

Brookline Advisory Committee
School Subcommittee Report
Warrant Articles 33

The School Subcommittee of the Advisory Committee held a public hearing on March 17, 2021 and a subsequent public meeting on March 30, 2021, which due to current health concerns, were held via Zoom, to review Warrant Articles 33 to be acted upon at the 2021, Annual Town Meeting. In attendance were Subcommittee members Cliff Brown (Chair), Ben Birnbaum, Chi Chi Wu, Dennis Doughty and, Paul Warren.

Also present were: Melissa Goff (Deputy Town Administrator), Justin Casanova-Davis (Assistant Town Administrator), Naomi Sweitzer (Petitioner), Danny Stone (Co-Petitioner), Mike Toffel (TMM P8), Paul Saner (TMM P13, Chair EDAB), Elizabeth Neill (Mutual Aid Brookline) and members of the public.

RECOMMENDATION

By votes of 4-0-1, the School Subcommittee recommends favorable action on Warrant Article 33 as amended.

BACKGROUND

Article 33 would amend the Town’s General Bylaws to require public notification, public input and periodic reporting of the Town’s eligibility and use of Emergency, Disaster and Stimulus funds as they are defined in the Article.

Article 33 is intended to bring transparency to the public and to various Town elected bodies and appointed boards, committees and commissions on how the Town is planning for and expending Emergency, Disaster and Stimulus funds from agencies such as the Federal Government, the Commonwealth of Massachusetts and Norfolk County. Funds of this nature are typically dealt with outside of the regular public budget process of the Town.

KEY ASPECTS OF THE PROPOSED BYLAW

Key aspects of the proposed Articles include the following:

As proposed by the Petitioners, the Article:

- 1) Creates a new section 4.10 in the general bylaw entitled “Emergency, Disaster and Stimulus Funds”
- 2) Defines these funds as well as information that must be provided to the public.
- 3) Identifies when and how the public and various Town organizations are notified.
 - Notification is triggered when the Town becomes eligible for funding.
 - Announcements are to be posted on Town’s website within 10 days of the town becoming eligible for funding.
 - Notification of eligibility is to be sent to Town Meeting Members, Town Moderator, Advisory Committee, Select Board, and School Committee.

- Notifications also are sent to other boards, committees and commissions that may be eligible to use the funds.
 - The Town would post contact information for the Town employee who can answer questions about the eligible funds.
- 4) Specifies when and how information is to be shared with the public on how the funds (including any funds the Town has received due to COVID-19) are being used including:
- Quarterly reports providing line-item detail on how the funds have been obligated and expended (example: “Department of Public Health, Staffing, 2 Full Time Nurses”)
 - Final report similar to the quarterly reports to be issued within one month of the funds being expended.
 - Within 30 days of the Annual Town Meeting, reports similar to the quarterly and final reports will be posted for all COVID-19 related funds that the Town has received.
- 5) When the Town has some flexibility on how the eligible funds can be used, specifies when and how the Public will have an opportunity to provide input on the use of funds.
- The Select Board and Advisory Committee would hold a joint public hearing to receive public comment on the use of funds.
 - The Town would provide a report (similar to the quarterly reports?) five business days prior to the public hearing.

PUBLIC COMMENT

Several attendees spoke in favor of Warrant Article 33 and raised several questions. A summary of the comments follows:

- **Transparency** – All speakers spoke in favor of increasing transparency on the availability and use of these funds. One attendee suggested that the reporting include funds that have been returned.
- **Timing** – If passed, the Warrant Article should be implemented immediately to ensure that funds allocated to the Town from the recently enacted American Rescue Plan are reported on.
- **Cost** – Several attendees were interested in understanding the costs associated with implementing the Article and the impact on staff time.
- **Schools** – The Article includes funds allocated to the Public Schools but it is not clear if the bylaw would apply to both Town and School reporting.

DISCUSSION

The subcommittee discussed a number of issues related to the proposed Warrant Article. The following is a summary of the issues raised.

