

FRANKLIN TOWN COUNCIL

Agenda & Meeting Packet

April 26, 2023

Meeting will be held at the **Municipal Building**

2nd floor, Council Chambers

355 East Central Street

7:00 PM

A NOTE TO RESIDENTS: All citizens are welcome to attend public board and committee meetings in person. Meetings are also [live-streamed by Franklin TV](#) and shown on Comcast Channel 11 and Verizon Channel 29.

In an effort to maximize citizen engagement opportunities, citizens will be able to continue to participate remotely via phone OR Zoom.

Link to access meeting via Zoom for the April 26, 2023 Town Council meeting:

- Zoom Link [HERE](#) -- Then click "Open Zoom".
- Or copy and paste this URL into your browser: <https://us02web.zoom.us/j/83974378921>
- Call-In Phone Number: Call 1-929-205-6099 and enter **Meeting ID # 839 7437 8921** --Then press #

1. ANNOUNCEMENTS FROM THE CHAIR

- This meeting is being recorded by Franklin TV and shown on Comcast channel 11 and Verizon Channel 29. This meeting may be recorded by others.*
- Chair to identify members participating remotely.*

2. CITIZEN COMMENTS

- Citizens are welcome to express their views for up to three minutes on a matter that is not on the agenda. The Council will not engage in a dialogue or comment on a matter raised during Citizen Comments. The Town Council will give remarks appropriate consideration and may ask the Town Administrator to review the matter.*

3. APPROVAL OF MINUTES

- [March 15, 2023](#)

4. PROCLAMATIONS / RECOGNITIONS - None Scheduled.

5. APPOINTMENTS - None Scheduled.

6. PUBLIC HEARINGS - 7:00 PM

- [Transfer of Section 15 Wine and Malt Beverages Package Store License and Approval of Parth Patel as the Manager - Marlboro Food, Inc. d/b/a 7-Eleven 37380B, Located at 664 Union St.](#)
 - See 7: License Transactions (a) below

7. LICENSE TRANSACTIONS

- [Transfer of Section 15 Wine and Malt Beverages Package Store License and Approval of Parth Patel as the Manager - Marlboro Food, Inc. d/b/a 7-Eleven, Located at 664 Union St.](#)
- [Robert Vozzella / La Cantina Winery - Farmer-Winery, Farmer's Market License](#)

8. PRESENTATIONS / DISCUSSION

- a. [Discussion: Open Space & Recreation Plan Update](#) - Breeka Li Goodlander, Conservation Agent and Natural Resources Manager
- b. [Discussion: Display of Flags on Town Flagpoles or Property](#)

9. LEGISLATION FOR ACTION

- a. [Resolution 23-28: Town Council Approval of County ARPA Funds](#)
(Motion to Approve Resolution 23-28 - Majority Vote)

10. TOWN ADMINISTRATOR'S REPORT

11. SUBCOMMITTEE & AD HOC COMMITTEE REPORTS

- a. Capital Budget Subcommittee
- b. Economic Development Subcommittee
- c. Budget Subcommittee
- d. GATRA Advisory Board

12. FUTURE AGENDA ITEMS

13. COUNCIL COMMENTS

14. EXECUTIVE SESSION - *None Scheduled.*

15. ADJOURN

Note: Two-Thirds Vote: requires 6 votes

Majority Vote: requires majority of members present and voting

**FRANKLIN TOWN COUNCIL
MINUTES OF MEETING
March 15, 2023**

A meeting of the Town Council was held on Wednesday, March 15, 2023, at the Municipal Building, 2nd Floor, Council Chambers, 355 East Central Street, Franklin, MA. Councilors present: Brian Chandler, Theodore Cormier-Leger, Robert Dellorco, Cobi Frongillo, Melanie Hamblen, Glenn Jones, Thomas Mercer, Deborah Pellegrini, Patrick Sheridan. Councilors absent: None. Administrative personnel in attendance: Jamie Hellen, Town Administrator; Mark Cerel, Town Attorney.

CALL TO ORDER: ► Chair Mercer called the meeting to order at 7:00 PM. Chair Mercer called for a moment of silence. All recited the Pledge of Allegiance.

ANNOUNCEMENTS: ► Chair Mercer reviewed the following as posted on the agenda. A Note to Residents: All citizens are welcome to attend public board and committee meetings in person. Meetings are live-streamed by Franklin TV and shown on Comcast Channel 11 and Verizon Channel 29. In an effort to maximize citizen engagement opportunities, citizens will be able to continue to participate remotely via phone or Zoom. He announced that this meeting is being recorded by Franklin TV; this meeting may be recorded by others.

CITIZEN COMMENTS: ► Ms. Amber Wilson, 903 Lincoln Street, stated that she was speaking as a resident and also as the president of the LGBTQ Alliance in Franklin. She stated that they are having their second annual Celebrate with Pride event on June 25. She proposed that they fly a Pride flag outside of Town Hall for the entire month of June or at least the weekend of the Pride event. She stated that this is looking to be an annual event. She stated that the City of Boston does it and a lot of other towns and cities in the Commonwealth do it.

APPROVAL OF MINUTES: ► *March 1, 2023.* ► **MOTION to Approve** the March 1, 2023 meeting minutes by **Dellorco. SECOND** by **Jones. No discussion.** ► **VOTE: Yes-9, No-0, Absent-0.**

PROCLAMATIONS/RECOGNITIONS: ► *Swearing In: Marciano Silva - Police Department; Swearing In: Christopher Gulla - Police Department; Swearing In: Michael LaCure - Police Department; Swearing In: Kevin Quinn - Police Department.* ► Chief of Police Thomas Lynch introduced the new police officers. He reviewed Officer Marciano Silva's education, background, and career. ► Officer Silva's wife pinned the badge. ► Chief Lynch reviewed Officer Christopher Gulla's education, background, and career. ► Officer Gulla's wife pinned the badge. ► Chief Lynch reviewed Officer Michael LaCure's education, background, and career. ► Officer LaCure's wife and son pinned the badge. ► Chief Lynch reviewed Officer Kevin Quinn's education, background, and career. ► Officer Quinn's father pinned the badge. ► Town Clerk Nancy Danello performed the swearing in.

Chair Mercer called a two-minute recess.

APPOINTMENTS: ► *Master Plan Update Committee.* ► Mr. Hellen stated that this item is to appoint the members of the Master Plan Update Committee. He referred to his Master Plan Update Committee Appointments memo to the Town Council dated March 10, 2023, that is provided in the meeting packet. He reviewed that they received a total of 16 applications for the six at-large seats and they tried to nominate folks who had the time and the passion to put the work in. He noted that this is going to be a 12 to 18 months project. He reviewed that the Master Plan Update Committee must be comprised of three members of the Town Council, two members of the Planning Board, one member of the ZBA, one member of the Conservation Commission, and six citizen members at large. He requested the Town Council ratify the appointments of the 13 individuals listed below to the Master Plan Update Committee.

- 1) Glenn Jones (Town Council)
- 2) Cobi Frongillo (Town Council)
- 3) Melanie Hamblen (Town Council)
- 4) Rick Power (Planning Board)
- 5) Jennifer Williams (Planning Board)
- 6) Bruce Hunchard (Zoning Board of Appeals)
- 7) Meghann Hagen (Conservation Commission)
- 8) Kenneth Elmore (At Large)
- 9) Erin Gallagher (At Large)
- 10) Joe Halligan (At Large)
- 11) Ginelle Lang (At Large)
- 12) Eric Steltzer (At Large)
- 13) Gino Carlucci (At Large)

► Councilor Jones read the appointments. ► **MOTION to Ratify** the appointments of the names listed above by the Town Administrator to serve as members of the Master Plan Update Committee with terms to expire upon delivery of a final report to the Planning Board for their consideration by **Jones. SECOND** by **Dellorco. Discussion:** ► Councilor Frongillo stated that he thinks this is a really great group in front of us. He stated that where he thinks it is the lightest and where he thinks they need to put in a concerted effort during the process in engaging the people throughout the process is around our schools, our arts, and around agriculture particularly in tying in arts and culture. ► Councilor Jones stated that this is an excellent selection of individuals. He pointed out that they are charged by Massachusetts state law that they must make a Master Plan. He stated that the current exiting Master Plan is available on the Town's website. ► **VOTE: Yes-9, No-0, Absent-0.**

HEARINGS: None.

LICENSE TRANSACTIONS: None.

PRESENTATIONS/DISCUSSIONS: ► **Discussion: FLOCK Cameras - Chief of Police Thomas J. Lynch.** ► Chief of Police Thomas Lynch reviewed the stationary FLOCK system license plate reader (LPR) proposal. He reviewed that the proposal is for the installation of two fixed license plate reader cameras sourced from FLOCK safety. He stated that they did research on this, discussed it with the Town Administrator, and are now bringing it forward to Town Council to let you know what we propose. ► Officer Michael Demers narrated a slideshow presentation. He reviewed a benefit analysis of the proposed system. He stated that more than 75 percent of crimes committed in the United States involve a motor vehicle. The LPR technology is established and already deployed nationwide. He stated that this technology only takes pictures of the back license plates of vehicles. He stated that they would like the LPRs stationed in two locations in town. He reviewed that many nearby towns already have this system including Medway and Bellingham. He explained the transparency portal is accessible by the public and provides data. He explained potential uses for this system including suicidal individuals, operators of vehicles who have felonious warrants, missing children, erratic operators, and local drug, firearm, and human trafficking. He reviewed various potential Franklin scenarios that this proposed system would be beneficial. He discussed the logic of the proposed locations at the Route 495 off and on ramps. He stated that this is a tool to help deter and solve situations. He stated that it only captures the rear license plate; it does not capture the front of the vehicle or the operator. He stated that FLOCK was chosen due to the great cost benefit of \$2,500 annually per camera with a one-time installation cost. He explained the ethical stance of the system. He stated that there are a lot of legalities to this, and if they say they will delete the data every 30 days, they have to. He stated that the number of days before it is deleted can be customized. ► Ms. Laura Holland, representative of FLOCK (via Zoom), reviewed the system

specifications. She reviewed how the vehicle recognition system works, system specifications, and balancing privacy considerations. She reviewed that the system takes a picture of the back of the vehicle and stores the image in a database and classifies the image based on key specifications. She stated that they call all those pieces of data the vehicle fingerprint. She stated that being able to have the ability to search on this can help as an investigative lead. She stated that the picture can be captured for a vehicle traveling as fast as 75 mph. She stated that it is a cloud-based connection through LTE; it functions 24/7 in all types of weather. She reviewed privacy concerns and stated that no photos of the front of the vehicle are stored, the camera does not record video, there are no facial recognition features only vehicle, and a flip-book of photos for each vehicle is created. She reviewed the American Civil Liberties Union (ACLU) recommendations regarding protecting privacy and noted that they take them seriously. ► Chief Lynch reviewed a recent incident where if the camera system was there, it would have provided some leads for finding the vehicle. ► Town Council members asked questions and made comments. ► Councilor Jones expressed a concern about the LTE based network and the possibility of cybercrime. He asked what is their cyber security. ► Ms. Holland reviewed the level of cyber security they provide. She stated that at this time they have had no instances of hacking. She stated that in general they do not see a lot of vandalism of their devices. ► Chief Lynch stated that he was not asking for any money from the Town Council and that he is taking care of it in another way to pay for it. ► Officer Demers reviewed that there would be two devices just for vehicles coming into town. He noted that there is no commitment to this and if it did not work out, they could pull out and the cost would be prorated back. ► Councilor Frongillo stated that governments role is a balance of liberty and security. He stated that his biggest point is this idea of audit law and asked can we publish searches and make that as transparent as possible. He asked if they are preparing to make that public or can we make a policy around this for when we do a search that information is shared. ► Ms. Holland explained what other communities do. She stated that some communities publish their search audit as part of their transparency. Other communities chose not to publish it on their transparency portal and bring it back to elected officials in a summary report of the audit log on a regular basis. ► Councilor Frongillo stated that he would be comfortable with either. He stated that if there is a commitment to transparency, he would feel much better. ► Chief Lynch stated that this is an investigative tool, not a video camera. ► Councilor Hamblen requested information on maintenance and repairs. ► Ms. Holland stated that they have a team that monitors the maintenance and health of all the cameras which is included in the leasing agreement. She stated that their cameras very rarely break. ► Councilor Chandler stated that there is not an expectation of privacy with license plates. He stated that we are fans of free movement and not fans of detaining people by mistake. He asked how many people are getting pulled over by mistake which is the part that he does not like about this. ► Chief Lynch explained that they would call the MECC and ask them to run a particular plate to make sure the plate matches; before you can act, you have to take the time to confirm. ► Ms. Holland discussed the question of possible mistakes being made, and she reviewed that they would verify that the plate that is in the image is the plate that is on the national registry. ► Chair Mercer stated that he would support giving this a shot and seeing how it helps the department.

► **Discussion & Project Presentation: 121 Grove Street, a “Friendly 40B” – Fairfield (Legislation for Action #9a).** ► Mr. Hellen stated that the Town Council will see a slideshow presentation on a project proposal for 121 Grove Street and legislation for action following it regarding a Friendly 40B. He reviewed, as provided in his memo to the Town Council dated February 24, 2023, that the decision before the Town Council will be to authorize, or not, the Town Administrator to fill out and file the requisite paperwork with the Commonwealth of Massachusetts for a Local Incentive Program (LIP) project. A LIP is a project where a community has over the required 10 percent and works with a developer to provide a required project with 25 percent affordable units (deeded, in perpetuity). The State housing agency, Department of Housing and Community Development (DHCD), is the next step in the project valuation process. The resolution tonight is to authorize the Town Administrator to submit the paperwork, which will allow for DHCD review and then the project will proceed to the local ZBA. It is important to note the proponent can move to the ZBA regardless of the Council’s decision this evening. The project has been

reviewed by the Planning Board (per town protocol) and is currently going through the Conservation Commission process regarding wetlands delineations. The Town Council has no jurisdiction on wetlands and the Conservation Commission proceedings. The EDC also had a Chapter 40B forum two weeks ago and had a preliminary presentation of the project at its February 22, 2023, meeting. ► Mr. Richard Cornetta, attorney working with Fairfield Residential; Mr. Robb Hewitt, Vice President of Fairfield Residential; Ms. Janice Hurst of Fairfield Residential; and Mr. John Shipe of Shipe Consulting addressed the Town Council. Mr. Cornetta reviewed that Fairfield Residential developed the property on Dean Avenue, Station 117, of about 257 apartment-style units by the train station. He stated that Fairfield is a national company. He reviewed that they started last June with the technical review for this proposal. He stated that there is a huge demand for housing and affordable housing. He stated that they have been before the Planning Board and Conservation Commission with this proposal. He stated that Fairfield, under the law, could apply to the Zoning Board of Appeals directly with this project; however, they want to work with Franklin so everyone can be proud of the project. He stated that another point is location. It is zoned as industrial. However, they believe through their research that even though it is an industrial property, it is not an industrial-desired property. He stated that there are not a lot of residential abutters. ► Mr. Hewitt narrated a slideshow presentation. He reviewed that Fairfield Residential is a national company. He stated that Fairfield owns the properties they develop. He stated that they like to control the quality of what they build. He discussed that Dean Avenue, Station 117, is one of their recent properties, and he showed photographs of the location. He discussed the amenities at Station 117. He stated that their market and affordable units are the same. He discussed the housing crisis in Massachusetts. He stated that this is an opportunity to meet the demand for high quality, diverse, and affordable housing. He stated that they prefer to be collaborative, and they like to get feedback. He discussed Franklin's Friendly 40B process. He stated that the next steps include submitting the application for site eligibility to DHCH or MassHousing, then they submit their application to the ZBA. He reviewed the location on Grove Street. He reviewed that it is 32 acres, there are no floodplains, no endangered species, abutted by the state forest, no direct residential neighbors, and no Title 5 septic concerns. He stated that the proposal is for 300 to 330 luxury apartments with a mix of one, two, and three bedrooms with 75 to 83 units deed restricted for affordability as workforce housing. He reviewed the proposed amenities and discussed items under consideration based on feedback to date. He showed a concept rendering of buildings from another project. He noted the location is great proximity to I-495, commuter rail station, shopping, Franklin state forest, and the rail trail. He noted benefits to the town and the public include that it significantly increases the tax assessment over the existing use and positive impacts for local retail. He noted that they will have to mitigate any traffic impacts based on a traffic study to be peer reviewed. He stated that this proposal would contribute to the state's mandates for affordable housing and increase the Town's SHI. He noted that there would be no impacts to abutters. He reviewed that they had a limited number of waivers including that they will need a waiver for the use as it is zoned for industrial. He noted that three stories are allowed, but they are suggesting four and five stories to decrease impervious coverage. He stated that Grove Street Residences will provide diverse and affordable rental housing options in Franklin. He stated that they are excited because they have developed in Franklin before. ► Town Council members asked questions and made comments. ► Councilor Hamblen stated that it is important to allow for new growth. She suggested a sidewalk to the Beaver Street playground. She stated that it is good that the fire department is okay with the height. She stated that the applicant is working with the Town and listening to feedback. She stated that the only concern would be that if the property were sold, they would keep track of the affordable housing units. ► Mr. Hewitt stated the units would be deeded in perpetuity. ► Councilor Frongillo stated that he wanted to reiterate the comments that they have heard. He reviewed his reasons that he loves this property. He stated that the location is that you cannot go anywhere without the use of a car. He stated that if we put a unit like this away from businesses and public services, they are only going to be adding to our traffic. He stated that his biggest ask if they move forward is their multi-use path space for people to access SNETT and the other opportunity is down near Beaver if you were going to bike to downtown, we would need to improve the safety. ► Councilor Jones confirmed the applicant's estimates were about 43 school-age children and about \$800,000 benefit to the community. He

stated that there is not a big cost benefit as it would require \$675,000 for the 43 children. He stated that this is a high-density housing development, and this is an industrial zoned area. He discussed that he does not see many green initiatives in this project. He stated that this project is in a busy area and this will add to the traffic. He discussed the walkability to downtown amenities and stated that this location is really off the beaten path. He stated that this is going to be a place where people will have to drive everywhere.

► Mr. Hewitt discussed that they are used to the Stretch Code and are starting to explore some solar ready roofs at some projects. He stated that they are always looking for some good ideas. ► Councilor Dellorco asked if there was a traffic study done on Grove Street. He discussed the number of tractor trailers that he sees on Grove Street. He stated that he thinks Grove Street should be all industrial. He stated that he is concerned about Beaver Street. He stated that when you put all these people in there, the traffic will greatly get backed up. He asked how many local contractors are used when it is being built. ► Mr. Hewitt stated that affordable rents range from \$1,800 to \$2,300. He stated that they usually get better pricing from local contractors, but they have to make sure they are qualified; everything is a bid process.

► Councilor Chandler discussed the industrial zoning of the location. He asked why at Station 117 there were no affordable units and here they have 25 percent. ► Mr. Hewitt stated that Station 117 was a rezone from the Town, and there was no ask for affordable units. ► Mr. Cornetta noted that Station 117 was an expensive project to clean as it was environmentally a mess; there were many mitigation measures that went into that project. ► Councilor Chandler stated that he was concerned the most with the Beaver Street light; there will be a lot of cars with the 350 apartments. He asked to see that part of the traffic study.

► Director of Planning and Community Development Bryan Taberner, in response to a question, stated that as this is a 40B, it is allowed, but multi-family is not an allowed use in an industrial zone. He stated that the ZBA has to approve this as they have the authority to give out the comprehensive permit or not. He stated that it does not matter if the Town Council likes or does not like the project; however, the Town Council's support does mean a lot. He noted that this is the Friendly 40B process. ► Councilor Chandler discussed parking and noted that for example 1.2 spots is not going to cut it. He stated that the public is not happy with the apartments. He stated that he cannot support more apartments. ► Mr. Hewitt stated that they would never do less than what was adequate; however, they do not want to build more parking and disturb more land than they have to. ► Councilor Cormier-Leger stated that they are looking for community partners and not just use this as a big project to make money. He discussed apartment rent costs, process to end a lease, and desire for homeownership. He stated that apartments seem to be more transient as people stay for a while and then move on which may be some of the concern about apartments. He asked if the developer contributed back to the town. He stated that the developers will be making probably millions of dollars on this project, and he asked if they could be a community partner with the town. ► Councilor Pellegrini stated that all she is hearing from the people out on the streets is that we have too many apartments and we do not need more apartments, and I have to agree with them. She stated that she is unhappy that Station 117 was sold. She stated that is not showing that they are about the town; they are only about their own pocket, and she is not about that at all. She stated that there are water bans and one of their slides states that there is ample water. She stated that she is concerned about Beaver Street, the light, and the traffic. She stated that the Town is over the 10 percent, so we do not have to push for affordable housing. She stated that she does not think they come out to be affordable. She stated that she wants to see some actual affordable housing units. She stated that they keep comparing this project to Dean Avenue. She stated that she talks to people living there and they are not happy with it. She stated that she has mixed feelings. ► Chair Mercer stated that for some of the questions asked we really do not have answers to yet. He noted that the delineation of the wetlands will decide how many units can go in there. He stated that he has issues with the number of units and the height of the buildings. He stated that there are unknowns here and he would like to have the answers. He stated that the Friendly 40B puts the ZBA in control of who builds what in the town. He stated that if we drop below the 10 percent, we do not have control, and it would all be from the state, and the town would have no control on who would be building it. He stated that at least this way, the Town can work with the contractor and fix concerns of the Town Council members and residents. He discussed that if there were 295 units, then the Town would not have to worry about their SHI number for many years. He stated that he is concerned that he does not

have enough good information to make an intelligent decision on what is before the Town Council this evening. ► Mr. Joseph Halligan, 1 Newell Drive, stated that he is familiar with the 30-acre property and it is not feasible for many industrial projects as the wetlands cut it up. He stated that these people can weave around that and put in smaller buildings and make it residential. He stated that it will never be developed as industrial. He stated that a similar project for this parcel was brought before the ZBA many years ago and it fell apart. He stated that traffic is a great concern, but all over Franklin traffic is a concern. He discussed that he has heard people talk about the need for affordable housing but not in my backyard. He stated that this project is an option for people who do not want to live in downtown; it is a different life style that some people will like. He stated that we really need affordable housing. He noted that Franklin lost population last year. He stated that he likes the project because of where it is located. He stated that we cannot have a carless society because of the size of the town; we will always have automobiles. He stated that a positive vote tonight will allow them to go to the ZBA, and the Town Council members could go to the ZBA and suggest some conditions. He stated that if we want affordable housing, it has to go somewhere. ► Mr. Hellen offered clarifying points. He stated that the water ban and water issues have nothing to do with this. He stated that this is about the water management permit. He stated that we have enough water for the town. He stated that there are a lot of local developers who flip projects; flipping projects is a market-based decision and is part of a free market. He stated that about the location, it is a struggling site as industrial, and this is one of the better uses. He noted that this is right near the Chilson Beach area. He discussed affordability and stated that the state sets the rates of \$1,800 to \$2,300. He discussed that there are only four single-family homes for sale in Franklin. He stated that if it is not increased, by 2030 the town will be under the 10 percent. He stated that he hears the number one concern in Massachusetts is housing. He noted that the Town just purchased over 200 acres of open space, which could have been single-family homes. He stated this is a very challenging decision. ► Mr. Cerel stated that he wanted to clarify on the projections going under 10 percent and what that means. He stated that if that happens, even if you are one unit short, a developer could come in with hundreds of units; as long as you are under 10 percent, multiple developers could come in with projects. ► Councilor Jones asked if the applicant would come back to the Town Council to do another presentation with answers to the questions asked tonight. ► Mr. Cornetta stated that there is a significant financial contribution to get to this point to provide all this detailed information which we know we will have to do for the ZBA. He suggested to allow us to go through the process and invest the money and do the studies and work with the ZBA where we invite you to participate in the process as well. He stated to let us go forward with this and we invite you to participate in that process that is in place. ► Councilor Jones proposed a motion to table Resolution 23-26: Franklin Town Council Support for Proposed GL Chapter 40B Affordable Housing Project at 121 Grove Street Pursuant to DHCD's Local Initiative Program (LIP): Friendly 40B, to the next meeting to try to afford some answers to some of the questions. ► Chair Mercer thanked the presenters for their presentation.

