

MINUTES OF CTOS MEETING – May 18, 2022

The Brookline Committee on Town Organization and Structure (CTOS) held a duly posted meeting via the Zoom platform on May 18, 2022 to discuss relevant warrant articles coming before the spring Town Meeting.

In attendance were; Jean Berg (CTOS), Dick Benka (CTOS), Harry Bohrs (CTOS), Abby Cox (CTOS – left at 7:00 pm), Betsy DeWitt (CTOS), Sean Lynn-Jones (CTOS), Ian Roffman (CTOS – arrived at 6:30 pm), Ann Braga (Human Resources), Joe Callanan (Town Counsel)

The meeting began at 6:00 p.m.

The committee took up discussion of the CTOS report on Articles 12 & 13 that was circulated and posted prior to the meeting. Dick Benka explained that the language is identical to petitioners' language with the one exception that the petitioners include a provision for fines and CTOS does not. He noted that subpoenas are an additional flashpoint. In the draft report, CTOS does not take a position on whether the articles should be adopted or not adopted and this might be a point for discussion along with taking a position on the issue of subpoenas. He summarized the Select Board's discussion of Articles 12 & 13, and reported Town Counsel's comments at that meeting regarding the 2019 language that would go into place if petitioners' motion is not approved by Town Meeting. Town Counsel had suggested that there could be work arounds to the 2019 language that would ameliorate some of the concerns that had been expressed about it, whereas Article 12 raised issues of the legality of the fines that he believed would be struck down by the Attorney General (AG). Dick Benka also reported the Advisory Committee's (AC) decision to vote on the CTOS draft with no fines and that the AC had overwhelmingly voted No Action, with the prevailing concern being that professionals rather than volunteers would be needed to investigate complaints. Jean Berg asserted that CTOS should come out with various suggestions and options, and asked why a vote on the articles would not be within the purview of the committee. Dick Benka replied that he perceived CTOS' role as trying to get the language into the best form possible in regards to the legalities and due process, but that the ultimate decision is Town Meeting's; that the issue seemed less about structure (clearly in CTOS' purview) than whether you feel the process will be beneficial and address or exacerbate existing problems. Jean Berg responded that she saw petitioners' motion as creating a structure. Betsy DeWitt noted that there had been many positive comments on the educational value of the CTOS report. Sean Lynn-Jones asked about the comparative merits of the 2019 language that Article 12 would replace. Betsy DeWitt repeated that there were concerns at AC about putting quasi-judicial power in the hands of volunteers, and that Cambridge had been cited as an example of a structure that is professionally staffed. There were comments that legal professionals had indicated they would not be willing to participate in the process that Article 12 proposes. Ian Roffman emphasized that Sean Lynn-Jones' question was the right one to ask, but he wasn't sure who the right person is to answer it. Harry Bohrs agreed and stated that as of July 1, there will be a new process, whether it comes from the 2019 language or Article 12. He noted that Article 12 creates a separate complaint committee, but that if the town sticks with the 2019 language, CDICR can still create a complaint committee and can delegate some work to Town Counsel.

The committee asked Joe Callanan (Town Counsel) to comment on the comparative merits of Article 12 and the 2019 language it would replace. He said that the 2019 version lacks specificity, but there could

be work-arounds. Article 12 has some specificity that people don't like (e.g. fines, landlord/tenant issues.) Town Counsel's job is not to ask which is better but are they legal (i.e. what is the risk of litigation?) Through that lens, there are fewer concerns in the 2019 language about what is illegal. Betsy Dewitt posed the question if the existing approved version could be implemented, would it be helpful to refer Article 12. Dick Benka noted that even if Articles 12 & 13 pass, they would likely not be up and running for two years (as the AG would have to approve it and there would be many steps to make it operable), and the 2019 language would go into effect either way. Joe Callanan explained that, as the investigations would be a lot of work and very time consuming, he likely would need to run 16-24 hours of training for volunteers who would take part. He pointed out that the job of Town Counsel's office is to make every department compliant with the bylaws and that if Article 12 & 13 passed, they would figure out how. Harry Bohrs summarized by saying the question comes down to legality versus advisability. With the 2019 language, legality can be met, but it may not be advisable, but Articles 12 & 13 raise issues of legality. Dick Benka reminded the committee that one of the reasons the effective date of the 2019 language was moved to 2022 was because CDICR said at the time it did not feel qualified to take on what they had been asked to do, and they were given 2 years of study to produce Articles 12 & 13. Betsy DeWitt further commented that the committee's study to produce Articles 12 & 13 should be recognized, but that the model they were looking towards in Cambridge has a budget of \$600-800K to support professionals to do the work and the petitioners are proposing something that the existing CDICR already said they can't do. Jean Berg stated that many feel we need a better structure for complaints, and while the drafters spent a year and a half, she wonders if the Town could use more time to study this. Ann Braga (Human Resources) said she has attended meetings for the last two and a half years in an advisory role. In the Human Resources department, the three people who do investigations of complaints have 75 years of combined experience, and it is still a lot of work and challenge for them. The existing 2019 language is broader in coverage, but it doesn't have the fines and subpoenas. When CDICR was created, there was an existing subcommittee for complaints but it never met and never had people assigned to it. She provided resources to the committee from her time involved in a similar quasi-judicial structure on Boston's Residency Compliance Commission. She doesn't know whether more time to "cook" will help the process proposed or if, like Town Counsel has suggested, it's most important to figure out how to implement whatever the Town has as of July 1.

