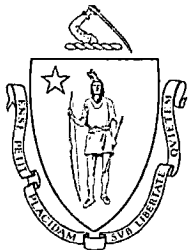
By a 6-20 with no abstentions, the Advisory Committee recommends NO ACTION on Article 14.

XXX



H

Exhibit H



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

July 19, 2021

Benjamin Kaufman, Town Clerk
Town of Brookline
333 Washington Street
Brookline, MA 02445

**Re: Brookline Special Town Meeting of November 17, 2020 -- Case # 10029
Warrant Articles # 7, 23, and 25 (Zoning)
Warrant Articles # 8, 14, 17, 20, 21, 22, 24, 28, 29, and 30 (General)**

Dear Mr. Kaufman:

Article 14 - We approve Article 14 from the November 17, 2020 Brookline Special Town Meeting that prohibits the sale of tobacco products to anyone born after January 1, 2000.¹ This letter briefly describes the by-law; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we are not persuaded by the arguments made to us that the by-law should be disapproved. Our analysis is substantially influenced by the Massachusetts Appeals Court decision in RYO Cigar Ass'n v. Boston Public Health Com'n, 79 Mass. App. Ct. 822, 832, review denied, 461 Mass. 1102 (2011), reaffirming the principle that "municipal regulation of tobacco sales in Massachusetts is a well-recognized and proper exercise of local power."

As with our review of all by-laws, we emphasize that our approval does not imply any agreement or disagreement with the policy views that led to the passage of the by-law. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986). The state constitution's Home Rule Amendment, as ratified by the voters themselves in 1966, confers broad powers on individual cities and towns to legislate in areas that previously were under the Legislature's exclusive control. Towns have used these home-rule powers to prohibit, within their borders, certain commercial activities that state statutes generally recognize as lawful and that are widely accepted in the remainder of the Commonwealth—for

¹ In a decision issued on April 26, 2021, we approved Articles 7, 8, 17, 20, 22, 23, 24, 25, 28, 29 and 30. Also on April 26, 2021, by agreement with Town Counsel pursuant to G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, we extended our deadline for review of Articles 14 and 21 for 90-days until July 19, 2021. In a decision issued on July 14, 2021, we approved Article 21.

example, coin-operated amusement devices, or self-service gas stations. Amherst, 398 Mass. at 798 n.8. The Supreme Judicial Court has upheld such by-laws and has overturned the Attorney General’s disapproval of them where they did not create any specific conflict with state law. Amherst, id.; see also Milton v. Attorney General, 372 Mass. 694, 695-96 (1977). The Attorney General thus has no power to disapprove a by-law merely because a town, in comparison to the rest of the state, has chosen a novel, unusual, or experimental approach to a perceived problem.

I. Description of Article 14

In Article 14, the Town voted to make several changes to Article 8.23, “Tobacco Control,” that prohibit the sale of tobacco or e-cigarette products to anyone born after January 1, 2000. Article 14 also amends the signage requirements for establishments selling tobacco or e-cigarette products to include a requirement to post a sign stating that the sale of tobacco products is prohibited to anyone born after January 1, 2000.

Specifically, Article 14 amends Section 8.23.5, “Sale and Distribution of Tobacco Products,” in relevant part as follows (new text in **bold** and underline and deleted text in strike-through):

D. Prohibition of Sales ~~to Minors~~ - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to ~~a minor~~ **anyone born after 1/1/2000.**

* * *

H. Required Signage

* * *

(ii) The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that “The sale of tobacco or e-cigarette products to someone ~~under the minimum legal sales age of 21 years of age~~ **born after 1/1/2000** is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

According to the sponsors of Article 14, the intent of the amendments is to incrementally increase the number of people who are unable to purchase tobacco products in Brookline until, eventually, the prohibition applies to everyone.²

² “Tobacco Free Generation: Brookline Passes New Restriction Aiming to Phase out Tobacco Sales to Young Smokers,” *The Boston Globe*, November 24, 2020 (quoting Kate Silbaugh, co-petitioner). Although Brookline is the first Massachusetts municipality to amend its by-laws to achieve the goal of a “Tobacco Free Generation,” it is a world-wide movement. *Id.* See also “Tobacco Free Generations,” World Health

II. The Attorney General's Standard of Review

Pursuant to G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the Constitution or laws of the Commonwealth. Id. at 796. “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973) (emphasis added). “The legislative intent to preclude local action must be clear.” Id. at 155.

III. Challenge to the Validity of Article 14

We have received numerous letters from organizations raising various challenges to the validity of Article 14.³ Although, as discussed below, we are unable to agree that any of these arguments furnishes a basis for disapproval of the by-law, we greatly appreciate these submissions, which have substantially assisted us in our review. We also appreciate the numerous letters from organizations offering legal arguments in support of Article 14.⁴ These letters have helped inform our understanding of the issues raised by the by-law.

Towns may regulate tobacco sales as a proper exercise of local power. RYO Cigar Ass’n, 79 Mass. App. Ct. at 832. Moreover, we do not find that Article 14 conflicts with Chapter 157 of the Acts of 2018, “An Act Protecting Youth from the Health Risks of Tobacco and Nicotine Addiction.” (the Act). Thus, as explained in more detail below, and based on our standard of review, we conclude that Article 14’s ban on the sale of tobacco products to those born after January 1, 2000 is within the Town’s authority to safeguard public health.