LEGISLATION FOR ACTION:

Note: Two-Thirds Vote requires six votes; Majority Vote requires majority of members present and voting.

- a. Resolution 23-26: Franklin Town Council Support for Proposed GL Chapter 40B Affordable Housing Project at 121 Grove Street Pursuant to DHCD's Local Initiative Program (LIP): Friendly 40B (Motion to Approve Resolution 23-26 - Majority Vote).* ► **MOTION to Waive** the Reading of Resolution 23-26: Franklin Town Council Support for Proposed GL Chapter 40B Affordable Housing Project at 121 Grove Street Pursuant to DHCD's Local Initiative Program (LIP): Friendly 40B by **Frongillo**. **SECOND** by **Dellorco**. **No discussion**. ► **VOTE: Yes-9, No-0, Absent-0**. ► **MOTION to Approve** Resolution 23-26: Franklin Town Council Support for Proposed GL Chapter 40B Affordable Housing Project at 121 Grove Street Pursuant to DHCD's Local Initiative Program (LIP): Friendly 40B by **Dellorco**. **SECOND** by **Hamblen**. **Discussion**. ► Councilor Frongillo stated that he thinks where he currently stands is leaning in favor of allowing them to move

forward; they seem like very willing participants. He stated that in no way is this an endorsement of the project where it stands but rather that we accept the basic understanding that this could add affordable housing to our inventory and adds revenue and the actual details still need to be worked out. He stated that he feels comfortable that they are strong partners and we continue to move forward. ► Chair Mercer stated that he thinks we as a Town Council have to have confidence that the ZBA as well as the Planning Board will continue to work and deal with the issues that they have brought forward. ► Councilor Pellegri stated that this resolution states that we are in support. ► Chair Mercer stated that it is in support of the paperwork being filed to let them continue to work with the authorities. ► Mr. Hellen reminded the Town Council that they are not permitting any project, and they have no jurisdiction over wetlands. He stated that there are waivers that are not under the purview of the Town Council. He stated that the support for the project is essentially to move the paperwork to the Department of Planning and Community Development. He stated that the ability for the Town Council or others to get their mitigation in is premature, and he does not have a timeline for that. ► Mr. Cerel stated that a letter of support comes from the chief executive officer of the municipality, which in this case is being given direction by the Town Council. ► Councilor Pellegri stated that she still would feel more comfortable without that word support because it is showing that we support this and some of us do not support this, but we are willing to listen to the next stages that have to be done. ► Mr. Cerel discussed what the support means. He stated that in the long run it is up to the ZBA where two of the three members would have to vote in the affirmative. ► Councilor Pellegri stated that for the reason of having that word in there, she is going to have to vote no. ► Councilor Chandler stated that he thinks that the bottom line is it does not matter what we say because they are going to go to the ZBA. ► Councilor Dellorco stated that when we went over the 10 percent, we thought that everything now would come to us, but that is not true. He stated that now, anyone can just go to the ZBA with a Friendly 40B, and what is left to be built in 2030 anyway as there will be nothing left to build. ► Chair Mercer requested a roll call vote. ► **ROLL CALL VOTE: Chandler-NO; Cormier-Leger-NO; Dellorco-NO; Frongillo-YES; Hamblen-YES; Jones-NO; Mercer-YES; Pellegri-NO; Sheridan-YES. ► VOTE: Yes-4, No-5, Absent-0. Motion Fails.**

- b. Resolution 23-27: Acceptance of an Additional 2% COLA for Retirees, as Authorized by Chapter 269 of the Legislative Acts of 2022 (Motion to Approve Resolution 23-27 - Majority Vote).** ► Councilor Jones read the resolution. ► **MOTION to Approve Resolution 23-27: Acceptance of an Additional 2% COLA for Retirees, as Authorized by Chapter 269 of the Legislative Acts of 2022 by Dellorco. SECOND by Hamblen. Discussion:** ► Mr. Hellen reviewed that Norfolk County is requesting all legislative bodies approve an additional 2 percent COLA for retirees over the 3 percent COLA this year to assist retirees with the impacts of inflation. By law, the Town Council is required to authorize this increase. Every community in Norfolk County has, or will, approve this COLA increase for retirees. In response to a question, he stated that this is not a budgetary item of the Town, it comes off the county assessment. He stated that there is no real budget impact; this will impact possibly in FY25/FY26. He stated that the pension system is run by the state. ► Councilor Frongillo asked for a presentation on pension liability. ► Mr. Hellen gave a brief review of the pension liability system and the funding. He stated that they send you the bill and you have to pay it or you do not; it is a challenging issue to get arms around. **VOTE: Yes-9, No-0, Absent-0.**
- c. Bylaw Amendment 23-893: Amendment to Sewer System Map - Second Reading (Motion to Approve Bylaw Amendment 23-893 - Majority Roll Call Vote).** ► Councilor Jones read the bylaw amendment. ► **MOTION to Approve Bylaw Amendment 23-893: Amendment to Sewer System Map by Dellorco. SECOND by Hamblen. Discussion:** ► Mr. Hellen stated that this is the second and final reading of the sewer map amendment which, if approved, will allow a sewer connection from the cannabis grow facility which is currently under construction at 160 Grove Street. ► **ROLL**

CALL VOTE: Chandler-NO; Cormier-Leger-YES; Dellorco-YES; Frongillo-YES; Hamblen-YES; Jones-YES; Mercer-YES; Pellegrini-YES; Sheridan-YES. ► VOTE: Yes-8, No-1, Absent-0.

TOWN ADMINISTRATOR'S REPORT: ► Mr. Hellen gave a thank you to the Franklin Fire Department and Senior Center staff for the annual corned beef dinner. He stated that there is a meeting at 8:30 AM at the Senior Center Café tomorrow for citizens to come down and look at the fixes that have been made. He offered condolences to Police Sergeant Nicholas Palmieri, the Franklin Police Department community, the Oak Street School community, and Franklin Public Schools community for the loss of Bianca Palmieri.

SUBCOMMITTEE REPORTS:

- a. **Capital Budget Subcommittee.** None.
- b. **Economic Development Subcommittee.** ► Councilor Hamblen stated that the next meeting is scheduled for next Wednesday at 6 PM at Council Chambers, and they will discuss accessory dwelling units.
- c. **Budget Subcommittee.** ► Chair Mercer stated that they met and discussion centered around a lot of the school side of the budget. He stated that he thinks the plan regarding the budget process is that they will not have another joint meeting until the budget hearings scheduled for May 24 and May 25.
- d. **GATRA Advisory Board.** ► Councilor Frongillo stated that they are not meeting this month, but they are preparing the budget and hoping to have that by May.

FUTURE AGENDA ITEMS: ► Councilor Sheridan requested a discussion regarding a place to put up different types of flags which was brought up earlier. ► Mr. Hellen noted that he was going to meet with Ms. Amber Wilson who spoke during Citizens Comments. ► Councilor Frongillo stated that he was going to say something similar and stated that if you feel that you need a policy, then I would like to provide you with that policy in order to make what I think is a no-brained decision to raise the Pride flag. ► Councilor Hamblen stated that she agreed with what Councilors Sheridan and Frongillo talked about. She stated that she thinks it would be really good to have a discussion about the pensions.

COUNCIL COMMENTS: ► Councilor Sheridan wished all a Happy St. Patrick's Day. ► Councilor Frongillo noted the Arts and Culture symposium at Dean College on March 30. He noted that the Open Space and Recreation survey is still open until April 16, and the Arts and Culture survey is open until June 1. He stated that Senior Center office hours are tomorrow. He stated that on March 29, from 4 PM to 6 PM, there is a Converse and Conserve workshop regarding if you own land and how to pass on an estate. ► Councilor Hamblen stated that she says everything that Councilor Frongillo said, and she gave condolences to the Palmieri family. ► Councilor Cormier-Leger gave condolences to the Palmieri family. He congratulated all new police officers. He thanked all who came out to the first Arts and Culture meeting at Dean College; it was a great discussion. He congratulated the cast, staff, and volunteers of *Something Rotten* at The Black Box; it was a fantastic performance. He stated that he gives his public support about the Pride flag and in general our efforts to figure this issue out. He stated that this will have his full support. ► Councilor Chandler stated that last week the MA Supreme Court ruled about when the Chair of a committee can ask people who are speaking to sit down and stop speaking. He asked if something can be provided about this. ► Mr. Cerel stated that he understands that the MMA is putting out detailed guidance and is working on it now so you will know how to proceed. ► Councilor Pellegrini stated that in our rules and orders there is something about the Chair being able to tell someone to sit down and maybe that is something that needs to be changed or added to. ► Mr. Cerel stated that you can still regulate disruptive conduct, but you cannot have a code of civility. ► Councilor Pellegrini noted the Franklin Rod & Gun Club's breakfast this Sunday which starts at 7:30 AM and is \$8 for adults and \$4 for children. She asked for an update on the Brick School and the old museum. She gave her deepest sympathies to the Palmieri family. ► Mr. Hellen stated that regarding the Red Brick Schoolhouse, the windows that were sent were rejected because they were 4 in. too wide; they were reordered and will be

here in possibly four to six months. He stated that the Historical Museum cupola is probably still one year out. He stated that the South Franklin Church regarding building by Habitat for Humanity is being worked on at their end. ► Councilor Jones gave his sympathies to the Palmieri family. He congratulated the new police officers. He thanked the Town Council members and his new teammates regarding the next Master Plan. He congratulated his son for being promoted to the highest rank of chief in the U.S. Naval Sea Cadet Corps; he stated that he is very proud of his son. ► Councilor Dellorco gave his condolences to the Palmieri family. He noted the passing of Olinto “Willie” Colace and gave his condolences to the Colace family. He stated that he has received some complaints about the traffic in front of St. Mary’s Church regarding the backups. ► Chair Mercer thanked everyone who was present for tonight’s meeting. He congratulated the new police officers. He thanked the presenters for tonight’s meeting.

EXECUTIVE SESSION: None.

ADJOURN: ► MOTION to Adjourn by Dellorco. SECOND by Jones. No Discussion. ► VOTE: Yes-9, No-0, Absent-0.

Meeting adjourned at 10:46 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
 MONETARY TRANSMITTAL FORM

APPLICATION FOR A TRANSFER OF LICENSE

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make \$200.00 payment here: [ABCC PAYMENT WEBSITE](#)

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

ENTITY/ LICENSEE NAME

ADDRESS

CITY/TOWN STATE ZIP CODE

For the following transactions (Check all that apply):

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> New License | <input type="checkbox"/> Change of Location | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal) | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input checked="" type="checkbox"/> Transfer of License | <input type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Change of License Type (i.e. club / restaurant) | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock) |
| <input type="checkbox"/> Change of Manager | <input type="checkbox"/> Change Corporate Name | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officers/
Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest
(LLC Members/ LLP Partners,
Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder | <input type="checkbox"/> Change of Hours |
| | | <input type="checkbox"/> Other <input type="text"/> | <input type="checkbox"/> Change of DBA |

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL

Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3
 Chelsea, MA 02150-2358

PARTH PATEL



TO WHOMEVER IT MAY CONCERN,

My experience aligns with the qualifications you are looking for Liquor manager. I have been working as a liquor manager at 1326 Main Street (7-Eleven) since 2018. I have completed all the required certifications and courses for the liquor license. My role as liquor manager serves as ordering/inventory management, adhering to policies and laws, training my staff for checking for Fake ID's, not selling alcohol to intoxicated customers, not selling alcohol to underage customers.

If you need any further documents or any other information, please contact me at 973-580-8195 anytime.

Thank You,
Parth Patel



CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE



TM1 SOLUTIONS INC
664 UNION ST
FRANKLIN MA 02038-5002

Why did I receive this notice?

The Commissioner of Revenue certifies that, as of the date of this certificate, TM1 SOLUTIONS INC is in compliance with its tax obligations under Chapter 62C of the Massachusetts General Laws.

This certificate doesn't certify that the taxpayer is compliant in taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law.

This is not a waiver of lien issued under Chapter 62C, section 52 of the Massachusetts General Laws.

What if I have questions?

If you have questions, call us at (617) 887-6400 or toll-free in Massachusetts at (800) 392-6089, Monday through Friday, 9:00 a.m. to 4:00 p.m..

Visit us online!

Visit mass.gov/dor to learn more about Massachusetts tax laws and DOR policies and procedures, including your Taxpayer Bill of Rights, and MassTaxConnect for easy access to your account:

- Review or update your account
- Contact us using e-message
- Sign up for e-billing to save paper
- Make payments or set up autopay

Edward W. Coyle, Jr., Chief
Collections Bureau



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

Maura Healey
GOVERNOR
Kim Driscoll
LT. GOVERNOR



418273630

Lauren E. Jones
SECRETARY
Katie Dishnica
ACTING DIRECTOR

tm1solutions inc
664 UNION STREET
FRANKLIN, MA 02038

EAN: 22117216
March 21, 2023

Certificate Id:68404

The Department of Unemployment Assistance certifies that as of 3/21/2023 ,tm1solutions inc is current in all its obligations relating to contributions, payments in lieu of contributions, and the employer medical assistance contribution established in G.L.c.149,§189.

This certificate expires in 30 days from the date of issuance.

Katie Dishnica, Acting Director

Department of Unemployment Assistance



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

APPLICATION FOR A TRANSFER OF LICENSE

Municipality

1. TRANSACTION INFORMATION

- Transfer of License
- Alteration of Premises
- Change of Location
- Management/Operating Agreement
- Pledge of Inventory
- Pledge of License
- Pledge of Stock
- Other
- Change of Class
- Change of Category
- Change of License Type (\$12 ONLY, e.g. "club" to "restaurant")

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation. Attach additional pages, if necessary.

I am buying 7-Eleven from current owner with package store license for this location

2. LICENSE CLASSIFICATION INFORMATION

ON/OFF-PREMISES	TYPE	CATEGORY	CLASS
Off-Premises-15	§15 Package Store	Wines and Malt Beverages	Annual

3. BUSINESS ENTITY INFORMATION

The entity that will be issued the license and have operational control of the premises.

Current or Seller's License Number FEIN

Entity Name

DBA Manager of Record

Street Address

Phone Email

Add'l Phone Website

4. DESCRIPTION OF PREMISES

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. If this application alters the current premises, provide the specific changes from the last approved description. You must also submit a floor plan.

FIRST FLOOR SQ FT AREA IS 2438, SECOND FLOOR AREA IS 846 SQ FT. 1ST FLOOR STORAGE AREA IS 102 SQ FT.

Total Sq. Footage	<input type="text" value="3284"/>	Seating Capacity	<input type="text" value="0"/>	Occupancy Number	<input type="text" value="0"/>
Number of Entrances	<input type="text" value="1"/>	Number of Exits	<input type="text" value="3"/>	Number of Floors	<input type="text" value="2"/>

APPLICATION FOR A TRANSFER OF LICENSE

5. CURRENT OFFICERS, STOCK OR OWNERSHIP INTEREST

Transferor Entity Name By what means is the license being transferred?

List the individuals and entities of the current ownership. Attach additional pages if necessary utilizing the format below.

Name of Principal	Title/Position	Percentage of Ownership
<input type="text" value="Mohamad Hijazi"/>	<input type="text" value="President"/>	<input type="text" value="100"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

6. PROPOSED OFFICERS, STOCK OR OWNERSHIP INTEREST

List all individuals or entities that will have a direct or indirect, beneficial or financial interest in this license (E.g. Stockholders, Officers, Directors, LLC Managers, LLC Members, LLP Partners, Trustees etc.). Attach additional page(s) provided, if necessary, utilizing Addendum A.

- The individuals and titles listed in this section must be identical to those filed with the Massachusetts Secretary of State.
- The individuals identified in this section, as well as the proposed Manager of Record, must complete a CORI Release Form.
- Please note the following statutory requirements for Directors and LLC Managers:
On Premises (E.g. Restaurant/ Club/Hotel) Directors or LLC Managers - At least 50% must be US citizens;
Off Premises(Liquor Store) Directors or LLC Managers - All must be US citizens and a majority must be Massachusetts residents.
- If you are a Multi-Tiered Organization, please attach a flow chart identifying each corporate interest and the individual owners of each entity as well as the Articles of Organization for each corporate entity. Every individual must be identified in Addendum A.

Name of Principal	Residential Address	SSN	DOB	Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen	MA Resident
<input type="text" value="Nakula Patel"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="President"/>	<input type="text" value="100"/>	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="radio"/> Yes <input type="radio"/> No
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

APPLICATION FOR A TRANSFER OF LICENSE

6. PROPOSED OFFICERS, STOCK OR OWNERSHIP INTEREST (Continued...)

Name of Principal	Residential Address	SSN	DOB
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
MA Resident			
<input type="radio"/> Yes <input type="radio"/> No			

Name of Principal	Residential Address	SSN	DOB
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
MA Resident			
<input type="radio"/> Yes <input type="radio"/> No			

Name of Principal	Residential Address	SSN	DOB
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
Title and or Position	Percentage of Ownership	Director/ LLC Manager	US Citizen
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No
MA Resident			
<input type="radio"/> Yes <input type="radio"/> No			

Additional pages attached? Yes No

CRIMINAL HISTORY

Has any individual listed in question 6, and applicable attachments, ever been convicted of a State, Federal or Military Crime? If yes, attach an affidavit providing the details of any and all convictions.

Yes No

6A. INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Does any individual or entity identified in question 6, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality
Marlboro Food Inc DBA-7-Eleven1442 Grafton st	Package Store Malt&Wine	Package Store	Worcester
Marlboro Food Inc DBA-7-Eleven 1326 Main St	Package Store Malt&Wine	Package Store	Worcester

6B. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 6, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

APPLICATION FOR A TRANSFER OF LICENSE

6C. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Have any of the disclosed licenses listed in question 6A or 6B ever been suspended, revoked or cancelled?
Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

7. CORPORATE STRUCTURE

Entity Legal Structure Date of Incorporation
State of Incorporation Is the Corporation publicly traded? Yes No

8. OCCUPANCY OF PREMISES

Please complete all fields in this section. Please provide proof of legal occupancy of the premises.

- If the applicant entity owns the premises, a deed is required.
- If leasing or renting the premises, a signed copy of the lease is required.
- If the lease is contingent on the approval of this license, and a signed lease is not available, a copy of the unsigned lease and a letter of intent to lease, signed by the applicant and the landlord, is required.
- If the real estate and business are owned by the same individuals listed in question 6, either individually or through separate business entities, a signed copy of a lease between the two entities is required.

Please indicate by what means the applicant will occupy the premises

Landlord Name Landlord Phone Landlord Email

Landlord Address

Lease Beginning Date Rent per Month

Lease Ending Date Rent per Year

Will the Landlord receive revenue based on percentage of alcohol sales? Yes No

9. APPLICATION CONTACT

The application contact is the person who the licensing authorities should contact regarding this application.

Name: Phone:
Title: Email:

12. MANAGER APPLICATION

A. MANAGER INFORMATION

The individual that has been appointed to manage and control the licensed business and premises.

Proposed Manager Name Date of Birth SSN

Residential Address

Email Phone

Please indicate how many hours per week you intend to be on the licensed premises

B. CITIZENSHIP/BACKGROUND INFORMATION

Are you a U.S. Citizen? Yes No *Manager must be a U.S. Citizen

If yes, attach one of the following as proof of citizenship US Passport, Voter's Certificate, Birth Certificate or Naturalization Papers.

Have you ever been convicted of a state, federal, or military crime? Yes No

If yes, fill out the table below and attach an affidavit providing the details of any and all convictions. Attach additional pages, if necessary, utilizing the format below.

Date	Municipality	Charge	Disposition

C. EMPLOYMENT INFORMATION

Please provide your employment history. Attach additional pages, if necessary, utilizing the format below.

Start Date	End Date	Position	Employer	Supervisor Name
10/15/2018	current	Manager	7-Eleven	Nakula Patel

D. PRIOR DISCIPLINARY ACTION

Have you held a beneficial or financial interest in, or been the manager of, a license to sell alcoholic beverages that was subject to disciplinary action? Yes No If yes, please fill out the table. Attach additional pages, if necessary,utilizing the format below.

Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Manager's Signature Date

13. MANAGEMENT AGREEMENT

Are you requesting approval to utilize a management company through a management agreement?

Yes No

If yes, please fill out section 13.

Please provide a narrative overview of the Management Agreement. Attach additional pages, if necessary.

IMPORTANT NOTE: A management agreement is where a licensee authorizes a third party to control the daily operations of the license premises, while retaining ultimate control over the license, through a written contract. *This does **not** pertain to a liquor license manager that is employed directly by the entity.*

13A. MANAGEMENT ENTITY

List all proposed individuals or entities that will have a direct or indirect, beneficial or financial interest in the management Entity (E.g. Stockholders, Officers, Directors, LLC Managers, LLP Partners, Trustees etc.).

Entity Name	Address	Phone
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>			

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>			

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>			

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

Name of Principal	Residential Address	SSN	DOB
<input style="width: 95%;" type="text"/>			

Title and or Position	Percentage of Ownership	Director	US Citizen	MA Resident
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes <input type="radio"/> No

CRIMINAL HISTORY

Has any individual identified above ever been convicted of a State, Federal or Military Crime?

Yes No

If yes, attach an affidavit providing the details of any and all convictions.

13B. EXISTING MANAGEMENT AGREEMENTS AND INTEREST IN AN ALCOHOLIC BEVERAGES

LICENSE

Does any individual or entity identified in question 13A, and applicable attachments, have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages; and or have an active management agreement with any other licensees?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

13C. PREVIOUSLY HELD INTEREST IN AN ALCOHOLIC BEVERAGES LICENSE

Has any individual or entity identified in question 13A, and applicable attachments, ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Name	License Type	License Name	Municipality

13D. PREVIOUSLY HELD MANAGEMENT AGREEMENT

Has any individual or entity identified in question 13A, and applicable attachments, ever held a management agreement with any other Massachusetts licensee?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Licensee Name	License Type	Municipality	Date(s) of Agreement

13E. DISCLOSURE OF LICENSE DISCIPLINARY ACTION

Have any of the disclosed licenses listed in question section 13B, 13C, 13D ever been suspended, revoked or cancelled?

