

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

Recommendation: Favorable Action by a vote of 22 – 0 with 3 abstentions.

Executive Summary:	This Article would amend the town's general bylaw 6.6 [Discharging Weapons] by adding a section regarding carrying weapons on town-owned property. Exemptions under 6.6.2 (c) include under certain circumstances: law enforcement officers, security guards, and active-duty military personnel.
Voting Yes will...	Would regulate the carrying of firearms
Voting No will...	Leave the existing bylaw as is.
Financial impact	None
Legal implications	May be challenged as unconstitutional.

Hearing Recording:

https://brooklinema.zoomgov.com/rec/play/nXQxNredGyhyHJVai1dpaMOQ0e11U191E_vYo3J4HvQjiGd__E COEjcB_vtx8kbNw0Iey4AdkSLdbn-y.4NMZzKhfjKl0wGw3?startTime=1683842965000

Introduction

This proposed bylaw would amend Article 6.6 [Discharging Firearms] of the town's general bylaws by adding a new subsection, "Carrying Firearms on Town Property" and changing the title of Article 6.6 to read Discharging **and Carrying** Firearms.

Evaluation Methodology/Research

- Federal Law: The Gun Free School Zones Act of 1990, amended in 1995¹.
- Federal Law: The 2022 Supreme Court Bruen decision^{2 3}.

¹ Gun-Free School Zones Act of 1990, 1995 Amendment, Ballotpedia, https://ballotpedia.org/Gun-Free_School_Zones_Act

² New York State Rifle & Pistol Association, Inc, et al. v. Bruen, Superintendent of New York State Police, et al., https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

³ 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/>

- State Policy: Massachusetts statehouse and courts have policies banning firearms on their properties⁴.
- Local Policy Brookline Parks and Recreation and Conservation⁵.
- Brookline’s state representative is a co-sponsor of legislation *An act to prohibit carrying firearms in sensitive places*⁶. This bill is currently in committee.
- 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.⁷ 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.⁸

Brookline has several policies regulating firearms; this would codify these policies into law.

Discussion

An Advisory Committee member asked how this would be enforced. The answer was the police will be called. Another Advisory Committee member mentioned that Brookline State Representative Tommy Vitolo has co-sponsored *An act to prohibit the carrying of firearms in sensitive places* (see footnote 6). This bylaw is currently in committee. A petitioner noted that they had met with Representative Vitolo in March, and that their language is consistent with the proposed state act.

Another petitioner mentioned that this local bylaw, if passed, will support the state initiative, which, if it passes, will strengthen our local bylaw because this warrant article was written to be consistent with the state initiative.

It was also mentioned that during the vetting process there was much discussion of what language would provide the most clarity for the proposed bylaw. Attention was given to clauses that could be misinterpreted such as “public way”, and locations that may or may not be regulated such as sidewalks and roads.

The petitioners’ intention was to provide a bylaw that was clear to interpret and would regulate firearms in sensitive places (town-owned buildings, playgrounds and parks) while respecting the rights of licensed gun owners.

Recommendation: Favorable Action by a vote of 22 – 0 with 3 abstentions.

⁴ Courts: <https://www.mass.gov/policy-statement/trial-court-weapons-policy>, Statehouse: <https://www.mass.gov/doc/bureau-of-the-state-house-policy-manual/download>

⁵ 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=>

⁶ An Act to prohibit carrying firearms in sensitive places <https://malegislature.gov/Bills/193/H2359>

⁷ 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/>

⁸ *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>

The Advisory Committee initially voted on this warrant article in May. After the vote the Moderator ruled the version the petitioner presented to the Advisory Committee as out of scope. It was determined that some editing to clarify ambiguous phrases was needed. Members of the Advisory Committee worked with the Office of Town Counsel and the Moderator to create something in scope and constitutional. This version of the warrant article was approved by the petitioner and was voted on by the Advisory Committee on May 30th.

VOTED: That the Town amend the General By-Laws as follows.

1) Amend Article 6.6 “DISCHARGING FIREARMS” as follows (additions in bold 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, 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: (i) in or on any property 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; or (ii) at any public gathering, public assembly, or special event conducted on property owned or under the control of the Town of Brookline that requires the issuance of a permit from the Town of Brookline, including, but not limited to, a demonstration, march, rally, vigil, protest, or picketing event. For the purposes of this subsection (b) “property” shall not include public ways, streets or sidewalks.

(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 others with the express written consent of the Chief of Police or Chief of Police’s designee; (v) law enforcement officers who qualify to carry firearms under the federal Law Enforcement Officers Safety Act, 18 U.S.C. 926 C; or (vi) 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 10.3, TABLE OF SPECIFIC PENALTIES UNDER ARTICLE 10.3, as follows (language to be added appearing in bold and underline):

Article 10.3 Discharging and Carrying Firearms

Section 6.6.1 Penalty	\$300.00
Section 6.6.2 Penalty	\$300.00

ARTICLE 1 STM 1 ADVISORY COMMITTEE VOTES

Article Description	Resolution Regarding Discharging and Carrying Firearms
AC recommendation (Favorable Action unless indicated)	22-0-3
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	A
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O’Neal, Sr.	Y
Linda Olson Pehlke	A
Markus Penzel	Y

David Pollak	
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	
Carolyn Thall	A
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	