

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Committee on Town Organization and Structure

To see if the Town will amend the first paragraph of Section 2.5.2, the first paragraph of Article 3.22, and Section 2.1.3 of the General By-Laws as follows (insertions in **underline**, deletions in ~~strikethrough~~):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with the article, in the combined reports. The Select Board and the Advisory Committee (or in the alternative to the full Advisory Committee a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing **on all articles** ~~prior to a final vote of the Select Board or the Advisory Committee, as the case may be, on any article in the Warrant.~~ The Select Board ~~and the Advisory Committee~~ shall prepare written reports, stating ~~their~~ **its** recommendations, **if any**, and the reasons **for each such recommendation or a decision not to make a recommendation** ~~therefor~~, for all articles in the Warrant for a Town Meeting. **The Select Board shall give priority to making recommendations on articles that (1) have been submitted by a Town department, board, committee, or commission; (2) request action by the Massachusetts state legislature; (3) propose to amend any Town by-law; (4) authorize or require the Town to enter binding agreements; or (5) involve any appropriation of funds. The Advisory Committee, in accordance with Section 2.2.6 (General Duties), shall prepare written reports or recommendations on any or all articles.** The reports **of the Select Board and Advisory Committee** shall be included in the combined reports to be emailed or mailed upon request as follows:

ARTICLE 3.22

THE PUBLIC'S RIGHT TO BE HEARD ON WARRANT ARTICLES

Any committee as defined in section 1.1.4, before taking ~~its first or only vote~~ **a vote on a report or making a recommendation to Town Meeting** with respect to an Article on the Warrant, must hold a duly noticed public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. C. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee or School Committee, provided a subcommittee of those bodies assigned to review and report to the full Committee on a warrant article complies with the by-law by holding a duly noticed public hearing before any vote on said warrant article.

SECTION 2.1.3 FILING OF ARTICLES

All Articles for insertion in the Warrant for any Annual or Special Town Meeting shall be filed in the office of the Select Board prior to 12:00 noon on the ~~75th~~ 90th day preceding the scheduled date of the opening session of said meeting. On the ~~75th~~ 90th day preceding the scheduled date of the opening session of said meeting, the Warrant shall be closed, and as soon as practicable thereafter signed, including only those Articles filed by the ~~75th~~ 90th day preceding said scheduled date.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This petitioner's description serves as the explanation of the warrant article submitted by the Committee on Town Organization and Structure (CTO&S), as well as the CTO&S report on the subject matter of Article 5 of the November 2022 Town Meeting, which that Town Meeting voted to refer to CTO&S.

SUMMARY

The average number of articles on the warrant for Town Meeting has increased by 50% since 2018. This warrant article recognizes the impact of this increase and offers proposals for considering and reporting on the increased number of articles. Unlike Article 5 of the November 2022 Town Meeting, this warrant article includes a clear requirement for the holding of public hearings on warrant articles and offers guidance as to which articles the Select Board should make recommendations on. It would amend the General Bylaws to require that the Select Board and Advisory Committee hold public hearings on all warrant articles and to clarify the existing bylaw requirement for holding such hearings. The warrant article would amend Section 2.5.2 of the General Bylaws to recognize that the Select Board may choose not to offer a recommendation on every warrant article, but the Select Board would be required to explain why it has declined to make a recommendation. Section 2.5.2 also would be amended to specify that the Select Board should give priority to five important categories of warrant articles: those that (1) have been submitted by a Town department, board, committee, or commission; (2) request action by the Massachusetts state legislature; (3) propose to amend any Town by-law; (4) authorize or require the Town to enter binding agreements; or (5) involve any appropriation of funds. The warrant article also would extend the period from the closing of the warrant until the first session of Town Meeting from 75 days to 90 days by amending 2.1.3. This would

allow the Select Board and Advisory Committee to have more time to consider the increased number of articles on the warrant for each Town Meeting. Finally, the proposed article would amend 3.22 to better clarify that any committee, as defined in section 1.1.4, would be required to hold a public hearing only for those articles on which it votes on a report or makes a recommendation to Town Meeting. Beyond this warrant article, additional steps are necessary to limit the number of warrant articles or to make more time available for the Select Board and Advisory Committee to consider them.

BACKGROUND

The Increasing Number of Warrant Articles for Each Town Meeting

In recent years, the number of warrant articles for Town Meetings has increased significantly. Since May 2018, each Town Meeting has had an average of 37.8 articles on the warrant, a 50% increase compared to the average of 25.2 articles for Town Meetings between May 2001 and November 2017. Before May 2018, most Town Meetings considered 20–30 warrant articles. Since May 2018, the range has been 30–40 articles, and four Town Meetings have had over 40.

