

ARTICLE 13

AMENDMENT OFFERED BY HARRY BOHRS, TMM3

Summary

In considering WA13, CTOS supported two different amending motions under this Article. In the end, CTOS decided to recommend a motion to refer.

However, it also created amended language to the original article. Should a motion to refer fail, it is important for Town Meeting to vote favorably on CTOS' amended language below.

The amended language preserves the mission of the petitioners' original language but clarifies it as a bylaw. Importantly, it modifies and condenses the "may" clause so as to preserve the original elements, but also guards against the unintended consequences of potential legal actions.

Consideration Of Bylaw Language.

It is clear that there is a need for a coordinated and centralized effort to provide information, assistance, and referrals around housing issues, particularly with regard to housing instability and the prospect of losing one's home. While we have yet to fully understand the problem quantitatively, we do have a sense of it qualitatively. We know that people in the midst of a housing crisis are particularly vulnerable, and that it may also be related to other struggles in their lives. As well, we know there can be a more efficient system within our Town government to address the issue by providing some measure of support and guidance.

The original motion under Warrant Article 13 is an attempt to address some of this, though there is language in the proposed bylaw that is unnecessarily broad or vague and, more importantly, inappropriate to introduce into a bylaw in a tangential manner through a "may" clause. This is especially important as it may technically allow the Town to intercede in and mediate private contract disputes between individuals. Formally extending this prerogative in a bylaw potentially opens the door for risk and liability to the Town and claims of unequal treatment.

May vs Shall

"May" is often perceived as simply not obliging one to do something, as opposed to "shall" which carries with it an expectation of action. However, "may" does confer authority and grants open discretion to exercise that authority, nonetheless. "May" establishes the outside bounds of what is possible, whether now or in the future. That is why it is extremely important to be careful in how "may" is interwoven into any bylaw. It is a concept particularly important to the consideration of the bylaw language proposed by the petitioners.

The petitioners' proposed bylaw language technically allows the Town to advocate with landlords, in any way, in housing disputes; something that is fraught with potential issues. The language is broad and subject to interpretation. Can the Town intercede in rental-agreement disputes? Can landlords have the Town provide help in evicting tenants over

rental disputes? It may be as simple as moderating a conversation between landlord and tenant to resolve a problem, or it could be much more involved and turn litigious.

Our Town Administrator and Town Counsel's offices have stated that the Town must not inject itself into private contract disputes. CTOS agreed with this position. However, regardless of how our current Town Administrator chooses to interpret the discretion granted in the proposed bylaw, a bylaw is a law. It grants prerogatives not merely to those in position now, but also in the future. And, during hearings on this article, the petitioners made it clear that ideally the Town would become directly involved in dispute mediation. Granting that broad authority in a bylaw, before we even understand what the position or program will look like, is simply not responsible.

The proposed amended language drafted by CTOS removes that specific provision, while still maintaining specific references to the office's role in providing referrals to existing community agencies for "legal, mental health, social services, advocacy, financial assistance, housing search, dispute resolution" assistance.

Where to Situate the Office

The petitioners' original language is vague in that it proposes that a new Office of Housing Stability be situated in the Health Department, but then says it is up to the Town Administrator to put it where he deems it to fit best. It is laudable to provide a measure of flexibility in the language. However, as a bylaw it is unclear by being merely "suggestive". The bylaw language should simply state that the office placement will be at the discretion of the Town Administrator. The proposed amended language below provides that clarity and maintains the same measure of flexibility as the petitioners' original language.

As A Policy Forum

The article also seeks to establish this yet to be formulated office as the central Town forum for addressing the housing issue. Again, inscribing that in a bylaw for a still undefined office is premature. Additionally, it is a broad policy issue that involves planning, public health, and affordable housing development, rather than a services-oriented approach to provide help, navigation, and referrals. The amended language below removes that broader reference, allowing this proposed new office to act as a focused resource.

Post Script

As a general rule, a bylaw should be clear, sharp and not overreach, especially if it addresses or establishes something that still needs a lot of study and consideration before implementation.

The petitioners' proposed bylaw asks us to jump in with both feet, before really knowing how deep the pool is.

The proposed amended language below preserves the core elements of the original article, while creating a clearer bylaw. It avoids opening the door to unnecessary risk or litigation. These language changes were originally developed within CTOS (which unanimously supported the changes). However, in the end CTOS felt more work needed to be done and is strongly supporting its referral motion.

That being said, this amended language should be favorably supported by Town Meeting if a motion to refer fails. It is part of a belt and suspenders approach and ensures better bylaw language.

Recommendation

Voted:

To amend Warrant Article 13 as follows:

That the Town will adopt the following as a new Article 3.12A of the Town By-laws:

Article 3.12A

Office of Housing Stability

There shall be established an Office of Housing Stability within ~~the Department of Public Health, or within another~~ **a designated** Town Department, **the appropriate department is to be determined** at the discretion of the Town Administrator.

The purpose of the Office shall be to assist residents at risk of displacement, prevent homelessness, and to develop initiatives to combat displacement. The office shall serve as a resource and clearinghouse of information for residents who need housing-related assistance ~~and a forum for identifying best practices for combatting displacement.~~

Potential services offered by the office may, **without limitation**, include:

- Advice and information on housing issues for Brookline residents
- Referrals to community agencies to prevent displacement (legal, mental health, social services, advocacy, **financial assistance, housing search, dispute resolution**)
- ~~Accessing financial assistance~~
- ~~Advocacy with landlords or housing agencies to resolve housing disputes~~
- Case management to stabilize tenancies
- ~~Housing search (affordable, private, public, inclusionary)~~
- ~~Individual outreach to Landlords and on-line resources regarding tenant rights and housing search~~