

Warrant Article 22: Amend Article 8 of the General By-Laws by adding a new section to restrict the sale of products that contain fluorinated hydrocarbons

Recommendation: Favorable Action on Referral of the Subject Matter of Article 22 to a Moderator's Committee, with a Preliminary Report due by the Fall 2022 TM and a Final Report and possible Warrant Article for the Spring 2023 Annual Meeting, by a vote of 21-3 with no abstentions.

<p>Executive Summary</p>	<p>WA 22 was filed to restrict the sale of certain products containing fluorinated hydrocarbons in the Town of Brookline for the purpose of reducing the risk of exposure to people and the environment. The products to be banned include those with fluorinated hydrocarbons within certain categories of goods (personal care and cosmetics, foods packaged in bulk, non-stick cookware and fabric treatments) as well as those identified by the Select Board, to be specified in regulations. The proposed by-law, as amended, would go into effect on July 1, 2023, with compliance by retailers enforced by the Department of Public Health and Human Services.</p> <p>The Advisory Committee was concerned that the by-law as written was too difficult to comply with and to enforce. Product labels often do not provide the information needed to identify which products fall under the by-law, and the current staffing of DPH likely is inadequate to properly enforce the by-law. Also, the responsibility of the Select Board to add items without guidance as to priority of additions could be improved upon. The Advisory Committee therefore recommends that a committee be established to consider how best to implement the goal of this warrant article to reduce the presence of fluorinated hydrocarbons, which the Advisory Committee agrees should be curtailed due to its harm to health and the environment.</p>
<p>Voting Yes will...</p>	<p>Voting Yes will reduce the volume of products containing fluorinated hydrocarbons that may be sold in Town. It assigns the role of promulgating regulations to the Select Board and enforcement responsibility to the Department of Public Health and Human Services.</p>
<p>Voting No will...</p>	<p>Voting No will have no impact on Town operations.</p>
<p>Financial impact</p>	<p>Enactment of this by-law will have a financial impact on the Town if there is a need for additional staffing to provide adequate enforcement. It also will have a financial impact on retailers who will need to invest in research to determine which products may no longer be sold, find alternative products that may be more costly, and potentially lose customers to retailers in other communities.</p>

Legal implications	The by-law as proposed may be subject to legal scrutiny if retailers are unable to comply with the law because they lack the information needed to determine whether they are in compliance.
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Introduction

Fluorinated hydrocarbons are a type of chemical compound. The most well-known of these compounds, of which there are thousands, are PFAS. Their strong chemical bonds prevent them from degrading, which has earned them the moniker of “forever chemicals.” This property makes them useful for a variety of purposes and consequently are found in many products. They are used in firefighter turnout gear to make it water-resistant, reduce moisture-related skin burns and to protect from steam. They are found in other products because of their water, oil and stain resistance.

Because these chemical compounds do not break down, they remain in the environment and in our bodies, and their presence in our bodies has been shown to cause a variety of harms, including weakening the immune system and related to that, reducing a person’s resistance to infectious diseases. They have also been linked to a variety of cancers, an increase in cholesterol levels, alterations in liver enzymes, reductions in infant birth weights and high blood pressure in pregnant women.

Warrant Article 22 proposes a new by-law to Article 8 of the Town’s General By-Laws – Public Health and Safety to restrict the sale of products within the following categories if they contain fluorinated hydrocarbons:

1. Over-the-counter cosmetic or personal care products, if fluorinated hydrocarbons were intentionally added.
2. Food ware products packaged in bulk if fluorinated hydrocarbons were intentionally added
3. New non-stick cookware
4. Fabric treatment products

The proposed by-law also would restrict the sale of other products containing fluorinated hydrocarbons if these are identified in regulations promulgated by the Select Board.

The by-law specifically excludes products sold in service businesses such as restaurants, medical offices, and hair and nail salons, as well as prescription products, and, as amended, would go into effect on July 1, 2023, with enforcement carried out by the Department of Public Health and Human Services, which currently has a single, part-time (19 hour/week) health specialist who enforces the plastic, polystyrene and other bans passed by TM some years ago.