For any given Town Meeting, the number of articles on the warrant may not give an accurate indication of the amount of time that Town Meeting, the Select Board, Advisory Committee, and other boards, committees, and commissions must devote to considering those articles. Some articles are simple or uncontroversial. Sometimes groups of related articles can be considered simultaneously. Sometimes petitioners decide not to move their articles, although such decisions may not come until those articles have been debated by the Select Board and Advisory Committee. Nevertheless, over the past five years, the sustained increase in the number of warrant articles has required Town Meeting, the Select Board, the Advisory Committee, and other committees to spend more time reviewing and voting on warrant articles.

The Select Board's Decision ("Experiment") Not To Take A Position on Some Articles

Faced with a growing number of warrant articles that required more and more attention from its members and Town staff, the Select Board decided to save time by taking a position on some, but not all, of the articles on the warrant for the May 2022 Annual Town Meeting. Articles on which the Select Board did not take a position (i.e., make a recommendation) included those that were beyond the Select Board's jurisdiction (e.g., national and international issues such as the U.S. embargo against Cuba) and issues on which the Select Board already had taken a position (e.g. leaf blowers). The Select Board elected to take a position on articles for which a Town department was the petitioner, as well as those that were controversial and involved Town assets. By applying these criteria, for the May 2022 Town Meeting the Select Board took a position on approximately two-thirds of the articles on the warrant. The Select Board deemed this experiment a success and decided to follow a similar procedure for the November 2022 Town Meeting. The

Select Board reported that for the November 2022 Town Meeting it used the following criteria for choosing the articles on which to offer recommendations:

- (1) Is the petitioner part of the Town, such as the Select Board or a Town Department?
- (2) Are there substantial budget implications for the Town?
- (3) Is the article likely to be controversial?

As it applied these criteria, the Select Board took a position on approximately half the articles on the November 2022 warrant.

Article 5 of the November 2022 Town Meeting

The Select Board placed Article 5 on the warrant for the November 2022 Town Meeting to formalize the process that the Board had followed at the May and November 2022 Town Meetings. Article 5 would have amended Section 2.5.2 of the General Bylaws to remove the requirement that the Select Board and Advisory Committee prepare written reports with recommendations for “*all* articles in the Warrant for a Town Meeting.” By deleting “*all*” Article 5 would have enabled the Select Board and Advisory Committee to choose the articles on which they would offer reports and recommendations to Town Meeting. The Select Board’s members argued that this change would allow “them to focus on warrant articles that directly affected their work instead of holding hearings on articles that were not germane to their interests and authority.”

Referral of Article 5 at the November 2022 Town Meeting

CTO&S moved to refer the subject matter of Article 5 to CTO&S because the Committee had three concerns.

First, Article 5 could have deprived Town Meeting of the Select Board’s valuable advice on important warrant articles. The Select Board has a unique and important role in reviewing Town Meeting articles. As the executive branch of Town government, the Select Board is responsible for overseeing the operations of Town departments, approving upper-level hiring, and appointing members of boards, committees, and commissions. The Select Board has the experience, knowledge, staff support, and access to information that enable it to offer important insights into the likely effects of warrant articles. It has the ability to alert Town Meeting to potential problems in implementing, administering, enforcing, or funding warrant articles that change the Town’s bylaws or require the appropriation of funds. In many cases, the Select Board can play an indispensable role in vetting warrant articles carefully and thoroughly.

Second, if approved, Article 5 might reduce the number and quality of public hearings on warrant articles. The two Brookline bylaws that require public hearings on warrant articles (Section 2.5.2 and Article 3.22), both mandate public hearings by the Select Board and the Advisory Committee (or a subcommittee of The Advisory Committee) when a vote is taken. If Article 5, as proposed, had removed the requirement that the Select Board and

Advisory Committee prepare written reports with recommendations for “*all* articles in the Warrant for a Town Meeting” (emphasis added), it is possible that neither body would hold a “final vote” or “first or only vote” on some warrant articles. Such a change would eliminate the requirement that a public hearing be held. There is a general recognition that public hearings play an important role in the review of warrant articles before Town Meeting. One reason for referring the subject matter of Article 5 to CTO&S was to explore ways of guaranteeing that public hearings were held even if the Select Board and Advisory Committee were not required to report or make recommendations on all warrant articles.