Yes No If yes, list in table below. Attach additional pages, if necessary, utilizing the table format below.

Date of Action	Name of License	City	Reason for suspension, revocation or cancellation

13F. TERMS OF AGREEMENT

a. Does the agreement provide for termination by the licensee? Yes No

b. Will the licensee retain control of the business finances? Yes No

c. Does the management entity handle the payroll for the business? Yes No

d. Management Term Begin Date

e. Management Term End Date

f. How will the management company be compensated by the licensee? (check all that apply)

\$ per month/year (indicate amount)

% of alcohol sales (indicate percentage)

% of overall sales (indicate percentage)

other (please explain)

ABCC Licensee Officer/LLC Manager

Management Agreement Entity Officer/LLC Manager

Signature:

Signature:

Title:

Title:

Date:

Date:

ADDITIONAL INFORMATION

Please utilize this space to provide any additional information that will support your application or to clarify any answers provided above.

APPLICANT'S STATEMENT

I, the: sole proprietor; partner; corporate principal; LLC/LLP manager
Authorized Signatory
of
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature:

Date:

Title:

CORPORATE VOTE

The Board of Directors or LLC Managers of Entity Name
duly voted to apply to the Licensing Authority of and the
City/Town
Commonwealth of Massachusetts Alcoholic Beverages Control Commission on Date of Meeting

For the following transactions (Check all that apply):

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> New License | <input type="checkbox"/> Change of Location | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal) | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input checked="" type="checkbox"/> Transfer of License | <input type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Change of License Type (i.e. club / restaurant) | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock) |
| <input type="checkbox"/> Change of Manager | <input type="checkbox"/> Change Corporate Name | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officers/
Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest
(LLC Members/ LLP Partners,
Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder | <input type="checkbox"/> Change of Hours |
| | <input type="checkbox"/> Other <input type="text"/> | | <input type="checkbox"/> Change of DBA |

"VOTED: To authorize Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

"VOTED: To appoint Name of Liquor License Manager

as its manager of record, and hereby grant him or her with full authority and control of the premises described in the license and authority and control of the conduct of all business therein as the licensee itself could in any way have and exercise if it were a natural person residing in the Commonwealth of Massachusetts."

A true copy attest,

Nakula
Corporate Officer /LLC Manager Signature

Nakula
(Print Name)

For Corporations ONLY
A true copy attest,

Corporation Clerk's Signature

(Print Name)



Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 239 Causeway Street, First Floor
 Boston, MA 02114

DEBORAH B. GOLDBERG
 TREASURER AND RECEIVER GENERAL

CORI REQUEST FORM

JEAN M. LORIZIO, ESQ.
 CHAIRMAN

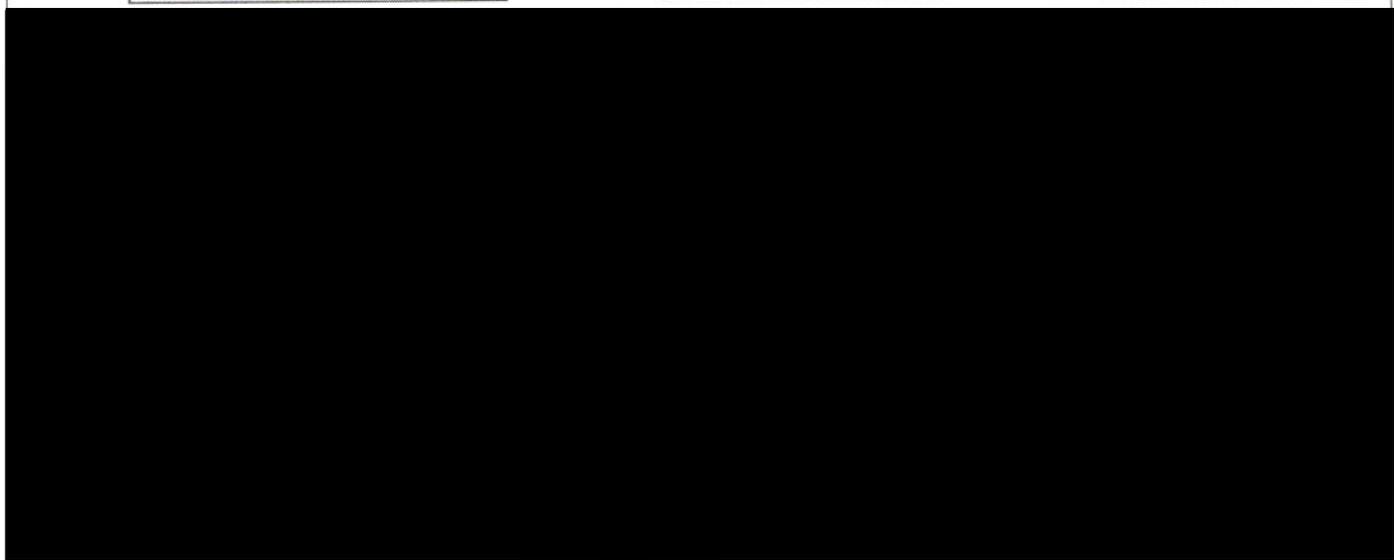
The Alcoholic Beverages Control Commission ("ABCC") has been certified by the Criminal History Systems Board to access conviction and pending Criminal Offender Record Information ("CORI"). For the purpose of approving each shareholder, owner, licensee or applicant for an alcoholic beverages license, I understand that a criminal record check will be conducted on me, pursuant to the above. The information below is correct to the best of my knowledge.

ABCC LICENSE INFORMATION

ABCC NUMBER: <small>(IF EXISTING LICENSEE)</small>	88909-PK-0430	LICENSEE NAME:	TM1 Solutions Inc	CITY/TOWN:	Franklin, MA
---	---------------	----------------	-------------------	------------	--------------

APPLICANT INFORMATION

LAST NAME:	Patel	FIRST NAME:	Parth	MIDDLE NAME:	
------------	-------	-------------	-------	--------------	--



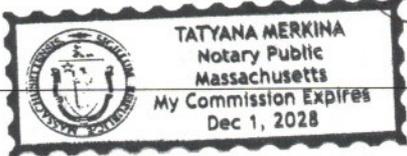
PRINT AND SIGN

PRINTED NAME:	PARTH PATEL	APPLICANT/EMPLOYEE SIGNATURE:	
---------------	-------------	-------------------------------	--

NOTARY INFORMATION

On this 05/27/2023 before me, the undersigned notary public, personally appeared Parth M. Patel
 (name of document signer), proved to me through satisfactory evidence of identification, which were MA Drivers License
 to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

NOTARY



DIVISION USE ONLY

REQUESTED BY:	
	<small>SIGNATURE OF CORI AUTHORIZED EMPLOYEE</small>

The DCJ Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identity Theft PIN Number by the DCJ. Certified agencies are required to provide all applicants the opportunity to include this information to ensure the accuracy of the CORI request process. ALL CORI request forms that include this field are required to be submitted to the DCJ via mail or by fax to (617) 660-4614.



Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3
 Chelsea, MA 02150

JEAN M. LORIZIO, ESQ.
 CHAIRMAN

CORI REQUEST FORM

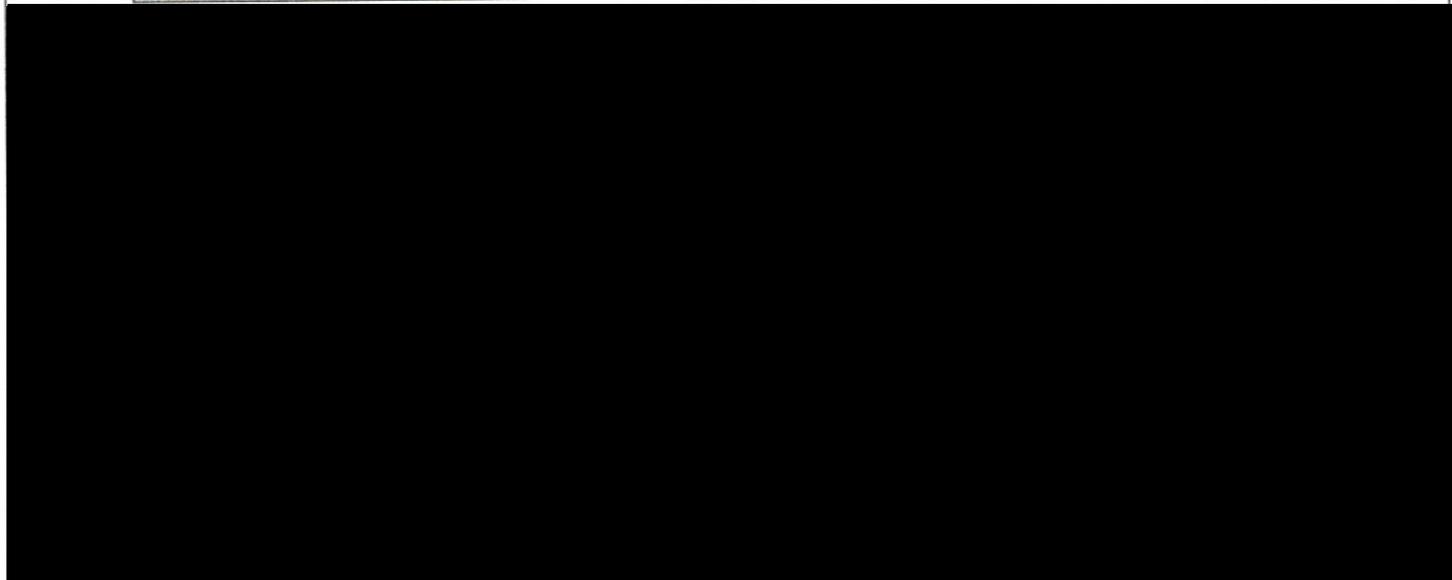
The Alcoholic Beverages Control Commission ("ABCC") has been certified by the Criminal History Systems Board to access conviction and pending Criminal Offender Record Information ("CORI"). For the purpose of approving each shareholder, owner, licensee or applicant for an alcoholic beverages license, I understand that a criminal record check will be conducted on me, pursuant to the above. The information below is correct to the best of my knowledge.

ABCC LICENSE INFORMATION

ABCC NUMBER: (IF EXISTING LICENSEE) LICENSEE NAME: CITY/TOWN:

APPLICANT INFORMATION

LAST NAME: FIRST NAME: MIDDLE NAME:



PRINT AND SIGN

PRINTED NAME: APPLICANT/EMPLOYEE SIGNATURE:

NOTARY INFORMATION

On this before me, the undersigned notary public, personally appeared (name of document signer), proved to me through satisfactory evidence of identification, which were to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

NOTARY



HEATHER LYNN FORCHILLI
 Notary Public
 Commonwealth of Massachusetts
 My Commission Expires Aug. 24, 2023

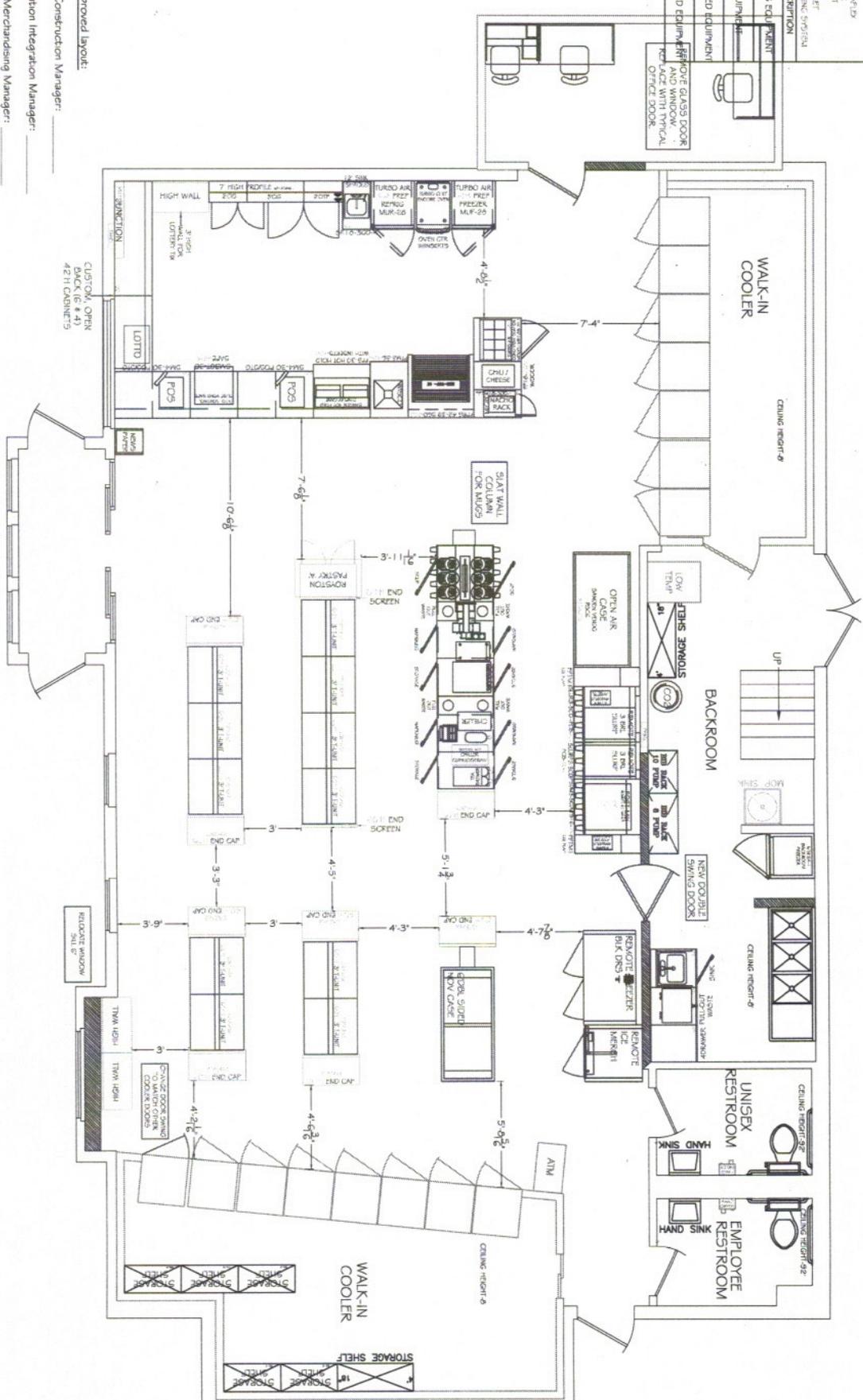
DIVISION USE ONLY

REQUESTED BY: SIGNATURE OF CORI-AUTHORIZED EMPLOYEE

The DCJ Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identity Theft PIN Number by the DCJ. Certified agencies are required to provide all applicants the opportunity to include this information to ensure the accuracy of the CORI request process. ALL CORI request forms that include this field are required to be submitted to the DCJ via mail or by fax to [617] 660-4614.

PROPOSED PLAN

MAIN FLOOR



1	LOAD BEARING WALLS
2	NON LOAD BEARING WALLS
3	CLEAN OUT
4	CONDENSATION DRAIN
5	CONDENSATION LINE
6	WATER FALLET
7	WATER SUPPLY LINES
8	1" PVC SHIFTER
9	1" PVC CLEANER
10	2" PVC SHIFTER
11	2" PVC CLEANER
12	BUILDING DRAIN
13	BANKED DRAIN
14	TRAP
15	TRAP

NO.	DESCRIPTION
1	EXISTING EQUIPMENT
2	NEW EQUIPMENT
3	RELOCATED EQUIPMENT
4	REMOVED EQUIPMENT
5	REMOVE GLASS DOOR RELOCATE WITH TYPICAL OFFICE DOOR.

SYMBOL	DESCRIPTION
①	NEW EQUIPMENT
②	RELOCATED EQUIPMENT



7-ELEVEN
Remodel

DISCLAIMER:
THIS IS NOT A LEGAL DOCUMENT. INTENT TO SHOW CURRENT EQUIPMENT CONDITIONS

REV#	DATE	DESCRIPTION
7-NRR	7/7/15	SHELVING CHANGE
8-NRR	7/6/15	EQUIPMENT TAG PLAN
9-NRR	7/17/15	CONFERENCE CALL W/ PHIL
10-NRR	7/23/15	SCOPE WALK NOTES
12-NRR	11/23/15	INTERNAL REVIEW

7-ELEVEN
37380
664 UNION ST
FRANKLIN, MA.
02038

SCALE: 3/16" = 1'-0"
DATE: 06/05/2015
SHEET: A - 1.1



37380-FP

Disclaimers: This drawing and all supporting documents contained in the "Drawing Package" are the property of 7-Eleven, Inc. The drawings and equipment list are not intended to represent or define all site specific scope characteristics and in no way relieve the Project Management Firm's responsibility for conducting a store specific site visit, collecting all as-built information, verifying critical dimensions and generating a proposed scope of work and for Project Management. The Survey Package and supporting documents do not constitute a legal document and are not intended, nor should be used as, permit drawings or documents. Royston LLC accepts no responsibility for errors or omission contained herein.

lease initial approved layout:
- Eleven AQIP Construction Manager:
- Eleven Visual Merchandising Manager:



Town of Franklin, MA
Nancy Danello, CMC
Town Clerk
355 East Central Street, Franklin, MA 02038

Date Issued: March 28,
2023
Record #: 123033
Certificate #: 23-63

BUSINESS VERIFICATION CERTIFICATE

In conformity with the provisions of Chapter 110, Section 5 of the General Laws, as amended, the undersigned hereby declare(s) that a business under the title of:

7-Elevn 37380B

is conducted at:

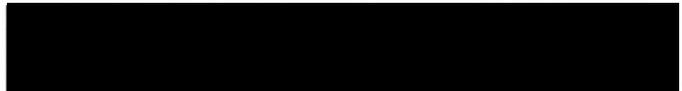
400 KING ST

by the following person:

FULL NAME

Marlboro Food, Inc

RESIDENCE



A certificate issued in accordance with this section shall be in force and effect for four years from the date of issue and shall be renewed each four years thereafter so long as such business shall be conducted and shall lapse and be void unless so renewed.

Expiration Date: March 28, 2027

Nakula
Business Owner Signature #1

Business Owner Signature #2

A True Attest Copy
Nancy Danello
Nancy Danello, CMC
Town Clerk

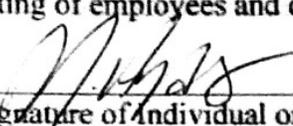
To learn more, scan this barcode or visit franklinma.viewpointcloud.com/#/records/155318





CERTIFICATE OF COMPLIANCE WITH STATE LAWS

Pursuant to M.G.L Chapter 62C, Sec 49A, and M.G.L. Ch. 151A, Section 19A, the undersigned acting on behalf on the License Holder, certifies under the penalty of perjury that, to the best of the undersign's knowledge and belief, the License Holder is in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support*.



** Signature of Individual or Corporate License Holder (Mandatory)

*** License Holder's Social Security Number/or Federal Identification Number

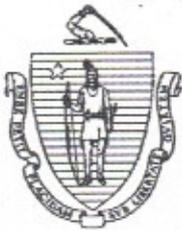
By: Mohamed Hijazi
Corporate Officer
(Mandatory, if applicable)

Date: 3/23/23

*The provision in the Attestation of relating to child support applies only when the License Holder is an individual.

**Approval of or a renewal of a license will not be granted unless this certification clause is signed by the applicant. For all corporations, a certified copy of the vote of the Board of Directors must be provided.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a license or other agreement issued, renewed or extended. This request is made under the authority of Massachusetts General Laws, Chapter 62C, section 49A.



The Commonwealth of Massachusetts
 Department of Industrial Accidents
 Office of Investigations
 600 Washington Street
 Boston, MA 02111
 www.mass.gov/dia

Workers' Compensation Insurance Affidavit: General Businesses

Applicant Information

Please Print Legibly

Business/Organization Name: Marlboro Food Inc. | DBA-7+ELEVEN

Address: 604 Union St.

City/State/Zip: Franklin MA Phone #: 774-249-0413

Are you an employer? Check the appropriate box:

- 1. I am an employer with 5 employees (full and/or part-time).*
- 2. I am a sole proprietor or partnership and have no employees working for me in any capacity. [No workers' comp. insurance required]
- 3. We are a corporation and its officers have exercised their right of exemption per c. 152, §1(4), and we have no employees. [No workers' comp. insurance required]**
- 4. We are a non-profit organization, staffed by volunteers, with no employees. [No workers' comp. insurance req.]

Business Type (required):

- 5. Retail
- 6. Restaurant/Bar/Eating Establishment
- 7. Office and/or Sales (incl. real estate, auto, etc.)
- 8. Non-profit
- 9. Entertainment
- 10. Manufacturing
- 11. Health Care
- 12. Other _____

*Any applicant that checks box #1 must also fill out the section below showing their workers' compensation policy information.

**If the corporate officers have exempted themselves, but the corporation has other employees, a workers' compensation policy is required and such an organization should check box #1.

I am an employer that is providing workers' compensation insurance for my employees. Below is the policy information.

Insurance Company Name: Mitisi Summitown Insurance

Insurer's Address: 5005 LBJ Freeway Suite 1400

City/State/Zip: Dallas TX 75244

Policy # or Self-ins. Lic. #: [REDACTED] Expiration Date: 1/1/24

Attach a copy of the workers' compensation policy declaration page (showing the policy number and expiration date).

Failure to secure coverage as required under Section 25A of MGL c. 152 can lead to the imposition of criminal penalties of a fine up to \$1,500.00 and/or one-year imprisonment, as well as civil penalties in the form of a STOP WORK ORDER and a fine of up to \$250.00 a day against the violator. Be advised that a copy of this statement may be forwarded to the Office of Investigations of the DIA for insurance coverage verification.

I do hereby certify, under the pains and penalties of perjury that the information provided above is true and correct.

Signature: Makiel

Date: 3/22/23

Phone #: [REDACTED]

Official use only. Do not write in this area, to be completed by city or town official.

City or Town: _____ Permit/License # _____

Issuing Authority (circle one):

- 1. Board of Health 2. Building Department 3. City/Town Clerk 4. Licensing Board 5. Selectmen's Office
- 6. Other _____

Contact Person: _____ Phone #: _____

NOTICE OF PUBLIC HEARING

FRANKLIN, MA

**Transfer of a Section 15 Wine and Malt Beverages Package Store License
From TM1 Solutions, Inc. d/b/a 7-Eleven Store Number 37380A
to Marlboro Food, Inc. d/b/a 7-Eleven 37380B**

The Franklin Town Council will hold a Public Hearing on an application by Marlboro Food, Inc. d/b/a 7-Eleven 37380B, located at 400 King Street, Franklin, MA for a transfer to it of a Section 15 Wine and Malt Beverages Package Store License presently held by TM1 Solutions, Inc. d/b/a 7-Eleven Store Number 37380A to be exercised at the same location. This hearing will be held on April 26, 2023 at 7:00 PM and will provide an open forum for discussion. Location: Municipal Building, 2nd floor Council Chambers, 355 E. Central St., Franklin and will also be available via the "ZOOM" platform. Residents can visit the Town website (Franklinma.gov) calendar on and after April 21, 2023 for updated meeting information. For questions, please call the Town Administrator's Office at (508) 520-4949.