Evaluation Methodology/Research

- Letter from the Massachusetts Sierra Club received April 5, 2022 in support of WAs 22 and 25.
- Letter from the Brookline Chamber of Commerce dated March 31, 2022 in opposition to WA 22, WA25 and WA30.
- Letters in support from 2 residents.
- Boston Globe webinar “Forever Chemicals: Understanding and Mitigating Impacts of PFAS, March 23, 2022
- Consumer Reports article “How PFAS Can Harm Your Health” March 22, 2022
- CNN Health article on the health and environmental risks of PFAS, March 25, 2022
- Two warrant articles passed by Town Meeting in November 2012 that ban polystyrene and plastic bags. See Section 8.32 Sustainable Food Containers and Packaging (effective dates 1/1/2019 and 1/1/2020); and Section 8.33 Sustainable Bags (effective date 7/1/2017 with up to a 1-year waiver).
- A warrant article passed by Town Meeting in May 2015 that regulates the sale of bottled water. <https://www.brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws>
- H.2350 An Act restricting toxic PFAS chemicals in consumer products to protect our health, which has 30 sponsors including Reps. Vitolo and Balsler. Currently in committee. <https://malegislature.gov/Bills/192/H2350>
- H.2348 An Act to ban the use of PFAS in food packaging, which has 39 sponsors, including Reps. Vitolo, Elugardo and Balsler. Currently in committee. <https://malegislature.gov/Bills/192/H2348/BillHistory>
- Input from Sigalle Reiss, Director of the Department of Public Health and Human Services

Discussion

With little scientific debate that fluorinated hydrocarbons have harmful effects on human health and the environment, the focus of the Advisory Committee discussion was whether the particular approach taken by the proposed by-law was the most effective to address the potential for harms created by these chemicals in our community.

Of the greatest concern was whether the by-law was workable. It would ban the sale of products within certain categories of merchandise; however, more frequently than not, product packaging does not provide information on whether fluorinated hydrocarbons are an ingredient, and manufacturers when contacted, do not always provide accurate information. Thus, Brookline’s retailers, and particularly the smaller stores, would lack the ability to identify which of the many items for sale within these categories contain the prohibited chemicals.

An approach suggested by Sigalle Reiss, the Director of the Department of Public Health and Human Services, as a first step would be to narrowly target businesses that expose people to the highest concentrations of fluorinated hydrocarbons. Not only would this focus restrictions where fluorinated carbons potentially cause the most harm to human health, it also would make

regulation, compliance and enforcement easier to implement. One such business is nail salons. Yet the proposed by-law excludes products that are sold by service industries.

Another approach suggested by Reiss was to educate the public about the dangers of fluorinated hydrocarbons prior to implementing restrictions on the sale of products that include them.

More general concerns brought up by some Advisory Committee members were whether there had been sufficient consideration of the degree to which a product containing fluorinated hydrocarbons causes risk of harm and an assessment of whether alternative products exist. Related to this, there was discussion regarding in which instances the benefit of having the chemical in a product outweighs the harm. For example, firefighter gear continues to contain PFAS because it is so effective in protecting firefighters from burns.

The petitioner noted that the choice of which products to include in the ban was taken from legislation currently pending at the State House. One reason that this warrant article was filed at this time was to support the State level legislation.

Given the concerns cited above, the Advisory Committee concluded that the substance of the proposed by-law would benefit from more analysis, with the goal of developing a by-law that would be a more workable and more effective tool to help curtail the harms caused by this chemical compound, the risks of which the public is becoming increasingly aware.

Recommendation

The Advisory Committee recommends FAVORABLE ACTION on the following motion, by a vote of 21-3 with no abstentions.

MOVED: That the subject matter of Article 22 be referred to a Moderator's Committee, with a Preliminary Report due by the Fall 2022 TM and a Final Report and possible Warrant Article for the Spring 2023 Annual Meeting.

ARTICLE 22 ADVISORY COMMITTEE VOTES

Article Description	Referral of WA22
AC recommendation (Favorable Action unless indicated)	21-3-0
Scott Ananian	N
Carla Benka	Y
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman *	
David-Marc Goldstein	Y
Neil Gordon	N
Susan Granoff	Y
Kelly Hardebeck	Y
Anita Johnson	Y
Georgia Johnson	
Alisa Jonas	Y
Janice Kahn	Y
Carol Levin	Y
Pam Lodish	Y
Linda Olson Pehlke	Y
Donelle O’Neal, Sr.	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	N
Lee Selwyn	Y
Alok Somani	Y
Christine Westphal	Y
Dennis Doughty	
* Chairperson does not vote except to break a tie	