Third, Article 5 did not differentiate between the Select Board and the Advisory Committee. Article 5 was placed on the warrant by the Select Board. The explanation is written entirely from the perspective of the Select Board, but the provisions of Article 5 also applied to the Select Board. CTO&S argued that referral of Article 5 was necessary either to consider whether the Advisory Committee should be required to report on certain categories of warrant articles *or* to revise Section 2.5.2 of the bylaws to make it consistent with the recently amended Section 2.2.6 (General Duties).

Article 29 of the November 2020 Town Meeting amended the Town’s General Bylaws as follows to give the Advisory Committee greater latitude in deciding what to consider and the option of making reports or recommendations on warrant articles:

SECTION 2.2.6 GENERAL DUTIES

The Committee shall consider any or ~~and~~ all municipal questions, including appropriation requests and proposed action under all articles in the warrant for a Town Meeting, for the purpose of making reports ~~or~~ ~~and~~ recommendations to the Town.

The November 2022 Town Meeting by a vote of 162 in favor, 79 opposed, with 11 abstentions decided to refer the subject matter of Article 5 to CTO&S with a request that CTO&S consider amendments to the relevant bylaws and deliver a report no later than the May 2023 Town Meeting.

After the vote to refer Article 5, many Town Meeting members expressed concern that the Select Board had not taken a position or conducted a focused public hearing on several controversial and complicated articles that had been placed on the November 2022 warrant by the Zero Admissions Advisory Board (ZEAB). Some Select Board members agreed that the Board made a mistake in not taking a position on those articles.

CTO&S CONSIDERATION OF THE REFERRED SUBJECT MATTER OF ARTICLE 5

CTO&S met to consider the subject matter of Article 5 on January 25, February 8, February 23, February 28, and March 2, 2023. The January 25 and March 2 meetings included public

hearings. Members of the Select Board and Advisory Committee participated in several of these meetings.

CTO&S attempted to balance the need to ensure that the Select Board and Advisory Committee fulfill their responsibilities with the fact that the increasing number of warrant articles has made it difficult to give every article serious attention. There was general recognition that some articles were more important than others. Town Meeting would, for example, benefit more from the reports and recommendations of the Select Board on complicated articles that created new sets of regulations, procedures, or funding mechanisms than on articles on topics such as U.S. foreign policy.

CTO&S ultimately voted to submit a warrant article that includes three bylaw amendments regarding how the Select Board and Advisory Committee review warrant articles, the requirement that public hearings be held, and the length of the time period between the closing of the warrant and the opening session of Town Meeting,

The three bylaw amendments reflect the following conclusions that emerged as CTO&S considered the subject matter of Article 5 of the November 2022 Town Meeting.

- *The Importance of Public Hearings.* Public hearings on warrant articles are, first and foremost, an opportunity for members of the public to offer comments, but they serve many other purposes. Public hearings can provide feedback to petitioners, who may then decide to reconsider or modify their warrant articles. They help the Select Board or Advisory Committee to decide what to recommend to Town Meeting. Particularly when the hearings are televised, they also educate the public and Town Meeting members about the issues raised by petitioners, as well as the status and strengths and weaknesses of warrant articles. This public education function is particularly important now that Brookline does not have a print newspaper. Select Board public hearings are prominent and are made available to a wide audience by the Brookline Interactive Group. Public hearings also could help the Select Board (or Advisory Committee) to decide whether to make a report or recommendation on a warrant article. In the absence of a public hearing, the implications of a warrant article and its potential for generating a contentious debate may not be clear.

CTO&S concluded that it was particularly important for the Select Board to hold public hearings on all warrant articles. While it was recognized that the Advisory Committee often does the most in-depth analyses of warrant articles, the Select Board's meetings are the only ones that are both publicly televised and generally scheduled for the same day and approximate time each week. CTO&S believes that it is important to give the proponents and opponents of articles this opportunity to articulate their positions, to identify issues for Select Board consideration, and to permit the televised Select Board hearings to serve as a vehicle for public education.

The Town has traditionally afforded all individuals who wished to speak the opportunity to do so at a noticed public hearing. In response to concerns that proponents or opponents, or both, could “flood” a Select Board public hearing with speakers and thus exacerbate workload issues, CTO&S has obtained an opinion from Town Counsel’s Office (see Appendix A) that the chair of a board or committee can impose reasonable, content-neutral, narrowly-tailored limits to the time allotted for comment on each warrant article at a public hearing. This could include limits on the time allotted to each speaker as well as prohibiting additional individuals from speaking when the total allotted time was reached, even at a public hearing. Thus, the issue of workload could be controlled.

