



COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Brookline Commercial Recycling Mandate Struggles with Enforcement Options

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Gemma Ypparila – Since the mid-1990's, there has been an ongoing debate as to whether recycling mandates are worth the headaches caused by enforcement troubles. Cynics, like Professor Daniel K. Benjamin who attempted to scourge the recycling movement first in 2003 with his paper “[Eight Great Myths of Recycling](#)” and then [again in 2010](#), seem to have been laid to rest in the past several years as many local governments across the United States have enacted mandatory recycling laws. Even entire states, like California and Massachusetts, have enacted mandatory programs, such as statewide commercial recycling mandates and waste bans. In drafting these laws the most important question seems to be what is the most effective way to enforce these laws against commercial entities.

This question of enforcement is what Department of Public Works (“DPW”) [Commissioner Andrew Pappastergion saw as the fatal flaw](#) in a proposed local by-law that would expand Brookline's mandated recycling requirements to businesses. As proposed by Brookline resident Alan Christ, Article 10 on [the November 18, 2014 Town Meeting Warrant](#) would, if adopted, require businesses to separate recyclables, just as residents are required to do. While the [Massachusetts Department of Environmental Protection's](#) (“MassDEP”) waste ban prohibits disposal of banned materials, such as recyclable paper and cardboard, at Massachusetts solid waste facilities, the difference lies in who has the [power to enforce these restrictions](#). MassDEP is charged with inspecting and regulating solid waste disposal facilities, and both the haulers and waste generators are liable for any waste ban violations. In Brookline, if Warrant Article 10 is passed, DPW would theoretically be able to fine violators directly after an initial warning.

If the proponent's concern is that commercial entities do not comply with the state waste bans already in place, how will adding the word “commercial” to the Brookline bylaws achieve this goal? Commissioner Pappastergion asked the same question at the Board of Selectmen hearing on October 14 during a public hearing for the article. Without the involvement of local haulers or least an implementation plan, chance monitoring by DPW employees will be no more effective than the system already in place. This proposal would apply to commercial properties using private haulers as well as those smaller commercial properties using the Town's waste pickup services. As an additional compliance obligation on commercial property owners, this type of regulation should not be adopted on an ad hoc, community-by-

community basis. The State is the proper forum for discussion and adoption of such measures. Brookline Town Meeting will address this proposal on November 18.