1. **School Funds** – The proposed Article includes funds allocated to the Brookline Public Schools. Citing case law Leonard v. School Committee of City of Springfield, it is Town Counsel’s opinion that Article 33 would not apply to funds directed to the public schools (see also, G.L. c. 71, s. 37).

2. **Declared Emergencies** – The Town’s Emergency Management Director, Chief Sullivan, raised a concern related to the Town’s need and ability to respond to emergencies such as those related to snow and weather. He stated that “Our response to activities cannot be predicated on the availability of these dependent funding sources, and must not be encumbered unduly by any additional local stipulations in order to be efficient and effective during an emergency.” In other words, the money is often spent to address an emergency before any emergency funding is made available to address the problem and a public hearing would not be practical. Deputy Town Administrator Melissa Goff suggested that monies coming from the Federal Emergency Management Administration and the Massachusetts Emergency Management Administration be excluded from the Article. Similarly, the Planning Department suggested that funds that come through the annual Community Development Block Grant program be eliminated.
3. **Notice of Eligibility** – The proposed bylaw calls for the public to be notified within 10 days of an “official funding eligibility announcement”. Staff raised concerns that this language is vague and could require that Staff monitor news sources, social media and other channels of formal and informal communication. Staff requested that this language be tightened up to make it clear when notice of eligibility has been received.
4. **Notified Parties** – The Warrant Article calls for a broad set of individuals, boards, committees and commissions be notified when the Town learns that it is eligible to receive funds. The subcommittee agreed that notice should be sent to the Select Board, Town Meeting, and the Advisory Committee. The subcommittee felt that notifying the Town Moderator was unnecessary. It was also discussed that the bylaw should not require Staff to assess all of the elected and appointed boards and commissions to determine which may be eligible for funds and to notify each one directly. These parties will have the same access to the public notice of fund availability via the website that the public has.
5. **Frequency of Reporting** – Both staff and the subcommittee discussed the duplication of effort and impact on staff time of having multiple reporting formats and frequencies. The funding agencies require that the Town comply with specific reporting periods and also dictate the format of the data. These requirements are not consistent across funding agencies. Article 33 imposes an additional reporting frequency (quarterly) and format (table with line-item detail). These requirements would be in addition to what is already being done for the Town to be compliant.
6. **Public Input** – The subcommittee agreed that the public should be heard on their ideas as to how discretionary funds could be used and support the Article’s call for a public hearing. The subcommittee did not agree that the Advisory Committee should be included in the public hearing process. Instead, it recommended that the Select Board or its designee hold a public hearing and inform the Advisory Committee through the normal process if a Reserve Fund Transfer were required.
7. **COVID-19 Related Funds** – Article 33 calls for reports to be posted for all COVID-19 emergency, disaster and stimulus funds received by the Town. The subcommittee felt

that a bylaw should not name a specific disaster or emergency and chose to strike the language from the Article.

8. **Bylaw vs. Resolution** – The Article 33 reporting requirements are specific and detailed and unlike anything that currently exists in the By-Law. Town Staff does not have a good sense of the effort and cost required to comply with the bylaw as written. Staff, and some subcommittee members, believe that the proposed Article would be more appropriate as a Resolution. A resolution would provide Staff with the flexibility to implement the requested public notice and reporting without being asked to comply with regulations that they may be unable to meet due to staffing and other constraints. Staff pointed out that if the petitioners were unhappy with progress after providing the Town the opportunity to comply with the requirements in a resolution that a By-Law article could be proposed in the future.

AMENDED WARRANT ARTICLE

A series of amendments (see below) were proposed and passed by the subcommittee that would address many of the issues raised during both public comment and the subcommittee discussion. The amendments support the following substantive changes to the proposed Warrant Article

1. Public School funds and funds related to winter weather events have been excluded.
2. Specified that “written notice” of eligible funding be received by the Town.
3. The Moderator was removed from being notified as well as additional “suggested” departments.
4. Changed the reporting requirement from quarterly to within 30 days of filing a required report to the granting authority.
5. Eliminated the requirement that the Advisory Committee participate in the public hearing on potential use of discretionary funds.
6. Eliminated the specific reporting requirement for COVID-19 related funds.