- *Preparing Reports Need Not Impose an Excessive Burden.* In response to concerns that the writing of reports imposed excessive burdens on Select Board staff, CTO&S noted that even when a report is mandated, the bylaws cannot dictate the extensiveness, quality, or depth of that report. Those issues would be entirely in the control of the Select Board. The Select Board has increasingly deferred its voting on articles until the Advisory Committee or an Advisory Committee subcommittee has reported, and a Select Board report could simply state “The Select Board agrees with the Advisory Committee” or “The Select Board takes a position that [with a short listing of bullet points]” or “The Select Board makes no recommendation on this article.” Here too, workload issues could be controlled.
- *The Select Board Has a Unique Ability and Responsibility to Advise and Inform Town Meeting on Some Categories of Warrant Articles.* The Select Board is the Town’s elected executive body, which means that it represents all the residents of Brookline and is responsible for overseeing the functioning of Town departments. It also has direct access to the Town’s executive and administrative personnel and the information that they can provide on the impact of warrant articles on the Town’s operations and financial situation. The Select Board is often responsible for placing articles on the warrant, either on its own behalf or on behalf of Town departments or committees that are appointed by the Select Board. The Select Board also has the responsibility for filing Home Rule Petitions with the state legislature. CTO&S thus believes that the Select Board should make recommendations for Town Meeting’s consideration on specific categories of warrant articles that are of particular significance to the Town and on which the Select Board may have an important and unique perspective: articles that (1) have been submitted by a Town department, board, committee, or commission; (2) request action by the Massachusetts state legislature; (3) propose to amend any Town by-law; (4) authorize or require the Town to enter binding agreements; or (5) involve any appropriation of funds. Nonetheless, while making such recommendations should be the presumptive course, CTO&S recognizes that the Select Board members cannot effectively be compelled to take a position on any given warrant article, because members can always abstain on a vote. Thus, the amendment that CTO&S is proposing to Section 2.5.2 recognizes that the Select

Board may choose not to make a recommendation on a warrant article, but requires that the Select Board state its reasons for offering no recommendation.

- *The Advisory Committee is Functioning Well Under the Bylaws Regarding Its Responsibilities for Preparing Reports and Recommendations on Warrant Articles.* CTO&S decided not to amend Section 2.2.6 of the General Bylaws, which states that the Advisory Committee may consider “any or all” questions, including warrant articles, for the purpose of making “reports or recommendations” to the Town. That language was added to Section 2.2.6 by the November 2020 Town Meeting and the process used by the Advisory Committee to consider and report on warrant articles appears to be working well, even if Town Meeting does not always vote the way the Advisory Committee recommends. CTO&S thought it would be premature to consider changes to Section 2.2.6. CTO&S did, however, decide that Section 2.5.2 of the General Bylaws should be amended to ensure that section was consistent with Section 2.2.6.
- *The Need for Further Actions.* CTO&S recognized that amending the bylaws regarding public hearings and the responsibilities of the Select Board and Advisory Committee would not address all the issues raised by the increasing number of warrant articles. Town Meeting itself also has found it challenging to consider a large number of warrant articles, particularly when some of those articles raise complex issues. It also will be necessary to reduce the number of warrant articles or to enable the Select Board, in particular, to find more time to devote to consideration of warrant articles.

EXPLANATION OF BYLAW AMENDMENTS PROPOSED BY THIS ARTICLE

The warrant article submitted by CTO&S on the warrant review process includes amendments to three sections of the Town’s General Bylaws.

Amendment to Section 2.5.2 of the General Bylaws

The proposed CTO&S amendment to Section 2.5.2 includes the following components:

- Select Board public hearings are explicitly required on all warrant articles, not just on those with regard to which there is a “final” or “first” vote. As noted above and in Appendix A, the chair can impose reasonable controls on public hearings.
- The Select Board would be required to prepare reports on all warrant articles. In practice, such reports need not be as detailed as the reports of the Advisory Committee. For some warrant articles, the Select Board may simply incorporate the reasoning of other reports, including those of the Advisory Committee.
- The Select Board would not be required to make a recommendation on every warrant article, but would be required to explain its reasons for deciding not to make a recommendation.

