
TO: Mr. Leon Goodwin, Town Manager (*By Electronic Mail Only*)
FROM: Lauren F. Goldberg, Esq.
RE: Planning for Town Meeting
DATE: July 9, 2020

Question

You have requested an opinion concerning planning for Town Meeting. In particular, you have asked for clarification as to the options for addressing only those items the Town determines are necessary for action for various reasons.

Short Answer

In my opinion, the Select Board may request that Town Meeting defer action on certain articles. While the Board would always have such option, in my further opinion, in light of the COVID-19 pandemic, there are many additional reasons to consider such an approach for this year's delayed Annual Town Meeting, all as discussed in further detail, below.

Analysis

As you are aware, a state of emergency has been declared at the federal, state and local level with respect to the novel coronavirus COVID-19. The Governor has issued numerous orders limiting gatherings, requiring the wearing of facemasks, and strongly encouraging social distancing in all circumstances. The Governor's orders further limit the number of persons that can be in offices, prohibit entirely certain types of businesses from being open, and impose strict "sector-specific guidance" concerning reopening of other businesses. The Attorney General's office has encouraged all meetings that are required to occur in person to take place outside. The Governor's order relaxing certain provisions of the Open Meeting Law to allow virtual meetings remains in effect. Finally, the General Court passed several special acts allowing the delay of town meetings and elections, as well as permitting representative town meetings, if they so choose, to meet virtually. Note, however, that legislative bodies of municipalities are explicitly exempt from the limitations on gatherings.

To that end, many municipalities have sought to reduce the time that legislative bodies will be meeting. It is the case, in my experience, that many town have limited deliberations at their 2020 Annual Town Meetings to only those matters that the Town has deemed essential for one reason or another. Questions have been raised as to whether such a "paring down" of Town Meeting business is consistent with applicable law. Of course, all articles are "properly before" the Town Meeting if they appear in the warrant; however, if the Town determines that such articles are not a priority, in my opinion, Town Meeting may certainly choose to take no action with respect to the same, or to "defer" action on such articles to a future meeting.

The warrant for Town Meeting is issued under the hand of the Select Board . General Laws c.39, §10, provides, in part, “The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat . . . No action shall be valid unless the subject matter thereof is contained in the warrant.” [emphasis supplied]. Case law suggests that articles should be interpreted liberally and without rigidity, and is summarized in Town Meeting Time, on page 67, §28, as follows.

The basic rule may be stated as follows: Since the purpose of the warrant is to apprise the voters of the subject matter to be considered at the meeting, all that is necessary is for the article to include a sufficient description of the subject matter to provide the voters with substantial and intelligent notice of the nature of the business to be acted upon. Matters incidental to and connected with the article are proper for consideration and action. Articles should be interpreted in a liberal manner and not with strictness or rigidity. [emphasis added] [internal citations omitted].

However, Town Meeting Time states further that, “There are limits, however, to the scope that may be given an article.” The examples listed are: a motion to amend the zoning bylaw when the article seeks to repeal the zoning bylaw; a motion to abolish school districts where the article seeks to redistrict the school districts; a motion to ratify a contract made by the selectmen for the purchase of a water plant where the article asked only whether the town should purchase the plant.

In the converse, there is no statutory requirement that substantive action be taken under every article in a warrant. Instead, there are often times when an article is placed on the warrant as a “placeholder”, but the matter is not later brought forward, when the matter is “not ready” to be addressed and the department head requests that Town Meeting not take action, or where no action on the matter is needed or appropriate at the time of the Town Meeting, whether because the Town received grant funding, shifted priorities or the like. In all of these cases, once the warrant is closed and executed, the article remains on the warrant and cannot be “withdrawn”. Such articles can, in my opinion, be “passed over” in a single vote, depending on the Town’s particular past practice, or a separate vote can be taken to pass over each such article.

In Dedham, there is a requirement that “action be taken” on all articles in the warrant before the meeting is dissolved. Thus, each article must be “addressed” even if no substantive action is proposed.

As the Board may be aware, the Planning Board voted last evening, due to the COVID-19 crisis, to request that its six articles be referred to the next Town Meeting. Action on zoning amendments is only proper if the Planning Board has held a public hearing, however. Thus, to allow further and more thorough consideration of such articles in the fall, the Planning Board chose not to hold its public hearings, thereby reducing the number of articles to be considered at the upcoming Annual Town Meeting.

The Select Board may, in my opinion, similarly request that certain articles that it deems non-essential, be deferred by the Annual Town Meeting for action at the fall Town Meeting. The Board would, as I indicated previously, always have the ability to request that the Finance Committee recommend no action on a particular item due to applicable circumstances. Moreover, it has complete discretion to include articles on the warrant under G.L. c.39, §10. In this case,

therefore, in my opinion, the Town can certainly choose to forgo action on some of the items in the warrant so as to limit the length of Town Meeting, and, thereby, the time that Town Meeting members will be in the same place. The Board can then include such articles on a fall Town Meeting warrant, and include such other articles as may be necessary and appropriate.

I understand that there are also three articles petitioned by Representative Town Meeting members. In my opinion, there is no legal reason that such articles must be moved as written, or that substantive action be taken on the same. Thus, to the extent that it is generally agreed that it would be better to limit the number of items addressed by Town Meeting, the Board could instead agree that it would place such articles on the warrant for the fall Town Meeting.

Except for the Planning Board, where a public hearing and recommendation are required by statute, please be aware that despite the requirement for hearings and recommendations from other committees as appear in the bylaws or Charter, they are likely to be interpreted as directory, rather than mandatory. See Young v. Town of Westport, 302 Mass. 597 (1939), where the finance committee failed to hold a public hearing on the sole article in a special town meeting warrant. The court, highlighting that the Town of Westport had not enacted a bylaw prohibiting action by town meeting if the finance committee had not considered an article, held:

The matters for consideration were properly before the meeting by virtue of the warrant, and the failure of the committee through inadvertance or inability to hold a public hearing did not prevent the voters from deciding the articles contained in the warrant. The instant by-law in form and in substance was directory to the finance committee and was not mandatory upon the town. The omission of a public hearing by the finance committee did not invalidate the action taken at the town meeting. Young, 302 Mass. at 600.

Of course, in Dedham, the public hearing and recommendation process is of significant import generally, and with respect to each specific article.

In sum, in my opinion, while Town Meeting will ultimately decide whether to take action on the matters included on the warrant by the Select Board, certain department heads, boards or Representative Town Meeting members, the Select Board may certainly request that Town Meeting forgo action on all that are not deemed essential for action. Should the Board so decide, it can choose to include on the warrant for the Fall Town Meeting all matters on the Annual Town Meeting warrant not substantively addressed.