Submitted by,
Julie McCann

LICENSE TRANSACTION



Transfer of §15 Wine and Malt Beverages Package Store License

Marlboro Food, Inc.

d/b/a 7-Eleven 37380B
664 Union Street
Franklin, MA 02038

Marlboro Food, Inc. d/b/a 7-Eleven 37380B is seeking approval for a transfer to it of an existing §15 Wine and Malt Beverages Package Store License, presently held by TM1 Solutions, Inc. d/b/a 7-Eleven Store #37380A, to be exercised at the same location, and to approve the manager, Parth Patel.

All departments have signed off on this application.

MOTION to approve the request by Marlboro Food, Inc. d/b/a 7-Eleven 37380B for a transfer to it of an existing §15 Wine and Malt Beverages Package Store License, presently held by TM1 Solutions, Inc. d/b/a 7-Eleven Store #37380A, to be exercised at the same location, and to approve the manager, Parth Patel.

DATED: _____, 2023

VOTED:

UNANIMOUS: _____

A True Record Attest:

YES: _____ **NO:** _____

ABSTAIN: _____

ABSENT: _____

RECUSED: _____

Nancy Danello, CMC
Town Clerk

Glenn Jones, Clerk
Franklin Town Council

License Transactions:

Robert Vozzella
La Cantina Winery
355 Union Street



This is a request for a Farmer-Winery, Farmer's Market License to allow samples and sale of bottled wine at the Franklin Farmers Market pursuant to Chapter 138, §15F.

MOTION to approve the issuance of a Farmer Winery, Farmer's Market License to Robert Vozzella, La Cantina Winery Company.

DATED: _____, 2023

VOTED: _____

UNANIMOUS: _____

A TRUE RECORD ATTEST:

YES: _____ **NO:** _____

ABSTAIN: _____ **ABSENT:** _____

RECUSED: _____

Nancy Danello, CMC
Town Clerk

Glenn Jones, Clerk
Franklin Town Council

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



Application for Certification of an Agricultural Event for the Sale of Wine
Pursuant to M.G.L. c. 138, Section 15F

*To be completed by the licensed farm-winery and returned to:

By Mail: Agricultural Event Certification Program, 251 Causeway Street, Suite 500, Boston, MA 02114
By Email: Katelyn.Rozenas@mass.gov with the subject line "Agricultural Event Certification"
(A separate application must be completed for each event)

In order for your application to be considered complete, you must include the following documents. Incomplete applications will not be accepted.

- Signed and dated application with farm-winery license number
- List of vendors with brief descriptions of products **for current year/season**
- Event operational guidelines or rules **for current year/season**
- Resume of event manager **or** description of experience
- Plan depicting the premises and specific location where the license will be exercised. **See Template 1.**
- Approval letter from event management including the name of the licensed farm-winery and the day(s), month and year of event. **See Template 2.**

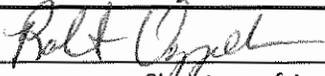
1. Applicant Information					
Name of Licensed Farm-Winery		La Cantina Winery Company			
Farm-Winery License Number		FW-110	State of Issue		MA
Contact Person	Robert Vozzella				
Address					
City	Franklin	State	MA	Zip	02038
Phone Number			Email		
Correspondence preference <input type="checkbox"/> Regular Mail <input checked="" type="checkbox"/> Email					
<i>Note: Approval/denial letters will be sent regular mail.</i>					
Do you intend to sell, sample, or both? Check all that apply.					
<input checked="" type="checkbox"/> Sell		<input type="checkbox"/> Sample			

2. Event Information					
Name of Agricultural Event		Franklin Farmers Market			
Type of Event	<input type="checkbox"/> Agricultural Fair (as defined by MDAR policy)	<input checked="" type="checkbox"/> Farmers Market (as defined by MDAR policy)	<input type="checkbox"/> Other Agricultural Event		
If you selected "Other Agricultural Event", how does this event promote local agriculture?					
Event Address					
Town Common Corner of Main and High St					
City	Franklin	State	MA	Zip	02038
Event Phone Number			Event Website		

5. General

Attach or provide in the space below a plan depicting the premises and the specific location where the license will be exercised. See *template for necessary elements to include*.

[Empty space for plan depicting premises and location]

 _____ Signature of Applicant	<u>4/11/23</u> _____ Date
Robert Vozzella _____ Name (please print)	Owner _____ Title (please print)
FW-110 _____ Farm-Winery License Number	MA _____ State

FOR DEPARTMENT USE ONLY

APPROVAL

The event listed above is an approved agricultural event by the Massachusetts Department of Agricultural Resources under M.G.L. C138, Sec. 15F.

 _____ Signature	<u>4/14/23</u> _____ Date
---	---------------------------------

DENIAL

The event listed above is not approved as an agricultural event by the Massachusetts Department of Agricultural Resources for the following reason(s):

_____ Signature	_____ Date
--------------------	---------------

Full Season Vendor	Product Description
A Basket Full of Herbs	culinary herb and spice blend packets
Amado Ceramics	Hand made an wheel thrown ceramic vessels - Unique pieces - Safe for food, oven, microwave and dishwasher
Angel Hair Alpacas	fiber products. We sell what may be the world's most Vegetables grown using organic practices - Eggs from happy hens, small batch flowers
A Night Owl Farm	
Barbara Sherman w/ Fish from Boston Sword and Tuna	I offer fresh prepackaged fish for sale each week. Depending on the availability, I will bring arctic char, bluefish, cod, haddock, halibut, salmon, sea scallops, striper, swordfish and frozen salmon burgers. All fish will fall under the fin and scallop category. Other fish may be added if available.
BirchTree Bread Comp.	cookies, house made spreads
Bread Guy Breads	Artisan Sourdough Breads and Bread Products.
Cook's Valley Farm	Our own fresh fruits and vegetables; fresh cut flowers mixed or as is. It adds flavor and body to anything it is mixed
Dugu, Inc	Sharpening knives, scissors, garden tools etc...
Eric's Sharper Edge Everything Jalapeno and NOT	Home made Jams, Pickles, Relish and Salsa Hot and not Hot
Fairmount Fruit Farm	Vegetables, Fruit, Eggs
Franklin Honey	balm, hand cream, soap, candles)
Grace Eternal Design	We personalize apparel with names, teams, groups and more. toys and more
Hearts of Hope	locally produced wine with grapes from around the globe
La Cantina Winery	Fresh Baked Products: Cookies, Muffins, Cupcakes, Breads organizing anything you can think of.
Leona's Baking Comp.	popcorn.fudge.candy.woopie pies
Lonequitter	flower plants -Handcrafts
Montville Candy	
Old Exit 17 Farm	
Peace Bee and Rainbow Song Henna	Henna body art, henna kits, beaded hair accessories House plants, handmade home decor, handmade plant accessories
Pearls and Peridot	happy hanks natural gluten free dog treats and clothing apparel
Pinebrook Farm LLC	A husband and wife team who work together to make leather and wood earrings and accessories in their Franklin home studio.
PT Color Market	Pasture Raised Meat & Eggs Beef, Pork, Chicken, Lamb, Goat & Turkey Eggs from Farm Roaming Hens
Pumpkin Farm, The	Handmade all natural soaps, scrubs, body butters and other body products
Sweet Willow Naturals	We at Urban Spice World believe in the concept of Curry in hurry. © We curate ready to cook meal kit for Busy families. We make cooking easy and bring families come together. Our Meal kits provide unique cooking experience and create memories.
Urban Spice World	Wright Old School Chocolate brings to you locally made bars with the boldest flavors from cocoa nibs and organic sugarcane. The cocoa beans are sourced from farms that are the friendly to the farmers and to our earth. There are no allergens. The products are vegan friendly.
Wright Old School Chocolate	- sustainably grown vegetables - local seasonal produce
Zeigler's Market Garden	

Partial Season Vendor	Product Description
Ackermann Maple Farm Angus Art	Wood fired Maple Syrup, family owned, Vermont! My original art is put on 2.5 inch square magnets.
Ayamams	Alida creates products made with resins and oils collected by indigenous communities in the Amazon Rainforest in Peru, where she and her husband run a company since 2012. All products are 100% natural with the goal to keep you healthy or reestablish your health The products are the perfect complement to Alida's healing sessions with Energy Medicine and Biomagnetism
Be Grow Co	Wrapped fresh flowers bouquets Small arrangements Dried flower bouquets Bouquet bar
Cafe NutMegs	Homemade Baked goods and sweet treats! Gourmet Caramel- Chocolate covered apples, Baklava, Specialty Brownies, Cookies, Krispy treats, Marshmallows, Oreos, Pretzels and more!
CK Custom	Handmade custom wood products including bowls, signs, cutting boards
Darby By Design	Boho and Nautical Jewelry designs. Hand forged, hand stamped & personalized; Some designs with genuine seaglass,. Inspired by my love of nature & the ocean. Hand crocheted wire gemstone necklaces *Handcrafted earrings, bracelets, and necklaces using Sterling silver or vermeil and Venetian blown glass *Fresh water pearl, gemstone jewelry
Definitely Annie	Organic, ethically sourced coffee Espresso and cold brew bar that includes nitro cold brew Sell organic coffee products from packaged coffee to their small batch bottled cold brew
Doglio Coffee	Top 9 allergen free and vegan baked goods. Cannoli, brownies, pretzels, donuts, cookies, cupcakes, and sweet breads. And for savory we have an assortment of calzones, and pasta bowls.
Jennifer Lee's Bakery Lumi Tea -Mary Pratt Wellness	Herbal Tea Blends - Crafted with organic herbs
Nutty Bird Granola	Premium handcrafted, small batch granola. Made with local ingredients wherever we can. A perfect mix of high quality nuts, organic oats, and local maple syrup and honey
PaperBack Candles	-hand poured 100% soy wax candle with wooden wick -book lover themed
Pardon my Frenchie	Handmade dog accessories(leashes, Bandanas, toys, blankets, outfits and harnesses) Handmade motivation creative clips
Sanobe Superfoods	The tastiest AND healthiest peanut butters on the market!; A complete meal in a jar, loaded with nutrition!; Introducing a 4th variety THIS season!
Sides of the Road	wood cutting boards and cheese boards resin cutting boards all items are food safe
Summer ICE Comp.	Colling off an afternoon with Summer Ice! Fluffy Shaved ice, Creative Fruit Flavors
TC Scoops	Locally made FoMu scooped to order. FoMu is a delicious premium vegan ice cream. Individual servings and pints will be available.
Three Wishes Bakery	We pride ourselves on food inclusivity. Our small batch baked goods are handmade without gluten or nuts that everyone loves and enjoys.
Time Peace Studio	We screen print artisan tee shirts and tops with images of nature, music, animals and ecologically conscious designs. Our practice uses water-based ink for a sustainable practice method.
Uanhme	Timeless New England Beach pebble art. Low maintenance Fabric pet chickens :) *Graduation Leis (only on June 3rd if space is available)
V V Alchemy	Herbalist offering a variety of handmade tinctured/gummy medicinals, salves, and tea blends,
Who is Coffee	Who is Coffee personally sources specialty coffee from single-farms to help small Colombian farmers reach the US market. We roast locally in Northborough MA. - We tackle the financial, ethical and environmental issues by redefining the coffee supply chain at a more human level and paying coffee farmers substantially above market prices.
Wooven Waves	One of a kind macramé art. Unique baskets of every size. Handmade items for everyday use.

Rules and Regulations

The Franklin Farmers' Market operates with permission of the Town of Franklin, Massachusetts. The following regulations have been formulated with the cooperation and approval of the Town of Franklin.

The market is located on the Franklin Town Common, and operates every Friday beginning June 2, and ending October 27th. Operating hours are from 2:00pm to 6:00pm. Vendors are requested not to arrive earlier than 1:00pm or later than 1:45pm on the day of the market. Vendors must remain at the market until 6pm unless otherwise approved by the market manager.

Any vendor wishing to sell processed foods, baked goods, meat, fish, etc. must obtain a Board of Health certificate from the Town of Franklin and provide proof of their licenses to the market manager with this registration. These items shall be wrapped, covered, and/or refrigerated as deemed necessary by the Town of Franklin Board of Health Agent and the market manager.

Prices shall be predominately displayed by pound, bunch or piece.

All scales are to have a Massachusetts Weights and Measures Inspection seal dated for the current market year.

Product dumping, price gouging, and loud hawking are prohibited.

The market is considered a class "B" market; defined as vendors growing or creating their own products, or selling the products of other New England producers that are previously approved by the market manager. In the event, there is reasonable doubt that a vendor is not adhering to this definition, the market manager will have the right to conduct an on-site inspection of the vendor's farm, kitchen or workshop at a mutually agreeable time. At this inspection, the market manager will verify that the vendor is capable of creating the products that they offer for sale.

No vendor shall have the right to sub-lease, sell, transfer, or permit any other person the use of their market space without prior approval of the market manager.

Vendors should park their cars on the Union St side of the common after unloading.

Tent weights are required on all tents for every market.

Vendors are required to clean their spaces and remove all debris prior to leaving.

Any market disputes should be brought to the attention of the market manager. All questions or concerns shall be directed to the market manager.

Vendors will be required to comply with health and safety regulations set by the State of Massachusetts, Town of Franklin and Market Manager. These will be provided once available.

The market manager reserves the right to cancel the privileges of any vendor who willfully violates any of these rules, *without reimbursement of market fees paid*.

The seasonal fee for attendance is \$250.00/year. Due by May 15th. Check made payable to "Franklin Farmers Market".

Lauren E. Kloos

EDUCATION

Farmers Market Nutritional Program (FMNP), Massachusetts
Training and Certification, 2021

Licensed Independent Clinical Social Worker, Massachusetts
License # 116556

Simmons College, Boston, MA
Master in Social Work, 2009

Assumption College, Worcester, MA
Bachelor of Arts in Sociology, 2006

EXPERIENCE

Franklin Farmers Market, Franklin, MA 2021-Present
Manager

- Manage the operation of the farmers market that runs weekly from June to October, incorporating vendors, entertainers and community groups.

Franklin Honey Company, INC, Franklin, MA 2010-Present
Owner and Manager

- Manage day to day runnings of small agricultural business.

Lauren Kloos, LLC, Franklin, MA October 2015-Present
Independent Clinician

- Deliver individual therapy to patients presenting with different issues including but not limited to anxiety, depression, PTSD, ADHD, marital issues, etc.

League School, Walpole, MA Dec 2013-October 2015
Clinician & Supervisor

- Manage clinical cases for children ages four to twenty two with emotional and behavioral problems in a school setting.
- Supervise MSW interns to provide clinical oversight to cases, to promote personal and professional social work growth and development, and to enhance learning in school environment.

PROFESSIONAL AFFILIATIONS

Member: National Association of Social Workers, 2007 - Present



Franklin Farmers' Market
200 Main Street
Franklin MA

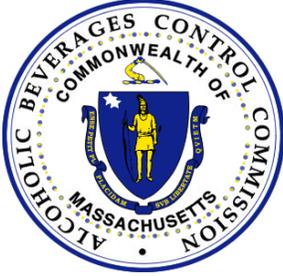
April 11, 2023

Hello La Cantina Winery

Thank you all for taking the time to fill out the application. Crave Mead has been accepted as a vendor to the Franklin Farmers Market, pending all necessary licenses and permits. The Market takes place on Fridays 2-6PM from June 2 to Oct 27 at the Franklin Town Common, 200 Main St, Franklin MA, 02038.

Sincerely
Lauren Kloos and Roger Trahan
Market Managers

franklinfarmersmarketma@gmail.com



Commonwealth of Massachusetts
Office of the State Treasurer
Alcoholic Beverages Control Commission

SALESMAN'S PERMIT

M.G.L. c. 138, §§ 19A & 22

This Permit authorizes the following permittee to act as a Salesman:

ROBERT VOZZELLA

355 Union St.
Franklin, MA 02038

La Cantina Winery Company

Approved by the Alcoholic Beverages Control Commission on September 02, 2022

Jean Lorizio, Chairman

Crystal Matthews, Commissioner

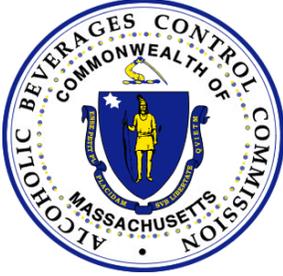
Deborah Baglio, Commissioner

License Number: **SP-LIC-007608**

Record Number: **2022-000107-SP-REN**

THIS PERMIT WILL EXPIRE DECEMBER 31, 2023 UNLESS REVOKED OR CANCELLED DURING THIS PERIOD

THIS PERMIT SHALL BE CARRIED BY THE PERMITTEE AT ALL TIMES



Commonwealth of Massachusetts
Office of the State Treasurer
Alcoholic Beverages Control Commission

TRANSPORTATION & DELIVERY PERMIT

M.G.L. c. 138, § 22

This Permit hereby authorizes the use of the following vehicle for transportation and delivery of alcoholic beverages:

Vehicle Plate Number

7143SF

Related License:

ROBERT VOZZELLA

ABCC License Number: SP-LIC-007608

License Type: Salesman Permit

Approved by the Alcoholic Beverages Control Commission on September 02, 2022

Jean Lorizio, Chairman

Crystal Matthews, Commissioner

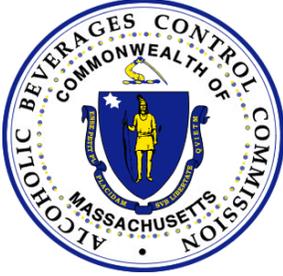
Deborah Baglio, Commissioner

License Number: **TR-LIC-003667**

Record Number: **2022-000107-SP-REN**

THIS PERMIT WILL EXPIRE DECEMBER 31, 2023 UNLESS REVOKED OR CANCELLED DURING THIS PERIOD

THIS PERMIT SHALL BE CARRIED IN THE VEHICLE AT ALL TIMES



Commonwealth of Massachusetts
Office of the State Treasurer
Alcoholic Beverages Control Commission

FARMER-WINERY LICENSE

M.G.L. c. 138, § 19B

This Farmer-Winery License authorizes the following licensee to produce, rectify, blend, or fortify, keep and expose for sale and to sell wine containing not more than twenty-four percent alcohol by weight:

La Cantina Winery Company

355-357 Union Street
Franklin, MA 02038

Approved by the Alcoholic Beverages Control Commission on September 06, 2022

Jean Lorizio, Chairman

Crystal Matthews, Commissioner

Deborah Baglio, Commissioner

License Number: **FW-LIC-000110**
Record Number: **2022-000008-FW-REN**
Capacity: **5K Gallons or Less**

THIS LICENSE WILL EXPIRE DECEMBER 31, 2023 UNLESS REVOKED OR CANCELLED DURING THIS PERIOD

THIS LICENSE SHALL BE DISPLAYED ON THE PREMISES IN A CONSPICUOUS PLACE WHERE IT CAN BE EASILY READ

Town of Franklin

355 East Central Street
Franklin, Massachusetts 02038-1352



Phone: (508) 520-4949
www.franklinma.gov

OFFICE OF THE TOWN ADMINISTRATOR

April 21, 2023

To: Town Council
From: Jamie Hellen, Town Administrator

Re: Open Space & Recreation Plan

This evening the Franklin Conservation Commission and Conservation Agent and Natural Resources Manager, Breek Li Goodlander, will give a brief update on the Open Space & Recreation Plan. I expect a complete draft plan before the Council later this fall, which is a Council goal for the session. In the meantime, this is an opportunity to provide any ideas, questions or comments on the Plan from the Council.

Two additional Town Council goals for the sessions was to discuss potential opportunities on long term trails maintenance and the master plan of the Maple Hill purchase. I expect significant representation on both of those ideas as part of the plan. I anticipate in 2024 adding more specific goals from the OSRP plan to the agenda on how to implement goals from the plan, including Maple Hill, Schmidt Farm and (hopefully!) a goal to establish "Friends" groups of the various town parks and assets to help create a stewardship system of our town's open spaces and parks. The DPW can do a lot, but coordinated groups of "Friends" can also add a tremendous amount of value and develop a strong social fabric within the community.

Please read the most up to date website to prepare for the discussion:

[OSRP Website](#)

Town of Franklin

355 East Central Street
Franklin, Massachusetts 02038-1352



Phone: (508) 520-4949
www.franklinma.gov

OFFICE OF THE TOWN ADMINISTRATOR

April 21, 2023

To: Town Council
From: Jamie Hellen, Town Administrator

Re: Display of Flags on Town Property

As requested by a few Councilors and several people in the community, tonight the Council will host a discussion on the idea of allowing flags, banners and/or symbols, including the Pride Flag, to be placed on a Municipal Building flagpole and/or other flag poles in town.

Supporting Materials

I have attached the current flag policy of the Town, a recent Supreme Judicial Court of the United States of America decision on a case recently involving the City of Boston and articles from NPR and the NYT summarizing the issue in that case.

The Choices

As I have said before, the Council has two choices on this matter:

- Do not allow town flagpoles to be used for the purposes of allowing third party organizations or individuals to essentially lease the flagpole for various purposes; OR
- Allow town flagpoles to be used for the purposes of allowing third party organizations or individuals to essentially lease the flagpole for various purposes.

If the latter is chosen, the Council will need to identify the pole(s) that can be applied for (presumably only the Municipal Building). Staff will need to work with the DPW and Town Attorney on a revised policy. Furthermore, a permitting process will be required to ensure equity, inclusion and coordination among all citizens or organizations who would want to display a flag, banner or any symbol. I would also anticipate more events being requested at the Municipal Building. Applicants would be from within the Town of Franklin and also from outside the Town of Franklin. Just like on the Town Common with religious symbols, the Town cannot limit the applicant from just Franklin. There will unquestionably be a fee to do so, as this will take a significant amount of staff time to permit, coordinate and actually perform the work.

Staff recommendation

My professional recommendation, along with the Town Attorney and DPW Director, is to NOT allow the town flagpoles to be used for such purposes. If the Council chooses to move forward, we will all fully respect that decision. However, at a minimum, we request all of you to allow the staff an appropriate amount of time to develop a policy, application, fee and further details. A fee would have to also be

enacted by the Council. Many details would need to be coordinated. For example, most of the flagpoles come with a purpose already, such as the war memorial on the Town Common, or the Town Administration Building, which traditionally has the US Flag, State Flag and Town Flag. These are the standard 3 flags at Massachusetts Town Halls. Additionally, there is a federal flag code for those who die in the line of duty, or deaths of certain dignitaries among others.

If you do not choose to move forward, we have worked closely with many organizations through the years on alternatives and continue to pledge to do so. Many groups are satisfied with our suggestions.

At the end of the day, this is an all or nothing policy decision. While I fully recognize the fact some groups will want to show unified support for a cause, there are NO restrictions or limitations on who can apply or to what the message is. If allowed, the Town should prepare for messages, flags and banners we all support and from those we do not support.