- The amendment specifies the categories of articles that deserve priority attention from the Select Board: on articles that (1) have been submitted by a Town department, board, committee, or commission; (2) request action by the Massachusetts state legislature; (3) propose to amend any Town by-law; (4) authorize or require the Town to enter binding agreements; or (5) involve any appropriation of funds. These are the types of articles for which the Select Board has a special responsibility, or on which the Select Board and its staff can provide important information and perspectives that would be valuable to Town Meeting.
- The amendment adds a reference to the recent November 2020 amendment to bylaw Section 2.2.6 (General Duties) regarding the Advisory Committee. Section 2.5.2 would thus be consistent with that section, which gives the Advisory Committee the option of considering “any or all” articles and offering “reports or recommendations” on each.

These changes to Section 2.5.2 reflect suggestions from former Select Board member and current Town Meeting Member Marty Rosenthal. CTO&S discussed many alternative approaches, including a firm requirement that the Select Board make recommendations on the five categories of warrant articles, procedures by which a supermajority of the Select Board could decide to not consider some article, and procedures by which a minority of the Select Board could vote to ensure that the Select Board considered a given warrant article and make a recommendation on it. After much discussion, CTO&S concluded that the approach embodied by the proposed amendments to Section 2.5.2 was the best and most balanced response to the significant increase in the number of warrant articles. It is ultimately up to Town Meeting to decide what the Select Board should be required to report to Town Meeting to enable Town Meeting to effectively make informed decisions on warrant articles.

Amendment Clarifying Article 3.22 of the General Bylaws

Article 3.22 of the General Bylaws requires all elected and appointed committees, boards, councils, and trustees to hold a public hearing before their “first or only vote” on a warrant article. Many of these bodies rarely make recommendations to Town Meeting. Most are not required to make recommendations. Should a committee that is not required to make a recommendation to Town Meeting be required to hold a public hearing prior to voting to not consider a warrant article that it is not required to consider? The proposed change would make clear that the requirement for a public hearing applies only when a such a committee decides to make a report or recommendation to Town Meeting. The Select Board and Advisory Committee are also governed by Sections 2.2.6 and 2.5.2 of the General Bylaws, which include further, more detailed requirements for holding hearings and making reports and recommendations to Town Meeting on warrant articles.

Note that the proposed CTO&S amendment to Section 2.5.2 requires the Select Board and the Advisory Committee (or a subcommittee of the Advisory Committee) to hold a public hearing on *all* articles in the warrant, even if no vote is taken. Article 3.22 ensures that

when the Select Board or Advisory Committee makes a recommendation to Town Meeting, such hearings will be held before the recommendation is made.

Amendment to Section 2.1.3 of the General Bylaws

This amendment to Section 2.1.3 would increase the time period between the closing of the warrant and the first night of Town Meeting from 75 days to 90 days. This would allow the Select Board and Advisory Committee more time to schedule hearings and meetings on warrant articles. The profusion of warrant articles that have recently been filed has increased the workload of the Select Board and the Advisory Committee, but the time period between the closing of the warrant and the beginning of Town Meeting has remained the same. CTO&S believes that, if those volunteer bodies are to be expected to do a thoughtful and credible job analyzing the language and impact of warrant articles (including, for the Advisory Committee, public hearings, subcommittee meetings, meetings of the full Advisory Committee, and the drafting of thorough reports), additional time is required. That view was shared by members of the Select Board and Advisory Committee who participated in the CTO&S's public hearings and meetings. The Advisory Committee, in particular, finds it challenging to schedule subcommittee public hearings and meetings of the full Advisory Committee to adequately review all warrant articles and departmental budgets in the weeks prior to the Annual Town Meeting. Even without the need to consider the budget, similar challenges emerge when there are many articles on the warrant for a November Town Meeting. The current bylaw providing a 75-day time period between the closing of the warrant and the opening session of Town Meeting was enacted when the warrant included many fewer articles.

Extending the time for the consideration of warrant articles and drafting of reports to 90 days would not prevent the Select Board from adding one or more articles to the warrant after the warrant had closed. The General Bylaws would continue to include the following provision: "The requirements of sections 2.1.2 through 2.1.4, inclusive, may be waived when the Select Board determines that emergency conditions, or a situation requiring immediate action or the provisions of any general or special law require such a waiver."

Would increasing the time period between the closing of the warrant and the first night of Town Meeting mean that Brookline was perpetually in "Town Meeting season"? Adding the 15 days to the current interval between the closing of the warrant and the start of Town Meeting would not significantly increase the amount of time devoted to Town Meeting-related issues. Brookline already has two Town Meeting "seasons" of approximately 120 days: 30 days in which the warrant is open, 75 days between the closing of the warrant and the first night of Town Meeting, and approximately 15 days from the first to the final night of Town Meeting—depending on the number of nights required and the need to take a break for holidays such as Thanksgiving. Thus, with Town Meetings in May and November, Brookline is now preparing for or holding Town Meeting for about 240 days of each year. The amendment to Section 2.1.3 would increase that total to about 270 days.

