

TOWN OF BROOKLINE ADVISORY COMMITTEE

Ad-hoc Subcommittee

Public Hearing via Zoom

April 10, 2023 5:00 p.m.

Special Town Meeting Warrant Article 1: Amend Article 6.6 (Discharging Firearms) of the Town's General Bylaws

Recommendation: By a vote of 4 in favor, 0 opposed, and no abstentions, the subcommittee recommends favorable action on Warrant Article 1, as amended by the subcommittee and agreed to by the petitioners.

Attendance: David-Marc Goldstein (Chair), Katherine Florio, Markus Penzel, Alisa Jonas; petitioners Anthony Ishak- TMM-1, Petra Bignami- TMM-12, Janice Kahn; Joslin Murphy- TMM-16, AC, Neil Gordon- TMM-1, AC; John Moreschi, First Assistant Town Counsel.

Executive Summary:	This Article would amend Brookline bylaw 6.6, adding restrictions to locations in Brookline where people who are licensed to carry firearms may do so, focusing on Brookline property, as well as voting sites, and at an event, rally or protest held on Town property.
Voting Yes will...	Add the restrictions mentioned in this report. Exemptions to this Bylaw would continue, as described under 6.6.1 (c).
Voting No will...	Leave the existing By-Law 6.6 as is.
Financial impact [if any]	None.
Legal implications [if any]	The law may be challenged.

Hearing Recording:

https://brooklinema.zoomgov.com/rec/share/57KoWRYCnwpRyvHliP-fsMflxf9brbz_1LvtPW8mrmYRlrZxzMN3CZCub4cod-gy.ZuOXo4UYB17RDj-F

Introduction:

Article 1 would amend By-Law 6.6, adding restrictions to places in Brookline where firearms may be carried, and added a fine for anyone found in violation of these restrictions.

In his presentation to the subcommittee, the lead petitioner listed the goals of this article as:

1. Reduce the risk of firearm injuries to children and the general public,
2. Prevent possible anxiety from the presence of firearms to town staff and the general public,
3. Prevent the presence of firearms from intimidating attendees or participants during discussions of public policy.

As of today, Massachusetts state law bans firearms (with certain exemptions) at elementary or secondary schools, colleges, or universities. The Massachusetts statehouse and courts have policies banning firearms on their properties, and Brookline has policies regarding conservation

and parks¹. Brookline's state representative is a co-sponsor of legislation to limit the carrying of firearms in public places². This bill is currently in committee.

The petitioner stated that the 2022 Supreme Court Bruen decision does allow localities to protect sensitive places such as schools and government buildings^{3 4}.

According to the petitioner, Brookline is not pre-empted from taking this action and provided a link to the Giffords Law Center's interpretation of Massachusetts' state law for support of this statement.⁵ He also referred to a 1986 case, *Amherst vs Attorney General* that upheld a local bylaw prohibiting the discharge of firearms within the town limits.⁶

The petitioners consulted the Office of Town Counsel, the chief of police, the director of Parks and Open Space Division of the Department of Public Works, and the chair of the Conservation Commission.

Discussion:

Most of the discussion in the hearing was on the language of the proposed changes to the bylaw. Some of the language was inspired by State legislation currently being considered in the House. However, since it's unknown whether any legislation will be passed into law, the subcommittee felt it was alright to create language that differs from the pending bill.

Advisory Committee member Joslin Murphy proposed several amendments to the Article, most of them under 6.6.1 (b). These changes were designed to clarify the language of the bylaw. She also included language to mention the schools. The petitioners accepted the changes, and the subcommittee adopted them as a friendly amendment. This version can be found in Appendix 2.

The subcommittee then discussed some of the restrictions under 6.6.1 (c). The subcommittee discussed language regarding (iii) active-duty military personnel, (iv) those given permission to carry by the Chief of Police, (v) law enforcement officers covered under the (Federal) Law Enforcement Officers Safety Act, and (ii) security guards.