Everyone has to ask themselves, is this the only, or most effective way, to increase support for a cause? In the end, policies on offering town flagpoles up for lease generally become political or religious messaging, affirmation of constitutional rights, or those for a common cause such as a fundraising effort for a family tragedy or social service cause. Is this what you want for the Municipal Building flagpole and/or other flagpoles? The staff are not convinced this effort would reap the short term rewards that are sought. The long term ramifications are challenging to predict.

The issue before the Council tonight is not about whether there is or is not overwhelming support for the LGBTQ community in Franklin. We already know voters have spoken overwhelmingly in favor of the elected leaders of the Town Council, School Committee and other boards that have widespread, if not unanimous, support for the LGTBQ community. Furthermore, both the Town Council and School committee have hired a Town Administrator and Superintendent of Schools who are extremely supportive and very engaged on these issues. Both the Town and School Administrations are very proud of the progress we have made as an organization to support the LGTBQ community in Franklin and will continue to do so. In fact, if its height one seeks in a flagpole, then your faith and confidence in me as the Town Administrator is equal to, or exceeds, the actual pole height outside. The message all of you have sent is far greater than any flag could have. Ditto for Superintendent Giguere.



The conversation this evening is much more expansive than the LGBTQ community. The debate is whether to allow commercial leasing of public space to members of the public, the pros and cons of that policy and what are the parameters. There are many sub questions that will need to be answered as well.



TOWN OF FRANKLIN

DEPARTMENT OF PUBLIC WORKS

257 Fisher Street
Franklin, MA 02038

November 2, 2021

Jamie Hellen, Town Manager
355 East Central Street
Town of Franklin, MA 02038

RE: Flag Protocols

Dear Jamie,

The Franklin Department of Public Works and the Franklin School Department maintains and controls 35 flags at various locations that include Town of Franklin buildings, schools, parks and traffic islands (see attachment).

Per past practices, labor agreements, conversations with members of the Franklin Town Council, the Town's Veteran Service Officer, representatives of local veteran organizations and you, I would like to modify our established Flag Protocols that were implemented in October 2020 to the following protocols. The following protocols will be followed for the display of the United States of America and the Commonwealth of Massachusetts flags that are under the control of the Franklin Department of Public Works in the Town of Franklin.

1. Follow the directives as given by the President of the United States or the Governor of the Commonwealth of Massachusetts. Typically the directive is for lowering the Federal and Commonwealth Flag to "half-staff" at the main or administration building of each public institution of the Commonwealth, e.g. town and city halls.
2. In addition to the directive given by the President of the United States or the Governor of the Commonwealth to lower the Flag at 355 East Central Street, we also lower the Flag located on the bridge at the intersection of East Central St, West Central St (Route 140) and Main Street for improved awareness and perception of said directive.
3. Additionally, if the directive to lower the flag as given by the President of the United States or the Governor of the Commonwealth of Massachusetts is related to service of a veteran, then the Flag located at the Veteran's Memorial on the Franklin Town Common would be lowered in recognition and respect of veterans.

4. On Memorial Day, in addition to lowering flags at the Municipal building, the United States of America and the Commonwealth of Massachusetts flags along the Memorial Day parade route will be lowered in the morning and raised at noon. The flags affected by this action are located at the Town Common, the Davis Thayer School, the Franklin Historical Museum, the bridge on Route 140, and the Franklin Town Library.

5. On the 4th of July, Veterans Day, Purple Heart Day, Flag Day and any other national days of recognition as agreed upon by the Veterans Service Officer, Director of Public Works and the Town Administrator, flags are not lowered (unless directed by the President or Governor). The Public Works Department will place the United States flags in the Downtown area on the ornamental light poles on Main St., East Central St. and West Central St.

6. On September 11th, The United States of America and the Commonwealth of Massachusetts flags will be lowered in the morning and raised in the evening at the following locations: King St. Memorial Park, Fletcher Field, Dacey Field, Beaver Pond, Town Common, Downtown Island, Senior Center, Museum, Library, Public Works Admin., Police Station, Fire Station 1, Fire Station 2, and the Municipal Building.

Thank you,


Robert Cantoreggi
Director of Public Works

→ Arborse!

CC: Carlos Rebelo, Highway and Grounds Superintendent
Tony Brunetta, Assistant Highway and Grounds Superintendent
Derek Adams, Environmental Affairs Superintendent
Doug Martin, Water and Sewer Superintendent
Jake Standley, Assistant Water and Sewer Superintendent
Shannon Nisbett, Veterans Services Officer
File

Supreme Court Rules Against Boston in Case on Christian Flag

The court unanimously ruled that the city, which has approved many other requests to raise flags at its City Hall, violated a Christian group's free speech rights.



By Adam Liptak

May 2, 2022

WASHINGTON — The Supreme Court unanimously ruled on Monday that the City of Boston had violated the First Amendment when it refused to let a private group raise a Christian flag in front of its City Hall.

One of the three flagpoles in front of the building, which ordinarily flies the flag of Boston, is occasionally made available to groups seeking to celebrate their backgrounds or to promote causes like gay pride. In a 12-year period, the city approved 284 requests to raise flags on the third flagpole.

It rejected only one, from Camp Constitution, which says it seeks “to enhance understanding of our Judeo-Christian moral heritage.” The group’s application said it sought to raise a “Christian flag” for one hour at an event that would include “short speeches by some local clergy focusing on Boston’s history.” The flag bore the Latin cross.

Justice Stephen G. Breyer, writing for six members of the court, said the central question in the case, *Shurtleff v. City of Boston*, No. 20-1800, was whether the city had created a public forum by allowing private groups to use its flagpole or was conveying its own speech by choosing and endorsing the flags it approved. When the government is speaking for itself, it is immune from First Amendment scrutiny.

Justice Breyer concluded that the Christian flag was private speech in a public forum and that the city’s refusal to let “Camp Constitution fly their flag based on its religious viewpoint violated the free speech clause of the First Amendment.”

Both the Biden administration and the American Civil Liberties Union had filed supporting briefs siding with the Christian group’s position. “The city cannot generally open its flagpole to flags from private civic and social groups while excluding otherwise similar groups with religious views,” the administration’s brief said.

The court should consider three factors in deciding whether a given message is government speech, Justice Breyer wrote: the history of the practice in question, whether observers were likely to believe that the messages reflected the government’s views and how much the government controlled the messages. The third factor was “the most salient feature of this case,” Justice Breyer wrote, and it cut sharply against the city.

“All told,” he wrote, “while the historical practice of flag flying at government buildings favors Boston, the city’s lack of meaningful involvement in the selection of flags or the crafting of their messages leads us to classify the flag railings as private, not government, speech — though nothing prevents Boston from changing its policies going forward.”

Justice Breyer stressed that governments must be free to take sides when they speak for themselves.

“When the government wishes to state an opinion, to speak for the community, to formulate policies or to implement programs, it naturally chooses what to say and what not to say,” he wrote. “That must be true for government to work. Boston could not easily congratulate the Red Sox on a victory were the city powerless to decline to simultaneously transmit the views of disappointed Yankees fans.”

Chief Justice John G. Roberts Jr. and Justices Sonia Sotomayor, Elena Kagan, Brett M. Kavanaugh and Amy Coney Barrett joined the majority opinion.

In a concurring opinion, Justice Samuel A. Alito Jr. wrote that he agreed with the majority’s bottom line but not its rationale. Instead of a three-factor test, Justice Alito wrote, courts should focus on a single question in deciding whether expression is government speech: “whether the government is *speaking* instead of regulating private expression.”

“Government speech occurs if — but only if — a government purposefully expresses a message of its own through persons authorized to speak on its behalf, and in doing so, does not rely on a means that abridges private speech,” Justice Alito wrote.

The Boston program, he wrote, “cannot possibly constitute government speech.”

“The flags flown reflected a dizzying and contradictory array of perspectives that cannot be understood to express the message of a single speaker,” Justice Alito wrote. “For example, the city allowed parties to fly the gay pride flag, but it allowed others to fly the flag of Ethiopia, a country in which ‘homosexual acts’ are punishable by ‘imprisonment for not less than one year.’”

He acknowledged that the Supreme Court has sometimes struggled to distinguish the government's speech from private speech, and he criticized a 2015 decision involving the Confederate battle flag.

In that case, *Walker v. Sons of Confederate Veterans*, the Supreme Court ruled that Texas could refuse to allow specialty license plates bearing the Confederate flag because the plates were government speech and therefore immune from First Amendment scrutiny. The vote was 5 to 4.

Texas had permitted hundreds of specialty plates bearing all sorts of messages, including ones for college alumni, sports fans, businesses and service organizations. Others sent messages like "Choose Life," "God Bless Texas" and "Fight Terrorism."

All were government speech, Justice Breyer wrote for the majority.

In dissent at the time, Justice Alito questioned the notion that license plates saying "Rather Be Golfing" or supporting the University of Oklahoma conveyed a government message. The first cannot plausibly represent state policy, he wrote; the second, in Texas at least, bordered on treason during college football season.

On Monday, Justice Alito said the license-plate decision had produced the three-factor test and warped the law in the process. "The government did not have any purpose to communicate, and instead allowed private parties to use personal plates to communicate their own messages," Justice Alito wrote. "This expansive understanding of government speech by adoption should be confined to government-issued IDs."

Justice Clarence Thomas, who had been in the majority in the license-plate case, joined Justice Alito's concurring opinion, as did Justice Neil M. Gorsuch.

In his own concurring opinion, Justice Gorsuch said the city had rejected the Christian flag because it feared it would run afoul of the clause of the First Amendment barring government establishment of religion. He wrote that the Supreme Court bore part of the blame for that misunderstanding and that lower courts and local officials should not rely on *Lemon v. Kurtzman*, a 1971 decision that has been the subject of much judicial and academic criticism but has not been formally overruled.

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LAW

Supreme Court says Boston unconstitutionally barred Christian flag from city hall

May 2, 2022 · 4:37 PM ET

Heard on All Things Considered



Nina Totenberg

3-Minute Listen

PLAYLIST Download
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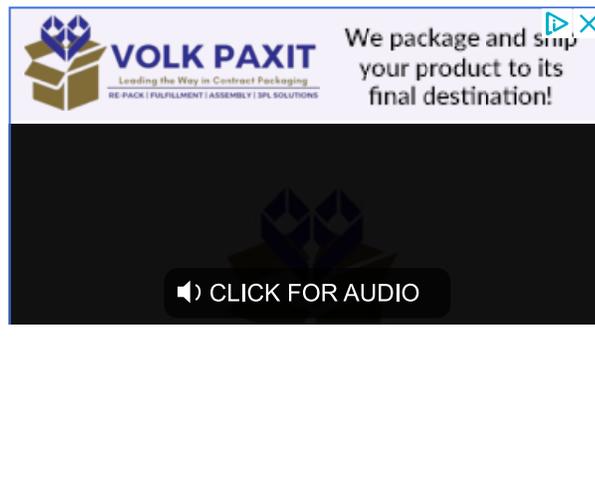
Al Drago/Getty Images

The U.S. Supreme Court ruled unanimously Monday that the city of Boston must let a Christian group fly its flag over city hall, but the decision was sufficiently narrow that other cities, indeed Boston itself, could construct rules that would limit flag flying to government-approved messages.

Just outside Boston's city hall, once named "the world's ugliest building," are three flagpoles. One flies the American Flag, the second flies the state flag, and the third usually flies the city's flag. Usually — because Boston has, for years, allowed the hoisting of other flags on the third pole when groups get permission to hold ceremonies on the city plaza. Between 2005 and 2017, Boston approved the raising of 50 such flags, most of them marking the national holidays of other countries.

Still, a few of the flags were associated with other groups or causes—national Pride Week, emergency medical service workers, and a community bank. In fact, the city had never rejected a flag-raising request until 2017 when Harold Shurtleff, the director of an organization called Camp Constitution, asked to hold a flag raising ceremony for a "Christian Flag."

Sponsor Message

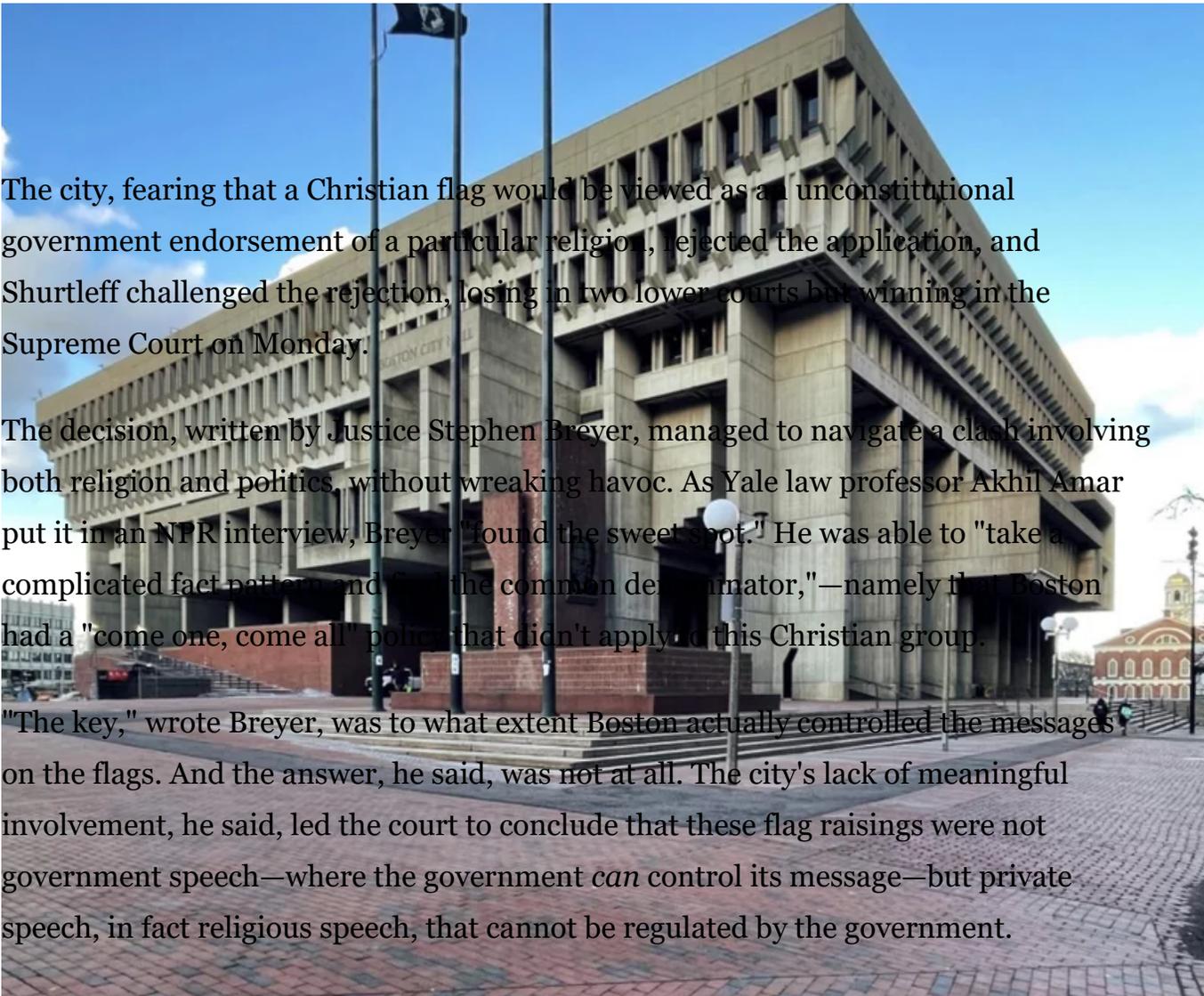


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The city, fearing that a Christian flag would be viewed as an unconstitutional government endorsement of a particular religion, rejected the application, and Shurtleff challenged the rejection, losing in two lower courts but winning in the Supreme Court on Monday.

The decision, written by Justice Stephen Breyer, managed to navigate a clash involving both religion and politics, without wreaking havoc. As Yale law professor Akhil Amar put it in an NPR interview, Breyer "found the sweet spot." He was able to "take a complicated fact pattern and find the common denominator,"—namely that Boston had a "come one, come all" policy that didn't apply to this Christian group.

"The key," wrote Breyer, was to what extent Boston actually controlled the messages on the flags. And the answer, he said, was not at all. The city's lack of meaningful involvement, he said, led the court to conclude that these flag raisings were not government speech—where the government *can* control its message—but private speech, in fact religious speech, that cannot be regulated by the government.

But, in a nod to the city, Breyer noted that nothing prevents Boston from changing its policies to exclude private speech going forward. It could—like San Jose, Calif.—explicitly say that flags are the city's speech and not intended to serve as a forum for free expression by the public. It could even require that a city council member sponsor a flag before it can be raised.

In fact, Boston suspended its policy last fall when the Supreme Court agreed to review the current policy, so all of these options are on the table now.

Three justices—Samuel Alito, Neil Gorsuch and Clarence Thomas—agreed with the result in the case, but rejected Breyer's reasoning. They wrote 30 pages worth of concurring opinions. In contrast, the 13-page majority opinion was classic Breyer, managing to achieve consensus in a restrained opinion that left both sides with a clearer idea of what is and is not permissible.



LAW

Justice Stephen Breyer, an influential liberal on the Supreme Court, to retire

It is an approach that, as University of Georgia Law Professor Sonja West observes, "frustrates" some of Breyer's conservative colleagues "who are eager to push the court further and faster, particularly on issues affecting religious speakers." But on a court that has been deeply divided along liberal/conservative lines of late, Breyer's skill in bridging that divide will likely be sorely missed when he retires at the end of the term this summer.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SHURTLEFF ET AL. *v.* CITY OF BOSTON ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 20–1800. Argued January 18, 2022—Decided May 2, 2022

Just outside the entrance to Boston City Hall, on City Hall Plaza, stand three flagpoles. Boston flies the American flag from the first pole and the flag of the Commonwealth of Massachusetts from the second. Boston usually flies the city’s own flag from the third pole. But Boston has, for years, allowed groups to hold ceremonies on the plaza during which participants may hoist a flag of their choosing on the third pole in place of the city’s flag. Between 2005 and 2017, Boston approved the raising of about 50 unique flags for 284 such ceremonies. Most of these flags were other countries’, but some were associated with groups or causes, such as the Pride Flag, a banner honoring emergency medical service workers, and others. In 2017, Harold Shurtleff, the director of an organization called Camp Constitution, asked to hold an event on the plaza to celebrate the civic and social contributions of the Christian community; as part of that ceremony, he wished to raise what he described as the “Christian flag.” The commissioner of Boston’s Property Management Department worried that flying a religious flag at City Hall could violate the Establishment Clause and found no past instance of the city’s having raised such a flag. He therefore told Shurtleff that the group could hold an event on the plaza but could not raise their flag during it. Shurtleff and Camp Constitution (petitioners) sued, claiming that Boston’s refusal to let them raise their flag violated, among other things, the First Amendment’s Free Speech Clause. The District Court held that flying private groups’ flags from City Hall’s third flagpole amounted to government speech, so Boston could refuse petitioners’ request without running afoul of the First Amendment. The First Circuit affirmed. This Court granted certiorari to decide whether the flags Boston allows others to fly express government speech, and whether Boston could, consistent with the Free

Syllabus

Speech Clause, deny petitioners' flag-raising request.

Held: 1. Boston's flag-raising program does not express government speech. Pp. 5–12.

(a) The Free Speech Clause does not prevent the government from declining to express a view. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469. The government must be able to decide what to say and what not to say when it states an opinion, speaks for the community, formulates policies, or implements programs. The boundary between government speech and private expression can blur when, as here, the government invites the people to participate in a program. In those situations, the Court conducts a holistic inquiry to determine whether the government intends to speak for itself or, rather, to regulate private expression. The Court's cases have looked to several types of evidence to guide the analysis, including: the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. See *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. 200, 209–213. Considering these indicia in *Summum*, the Court held that the messages of permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. See 555 U. S., at 470–473. In *Walker*, the Court found that license plate designs proposed by private groups also amounted to government speech because, among other reasons, the State that issued the plates “maintain[ed] direct control over the messages conveyed” by “actively” reviewing designs and rejecting over a dozen proposals. 576 U. S., at 213. On the other hand, in *Matal v. Tam*, the Court concluded that trademarking words or symbols generated by private registrants did not amount to government speech because the Patent and Trademark Office did not exercise sufficient control over the nature and content of those marks to convey a governmental message. 582 U. S. ___, ___. Pp. 5–6.

(b) Applying this government-speech analysis here, the Court finds that some evidence favors Boston, and other evidence favors Shurtleff. The history of flag flying, particularly at the seat of government, supports Boston. Flags evolved as a way to symbolize communities and governments. Not just the content of a flag, but also its presence and position have long conveyed important messages about government. Flying a flag other than a government's own can also convey a governmental message. For example, another country's flag outside Blair House, across the street from the White House, signals that a foreign leader is visiting. Consistent with this history, flags on Boston's City Hall Plaza usually convey the city's messages. Boston's flag symbol-

Syllabus

izes the city and, when flying at halfstaff, conveys a community message of sympathy or somber remembrance. The question remains whether, on the 20 or so times a year when Boston allowed private groups to raise their own flags, those flags, too, expressed the city’s message. The circumstantial evidence of the public’s perception does not resolve the issue. The most salient feature of this case is that Boston neither actively controlled these flag raisings nor shaped the messages the flags sent. To be sure, Boston maintained control over an event’s date and time to avoid conflicts, and it maintained control over the plaza’s physical premises, presumably to avoid chaos. But the key issue is whether Boston shaped or controlled the flags’ content and meaning; such evidence would tend to show that Boston intended to convey the flags’ messages as its own. And on that issue, Boston’s record is thin. Boston says that all (or at least most) of the 50 unique flags it approved reflect particular city-endorsed values or causes. That may well be true of flying other nations’ flags, or the Pride Flag raised annually to commemorate Boston Pride Week, but the connection to other flag-raising ceremonies, such as one held by a community bank, is more difficult to discern. Further, Boston told the public that it sought “to accommodate all applicants” who wished to hold events at Boston’s “public forums,” including on City Hall Plaza. App. to Pet. for Cert. 137a. The city’s application form asked only for contact information and a brief description of the event, with proposed dates and times. The city employee who handled applications testified that he did not request to see flags before the events. Indeed, the city’s practice was to approve flag raisings without exception—that is, until petitioners’ request. At the time, Boston had no written policies or clear internal guidance about what flags groups could fly and what those flags would communicate. Boston’s control is therefore not comparable to the degree of government involvement in the selection of park monuments in *Summum*, see 555 U. S., at 472–473, or license plate designs in *Walker*, see 576 U. S., at 213. Boston’s come-one-come-all practice—except, that is, for petitioners’ flag—is much closer to the Patent and Trademark Office’s policy of registering all manner of trademarks in *Matal*, see 582 U. S., at ____, ____. All told, Boston’s lack of meaningful involvement in the selection of flags or the crafting of their messages leads the Court to classify the third-party flag raisings as private, not government, speech. Pp. 6–12.

2. Because the flag-raising program did not express government speech, Boston’s refusal to let petitioners fly their flag violated the Free Speech Clause of the First Amendment. When the government does not speak for itself, it may not exclude private speech based on “religious viewpoint”; doing so “constitutes impermissible viewpoint discrimination.” *Good News Club v. Milford Central School*, 533 U. S.