ADDITIONAL POTENTIAL METHODS TO DEAL WITH THE PROBLEM OF “TOO MANY ARTICLES, TOO LITTLE TIME”

In addition to the warrant article submitted by CTO&S, there are a variety of potential options that might be considered to deal with the problem of “too many warrant articles, too little time” that has been identified as a concern by members of the Select Board, Advisory Committee, and Town Meeting. The following list includes items that have been mentioned at CTO&S meetings and other discussions of how to address the problem of “article profusion.” Although CTO&S has not evaluated these ideas, some may merit further study. Most could be implemented without amending the Town bylaws.

Reducing the Number of Warrant Articles

- Add more language to the Town Meeting Handbook to explain that a warrant article often is not necessary, because issues can often be resolved by discussions with Town or School personnel. Build the norm that the goal is not to have as many articles as possible. Discourage resolutions on national and international topics.
- Encourage the Select Board to place articles on the warrant only when necessary and when they already have been thoroughly vetted through an internal process and with community engagement. Past articles generated by Town departments have at times been referred or not moved because they were premature and should have been vetted and revised prior to submission.
- Require more signatures for warrant articles. Under State Law, G.L. c. 39, sec. 10, no more than 10 signatures may be required for an Annual Town Meeting warrant article and no more than 200 signatures for a Special Town Meeting warrant article. It is questionable whether there would be a realistic chance of increasing the Annual Town Meeting requirement by special State legislation. Brookline has in fact reduced the number to 10 for all Town Meetings; it could without State legislation increase the number of required signatures to as many as 200 for Special Town Meetings. But would an increased number of signatures be an effective hurdle? Or could it lead to petitioners simply filing articles for the Annual Town Meeting rather than a Special Town Meeting?
- Encourage the Select Board and Advisory Committee to develop the mindset that it is better to tell petitioners that they should not move their articles instead of expending time working with petitioners to revise and improve deeply flawed articles. Would this reduce the number of warrant articles that are ultimately debated at Town Meeting, or would it lead to Town Meeting passing flawed articles if the petitioner nonetheless forged ahead?
- Assign a staff person the responsibility of fielding queries from petitioners as to whether their potential warrant articles are necessary. That staff person might be better able to find out what departments are already doing. Petitioners are already

encouraged to check with staff in departments that would be affected by warrant articles, but that has not consistently occurred.

Finding More Time to Review Warrant Articles

- Allow the Select Board to delegate more of its responsibilities, including licensing and appointments. This would require approval of revisions to the Town Administrator Act by the State legislature. For example, the Select Board is now required to approve all innholder, lodging house, common victualer, food vendor, secondhand motor vehicle sales, open air parking, liquor sales, theater and entertainment licenses. Legislation was filed to change his requirement, but it died in the last legislative session; the legislation is apparently being refiled. In addition, the Select Board is required to make all Civil Service appointments (police and fire at all levels, not just the chiefs or management level personnel).
- Allow the Select Board to delegate authority regarding items such as minor budget changes (e.g., minor reallocations within departments) or minor contract approvals. The Town Administrator has committed to addressing some of these issues.
- Reduce the number of committees on which Select Board members serve. While it is important for Select Board members to be familiar with the actions of certain committees, an initial examination indicates that Select Board membership is in fact legally required on very few of the committees on which Select Board members sit.
- Amend Section 2.5.2 and Article 3.22 of the General Bylaws to allow Select Board subcommittees to hold public hearings on warrant articles—if the Brookline Interactive Group will televise these hearings. The current bylaws only allow subcommittees of the Advisory Committee and School Committee to hold such hearings in lieu of the full committee.
- Accept the fact that Select Board reports may be short and cursory, especially when the reports are not on the categories of warrant articles listed in the proposed CTO&S amendment to Section 2.5.2 of the General Bylaws.
- Encourage the Select Board and the Advisory Committee to write joint reports (including reports written by the Advisory Committee and signed by the Select Board) when the two bodies concur. This would be particularly appropriate for the initial 6 or 7 articles on the Annual Town Meeting warrant, but there might be other opportunities for joint reports. This also would reduce redundancy in the Combined Reports, which often include Select Board and Advisory Committee reports that contain very similar material.
- Improve the process of bringing the Select Board and Advisory Committee into concurrence (when that outcome is possible) so that it takes fewer meetings for the

two bodies to agree on a motion and that Town Meeting has fewer motions and amendments to consider.