During the course of our review, we have considered the argument raised by the opponents that the by-law is unlawful because it conflicts with the Act. We do not agree. The Act amends several state laws in order to reduce underage access to and use of tobacco products. Section 9 of

Organization-Europe, https://www.euro.who.int/_data/assets/pdf_file/0008/343376/20170428_WHO-TobaccoFreeGeneration-DRAFT09.pdf

³ We appreciate the letters we received opposing Article 14 from, among others, Jonathan Shaer on behalf of the New England Convenience Store and Energy Marketers Association and Elias Audy on behalf of the Business Retail Association of Brookline.

⁴ We also appreciate the letters we received in favor of Article 14 from Mark Gottlieb and Chris Banthin of Northeastern University School of Law’s Public Health Advocacy Institute and Chris Bostic on behalf of Action on Smoking and Health.

the Act amends G.L. c. 270, § 6 to increase the minimum age for purchase of tobacco products to twenty-one years old.⁵ Section 22 provides as follows:

This act shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law relating to the minimum sales age to purchase tobacco products; provided, that this act shall neither preempt, supersede nor nullify any inconsistent, contrary or conflicting local law in effect on December 30, 2018 that prohibits the sale of tobacco products to persons under the age of 19, 20, or 21 as applied to persons who attained the age of 18 before December 31, 2018. This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.

While it is true that the statute expressly preempts “any *inconsistent, contrary or conflicting* state or local law relating to the *minimum sales age* to purchase tobacco products” (Section 22, emphasis supplied), the preemptive effect of the statute is limited to local laws that would *allow* tobacco sales to those under the age of twenty-one (except in the limited circumstances listed in Section 22). The by-law amendments adopted under Article 14 are not inconsistent with these statutory provisions. The statute and the by-law both aim for the same goal of barring the sale of tobacco products to those under the age of twenty-one. The by-law simply goes further than the statute and imposes an incremental increase in the age limit such that, eventually, no one will be able to purchase tobacco products in the Town. Section 22 of the Act expressly allows for such supplemental regulation: “This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.”⁶ We thus determine that the by-law amendments adopted under Article 14 are valid because they complement the goals of the Act and do not interfere with the accomplishment of those goals. See Lovequist v. Conservation Comm’n of Dennis, 379 Mass. 7, 14-15 (1979) (“Since the language of the by-law parallels that of the statute, it appears plain that [the by-law] furthers rather than derogates from the legislative purpose embodied in the [Act].”). See also Bloom v. Worcester, 363 Mass.136, 156 (1973) (“If the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject, the local ordinance or by-law is not inconsistent with the State legislation, unless the Legislature has expressly forbidden the adoption of local ordinances and by-laws on that subject.”)

The court’s decision in Tri-Nel Mgt., Inc. v. Board of Health of Barnstable, 433 Mass. 217 (2001) illustrates this principle. In Tri-Nel the opponents challenged a board of health regulation prohibiting smoking in food service establishments, lounges, and bars in the Town. Among other arguments they asserted that the regulation conflicted with G. L. c. 270, s. 22, which prohibits smoking in certain restaurants and other public places. The court rejected the assertion that the BOH regulation’s broader scope presented a conflict with the statute: “[The statute] sets forth minimum statewide restrictions on smoking in restaurants to protect and accommodate the

⁵ Section 6 previously prohibited the sale of tobacco products to any person under eighteen years of age.

⁶ Further, Section 22 specifically provides that it does not preempt pre-existing laws in effect as of December 30, 2018 that ban the sale of tobacco products to people under the age of 21. Thus, it appears that the intent of the Act is to leave in place more restrictive bans and only preempt less restrictive bans.

nonsmoking public. The board's ban placing additional restrictions on smoking, furthers, rather than frustrates, this intent. Accordingly, the board's regulation does not conflict with [the statute].” Id. at 224-225.

Our determination is further informed by the broad public health power of municipalities to regulate tobacco products. Massachusetts courts have consistently recognized that the “municipal regulation of tobacco sales in Massachusetts is a well-recognized and proper exercise of local power.” RYO Cigar Ass’n, 79 Mass. App. Ct. at 832 (Public Health Commission regulation banning the sale of cigar wraps was a permissible exercise of the Commission’s authority to safeguard public health and was rationally related to the permissible purpose of protecting residents from the harmful effects of tobacco use). Preventing and deterring tobacco use is a legitimate municipal goal. Id. at 828. On several occasions, the Supreme Judicial Court has “recognized the ill effects of tobacco use, particularly when it involves minors, as a legitimate municipal health concern justifying additional municipal regulation of tobacco products.” Tri-Nel Mgmt., 433 Mass. at 220. The Act cited by the opponents specifically preserves this municipal regulatory power: “This act shall not otherwise preempt the authority of any city or town to enact any ordinance, by-law or any fire, health or safety regulation that limits or prohibits the purchase of tobacco products.” The Town’s by-law banning the sale of tobacco products to those born after January 1, 2000 is within the Town’s authority to safeguard public health.

IV. Conclusion

Because we find no conflict between Article 14 and the Constitution or laws of the Commonwealth, we approve Article 14.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

cc: Joslin Murphy, Town Counsel
Linda Goldburgh, Assistant Town Clerk