Syllabus

98, 112. Boston concedes that it denied petitioners' request out of Establishment Clause concerns, solely because the proposed flag "promot[ed] a specific religion." App. to Pet. for Cert. 155a. In light of the Court's government-speech holding, Boston's refusal to allow petitioners to raise their flag because of its religious viewpoint violated the Free Speech Clause. Pp. 12–13.

986 F. 3d 78, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SOTOMAYOR, KAGAN, KAVANAUGH, and BARRETT, JJ., joined. KAVANAUGH, J., filed a concurring opinion. ALITO, J., filed an opinion concurring in the judgment, in which THOMAS and GORSUCH, JJ., joined. GORSUCH, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 20–1800

HAROLD SHURTLEFF, ET AL., PETITIONERS *v.* **CITY OF BOSTON, MASSACHUSETTS, ET AL.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[May 2, 2022]

JUSTICE BREYER delivered the opinion of the Court.

When the government encourages diverse expression—say, by creating a forum for debate—the First Amendment prevents it from discriminating against speakers based on their viewpoint. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828–830 (1995). But when the government speaks for itself, the First Amendment does not demand airtime for all views. After all, the government must be able to “promote a program” or “espouse a policy” in order to function. *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. 200, 208 (2015). The line between a forum for private expression and the government’s own speech is important, but not always clear.

This case concerns a flagpole outside Boston City Hall. For years, Boston has allowed private groups to request use of the flagpole to raise flags of their choosing. As part of this program, Boston approved hundreds of requests to raise dozens of different flags. The city did not deny a single request to raise a flag until, in 2017, Harold Shurtleff, the director of a group called Camp Constitution, asked to fly a

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Christian flag. Boston refused. At that time, Boston admits, it had no written policy limiting use of the flagpole based on the content of a flag. The parties dispute whether, on these facts, Boston reserved the pole to fly flags that communicate governmental messages, or instead opened the flagpole for citizens to express their own views. If the former, Boston is free to choose the flags it flies without the constraints of the First Amendment’s Free Speech Clause. If the latter, the Free Speech Clause prevents Boston from refusing a flag based on its viewpoint.

We conclude that, on balance, Boston did not make the raising and flying of private groups’ flags a form of government speech. That means, in turn, that Boston’s refusal to let Shurtleff and Camp Constitution raise their flag based on its religious viewpoint “abridg[ed]” their “freedom of speech.” U. S. Const., Amdt. I.

I

A

The flagpole at issue stands at the entrance of Boston City Hall. See Appendix, *infra*. Built in the late 1960s, Boston City Hall is a raw concrete structure, an example of the brutalist style. Critics of the day heralded it as a public building that “articulates its functions” with “strength, dignity, grace, and even glamor.” J. Conti, A New City Hall: Boston’s Boost for Urban Renewal, Wall Street Journal, Feb. 12, 1969, p. 14. (The design has since proved somewhat more controversial. See, *e.g.*, E. Mason, Boston City Hall Named World’s Ugliest Building, Boston Herald (Nov. 15, 2008), <https://www.bostonherald.com/2008/11/15/boston-city-hall-named-worlds-ugliest-building>.) More to the point, Boston City Hall sits on City Hall Plaza, a 7-acre expanse paved with New England brick. Inspired by open public spaces like the Piazza del Campo in Siena, the plaza was designed to be “‘Boston’s fairground,’” a “public gathering spac[e]” for the people. N. DeCosta-Klipa, Why Is

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Boston City Hall the Way It Is? Boston.com (July 25, 2018), <https://www.boston.com/news/history/2018/07/25/boston-city-hall-brutalism>.

On the plaza, near City Hall’s entrance, stand three 83-foot flagpoles. Boston flies the American flag from the first pole (along with a banner honoring prisoners of war and soldiers missing in action). From the second, it flies the flag of the Commonwealth of Massachusetts. And from the third, it usually (but not always) flies Boston’s flag—a sketch of the “City on a Hill” encircled by a ring against a blue backdrop.

Boston makes City Hall Plaza available to the public for events. Boston acknowledges that this means the plaza is a “public forum.” Brief for Respondents 27. The city’s policy is, “[w]here possible,” “to accommodate all applicants seeking to take advantage of the City of Boston’s public forums,” including the plaza and the area at the flagpoles’ base. App. to Pet. for Cert. 133a, 137a.

For years, since at least 2005, the city has allowed groups to hold flag-raising ceremonies on the plaza. Participants may hoist a flag of their choosing on the third flagpole (in place of the city’s flag) and fly it for the duration of the event, typically a couple of hours. Most ceremonies have involved the flags of other countries—from Albania to Venezuela—marking the national holidays of Bostonians’ many countries of origin. But several flag raisings have been associated with other kinds of groups or causes, such as Pride Week, emergency medical service workers, and a community bank. All told, between 2005 and 2017, Boston approved about 50 unique flags, raised at 284 ceremonies. Boston has no record of refusing a request before the events that gave rise to this case. We turn now to those events.

B

In July 2017, Harold Shurtleff, the director of an organization called Camp Constitution, asked to hold a flag-

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raising event that September on City Hall Plaza. The event would “commemorate the civic and social contributions of the Christian community” and feature remarks by local clergy. *Id.*, at 130a–131a. As part of the ceremony, the organization wished to raise what it described as the “Christian flag.” *Id.*, at 131a. To the event application, Shurtleff attached a photo of the proposed flag: a red cross on a blue field against a white background.

The commissioner of Boston’s Property Management Department said no. The problem was “not the content of the Christian flag,” but “the fact that it was the Christian flag or [was] called the Christian flag.” App. in No. 20–1158 (CA1), at 212–213 (deposition of then-commissioner Gregory T. Rooney, hereafter Rooney deposition). The commissioner worried that flying a religious flag at City Hall could violate the Constitution’s Establishment Clause and found no record of Boston ever having raised such a flag. He told Shurtleff that Camp Constitution could proceed with the event if they would raise a different flag. Needless to say, they did not want to do so.

C

Shurtleff and Camp Constitution (petitioners) sued Boston and the commissioner of its Property Management Department (respondents). Petitioners claimed that Boston’s refusal to let them raise their flag violated, among other things, the First Amendment’s Free Speech Clause. They asked for an immediate order requiring Boston to allow the flag raising, but the District Court denied the request. See 337 F. Supp. 3d 66 (Mass. 2018), *aff’d*, 928 F. 3d 166 (CA1 2019). The parties engaged in discovery. At its close, they filed cross-motions for summary judgment. The parties agreed to all relevant facts and submitted a joint statement setting them out. App. to Pet. for Cert. 128a–160a.

On that record, the District Court held that flying private

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groups' flags from City Hall's third pole amounted to government speech. See 2020 WL 555248, *5, ___ F. Supp. 3d ___, ___ (Mass., Feb. 4, 2020). Hence, the city acted within its constitutional authority in declining to raise Camp Constitution's flag. *Id.*, at *3, *5. The District Court therefore granted summary judgment for Boston. The First Circuit affirmed. See 986 F. 3d 78 (2021).

Shurtleff and Camp Constitution next petitioned this Court for certiorari. We agreed to decide whether the flags Boston allows groups to fly express government speech, and whether Boston could, consistent with the Free Speech Clause, deny petitioners' flag-raising request.

II

A

The first and basic question we must answer is whether Boston's flag-raising program constitutes government speech. If so, Boston may refuse flags based on viewpoint.

The First Amendment's Free Speech Clause does not prevent the government from declining to express a view. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469 (2009). When the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say. See *Walker*, 576 U. S., at 207–208. That must be true for government to work. Boston could not easily congratulate the Red Sox on a victory were the city powerless to decline to simultaneously transmit the views of disappointed Yankees fans. The Constitution therefore relies first and foremost on the ballot box, not on rules against viewpoint discrimination, to check the government when it speaks. See *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U. S. 217, 235 (2000).

The boundary between government speech and private expression can blur when, as here, a government invites the people to participate in a program. In those situations,

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when does government-public engagement transmit the government’s own message? And when does it instead create a forum for the expression of private speakers’ views?

In answering these questions, we conduct a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression. Our review is not mechanical; it is driven by a case’s context rather than the rote application of rigid factors. Our past cases have looked to several types of evidence to guide the analysis, including: the history of the expression at issue; the public’s likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. See *Walker*, 576 U. S., at 209–214.

Considering these indicia in *Sumnum*, we held that the messages of permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. See 555 U. S., at 470–473. In *Walker*, we explained that license plate designs proposed by private groups also amounted to government speech because, among other reasons, the State that issued the plates “maintain[ed] direct control over the messages conveyed” by “actively” reviewing designs and rejecting over a dozen proposals. 576 U. S., at 213. In *Matal v. Tam*, 582 U. S. ___ (2017), on the other hand, we concluded that trademarking words or symbols generated by private registrants did not amount to government speech. *Id.*, at ___–___ (slip op., at 14–18). Though the Patent and Trademark Office had to approve each proposed mark, it did not exercise sufficient control over the nature and content of those marks to convey a governmental message in so doing. *Ibid.* These precedents point our way today.

B

Applying the government-speech analysis to this record,

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we find that some evidence favors Boston, and other evidence favors Shurtleff.

To begin, we look to the history of flag flying, particularly at the seat of government. Were we to consider only that general history, we would find that it supports Boston.

Flags are almost as old as human civilization. Indeed, flags *symbolize* civilization. From the “primordial rag dipped in the blood of a conquered enemy and lifted high on a stick,” to the feudal banner bearing a lord’s coats of arms, to the standards of the Aztecs, nearly every society has taken a piece of cloth and “endow[ed] it, through the circumstances of its display, with a condensed power” to speak for the community. W. Smith, *Flags Through the Ages and Across the World* 1–2, 32, 34 (1975). Little wonder that the Continental Congress, seeking to define a new nation, “[r]esolved” on June 14, 1777, “[t]hat the Flag of the . . . United States be thirteen stripes, alternate red and white: that the union be thirteen stars, white in a blue field, representing a new constellation.” 8 *Journals of the Continental Congress 1774–1789*, p. 464 (W. Ford ed. 1907). Today, the American flag continues to symbolize our Nation, a constellation of 50 stars standing for the 50 States.

Other contemporary flags, both state and local, reflect their communities. Boston’s flag, for instance, bears the city’s seal and motto rendered in blue and buff—the colors of the Continental Army’s Revolutionary War uniforms. See *Symbols of the City of Boston*, City of Boston (July 16, 2016), <https://www.boston.gov/departments/tourism-sports-and-entertainment/symbols-city-boston> (Symbols of Boston).

Not just the content of a flag, but also its presence and position have long conveyed important messages about government. The early morning sight of the stars and stripes above Fort McHenry told Francis Scott Key (and, through his poem, he told the rest of us) that the great experiment—

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the land of the free—had survived the British attack on Baltimore Harbor. See C. Lineberry, *The Story Behind the Star Spangled Banner*, *Smithsonian Magazine* (Mar. 1, 2007). No less familiar, a flag at halfstaff tells us that the government is paying its “respect to th[e] memory” of someone who has died. 4 U. S. C. §7(m). (Congress has explained, across several sections of the U. S. Code, the meaning we should take from the “position,” “manner,” “time,” and “occasions” of the American flag’s display. §§6, 7.) And the presence of the Royal Standard flying from Windsor Castle’s Round Tower says the Queen is home. See *Windsor Castle Today*, Royal Collection Trust, www.rct.uk/visit/windsor-castle/windsor-castle-today.

The flying of a flag other than a government’s own can also convey a governmental message. A foreign flag outside Blair House, across the street from the White House, signals that a foreign leader is visiting and the residence has “becom[e] a de facto diplomatic mission of the guest’s home nation.” M. French, *United States Protocol: The Guide to Official Diplomatic Etiquette* 298 (2010). And, according to international custom, when flags of two or more nations are displayed together, they cannot be flown one nation above the other “in time of peace.” 4 U. S. C. §7(g).

Keeping with this tradition, flags on Boston’s City Hall Plaza usually convey the city’s messages. On a typical day, the American flag, the Massachusetts flag, and the City of Boston’s flag wave from three flagpoles. Boston’s flag, when flying there at full mast, symbolizes the city. When flying at halfstaff, it conveys a community message of sympathy or somber remembrance. When displayed at other public buildings, it marks the mayor’s presence. See *Symbols of Boston*. The city also sometimes conveys a message by replacing its flag with another. When Boston’s mayor lost a bet with Montreal’s about whose hockey team would win a playoff series, Boston, duty-bound in defeat, hoisted the Canadiens’ banner. See *Tr. of Oral Arg.* 54–55.

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While this history favors Boston, it is only our starting point. The question remains whether, on the 20 or so times a year when Boston allowed private groups to raise their own flags, those flags, too, expressed the city’s message. So we must examine the details of *this* flag-flying program.

Next, then, we consider whether the public would tend to view the speech at issue as the government’s. In this case, the circumstantial evidence does not tip the scale. On an ordinary day, a passerby on Cambridge Street sees three government flags representing the Nation, State, and city. Those flags wave “in unison, side-by-side, from matching flagpoles,” just outside “the entrance to Boston’s seat of government.” 986 F. 3d, at 88. Like the monuments in the public park in *Summum*, the flags “play an important role in defining the identity that [the] city projects to its own residents and to the outside world.” 555 U. S., at 472. So, like the license plates in *Walker*, the public seems likely to see the flags as “conveying some message” on the government’s “behalf.” 576 U. S., at 212 (quoting *Summum*, 555 U. S., at 471).

But as we have said, Boston allowed its flag to be lowered and other flags to be raised with some regularity. These other flags were raised in connection with ceremonies at the flagpoles’ base and remained aloft during the events. Petitioners say that a pedestrian glimpsing a flag other than Boston’s on the third flagpole might simply look down onto the plaza, see a group of private citizens conducting a ceremony without the city’s presence, and associate the new flag with them, not Boston. Thus, even if the public would ordinarily associate a flag’s message with Boston, that is not necessarily true for the flags at issue here. Again, this evidence of the public’s perception does not resolve whether Boston conveyed a city message with these flags.

Finally, we look at the extent to which Boston actively controlled these flag raisings and shaped the messages the flags sent. The answer, it seems, is not at all. And that is

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the most salient feature of this case.

To be sure, Boston maintained control over an event’s date and time to avoid conflicts. It maintained control over the plaza’s physical premises, presumably to avoid chaos. And it provided a hand crank so that groups could rig and raise their chosen flags. But it is Boston’s control over the flags’ content and meaning that here is key; that type of control would indicate that Boston meant to convey the flags’ messages.

On this issue, Boston’s record is thin. Boston says that all (or at least most) of the 50 unique flags it approved reflect particular city-approved values or views. Flying flags associated with other countries celebrated Bostonians’ many different national origins; flying other flags, Boston adds, was not “wholly unconnected” from a diversity message or “some other day or cause the City or Commonwealth had already endorsed.” Brief for Respondents 8, 35. That may well be true of the Pride Flag raised annually to commemorate Boston Pride Week. See Brief for Commonwealth of Massachusetts et al. as *Amici Curiae* 25–26 (citing reports that the then-mayor of Boston gave remarks as the Pride Flag was raised). But it is more difficult to discern a connection to the city as to, say, the Metro Credit Union flag raising, a ceremony by a local community bank.

In any event, we do not settle this dispute by counting noses—or, rather, counting flags. That is so for several reasons. For one thing, Boston told the public that it sought “to accommodate all applicants” who wished to hold events at Boston’s “public forums,” including on City Hall Plaza. App. to Pet. for Cert. 137a. The application form asked only for contact information and a brief description of the event, with proposed dates and times. The city employee who handled applications testified by deposition that he had previously “never requested to review a flag or requested changes to a flag in connection with approval”; nor did he even see flags before the events. *Id.*, at 150a. The city’s

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practice was to approve flag raisings, without exception. It has no record of denying a request until Shurtleff's. Boston acknowledges it "hadn't spent a lot of time really thinking about" its flag-raising practices until this case. App. in No. 20–1158 (CA1), at 140 (Rooney deposition). True to its word, the city had nothing—no written policies or clear internal guidance—about what flags groups could fly and what those flags would communicate.

Compare the extent of Boston's control over flag raisings with the degree of government involvement in our most relevant precedents. In *Summum*, we emphasized that Pleasant Grove City always selected which monuments it would place in its park (whether or not the government funded those monuments), and it typically took ownership over them. 555 U. S., at 472–473. In *Walker*, a state board "maintain[ed] direct control" over license plate designs by "actively" reviewing every proposal and rejecting at least a dozen. 576 U. S., at 213. Boston has no comparable record.

The facts of this case are much closer to *Matal v. Tam*. There, we held that trademarks were not government speech because the Patent and Trademark Office registered all manner of marks and normally did not consider their viewpoint, except occasionally to turn away marks it deemed "offensive." 582 U. S., at ___, ___ (slip op., at 14, 22). Boston's come-one-come-all attitude—except, that is, for Camp Constitution's religious flag—is similar.

Boston could easily have done more to make clear it wished to speak for itself by raising flags. Other cities' flag-flying policies support our conclusion. The City of San Jose, California, for example, provides in writing that its "flagpoles are not intended to serve as a forum for free expression by the public," and lists approved flags that may be flown "as an expression of the City's official sentiments." See Brief for Commonwealth of Massachusetts et al. as *Amici Curiae* 18.

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All told, while the historical practice of flag flying at government buildings favors Boston, the city’s lack of meaningful involvement in the selection of flags or the crafting of their messages leads us to classify the flag raisings as private, not government, speech—though nothing prevents Boston from changing its policies going forward.

III

Last, we consider whether Boston’s refusal to allow Shurtleff and Camp Constitution to raise their flag amounted to impermissible viewpoint discrimination.

Boston acknowledges that it denied Shurtleff’s request because it believed flying a religious flag at City Hall could violate the Establishment Clause. And it admits this concern proceeded from the premise that raising the flag would express government speech. See Brief in Opposition 23 (explaining that “viewpoint neutrality” was “incompatible” with Boston’s view of its program). But we have rejected that premise in the preceding pages. We must therefore consider Boston’s actions in light of our holding.

When a government does not speak for itself, it may not exclude speech based on “religious viewpoint”; doing so “constitutes impermissible viewpoint discrimination.” *Good News Club v. Milford Central School*, 533 U. S. 98, 112 (2001). Applying that rule, we have held, for example, that a public university may not bar student-activity funds from reimbursing only religious groups. See *Rosenberger*, 515 U. S., at 830–834. Here, Boston concedes that it denied Shurtleff’s request solely because the Christian flag he asked to raise “promot[ed] a specific religion.” App. to Pet. for Cert. 155a (quoting Rooney deposition). Under our precedents, and in view of our government-speech holding here, that refusal discriminated based on religious viewpoint and violated the Free Speech Clause.

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* * *

For the foregoing reasons, we conclude that Boston’s flag-raising program does not express government speech. As a result, the city’s refusal to let Shurtleff and Camp Constitution fly their flag based on its religious viewpoint violated the Free Speech Clause of the First Amendment. We reverse the First Circuit’s contrary judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX TO OPINION OF THE COURT

The flagpoles outside Boston City Hall fly the American flag, the Commonwealth of Massachusetts flag, and the city flag, side by side, on an ordinary day.



Source: Preservation Priorities, Boston Preservation Alliance (Feb. 3, 2022), <https://boston-preservation.org/news-item/preservation-priorities-letter-mayor-wu>

KAVANAUGH, J., concurring

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[May 2, 2022]

JUSTICE KAVANAUGH, concurring.

This dispute arose only because of a government official’s mistaken understanding of the Establishment Clause. A Boston official believed that the City would violate the Establishment Clause if it allowed a religious flag to briefly fly outside of City Hall as part of the flag-raising program that the City had opened to the public. So Boston granted requests to fly a variety of secular flags, but denied a request to fly a religious flag. As this Court has repeatedly made clear, however, a government does not violate the Establishment Clause merely because it treats religious persons, organizations, and speech equally with secular persons, organizations, and speech in public programs, benefits, facilities, and the like. See, *e.g.*, *Zelman v. Simmons-Harris*, 536 U. S. 639 (2002). On the contrary, a government *violates* the Constitution when (as here) it *excludes* religious persons, organizations, or speech because of religion from public programs, benefits, facilities, and the like. See, *e.g.*, *Espinoza v. Montana Dept. of Revenue*, 591 U. S. ____ (2020); *Good News Club v. Milford Central School*, 533 U. S. 98 (2001); *McDaniel v. Paty*, 435 U. S. 618 (1978). Under the Constitution, a government may not treat religious persons, religious organizations, or religious speech as second-class.

ALITO, J., concurring in judgment

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[May 2, 2022]

JUSTICE ALITO, with whom JUSTICE THOMAS and
JUSTICE GORSUCH join, concurring in the judgment.

I agree with the Court’s conclusion that Boston (hereafter
City) violated the First Amendment’s guarantee of freedom
of speech when it rejected Camp Constitution’s application
to fly what it characterized as a “Christian flag.” But I can-
not go along with the Court’s decision to analyze this case
in terms of the triad of factors—history, the public’s percep-
tion of who is speaking, and the extent to which the govern-
ment has exercised control over speech—that our decision
in *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*,
576 U. S. 200 (2015), derived from *Pleasant Grove City v.*
Summum, 555 U. S. 460 (2009). See *ante*, at 6–12. As the
Court now recognizes, those cases did not set forth a test
that always and everywhere applies when the government
claims that its actions are immune to First Amendment
challenge under the government-speech doctrine. And
treating those factors as a test obscures the real question in
government-speech cases: whether the government is
speaking instead of regulating private expression.

I

The government-speech doctrine recognizes that the Free
Speech Clause of the First Amendment “restricts govern-
ment regulation of private speech” but “does not regulate

ALITO, J., concurring in judgment

government speech.” *Summun*, 555 U. S., at 467. That doctrine presents no serious problems when the government speaks in its own voice—for example, when an official gives a speech in a representative capacity or a governmental body issues a report. But courts must be very careful when a government claims that speech by one or more private speakers is actually government speech. When that occurs, it can be difficult to tell whether the government is using the doctrine “as a subterfuge for favoring certain private speakers over others based on viewpoint,” *id.*, at 473, and the government-speech doctrine becomes “susceptible to dangerous misuse,” *Matal v. Tam*, 582 U. S. ___, ___–___ (2017) (slip op., at 13–14).

In *Tam*, for example, the United States defended a statutory provision that permitted the Patent and Trademark Office to deny federal registration to “disparag[ing]” marks, 15 U. S. C. §1052(a), on the theory that “the registration of a trademark converts the mark into government speech.” 582 U. S., at ___ (slip op., at 17). We rejected that argument and held that because the Government’s role in registration was limited to applying a standard of assessment to marks generated by private parties, registered marks are not government speech. *Id.*, at ___–___ (slip op., at 12–14). But the Government’s position had radical implications: If registration transforms trademarks into government speech, the same logic would presumably hold for other speech included on systems of government registration. Books on the copyright registry, for example, would count as the Government’s own speech—presumably subject to editorial control. And the Government would be free to exclude authors from copyright protection based on their views. *Id.*, at ___–___ (slip op., at 17–18).