May 23, 2023 Annual Town Meeting

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APPENDIX A

From: Jonathan Simpson <jsimpson@brooklinema.gov>

Sent: Friday, February 24, 2023 1:20 PM

To: Richard Benka <rcvben@verizon.net>

Cc: Joe Callanan <jcallanan@brooklinema.gov>; John Moreschi <jmoreschi@brooklinema.gov>; Harry Bohrs <Harry.Bohrs@bmc.org>; Lynn-Jones, Sean M. <sean_lynn-jones@hks.harvard.edu>

Subject: FW: Legal question for CTO&S - must everyone be allowed to speak at a public hearing? If so, what is the source of the requirement?

Dick:

A chair can impose reasonable restrictions to the time, place, and manner of public testimony as long as the restrictions are content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. The desire to conduct an orderly, efficient, and productive meeting is a governmental interest significant enough to justify restrictions on speech at the “limited public forums” that are public hearings.

Your specific questions were:

if something is noticed as a “public hearing,” can the chair limit the number of speakers, which could effectively prohibit some individuals from speaking

I believe the answer is **yes**, if that limit was content-neutral and narrowly tailored. Allowing public comment doesn’t mean a board has to sit and allow public comment indefinitely. A board can apply reasonable, narrowly-tailored limits to both the total time allotted for public comment and the time allotted to each speaker.

could the chair prohibit individuals who wanted to speak from speaking at a duly noticed “public hearing

Again, I believe that, if the limitations the chair was imposing were content-neutral and narrowly-tailored, they could, theoretically, result in prohibiting individuals who wanted to speak at a public hearing from speaking. If the chair has allotted an hour to take public comment, and given each speaker 3 minutes, then the 21st speaker may not get to weigh in. Note, though, that this is NOT a situation where the chair looks at a particular speaker, says “Mr. Smith, we’ve heard from 10 people on your side and I don’t think you’ll be adding anything new to the discussion so I’m going to skip you”. That’s not content-neutral. Again, any prohibition should be the result of a content-neutral, narrowly-tailored restriction – nothing individualized.

Of course, just because a Chair *can* limit testimony does not necessarily mean they *should*. I know from personal experience the value of letting everyone who wants to comment at a public hearing do so; it's been the Town's general practice for a reason. But, as noted above, boards need to be able to conduct orderly, efficient, and productive meetings.

SELECT BOARD'S RECOMMENDATION

Article 11 is a proposal filed by the Committee on Town Organization and Structure (CTOS) in response to the referral of Article 5 of the November 2022 to CTOS for further evaluation. The original article sought to eliminate the requirement that the Select Board provide recommendations on all of the articles in the warrant. CTOS has demonstrated the impact that larger sized warrants have had on the ability of the Board to give every article serious attention while balancing other time consuming agenda items. Unfortunately the Board feels that the solutions proposed by CTOS do not meet the request that the Board made, for a simplified solution. The proposed article does not make navigating the warrant any easier for the Select Board. The Board also heard concerns about the extended timeframe for the opening and closing of the warrant. There would need to be consideration given in years when the budget is filed late (as was the case this year with a new Governor extending the normal timeline) The Board also acknowledged that with a change in leadership they have reverted back to the prior system of reviewing all articles on the warrant, and that a change may not be necessary given that shift.

A unanimous Select Board voted NO ACTION on Article 11.

ROLL CALL VOTE:

Aye:

Greene

Aschkenasy

VanScoyoc

Sandman

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Warrant Article 11 as amended by a vote of 21-3-1

Executive Summary	<p>Warrant Article 11 seeks to amend the Town’s General By-Laws as follows:</p> <ul style="list-style-type: none"> • Ensures the Select Board and Advisory Committee hold at least one public hearing on all warrant articles • Revises the requirement of the Select Board to prepare written reports and make recommendations to allow the Select Board to decline to make a recommendation on any warrant article, but require the Board to provide a reason for not making a recommendation • Specifies the categories of articles that the Select Board should prioritize in their review • Changes the date for closing the warrant for the Annual Town Meeting to 90 days before the scheduled opening date
Voting Yes will...	<p>Amend the By-Law to redefine the Select Board’s obligation to provide recommendations on all warrant articles, reaffirm the Select Board’s responsibility to hold public hearings on all warrant articles, and change the timing with regard to the closing of warrant for the Annual Town Meeting.</p>
Voting No will...	<p>Make no change to the Select Board’s current obligations or the closing date for the warrant for the Annual Town Meeting</p>
Financial Impact	<p>None expressed.</p>
Legal Implications	<p>None expressed.</p>

Introduction

At the November 2022 Town Meeting, Warrant Article 5, which sought to reduce the requirement for the Select Board to hold a public hearing and make a recommendation on each warrant article, was referred to the Committee on Town Organization and Structure (CTO&S) with a request that CTO&S report back to Town Meeting no later than May 2023. Article 11, petitioned by the Committee on Town Organization and Structure, is the result of CTO&S’ consideration of the subject matter of Article 5.