The discussion regarding security guards began with a concern that a guard who is licensed to carry a firearm should not have to leave their firearm unsecured at their workplace if they were going to the library or a public park on their lunch hour. Another concern was guards who work for companies such as Brinks, who are in and out of local businesses and moving around the town. After discussion, the phrase "during work hours while at the location of their employment" was removed.

¹Courts: <https://www.mass.gov/policy-statement/trial-court-weapons-policy>,

Statehouse: <https://www.mass.gov/doc/bureau-of-the-state-house-policy-manual/download>

Brookline Parks and Recreation: <https://www.brooklinema.gov/1312/Park-Rules-and-Regulations>
<https://www.brooklinema.gov/DocumentCenter/View/2045/Conservation-Area-Rules-and-Regulations?bidId=>

² An Act to prohibit carrying firearms in sensitive places <https://malegislature.gov/Bills/193/H2359>

³ NEW YORK STATE RIFLE & PISTOLASSOCIATION, INC., ET AL. v. BRUEN, SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL., https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

⁴ Miller, Darrell AH The next front in the fight over guns, *The Washington Post* July 1, 2022, <https://www.washingtonpost.com/outlook/2022/07/01/bruen-guns-rights-carry-sensitive-places/>

⁵ Preemption of Local Laws in Massachusetts, Other Laws and Policies, Giffords Law Center, <https://giffords.org/lawcenter/state-laws/preemption-of-local-laws-in-massachusetts/>

⁶ *Amherst v Attorney General* 393 Mass. 793 (1986) Supreme Judicial Court of Massachusetts, Suffolk <https://law.justia.com/cases/massachusetts/supreme-court/1986/398-mass-793-2.html>

Another concern raised was that while there was an exemption for Town Employees, there was no exemption for someone who had permission to carry a gun for self-defense. A person with a license to carry a firearm could be on sidewalks but would not be able to pick up books at the library or visit a park. The committee agreed that if someone had been given a license to carry a firearm, if they had met the criteria for a license and had been approved by the chief of police, their movements shouldn't be restricted. To address this, the subcommittee added the words "and residents" after Town employees in (iv).

The question of legal challenges to this bylaw was discussed. The consensus of the lawyers in attendance was that this language would likely survive, and that other local and state laws would not be threatened. The petitioners asserted that the Giffords Law Center would provide resources and support.

The subcommittee also discussed the sign requirement. Although the lead petitioner stated that the chief of police requested that signs be displayed, in the hope that responsible gun owners who were carrying weapons would turn around and put them in their car before entering public buildings or parks, much of the subcommittee agreed the signs would increase public anxiety and create a perception of a crime problem where there is none. The subcommittee, in discussion with the petitioners, agreed to remove this language.

John Moreschi, representing the office of Town Counsel, suggested that the petitioners remove the final clause of subsection b, based on constitutional concerns. The petitioners agreed to this change. He also raised concerns about the phrase "at any event, rally or protest conducted in or on any public street or sidewalk owned or under the control of the Town of Brookline" which was left in, pending his further review and comment.

Recommendation:

The subcommittee unanimously (4-0) voted to recommend **FAVORABLE ACTION** on the Warrant Article as amended.

Appendix 1: The petitioners' original language

Appendix 2: Amendments proposed by Joslin Murphy (TMM-16, AC)

**Appendix 3: Clean copy of petitioner's language and Murphy amendments (combined)
with subcommittee's amendments added**

Appendix 4: Clean copy with all amendments included (motion of the subcommittee)

Appendix 1:

ARTICLE 1

Submitted by: Anthony Ishak TMM-1, Janice Kahn TMM-15, Petra Bignami TMM-12

To see if the Town will amend:

1) General Bylaw 6.6 as follows (language to be added appearing in bold and underline):

ARTICLE 6.6 DISCHARGING AND CARRYING FIREARMS

SECTION 6.6.1 Discharging Firearms.

No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any person.

Section 6.6.2 Carrying Firearms

(a) For the purposes of this section, “firearm” shall mean any device, loaded or unloaded, designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including, but not limited to, a gun, pistol, shotgun or rifle.