To prevent the government-speech doctrine from being used as a cover for censorship, courts must focus on the identity of the speaker. The ultimate question is whether the government is actually expressing its own views or the

ALITO, J., concurring in judgment

real speaker is a private party and the government is surreptitiously engaged in the “regulation of private speech.” *Summum*, 555 U. S., at 467. But our precedent has never attempted to specify a general method for deciding that question, and the Court goes wrong in proceeding as though our decisions in *Walker* and *Summum* settled on anything that might be considered a “government-speech analysis.” *Ante*, at 6. In both cases, we employed a fact-bound totality-of-the-circumstances inquiry that relied on the factors that appeared helpful in evaluating whether the speech at issue was government or private speech. See *Walker*, 576 U. S., at 210–213; *Summum*, 555 U. S., at 470–478. We did not set out a test to be used in all government-speech cases, and we did not purport to define an exhaustive list of relevant factors. And in light of the ultimate focus of the government-speech inquiry, each of the factors mentioned in those cases could be relevant only insofar as it sheds light on the identity of the speaker. When considered in isolation from that inquiry, the factors central to *Walker* and *Summum* can lead a court astray.

Consider first “the extent to which the government has actively shaped or controlled the expression.” *Ante*, at 6. Government control over speech is relevant to speaker identity in that speech by a private individual or group cannot constitute government speech if the government does not attempt to control the message. But control is also an essential element of censorship. Consider this example. The British Licensing Act of 1737, 10 Geo. II c. 28, §1, in 17 Eng. Stat. at Large 140 (1765), as amended by the Theatres Act of 1843, 6 & 7 Vict. c. 68, §2 (1843), prohibited the performance of any “interlude, tragedy, comedy, opera, play, farce, or other entertainment” without a patent issued by the King of England or a “License from the Lord Chamberlain of Her Majesty’s Household.” *Ibid*. This regime attracted criticism precisely because it gave the Lord Chamberlain extensive “control over the nature and content,”

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ante, at 6, of covered performances. One of the leading critics of the Act—the playwright George Bernard Shaw—was denied permission to perform several plays, including Mrs. Warren’s Profession, The Shewing-up of Blanco Posnet, and Press Cuttings.¹ But had the Lord Chamberlain approved these plays, would anyone seriously maintain that those plays were thereby transmuted into the government’s speech?

As this illustration shows, neither “control” nor “final approval authority” can in itself distinguish government speech from censorship of private speech, and analyzing that factor in isolation from speaker identity flattens the distinction between government speech and speech tolerated by the censor. And it is not as though “actively” exercising control over the “nature and content” of private expression makes a difference, as the Court suggests, *ibid.* Censorship is not made constitutional by aggressive and direct application.

Next, turn to the history of the means of expression. *Ibid.* Historical practice can establish that a means of expression “typically represent[s] government speech.” *Summum*, 555 U. S., at 470 (emphasis added); *Tam*, 582 U. S., at ___ (slip op., at 17). But in determining whether speech is the government’s, the real question is not whether a form of expression is *usually* linked with the government but whether the speech *at issue* expresses the government’s own message. Governments can put public resources to novel uses. And when governments allow private parties to use a resource normally devoted to government speech to express their own messages, the government cannot rely on historical expectations to pass off private speech as its own. Cf. *Summum*, 555 U. S., at 480 (explaining that even though monuments in parks are normally government speech, that

¹See generally L. Hugo, *Edwardian Shaw: The Writer and His Age* 197–230 (1999).

ALITO, J., concurring in judgment

would not be true if “a town created a monument on which all of its residents (or all those meeting some other criterion) could place the name of a person to be honored or some other private message”).

This case exemplifies the point. Governments have long used flags to express government messages, so this factor provides *prima facie* support for Boston’s position under the Court’s mode of analysis. *Ante*, at 7–9. But on these facts, the history of flags clearly cannot have any bearing on whether the flag displays express the City’s own message. The City put the flagpoles to an unorthodox use—allowing private parties to use the poles to express messages that were not formulated by City officials. Treating this factor as significant in that circumstance loads the dice in favor of the government’s position for no obvious reason.

Now consider the third factor: “the public’s likely perception as to who (the government or a private person) is speaking.” *Ante*, at 6. Our earlier government-speech precedents recognized that “the correct focus” of the government-speech inquiry “is not on whether the . . . reasonable viewer would identify the speech as the government’s,” *Johanns v. Livestock Marketing Assn.*, 544 U. S. 550, 564, n. 7 (2005), and with good reason. Unless the public is assumed to be omniscient, public perception cannot be relevant to whether the government *is* speaking, as opposed merely *appearing* to speak. Focusing on public perception encourages courts to categorize private expression as government speech in circumstances in which the public is liable to misattribute that speech to the government. This case once again provides an apt illustration. As the Court rightly notes, “[a] passerby on Cambridge Street” confronted with a flag flanked by government flags standing just outside the entrance of Boston’s seat of government would likely conclude that all of those flags “conve[y] some message on the government’s behalf.” *Ante*, at 9 (internal quotation marks

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omitted). If that is the case, this factor supports the exclusion of private parties from using the flagpoles even though the government allows private parties to use the flagpoles to express private messages, presumably because those messages may be erroneously attributed to the government. But there is no obvious reason why a government should be entitled to suppress private views that might be attributed to it by engaging in viewpoint discrimination. The government can always disavow any messages that might be mistakenly attributed to it.

The factors relied upon by the Court are thus an uncertain guide to speaker identity. But beyond that, treating these factors as a freestanding test for the existence of government speech artificially separates the question whether the government is speaking from whether the government is facilitating or regulating private speech. Under the Court's factorized approach, government speech occurs when the government exercises a "sufficient" degree of control over speech that occurs in a setting connected with government speech in the eyes of history and the contemporary public, regardless of whether the government is actually merely facilitating private speech. This approach allows governments to exploit public expectations to mask censorship.

And like any factorized analysis, this approach cannot provide a principled way of deciding cases. The Court's analysis here proves the point. The Court concludes that two of the three factors—history and public perception—favor the City. But it nonetheless holds that the flag displays did not constitute government speech. Why these factors drop out of the analysis—or even do not justify a contrary conclusion—is left unsaid. This cannot be the right way to determine when governmental action is exempt from the First Amendment.

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II

A

I would resolve this case using a different method for determining whether the government is speaking. In my view, the minimum conditions that must be met for expression to count as “government speech” can be identified by considering the definition of “government speech” and the rationale for the government-speech doctrine. Under the resulting view, government speech occurs if—but only if—a government purposefully expresses a message of its own through persons authorized to speak on its behalf, and in doing so, does not rely on a means that abridges private speech.

Defined in literal terms, “government speech” is “speech” spoken by the government. “Speech,” as that term is used in our First Amendment jurisprudence, refers to expressive activity that is “intended to be communicative” and, “in context, would reasonably be understood . . . to be communicative.” *Clark v. Community for Creative Non-Violence*, 468 U. S. 288, 294 (1984); see also *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 569 (1995). Our government-speech precedents have worked with largely the same definition. See, e.g., *Summum*, 555 U. S., at 472 (accepting monument for placement in a city park “constitute[d] government speech” because the monuments were “meant to convey and have the effect of conveying a government message”); *Walker*, 576 U. S., at 214 (similar). And although this definition of “speech” is not fully precise, the purposeful communication of the speaker’s own message generally qualifies as “speech.”

For “speech” to be spoken by the government, the relevant act of communication must be government action. Governments are not natural persons and can only communicate through human agents who have been given the power to speak for the government. When individuals charged with speaking on behalf of the government act

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within the scope of their power to do so, they “are not speaking as citizens for First Amendment purposes.” *Garcetti v. Ceballos*, 547 U. S. 410, 421 (2006). And because “speech” requires the purposeful communication of the speaker’s own message, the message expressed must have been formulated by a person with the power to determine what messages the government will communicate. In short, the government must “se[t] the overall message to be communicated” through official action. *Johanns*, 544 U. S., at 562.

Government speech is thus the purposeful communication of a governmentally determined message by a person exercising a power to speak for a government. But not all governmental activity that qualifies as “government speech” in this literal and factual sense is exempt from First Amendment scrutiny. For although we have said that the Free Speech Clause “has no application” when a government is “engaging in [its] own expressive conduct,” *Summum*, 555 U. S., at 467, we have also recognized that “the Free Speech Clause itself may constrain the government’s speech” under certain conditions, as when a “government seeks to compel private persons to convey the government’s speech.” *Walker*, 576 U. S., at 208; see also *Wooley v. Maynard*, 430 U. S. 705 (1977); *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624 (1943).

That is because the government-speech doctrine is not based on the view—which we have neither accepted nor rejected—that governmental entities have First Amendment rights. See *United States v. American Library Assn., Inc.*, 539 U. S. 194, 210–211 (2003); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U. S. 94, 139, and n. 7 (1973) (Stewart, J., concurring).² Instead, the

²The text of the First Amendment also seems to exclude the possibility that the Federal Government has a constitutional right to speak, since it prohibits “Congress” and other federal entities and actors from “abridging the freedom of speech.” A different analysis might be called for in a

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doctrine is based on the notion that governmental communication—and the exercise of control over those charged by law with implementing a government’s communicative agenda—do not normally “restrict the activities of . . . persons acting as private individuals.” *Rust v. Sullivan*, 500 U. S. 173, 198–199 (1991); see also *Sumnum*, 555 U. S., at 467 (“The Free Speech Clause restricts government regulation of private speech”); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 833–835 (1995). So government speech in the literal sense is not exempt from First Amendment attack if it uses a means that restricts private expression in a way that “abridges” the freedom of speech, as is the case with compelled speech. Were it otherwise, virtually every government action that regulates private speech would, paradoxically, qualify as government speech unregulated by the First Amendment. Naked censorship of a speaker based on viewpoint, for example, might well constitute “expression” in the thin sense that it conveys the government’s disapproval of the speaker’s message. But plainly that kind of action cannot fall beyond the reach of the First Amendment.

It follows that to establish that expression constitutes government speech exempt from First Amendment attack, the government must satisfy two conditions. First, it must show that the challenged activity constitutes government speech in the literal sense—purposeful communication of a governmentally determined message by a person acting within the scope of a power to speak for the government. Second, the government must establish it did not rely on a

case in which the Federal Government attempts to restrict the speech of another sovereign. If the States had First Amendment rights against the Federal Government at the time of ratification, it is not obvious why that right would be eliminated by the incorporation of the speech rights of *private* citizens against the States through the Fourteenth Amendment.

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means that abridges the speech of persons acting in a private capacity. It is only then that “the Free Speech Clause has no application.” *Summum*, 555 U. S., at 467.

This framework explains the conditions under which government communication that relies on private parties can constitute government speech. Our precedents recognize two ways in which a government can speak using private assistance. First, the government can prospectively “enlis[t] private entities to convey its own message,” *Rosenberger*, 515 U. S., at 833, by deputizing private persons as its agents. See *Johanns*, 544 U. S., at 560–562, and n. 4; *Rust*, 500 U. S., at 192–200. In that kind of situation, private persons assume a public or quasi-public capacity that empowers them to speak on behalf of the government. So long as this responsibility is voluntarily assumed, speech by a private party within the scope of his power to speak for the government constitutes government speech.

Second, the government can “adop[t]” a medium of expression created by a private party and use it to express a government message. *Summum*, 555 U. S., at 473–474. In that circumstance, private parties are not deputized by the government; instead a private person generates a medium of expression and transfers it to the government. *Id.*, at 472–474. For the adopted expression to qualify as the government’s, the private party must alienate control over the medium of expression to the government. And government actors must put the medium to use to intentionally express a government message. Compare *id.*, at 473–475 (holding that a government adopted donated monument because it “took ownership of that monument and put it on permanent display in a park that it owns and manages”), with *Tam*, 582 U. S., at ___, ___–___ (slip op., at 5, 12–15) (no adoption occurred because governments neither produced nor took ownership of privately generated trademarks). Otherwise, the government is simply providing a forum for private parties to submit their own productions and usual First

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Amendment principles apply. And to avoid running afoul of the prohibition on compelled speech, that alienation must be voluntary.³

This approach also explains the circumstances in which we have concluded that the government is *not* speaking. We have repeatedly held that the government-speech doctrine does not extend to private-party speech that is merely subsidized or otherwise facilitated by the government. See, e.g., *Legal Services Corporation v. Velazquez*, 531 U. S. 533, 542 (2001); *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U. S. 217, 229 (2000); *Rosenberger*, 515 U. S., at 833–834. Facilitating speech by private persons cannot constitute government speech unless the government assigns a power to speak to those persons or appropriates the products of their expressive activity to express its own message. When the government’s role is limited to applying a standard of assessment to determine a speaker’s eligibility for a benefit, the government is regulating private speech, and ordinary First Amendment principles apply. *Tam*, 582 U. S., at ____–____ (slip op., at 13–14).

For analogous reasons, private-party expression in any type of forum recognized by our precedents does not constitute government speech. A forum, by definition, is a space

³The place of *Walker* within this framework warrants comment. In that case, properly understood, the government claimed to have adopted specialty-license-plate designs submitted by private parties and actually did “ow[n] the designs on its license plates,” *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. 200, 212 (2015). But it was not obvious how designs such as “Rather Be Golfing” could possibly express a government message. *Id.*, at 222 (ALITO, J., dissenting). In other words, although the private parties alienated control over the plate designs, the government did not have any purpose to communicate, and instead allowed private parties to use personal plates to communicate their own messages. This expansive understanding of government speech by adoption should be confined to government-issued IDs. As we have said, *Walker* “likely marks the outer bounds of the government-speech doctrine.” *Matal v. Tam*, 582 U. S. ____, ____ (2017) (slip op., at 17).

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for private parties to express their own views. The government can of course speak as a participant in a forum, but the creation of a space for private discourse does not involve expressing a governmental message, deputizing private parties to express it, or adopting a private party's contribution as a vehicle of government speech. So when examination of the government's "policy and practice" indicates that the government has "intentionally open[ed] a nontraditional forum for public discourse," a court may immediately infer that private-party expression in the forum is not government speech. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 802 (1985). There is no need to consider history, public perception, or control in the abstract.

B

Analyzed under this framework, the flag displays were plainly private speech within a forum created by the City, not government speech. The record attests that the City's application materials—which were the only written form of guidance available on the program prior to the adoption of a written policy in 2018—characterized the flagpoles as one of the City's "public forums." App. to Pet. for Cert. 137a. The application guidelines did not enumerate any criteria for access to the flagpoles that go beyond those typical of a resource that has been made generally available to the public. *Id.*, at 137a–140a. The first rejection of an application was the denial of Camp Constitution's application in 2017. *Id.*, at 150a–158a. Prior to then, the City never rejected any request to raise a flag submitted by any private party. And private speakers accounted for 78% of the flag-raising applicants. See Reply Brief 8.

A program with this design cannot possibly constitute government speech. The City did nothing to indicate an intent to communicate a message. *Clark*, 468 U. S., at 294. Nor did it deputize private speakers or appropriate private-

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party expressive content. The flags flown reflected a dizzying and contradictory array of perspectives that cannot be understood to express the message of a single speaker. For example, the City allowed parties to fly the gay pride flag, App. to Pet. for Cert. 142a, but it allowed others to fly the flag of Ethiopia, *id.*, at 174a, a country in which “homosexual act[s]” are punishable by “imprisonment for not less than one year.” The Crim. Code of Fed. Democratic Republic of Eth. 2004, Arts. 629 and 630, Proclamation No. 414/2004. Indeed, the City disclaimed virtually all messages expressed by characterizing the flagpoles as a “public forum” and adopting access criteria consistent with generalized public use. The City’s policy and practice thus squarely indicate an intent to open a public forum for any private speakers who met the City’s basic criteria. The requirement of viewpoint neutrality applies to any forum of this kind. *Cornelius*, 473 U. S., at 802.

As the Court rightly holds, denying Shurtleff’s application to use that forum constituted impermissible viewpoint discrimination. *Ante*, at 12–13. The City’s stated reason for rejecting Camp Constitution’s application was an unwritten “policy and practice” of “refrain[ing] from flying non-secular flags on the City Hall flagpoles.” App. to Pet. for Cert. 153a–154a. But as we have recognized, religion constitutes a viewpoint, and “speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious point of view.” *Good News Club v. Milford Central School*, 533 U. S. 98, 112 (2001); *Rosenberger*, 515 U. S., at 835.

The City’s decision was grounded in a belief that “[e]stablished First Amendment jurisprudence” prohibits a government from allowing a private party to “fly a [r]eligious flag on public property.” App. to Pet. for Cert. 153a–154a. But “[m]ore than once,” this Court has “rejected the position

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that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design.” *Rosenberger*, 515 U. S., at 839; see also *Good News Club*, 533 U. S., at 112; *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U. S. 384 (1993). Indeed, excluding religious messages from public forums that are open to other viewpoints is a “denial of the right of free speech” indicating “hostility to religion” that would “undermine the very neutrality the Establishment Clause requires.” *Rosenberger*, 515 U. S., at 845–846; see also *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U. S. 226, 248 (1990) (plurality opinion).

Although developments in City policy postdating the denial of Shurtleff’s application are not relevant to whether that act constituted a First Amendment violation, it should be emphasized that the City’s adoption of a written policy in October 2018 did not to convert the flag displays into government speech. The policy’s principal provision specified that the City will not “display flags deemed to be inappropriate or offensive in nature or those supporting discrimination, prejudice, or religious” viewpoints. App. in No. 20–1158 (CA1), p. 570 (App).⁴ That provision did not identify a

⁴The policy included six other rules specifying that: (1) flag raisings must occur on “a normal business work day, generally between the hours of 10:00 am and 3:00 pm”; (2) flag raisings must be open to the public and “[g]uests must adhere to the City of Boston policy not to discriminate on the basis of sex, race, religion, etc.”; (3) guests must deliver the “guest flag” to City personnel before the raising and retrieve it after; (4) events must be consistent with the City’s “sustainability” policy; (5) flags may be lowered to comply with the U. S. Flag Code; and (6) flags will normally be flown for 24 hours or fewer. App. 570. These criteria do not suggest purposeful communication of a government message. The policy also reserved “sole and complete discretion” to refuse to fly any flag. *Id.*, at 569. But this reservation unbridled discretionary control over access to a government-owned medium of expression cannot establish that a speaker permitted to speak through the medium is speaking for the government.

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message the City intended to express; it simply codified the City’s prior exclusion of speakers expressing a “religious viewpoint” and extended it to messages deemed “offensive,” despite the “bedrock First Amendment principle” that “[s]peech may not be banned on the ground that it expresses ideas that offend.” *Tam*, 582 U. S., at ____–____ (slip op., at 1–2).

In briefing before this Court, counsel for the City argued that despite all appearances to the contrary, the City actually *did* intend to express a message through the flag-raising program: The City’s support for “the diverse national heritage of the City’s population.” Brief for Respondents 19. All other flag raisings, the City claims, occurred “in connection with some publicly designated date of observance.” *Ibid.* This argument is a transparent attempt to reverse engineer a governmental message from facts about the flag raisings that occurred. It is true that many of the flag raisings from 2007 to 2015 celebrated nationalities. App. to Pet. for Cert. 173a–187a. But these events were conducted by private organizations to express their own support for the relevant national communities. Neither the City’s application guidance nor the 2018 written policy singled out a connection with a nationality commemoration as a condition of access to the flagpoles. The City never cited this purported requirement in its rejection of the applications it denied. And the City approved flags that had nothing to do with nationality or official holidays, such as the “Metro Credit Union Flag Raising” mentioned by the Court.

Even if the City *had* reserved the flagpoles for nationality commemorations and official holidays, that would only mean that the City had reserved the flagpoles “for certain groups or for the discussion of certain topics” and created a nonpublic forum, not that it had engaged in government

Instead, such discretionary authority is a hallmark of a standardless system of censorship.

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speech. *Rosenberger*, 515 U. S., at 829; see also *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U. S. 37, 49 (1983) (“Implicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity”). Had the City restricted use of the flagpoles to these subject matters, it could have relied on the forum’s topical limitations to deny applications to host events. But it could not have employed viewpoint-discriminatory criteria to bar otherwise-eligible speakers from expressing their own views on those subjects.

On this record, however, the only viable inference is that the City had no policy restricting access to the forum apart from the modest access conditions articulated in the application materials. Having created a forum with those characteristics, the City could not reject Shurtleff’s application on account of the religious viewpoint he intended to express. For that reason, I agree with the Court’s ultimate conclusion and concur in the judgment.

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SUPREME COURT OF THE UNITED STATES

No. 20–1800

HAROLD SHURTLEFF, ET AL., PETITIONERS *v.* CITY
OF BOSTON, MASSACHUSETTS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

[May 2, 2022]

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins,
concurring in the judgment.

The real problem in this case doesn’t stem from Boston’s mistake about the scope of the government speech doctrine or its error in applying our public forum precedents. The trouble here runs deeper than that. Boston candidly admits that it refused to fly the petitioners’ flag while allowing a secular group to fly a strikingly similar banner. And the city admits it did so for one reason and one reason only: It thought displaying the petitioners’ flag would violate “the [C]onstitution’s [E]stablishment [C]lause.” App. to Pet. for Cert. 157a; see also *id.*, at 153a–154a. That decision led directly to this lawsuit, all the years of litigation that followed, and the city’s loss today. Not a single Member of the Court seeks to defend Boston’s view that a municipal policy allowing all groups to fly their flags, secular and religious alike, would offend the Establishment Clause.

How did the city get it so wrong? To be fair, at least some of the blame belongs here and traces back to *Lemon v. Kurtzman*, 403 U. S. 602 (1971). Issued during a “bygone era” when this Court took a more freewheeling approach to interpreting legal texts, *Food Marketing Institute v. Argus Leader Media*, 588 U. S. ___, ___ (2019) (slip op., at 8), *Lemon* sought to devise a one-size-fits-all test for resolving Establishment Clause disputes. That project bypassed any

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inquiry into the Clause’s original meaning. It ignored longstanding precedents. And instead of bringing clarity to the area, *Lemon* produced only chaos. In time, this Court came to recognize these problems, abandoned *Lemon*, and returned to a more humble jurisprudence centered on the Constitution’s original meaning. Yet in this case, the city chose to follow *Lemon* anyway. It proved a costly decision, and Boston’s travails supply a cautionary tale for other localities and lower courts.

*

To see how all this unfolded, start with *Lemon* itself. *Lemon* held out the promise that any Establishment Clause dispute could be resolved by following a neat checklist focused on three questions: (1) Did the government have a secular purpose in its challenged action? (2) Does the effect of that action advance or inhibit religion? (3) Will the government action “excessive[ly] . . . entangl[e]” church and state? 403 U. S., at 612–613 (internal quotation marks omitted). But from the start, this seemingly simple test produced more questions than answers. How much religion-promoting purpose is too much? Are laws that serve both religious and secular purposes problematic? How much of a religion-advancing effect is tolerable? What does “excessive entanglement” even mean, and what (if anything) does it add to the analysis? Putting it all together, too, what is a court to do when *Lemon*’s three inquiries point in conflicting directions? More than 50 years later, the answers to all these questions remain unknown.

