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## MEMORANDUM

**TO:** The Honorable Bristol Town Council

**CC:** The Honorable Steve Contente, Town Administrator

**FROM:** Andrew M. Teitz, Solicitor; David Marks, Assistant Solicitor

**DATE:** April 15, 2026

**SUBJECT:** Permanent Placement of the Bristol Santa House

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### 1. Introduction

This memorandum addresses Michael Rielly's proposal before the Town Council regarding the permanent location of the Bristol Santa House on the High Street side of the Town Common. For the reasons set forth below, the Solicitor's Office advises against allowing permanent encroachments by private parties on the Town Common.

The Bristol Santa House began operations in 2022. The Proposal describes it as "a free, appointment based sensory aware holiday experience." The existing structure measures 22 by 16 feet and has been placed on the Bristol Statehouse property on the Town Common for the past three holiday seasons. The structure is transported to and from downtown Bristol each year and stored off-site during the off season.

The proposal entails a permanent year-round placement of the structure on the Town Common, north of the Byfield School building. Outside of the December operation period the Santa House would be fully dormant.

### 2. The Common

Bristol is one of only two municipalities in Rhode Island that have Commons.<sup>1</sup> This is because the Town was originally a part of the New Plymouth Colony which became Massachusetts, where town commons are still widespread. In 1680, the original "Proprietors" of

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<sup>1</sup> The other town is Little Compton.

the Town agreed to buy the land which now comprises Bristol. *See Wall v. Eisenstadt*, 154 A. 651, 652 (R.I. 1931).

Ten years later in 1690, the Proprietors executed “to the inhabitants of the Town of Bristol,” the Deed of Highways, which laid out the plats of the new Town and created an eight-acre tract for use as a Town Common. The Deed of Highways, which describes itself as an “instrument of donation,” provides:

“[The Proprietors] further give, grant and hereby confirm to the inhabitants of [the Town] to them and their successors forever eight acres of land [comprising the Common] . . . for the public use and benefit and improvement of the inhabitants of [the Town ] that is to say for a meeting house, townhouse, or for the directing any other public buildings or edifice for [the Town’s] use, and for a market place, carrying place farming, field, or any other public use[.]”

Thus, the Common was originally granted in trust to the inhabitants of the town “for the public use and benefit,” “forever.”

### **3. Rhode Island Law**

The Rhode Island Supreme Court has opined that Town Councils have “the authority properly to deal with trust property on behalf of the town, [thus they are] authorized to lease real estate held in trust **provided such action would serve to carry out the purposes of the trust.**” *Raymond Const. Co. v. Bisbano*, 114 R.I. 1, 8, 326 A.2d 858, 862 (1974) (emphasis added). Because the original purpose of the grant of the Common was “for the public use and benefit and improvement of the inhabitants” of Bristol, the Town should not cede undeveloped portions of that land for permanent private structures.

Although the petitioner notes that the Santa House does not charge a fee, it is still a private endeavor. Moreover, according to the proposal, the permanent Santa House would not operate any more than the current temporary version. Thus, there would be a dormant structure occupying land in the Common for ten months out of the year. This does not further the purpose of the original grant to provide for the public use and benefit. Instead, it reduces the Common without serving the public any more than the current temporary version.

Related to this issue, the general laws enable the Town to lease land and property which has become unsuitable for public purposes. G. L. 1956 § 45-2-5 provides that:

“The city council of any city and the town council of any town, if it sees fit so to do, is hereby authorized, from time to time, to sell, lease, convey . . . any lands or properties owned by the city or town, which have been purchased [or] acquired, . . . for municipal or other public purposes, whenever, in the opinion of the city council or town council, the lands or properties have become unsuitable or have ceased to be used for those purposes.”

Thus, state law enables the Council to lease properties that already exist on the Common when such structures become unsuitable or cease to be used for public purposes, like abandoned or disused school buildings. But the General Laws do not confer upon the Town comparable authority over undeveloped portions of the Common held for public use.

#### **4. Massachusetts Law**

The Santa House proposal concerns the Town's ability to permit permanent private use of undeveloped land in the Common. Because Town Commons are rare in Rhode Island, Massachusetts law provides useful guidance, where such Commons are more prevalent. In Massachusetts, "a municipality may dedicate land owned by it to a particular public purpose . . . and upon completion of the dedication it becomes irrevocable. *Lowell v. City of Bos.*, 79 N.E.2d 713, 725 (Mass. 1948). Further, "public lands acquired for one public use may not be diverted to another inconsistent public use unless the subsequent use is authorized by plain and explicit legislation." *Town of Sudbury v. Massachusetts Bay Transportation Auth.*, 485 Mass. 774, 775, 152 N.E.3d 1101, 1103 (2020).

Therefore, were Bristol in Massachusetts, the Town Council would not be able to permanently allocate unimproved sections of the Town Common to private enterprises without explicit legislation from the General Assembly to do so. The only exception is when such use is consistent with the original grant of highways. But as explained above, the grant permanently restricts the Common to public use. And the Town has actively sought to reduce the number of disused structure on the Common, while the proposal here would add one for ten months out of the year.

#### **5. Conclusion**

The Town should use undeveloped land in the Common pursuant to the original grant: for public use. While this does not prevent the Town from leasing buildings that already exist on the Common which have become unsuitable, the Council should not relinquish unimproved public land for the erection of new permanent private structures.