Returning to his initial question, Sean Lynn-Jones voiced his concern that we still don't have enough information to compare the relative merits of the 2019 language and Articles 12 & 13, and he wonders how, in a Town Meeting where approximately 1/3 of the members are new, it will be possible to think about this carefully and make a wise decision. He asked whether CTOS is going to provide guidance. Dick Benka commented that CTOS needs to decide about including a recommendation on subpoenas or not and taking a position on the Article or not. Alternatively, a section detailing pros/cons could be added to the report. Ian Roffman stated that after this discussion, he is inclined to recommend referral. He believes more time would be beneficial. If the 2019 language will go into effect anyway on July 1, CDICR will get experience implementing that. There has been great momentum around Article 12 and a lot of admirable progress in the last several weeks, but it is not yet ready for prime time, and if this bylaw fails, there will be opportunity for another one. Jean Berg suggested that the committee could vote No Action, assuming the petitioners will come back in some form that is less rushed. Dick Benka wondered about the value of referral when CDICR has already taken their best shot at it and it is not something for the Moderator's Committee. He thinks it comes down to philosophical differences that underlie the different positions. Betsy DeWitt pointed out that one benefit of referral would be to save

the work that has been done, given that it is at risk of being rejected. Jean Berg asked whom it would be referred to, and Betsy DeWitt said CDICR. Ian Roffman asked what the effective results would be of a “no action” vs. a “referral” vote by Town Meeting. Betsy DeWitt explained that if it’s referred to CDICR to make improvements, a referral might be helpful. A motion was made to reconsider CTOS’ decision not to make a recommendation, and it was unanimously approved (Abby Cox was no longer in the meeting.) As the committee debated the language of the motion of their next vote, Jean Berg raised the point that the training of volunteers and potential liability had not been addressed in the draft CTOS report. Harry Bohrs expressed that while he was initially disinclined to the notion of referral, he believes the 2019 version does not have enough oversight in what transpires, and that with Article 12, if the fines and subpoenas were removed, there would be a narrower and better defined complaint committee. A referral would keep the conversation going. Betsy DeWitt added on that the 2019 language will go into effect on July 1 and Town Counsel’s office will work closely with the folks discussing the changes that need to be made and developing the training, so there may be progress in the interim as a practical matter. Sean Lynn-Jones enumerated the advantages of a referral motion: It gives time to figure out the pros/cons of the language and practice; it gives the 80+ new Town Meeting Members a chance to figure out what’s going on; the motion that comes back from referral is not confined by the scope of the current warrant. A motion was made to refer the Article to CDICR to come back to the 2023 Annual Town Meeting, and it was approved unanimously. Following the vote, there was conversation in the committee about how you evaluate the efficacy of a complaint process.

The committee moved to a discussion of a response to BFAC. Sean Lynn-Jones noted that CTOS has nothing further to add since its last report. He wonders whether CTOS should discuss, in light of the recent contentious back and forth, the process by which the Select Board and AC and any other committees, boards, and commissions consider warrant articles and make recommendations to Town Meeting. He mentioned the question Mike Toffel (BFAC) had raised at CTOS’ prior meeting about how the structure of Brookline’s town government should be monitoring long term fiscal conditions. The practice has been to convene various override study, efficiency, and financial policy review committees that bring in people from the outside. They offer new perspectives and do a great job, but then they go and are replaced by another group of people. Does CTOS want to take this up? The committee chair said that was an issue for a future meeting but that CTOS needed to focus on response to the current request. The committee agreed to submit the same response as the previous quarter. A discussion followed about changes in the AC’s process (forms, financial ramification prompts.)

Article 26 was brought up. Harry Bohrs is finishing the edits on the report for Town Meeting. It is unclear that the petitioner is making any changes.

Ian Roffman reported there is nothing new on Article 33. There is some confusion about whether the petitioners plan to offer the original article as a motion. He has sent an email inquiring.

The meeting adjourned at 7:35 pm.