The only sure thing *Lemon* yielded was new business for lawyers and judges. Before *Lemon*, this Court had never held a flag or other similar public display to constitute an unconstitutional “establishment” of religion. See Congressional Research Service, C. Brougher, Public Display of the Ten Commandments and Other Religious Symbols 1–2 (2011) (Brougher); M. McConnell, No More (Old) Symbol

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Cases, 2019 Cato Sup. Ct. Rev. 91 (2019) (Symbol Cases). After *Lemon*, cases challenging public displays under the Establishment Clause came fast and furious. And just like the test itself, the results proved a garble. May a State or local government display a Christmas nativity scene? Some courts said yes, others no.¹ How about a menorah? Again, the answers ran both ways.² What about a city seal that features a cross? Good luck.³

If anything, the confusion grew with time. In the years following *Lemon*, this Court modified its “effects” test by requiring lower courts to ask whether a “reasonable observer” would consider the government’s challenged action to be an “endorsement” of religion. See, e.g., *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 593 (1989); *id.*, at 630 (O’Connor, J., concurring in part and concurring in judgment). But rather than fix *Lemon*’s problems, this new gloss compounded them. Some argued that any reasonable observer worthy of the name would consider all the relevant facts and law, just as a judge or jury must. See *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U. S. 753, 778–781 (1995) (O’Connor, J., concurring in part). Others suggested that a reasonable observer could make mistakes about the law or fail to consider all the facts. See, e.g., *American Atheists, Inc. v. Duncan*, 616 F. 3d 1145, 1160–1161 (CA10 2010). And that suggestion only raised even more questions. Just

¹ Compare *Lynch v. Donnelly*, 465 U. S. 668, 671–672 (1984) (yes), and *American Civil Liberties Union of Ky. v. Wilkinson*, 895 F. 2d 1098, 1099–1100, 1104 (CA6 1990) (yes), with *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 578–579 (1989) (no), and *Smith v. County of Albemarle*, 895 F. 2d 953, 955, 958–960 (CA4 1990) (no).

² Compare *Allegheny*, 492 U. S., at 578–581 (yes), and *Skoros v. New York*, 437 F. 3d 1, 3–4 (CA2 2006) (yes), with *Kaplan v. Burlington*, 891 F. 2d 1024, 1025–1026, 1030–1031 (CA2 1989) (no).

³ Compare *Murray v. Austin*, 947 F. 2d 147, 149 (CA5 1991) (yes), with *Harris v. Zion*, 927 F. 2d 1401, 1402 (CA7 1991) (no).

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how mistake-prone might an observer be and still qualify as reasonable? On what authority may courts exercise the awesome power of judicial review to declare a duly enacted law unconstitutional thanks only to (admitted) errors about the relevant facts or law? See *American Atheists, Inc. v. Davenport*, 637 F. 3d 1095, 1108–1110 (CA10 2010) (Gorsuch, J., dissenting from denial of rehearing en banc).

Ultimately, *Lemon* devolved into a kind of children’s game. Start with a Christmas scene, a menorah, or a flag. Then pick your own “reasonable observer” avatar. In this game, the avatar’s default settings are lazy, uninformed about history, and not particularly inclined to legal research. His default mood is irritable. To play, expose your avatar to the display and ask for his reaction. How does he *feel* about it? Mind you: Don’t ask him whether the proposed display actually amounts to an establishment of religion. Just ask him if he *feels* it “endorses” religion. If so, game over.

Faced with such a malleable test, risk-averse local officials found themselves in an ironic bind. To avoid Establishment Clause liability, they sometimes felt they had to discriminate against religious speech and suppress religious exercises. But those actions, in turn, only invited liability under other provisions of the First Amendment. The hard truth is, *Lemon*’s abstract and ahistoric test put “[p]olicymakers . . . in a vise between the Establishment Clause on one side and the Free Speech and Free Exercise Clauses on the other.” *Pinette*, 515 U. S., at 767–768 (plurality opinion).

Our case illustrates the problem. The flags of many nations bear religious symbols. So do the flags of various private groups. Historically, Boston has allowed them all. The city has even flown a flag with a cross nearly identical in size to the one on petitioners’ flag. It was a banner presented by a secular group to commemorate the Battle of Bunker Hill. See Appendix, *infra* (photographs). Yet when

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the petitioners offered their flag, the city flinched. Perhaps it worried: Would the assigned judge’s imagined “reasonable observer” bother to learn about its generous policy for secular groups? Would this observer take the trouble to consult the long tradition in this country allowing comparable displays? Or would he turn out to be an uninformed passerby offended by the seeming incongruity of a new flag flying beside those of the city, State, and Nation? Who could tell. Better to err on the safe side and reject the petitioners’ flag. As it turned out, though, that route only invited years of litigation and a unanimous adverse decision because no government may discriminate against religious speech in a public forum. To avoid a spurious First Amendment problem, Boston wound up inviting a real one. Call it a *Lemon* trade.⁴

*

While it is easy to see how *Lemon* led to a strange world in which local governments have sometimes violated the First Amendment in the name of protecting it, less clear is why this state of affairs still persists. *Lemon* has long since

⁴It seems possible, too, that these spurious Establishment Clause concerns embolden government officials to treat religion with hostility even when they don’t rely on *Lemon* by name. Sometimes colleges seek to prevent students from engaging in religious speech, labeling expressions of faith “fighting words.” See *Uzuegbunam v. Preczewski*, 592 U. S. ____, ____ (2021) (slip op., at 1–3). Certain public transit systems that sell advertising space on trains and buses ban religious messages. See *Archdiocese of Washington v. Washington Metropolitan Area Transit Authority*, 589 U. S. ____, ____ (2020) (GORSUCH, J., respecting denial of certiorari) (slip op., at 1–2); *Northeastern Pa. Freethought Soc. v. County of Lackawanna Transit Sys.*, 938 F. 3d 424, 428–431 (CA3 2019). And some governments seek to exclude religious groups from using public facilities or designations available to others. See *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F. 4th 855, 860–862 (CA8 2021); *Bronx Household of Faith v. Board of Ed.*, 750 F. 3d 184, 192 (CA2 2014). All of these trades resulted in less First Amendment protection and more needless litigation.

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been exposed as an anomaly and a mistake.

From the birth of modern Establishment Clause litigation in *Everson v. Board of Ed. of Ewing*, this Court looked primarily to historical practices and analogues to guide its analysis. 330 U. S. 1, 9–15 (1947). So, for example, while the dissent in *Everson* disagreed with some of the majority’s conclusions about what qualifies as an establishment of religion, it readily agreed that “[n]o provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment.” *Id.*, at 33–49 (Rutledge, J., dissenting). This approach fit, too, with this Court’s usual course in other areas. Often, we have looked to early and long-continued historical practices as evidence of the Constitution’s meaning at the time of its adoption.⁵ And, in the years following *Everson*, the Court followed this same path when interpreting the Establishment Clause. Agree or disagree with the conclusions in these cases, there can be little doubt that the Court approached them in large part using history as its guide.⁶

⁵See, e.g., *McDonald v. Chicago*, 561 U. S. 742, 767–770 (2010); *Giles v. California*, 554 U. S. 353, 358 (2008); see also *The Pocket Veto Case*, 279 U. S. 655, 689 (1929).

⁶See, e.g., *Walz v. Tax Comm’n of City of New York*, 397 U. S. 664, 680 (1970) (upholding tax exemptions for churches because they were supported by “more than a century of our history and uninterrupted practice”); *School Dist. of Abington Township v. Schempp*, 374 U. S. 203, 294 (1963) (Brennan, J., concurring) (“[T]he line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers”); *McGowan v. Maryland*, 366 U. S. 420, 437–440 (1961) (assessing “the place of Sunday Closing Laws in the First Amendment’s history”); *Torcaso v. Watkins*, 367 U. S. 488, 490 (1961) (concluding that religious-test oaths were one of the elements of “the formal or practical” religious establishments that “many of the early colonists left Europe and came here hoping to” avoid). JUSTICE THOMAS has raised important questions about this Court’s incorporation of the Establishment Clause against the States in these cases. But “[e]ven assuming” incorporation, the Clause “would only protect against an ‘establishment’ of religion as understood at the founding.” *Espinoza v. Montana Dept. of Revenue*, 591 U. S. ___,

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Lemon interrupted this long line of precedents. It offered no plausible reason for ignoring their teachings. And, as we have seen, the ahistoric alternative it offered quickly proved both unworkable in practice and unsound in its results. Nor is it as if *Lemon* vanquished the field even during its heyday. Often, this Court continued to look to history to resolve certain Establishment Clause disputes outside the context of religious displays.⁷ And several early decisions applying *Lemon* were themselves rapidly overruled in part or in whole.⁸ All of which in time led Justice after Justice to conclude that *Lemon* was “flawed in its fundamentals,” “unworkable in practice,” and “inconsistent with our history and our precedents.” *County of Allegheny*, 492 U. S., at 655, 669 (Kennedy, J., concurring in judgment in part and dissenting in part).⁹

____ (2020) (THOMAS, J., concurring) (slip op., at 2).

⁷See, e.g., *Marsh v. Chambers*, 463 U. S. 783, 786 (1983) (surveying history to determine that “[f]rom colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom”).

⁸See, e.g., *Agostini v. Felton*, 521 U. S. 203, 236 (1997) (overruling *School Dist. of Grand Rapids v. Ball*, 473 U. S. 373 (1985), and *Aguilar v. Felton*, 473 U. S. 402 (1985)); *Mitchell v. Helms*, 530 U. S. 793, 835 (2000) (plurality opinion) (overruling *Wolman v. Walter*, 433 U. S. 229 (1977), and *Meek v. Pittenger*, 421 U. S. 349 (1975)).

⁹See also, e.g., *Salazar v. Buono*, 559 U. S. 700, 720–721 (2010) (plurality opinion of Kennedy, J., joined in full by ROBERTS, C. J., and in part by ALITO, J.); *Van Orden v. Perry*, 545 U. S. 677, 699–700 (2005) (BREYER, J., concurring) (noting “*Lemon*’s checkered career in the decisional law of this Court” (internal quotation marks omitted)); *id.*, at 692–693 (THOMAS, J., concurring) (“This case would be easy if the Court were willing to abandon the inconsistent guideposts it has adopted for addressing Establishment Clause challenges”); *McCreary County v. American Civil Liberties Union of Ky.*, 545 U. S. 844, 890 (2005) (Scalia, J., joined in full by Rehnquist, C. J., and THOMAS, J., and in part by Kennedy, J., dissenting) (“[A] majority of the Justices on the current Court . . . have, in separate opinions, repudiated the brain-spun ‘*Lemon* test’”); *Board of Ed. of Kiryas Joel Village School Dist. v. Grumet*, 512 U. S. 687, 720 (1994)

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Recognizing *Lemon*'s flaws, this Court has not applied its test for nearly two decades. In *Town of Greece v. Galloway*, this Court declined an invitation to use the *Lemon* test. See 572 U. S. 565, 577 (2014); Brief for Respondents in *Town of Greece v. Galloway*, O. T. 2013, No. 12–696, pp. 58–60. Instead, the Court explained that the primary question in Establishment Clause cases is whether the government's conduct “accords with history and faithfully reflects the understanding of the Founding Fathers.” 572 U. S., at 577 (internal quotation marks omitted). The Court observed that this form of analysis represents the rule rather than “an exception” within the “Court's Establishment Clause jurisprudence.” *Id.*, at 575–577 (internal quotation marks omitted).

In *American Legion v. American Humanist Association* we underscored the message. 588 U. S. ___, ___ (2019) (plurality opinion) (slip op., at 25). Again we expressly refused to apply *Lemon*, this time in a challenge to a public display—the very kind of dispute *Lemon*'s test ushered into existence and where it once held sway. 588 U. S., at ___–___ (slip op., at 13–16). Again we explained that “[i]f the *Lemon* Court thought that its test would provide a framework for all future Establishment Clause decisions, its expectation has not been met.”¹⁰ *Id.*, at ___ (slip op., at 13).

(O'Connor, J., concurring in part and concurring in judgment); *Committee for Public Ed. and Religious Liberty v. Regan*, 444 U. S. 646, 671 (1980) (Stevens, J., dissenting) (disparaging “the sisyphian task of trying to patch together the ‘blurred, indistinct, and variable barrier’ described in *Lemon*”).

¹⁰See also *American Legion*, 588 U. S., at ___ (THOMAS, J., concurring in judgment) (slip op., at 7) (“[B]ecause the *Lemon* test is not good law, we ought to say so”); *id.*, at ___ (GORSUCH, J., concurring in judgment) (slip op., at 7) (“*Lemon* was a misadventure. It sought a ‘grand unified theory’ of the Establishment Clause but left us only a mess”); *id.*, at ___ (KAVANAUGH, J., concurring) (slip op., at 1) (“As this case again demonstrates, this Court no longer applies the old test articulated in *Lemon*”).

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And again we stressed that the right place to look for guidance lies in ““historical practices and understandings.”” *Id.*, at ____ (slip op., at 25) (quoting *Town of Greece*, 572 U. S., at 576).

*

With all these messages directing and redirecting the inquiry to original meaning as illuminated by history, why did Boston still follow *Lemon* in this case? Why do other localities and lower courts sometimes do the same thing, allowing *Lemon* even now to “si[t] up in its grave and shuffl[e] abroad”? *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U. S. 384, 398 (1993) (Scalia, J., concurring in judgment). There may be other contributing factors, but let me address two.

First, it’s hard not to wonder whether some simply prefer the policy outcomes *Lemon* can be manipulated to produce. Just dial down your hypothetical observer’s concern with facts and history, dial up his inclination to offense, and the test is guaranteed to spit out results more hostile to religion than anything a careful inquiry into the original understanding of the Constitution could sustain. *Lemon* may promote an unserious, results-oriented approach to constitutional interpretation. But for some, that may be more a virtue than a vice.

There is more than a little in the record before us to suggest this line of thinking. As city officials tell it, Boston did not want to “display flags deemed to be inappropriate or offensive in nature or those supporting discrimination, prejudice, or religious movements.” App. to Pet. for Cert. 160a. Instead, the city wanted to celebrate only “a particular kind of diversity.” Tr. of Oral Arg. 85–86. And if your policy goal is to lump in religious speech with fighting words and obscenity, if it is to celebrate only a “particular” type of diversity consistent with popular ideology, the First Amendment is not exactly your friend. Dragging *Lemon* from its grave

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may be your only chance.

To the extent this is why some still invoke *Lemon* today, it reflects poorly on us all. Through history, the suppression of unpopular religious speech and exercise has been among the favorite tools of petty tyrants. See *Pinette*, 515 U. S., at 760; *Feldman v. United States*, 322 U. S. 487, 501 (1944) (Black, J., dissenting). Our forebears resolved that this Nation would be different. Here, they resolved, each individual would enjoy the right to make sense of his relationship with the divine, speak freely about man's place in creation, and have his religious practices treated with respect. See *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 642 (1943). The day governments in this country forage for ways to abandon these foundational promises is a dark day for the cause of individual freedom.

Besides, even for those whose policy ambitions run in this direction, invoking *Lemon* is a myopic tactic. For as long as the First Amendment means anything, government policies that discriminate against religious speech and exercise will only invite litigation and result in losses like Boston's. Today's case is just one more in a long line of reminders about the costs associated with governmental efforts to discriminate against disfavored religious speakers. See *Good News Club v. Milford Central School*, 533 U. S. 98, 120 (2001); *Lamb's Chapel*, 508 U. S., at 392–397; *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 823–824, 845–846 (1995).

Second, it seems that *Lemon* may occasionally shuffle from its grave for another and more prosaic reason. By demanding a careful examination of the Constitution's original meaning, a proper application of the Establishment Clause no doubt requires serious work and can pose its challenges. *Lemon's* abstract three-part test may seem a simpler and tempting alternative to busy local officials and lower courts. But if this is part of the problem, it isn't without at least a partial remedy. For our constitutional history

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contains some helpful hallmarks that localities and lower courts can rely on.

Beyond a formal declaration that a religious denomination was in fact the established church, it seems that founding-era religious establishments often bore certain other telling traits. See M. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 *Wm. & Mary L. Rev.* 2105, 2110–2112, 2131 (2003) (*Establishment and Disestablishment*). First, the government exerted control over the doctrine and personnel of the established church. Second, the government mandated attendance in the established church and punished people for failing to participate. Third, the government punished dissenting churches and individuals for their religious exercise. Fourth, the government restricted political participation by dissenters. Fifth, the government provided financial support for the established church, often in a way that preferred the established denomination over other churches. And sixth, the government used the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function. See *id.*, at 2131–2181. Most of these hallmarks reflect forms of “coerc[ion]” regarding “religion or its exercise.” *Lee v. Weisman*, 505 U. S. 577, 587 (1992); *id.*, at 640 (Scalia, J., dissenting); *Van Orden*, 545 U. S., at 693 (THOMAS, J., concurring).

These traditional hallmarks help explain many of this Court’s Establishment Clause cases, too. This Court, for example, has held unlawful practices that restrict political participation by dissenters, including rules requiring public officials to proclaim a belief in God. See *Torcaso v. Watkins*, 367 U. S. 488, 490 (1961). It has checked government efforts to give churches monopolistic control over civil functions. See *Larkin v. Grendel’s Den, Inc.*, 459 U. S. 116, 127 (1982). At the same time, it has upheld nondiscriminatory public financial support for religious institutions alongside

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other entities. See *Espinoza v. Montana Dept. of Revenue*, 591 U. S. ___, ___–___ (2020) (slip op., at 18–22); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. ___, ___–___ (2017) (slip op., at 14–15); *Zelman v. Simmons-Harris*, 536 U. S. 639, 662–663 (2002). The thread running through these cases derives directly from the historical hallmarks of an establishment of religion—government control over religion offends the Constitution, but treating a church on par with secular entities and other churches does not. See Establishment and Disestablishment 2205–2208.

These historical hallmarks also help explain the result in today’s case and provide helpful guidance for those faced with future disputes like it. As a close look at these hallmarks and our history reveals, “[n]o one at the time of the founding is recorded as arguing that the use of religious symbols in public contexts was a form of religious establishment.” Symbol Cases 107. For most of its existence, this country had an “unbroken history of official acknowledgment by all three branches of government of the role of religion in American life.” *Lynch*, 465 U. S., at 674.¹¹ In fact and as we have seen, it appears that, until *Lemon*, this Court had never held the display of a religious symbol to

¹¹So, for example, when designing a seal for the new Nation in 1776, Benjamin Franklin and Thomas Jefferson proposed a familiar Biblical scene—Moses leading the Israelites across the Red Sea. J. Hutson, Religion and the Founding of the American Republic 50–51 (1998) (Hutson). The seal ultimately adopted by Congress in 1782 features “the Eye of Providence” surrounded by “glory” above the motto *Annuet Coeptis*—“He [God] has favored our undertakings.” Dept. of State, Bureau of Pub. Affairs, *The Great Seal of the United States* 4–6 (July 2003). This Court has recognized that President Washington’s 1789 Thanksgiving Day Proclamation referred to “a day of public thanksgiving and prayer” and the role of a “Supreme Being” in “the foundations and successes of our young Nation.” *Van Orden*, 545 U. S., at 686–687. And President Jefferson allowed various religious groups to use the Capitol for weekly worship services. Hutson 84–94.

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constitute an establishment of religion. See Brougher 1–2; Symbol Cases 91. The simple truth is that no historically sensitive understanding of the Establishment Clause can be reconciled with a rule requiring governments to “roa[m] the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine.” *American Legion*, 588 U. S., at ____ (slip op., at 20). Our Constitution was not designed to erase religion from American life; it was designed to ensure “respect and tolerance.” *Id.*, at ____ (slip op., at 31).

*

To justify a policy that discriminated against religion, Boston sought to drag *Lemon* once more from its grave. It was a strategy as risky as it was unsound. *Lemon* ignored the original meaning of the Establishment Clause, it disregarded mountains of precedent, and it substituted a serious constitutional inquiry with a guessing game. This Court long ago interred *Lemon*, and it is past time for local officials and lower courts to let it lie.

APPENDIX TO OPINION OF GORSUCH, J.

The Bunker Hill Flag



Source: App. to Pet. for Cert. 146a

The Camp Constitution Flag



Source: App. to Pet. for Cert. 132a

Town of Franklin

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Franklin, Massachusetts 02038-1352



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OFFICE OF THE TOWN ADMINISTRATOR

April 21, 2023

To: Town Council
From: Jamie Hellen, Town Administrator

Re: Resolution 23-28: Town Council Acceptance and/or Approval of ARPA Funds

Tonight, the Council will consider an application to Norfolk County for further ARPA awards for water main construction of \$779,666. This award will allocate 80% of the Town's County allocation.

Staff are generating a plan later this fall for the remaining 20% (or approximately \$1.36 million). My best guesses will be capital projects in water and sewer to help alleviate more costs to ratepayers who will already be seeing a large spike in rates from the Stormwater Utility and Beaver Street Interceptor (expect rate increases on May 3rd and May 25th to be effective July 1st). As Congressman Auchincloss told us a year ago, as well as the County last fall, the Town is spending its ARPA funds exactly as envisioned. The Town is also in an excellent position to be competitive for any excess unspent ARPA County money.

Recall, County ARPA funds are more limited by federal statute. The County Allocation breakdown to date:

Project #1: Water Main Replacement 1	\$1,471,185
Project #2: StormWater	\$1,500,000
Project #3: Public Health - Second Mental Health Clinician at Police	\$250,000
Project #4: Water Main Replacement 2	\$1,055,090
Project #5: Water Main Replacement 3	\$779,666
Project #6: TBD Sewer Capital Project	TBD
Project #7: TBD Water Capital Project	TBD
Total Authorized:	\$5,055,941
Allocation:	\$6,422,370
Remaining Available:	\$1,366,429

I hope to provide a more in depth report on the Municipal ("ARPA Direct") later this summer. That said, I am excited to announce three new projects from the ARPA Direct funds:

- Two new electric vehicles to replace two gas vehicles for the town hall staff fleet;
- \$100,000 toward environmental assessment and preliminary remediation work on the Nu-Style property.
- \$1,000,000 in new road construction to replace the lost hotel revenue from the two pandemic years of 2020 and 2021.



**TOWN OF FRANKLIN
RESOLUTION 23-28**

**TOWN COUNCIL APPROVAL OF AMERICAN RESCUE
PLAN ACT (ARPA) FUNDS**

The Franklin Town Council on behalf of the Town of Franklin hereby accepts the receipt of ARPA Funds from and/or through Norfolk County, MA, approves the expenditure of funds for the below-listed purposes, and authorizes the Town Administrator to execute any and all documents and/or to take any and all other action required for Town to receive said funds.

Water Main Replacement	\$779,666
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This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

DATED: _____, 2023

VOTED: _____

UNANIMOUS: _____

A TRUE RECORD ATTEST:

YES: _____ **NO:** _____

ABSTAIN: _____ **ABSENT:** _____

RECUSED: _____

Nancy Danello, CMC
Town Clerk

Glenn Jones, Clerk
Franklin Town Council