(b) No person shall carry a firearm in any place owned or under the control of the Town of Brookline for the purpose of government administration, including, but not limited to, a library, public playground, public park, pool, Town Hall, any location being used as an active polling or voting site, including use for the certification of votes and vote counting; events, rallies or protests, using any public ways, public property, public sidewalk, or other public areas and any special event that has been issued a license or permit by any governmental body.

(c) This section shall not apply to: (i) law enforcement officers carrying a firearm on their person as part of their official duties; (ii) security guards carrying a firearm on their person as part of their official duties during work hours while at the location of their employment; (iii) active-duty military personnel; (iv) Town employees under written express consent of the Chief of Police or their designee; or (v) law enforcement officers who qualify to carry firearms under the federal Law Enforcement Officers Safety Act, 18 U.S.C. 926 C.

(d) Signage should be visible from the entrance of all Town properties affected.

2) Amend Article 6.6 of Article 10, Brookline’s General Penalty Provisions, as follows (language to be stricken appearing in strikeout, language to be added appearing in bold and underline):

Article 6.6	Discharging <u>and Carrying</u> Firearms	\$100.00
<u>Section 6.6.1</u>	<u>Penalty</u>	\$100.00 300.00
<u>Section 6.6.2</u>	<u>Penalty</u>	<u>\$300.00</u>
Or take any action relative thereto		

Appendix 2:

(Murphy amendments to section 6.6.2 (b), (c), (d) in red)

Section 6.6.2 Carrying Firearms

(a) For the purposes of this section, "firearm" shall mean any device, loaded or unloaded, designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including, but not limited to, a gun, pistol, shotgun or rifle.

(b) No person shall carry a firearm in any ~~place~~ **building** owned **by** or under the control of the Town of Brookline ~~for the purpose of government administration,~~ including, but not limited to, ~~a library, public playground, public park, pool, Town Hall,~~ any location being used **by the Town** as an active polling or voting site, including use for the certification of votes and vote counting; ~~in or on any park or playground owned by the Town of Brookline;~~ **at any events,** rallies or protests, ~~conducted in or on~~ **using** any ~~public ways, public street or sidewalk property~~ owned or under the control of the Town of Brookline, ~~public sidewalk;~~ or ~~other public areas and~~ **at any special event for which that has been issued** a license or permit **has been issued by the any governmental body** Town of Brookline.

(c) This section shall not apply to: (i) law enforcement officers carrying a firearm on their person as part of their official duties; (ii) security guards carrying a firearm on their person as part of their official duties during work hours while at the location of their employment; (iii) active-duty military personnel; (iv) Town employees under written express consent of the Chief of Police or their designee; ~~or~~ (v) law enforcement officers who qualify to carry firearms under the federal Law Enforcement Officers Safety Act, 18 U.S.C. 926 C; **and (vi) the carrying of firearms in any building or on the grounds of any school that is under the control of the Public Schools of Brookline, unless expressly permitted by State law.**

~~(d) Signage should be visible from the entrance of all Town properties affected.~~

Appendix 3:

(clean copy of petitioners' motion & Murphy amendments, with further subcommittee changes in blue)

ARTICLE 6.6

DISCHARGING AND CARRYING FIREARMS

SECTION 6.6.1 Discharging Firearms.

No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any person.

Section 6.6.2 Carrying Firearms

(a) For the purposes of this section, "firearm" shall mean any device, loaded or unloaded, ~~designed or modified to be used as a weapon~~ capable of firing a projectile using an explosive charge as a propellant, including, but not limited to, a gun, pistol, shotgun or rifle.

(b) No person shall carry a firearm in any building owned by or under the control of the Town of Brookline, including, but not limited to any location being used as an active polling or voting site, including use for the certification of votes and vote counting; at any event, rally or protest, conducted in or on any public street or sidewalk owned or under the control of the Town of Brookline. ~~or other public areas and at any special event for which that has been issued a license or permit has been issued by the any governmental body~~ Town of Brookline.