Since 2018, we have experienced about a 50% increase in Town Meeting warrant articles (although there are just 24 submitted for this current Town Meeting). This increase has burdened the Select Board, as, generally, Town Meeting needs recommendations from both the Select Board and the Advisory Committee in order to efficiently conduct Town Meeting business. By experiment, the Select Board reviewed about half of the articles filed for a recent Town Meeting, and brought so-called Article 5 in November, 2022, which sought to codify the Select Board’s practice. Town Meeting referred the subject matter of Article 5 to CTO&S.

CTO&S' intent is to provide the Select Board with a workable, more efficient but also more definitive framework, while at the same time satisfying the need of Town Meeting to know and understand the Select Board's position on significant warrant articles, and the public's right to both be informed and to be heard.

Discussion

There are many reasons for public hearings and for recommendations from the Select Board as they relate to warrant articles. CTO&S has proposed Select Board discretion but that the Select Board prioritize their review of warrant articles based on five expressed categories. This would give the Select Board flexibility, albeit within a codified framework. Where the Select Board declined to provide a recommendation, they would issue a relatively short report citing their reasons for doing so.

Two other modifications to the current Bylaw include (i) a relatively minor change, changing language citing a "first or only vote," to "a vote on a report or making a recommendation to Town Meeting," and (ii) a change in the timing for the closing of the warrant.

The Advisory Committee believes that the Select Board, as the Town's executive body, is obligated by virtue of their position to review articles, and as a full body rather than through subcommittees. Also, that Select Board meetings are held on a defined (i.e., Tuesday evening) schedule, are televised and archived, an important factor for community engagement.

CTO&S' article prioritizes articles that (1) have been submitted by a Town department body; (2) request action by the state legislature, (3) propose a By-Law amendment, (4) authorize or require binding agreements, and (5) involve any appropriation of funds. The Advisory Committee agrees that this framework balances the codification of priorities while not being rigid and prescriptive.

Discussion of changing the opening date of the warrant to 90 days prior to Town Meeting from 75 focused on the side effects of the change, e.g., having the warrant close in Summer, when staff is less available, and, with potentially a higher signature requirement for petitioned warrant articles, difficulty gathering signatures during vacation season.

The subcommittee concluded that the timing for annual and special Town Meetings could be evaluated independently. Accordingly, the Advisory Committee concluded that advancing the closing of the warrant was best limited to Annual Town Meeting and amended the motion as shown below.

Meeting Recording: ...

Recommendation

May 23, 2023 Annual Town Meeting

11-18

The Advisory Committee recommends FAVORABLE ACTION on an amended version of Warrant Article 11, shown below, by a vote of 21-3 with 1 abstention.

VOTED: That the Town amend the Section 2.1.3 of the General By-Laws as follows (language to be inserted appears in **bold underline**; language to be deleted is ~~struck out~~):

SECTION 2.1.3 FILING OF ARTICLES

All Articles for insertion in the Warrant for any ~~Annual or~~ Special Town Meeting shall be filed in the office of the Select Board prior to 12:00 noon on the 75th day, **and for any Annual Town Meeting on the 90th day,** preceding the scheduled date of the opening session of said meeting. On the 75th day **or the 90th day, as required by the foregoing sentence,** preceding the scheduled date of the opening session of said meeting, the Warrant shall be closed, and as soon as practicable thereafter signed, including only those Articles filed by the **required** 75th day **or 90th day** preceding said scheduled date.

ARTICLE 11 ADVISORY COMMITTEE VOTES

Article Description	Amend Select Board Requirements for Warrant Article Recommendations
AC recommendation (Favorable Action unless indicated)	21-3-1
Ben Birnbaum	Y
Harry Bohrs	A
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	N
Kelly Hardebeck	Y
Amy Hummel	N
Anita Johnson	Y
Alisa Jonas	Y

Janice Kahn	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O'Neal, Sr.	Y
Linda Olson Pehlke	N
Markus Penzel	
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	

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