(c) This section shall not apply to: (i) law enforcement officers ~~duly qualified to~~ carry a firearm on their person ~~as part of their official duties~~; (ii) security guards ~~duly licensed to carry a firearm on their person as part of their official duties; during work hours while at the location of their employment~~; (iii) active-duty military personnel ~~where permitted by State and Federal Law~~; (iv) Town employees ~~and residents~~ under written express consent of the Chief of Police or their designee; (v) law enforcement officers who qualify to carry firearms under the federal Law Enforcement Officers Safety Act, 18 U.S.C. 926 C; ~~and (vi) the carrying of firearms in any building or on the grounds of any school that is under the control of the Public Schools of Brookline, unless expressly permitted by State law.~~ and (vi) to the carrying of firearms in any building or on the grounds of any school under the

control of the Public Schools of Brookline, which conduct is expressly prohibited as provided in M.G.L. c. 269, s. 10(j).

d) If any section, subsection, sentence, clause, phrase, word, provision or application of this bylaw shall be found to be invalid, illegal or unconstitutional, that finding shall not affect or undermine the validity of any other section, subsection, sentence, clause, phrase, word, provision or application of this bylaw.

2) Amend Article 6.6 of Article 10, Brookline's General Penalty Provisions, as follows (language to be stricken appearing in strikeout, language to be added appearing in bold and underline):

Article 6.6 Discharging ~~and Carrying~~ Firearms

<u>Section 6.6.1 Penalty</u>	<u>\$300.00</u>
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<u>Section 6.6.2 Penalty</u>	<u>\$300.00</u>
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Or take any action relative thereto.

Appendix 4:

(clean copy of the motion of the subcommittee)

ARTICLE 6.6

DISCHARGING AND CARRYING FIREARMS

SECTION 6.6.1 Discharging Firearms.

No person shall fire or discharge any gun, fowling-piece, or firearm within two hundred feet of any street in the town of Brookline or on any private grounds, except with the consent of the owner thereof; provided, however, that this by-law shall not apply to the use of such weapons at any military exercise, in law enforcement or in the lawful defense of the person, family, or property of any person.

Section 6.6.2 Carrying Firearms

- (a) **For the purposes of this section, “firearm” shall mean any device, loaded or unloaded, capable of firing a projectile using an explosive charge as a propellant, including, but not limited to, a gun, pistol, shotgun or rifle.**
- (b) **No person shall carry a firearm in any building owned by or under the control of the Town of Brookline, including, but not limited to, any location being used by the Town as an active polling or voting site, including use for the certification of votes and vote counting; in or on any park, playground or recreational facility owned by the Town of Brookline; at any event, rally or protest conducted in or on any public street or sidewalk owned or under the control of the Town of Brookline;**
- (c) **This section shall not apply to: (i) law enforcement officers duly qualified to carry a firearm on their person; (ii) security guards duly licensed to carry a firearm on their person as part of their official duties; (iii) active-duty military personnel where permitted by State and Federal Law; (iv) Town employees and residents under written express consent of the Chief of Police or their designee; (v) law enforcement officers who qualify to carry firearms under the federal Law Enforcement Officers Safety Act, 18 U.S.C. 926 C; (vi) to the carrying of firearms in any building or on the grounds of any school under the control of the Public Schools of Brookline, which conduct is expressly prohibited as provided in M.G.L. c. 269, s. 10(i).**
- (d) **If any section, subsection, sentence, clause, phrase, word, provision or application of this bylaw shall be found to be invalid, illegal or unconstitutional, that finding shall not affect or undermine the validity of any other section, subsection, sentence, clause, phrase, word, provision or application of this bylaw.**

2) Amend Article 6.6 of Article 10, Brookline's General Penalty Provisions, as follows (language to be stricken appearing in strikeout, language to be added appearing in bold and underline):

Article 6.6 Discharging ~~and Carrying~~ Firearms

Section 6.6.1 Penalty **\$300.00**

Section 6.6.2 Penalty **\$300.00**

Or take any action relative thereto.