

TMMA Warrant Information Report



“Getting the Word Out” – done for TMMA by Christopher Bing

Fall Special Town Meetings 2020-2 and 2020-3

This report has been prepared by the Town Meeting Members Association to provide information to Town Meeting members concerning the articles of the warrants for the **Special Town Meetings 2020-2** and **2002-3**. TMMA thanks town officials, town staff, and members of boards and committees for their assistance in providing information for this report.

The following people participated in the preparation of this report:

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For new and updated information, please refer to the TMMA website at

www.LexingtonTMMA.org

Conflict of Interest Guideline for Town Meeting Members

In 1976, Town Meeting adopted the following non-binding Conflict of Interest Resolution:

Resolved, that Town Meeting Members abstain from voting in any particular matter in which to his knowledge, he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has any economic interest in the particular matter under consideration.

Please note that Town Meeting Members are specifically excluded from the responsibilities posed by the State conflict of interest statute, Chapter 268A.

Notes

Please note that all dollar amounts listed in this report are NOT final. The final dollar amounts will be provided in motions presented at the Special Town Meetings.

Also note that the information provided in this report was current as of the publication date; some circumstances may have changed since then. See the TMMA web site for new and updated information.

Note that other than Article 1 Reports, the entire text of the Special Town Meeting Warrants are included in this report.

Special thanks to:

Peet Coffee and Tea, Lexington for supplying coffee for the edit session.

Article 2

Short Term Rental Impact Fee

To see if the Town will vote to accept Massachusetts General Laws Chapter 64G, Sections 3A & 3D, Local Option Community Impact Fee of 3% on short term rental properties, or act in any other manner in relation thereto.

(Inserted by the Select Board)

DESCRIPTION: The article authorizes the Town to adopt a "community impact fee" of up to 3% on "professionally managed" rental units. These units are defined as accommodations where an operator runs more than one short-term rental in the same municipality with at least one of those units not located in a single-, two-, or three- family dwelling that includes the operator's primary residence.

TMMA Summary

This article proposes that the Town adopt State legislation to allow Lexington to collect a fee of up to 3% on certain short-term rental units. The fee could be collected on rental units that are operated by an entity that manages more than one unit in Lexington, unless the rental unit is in a dwelling that is the primary residence of the owner, and is a one, two, or three-family dwelling.

Adoption of this legislation does not put a fee into place. It enables the Select Board to institute a fee of up to 3%, should they ever vote to do so.

TMMA Questions:

- 1) What is the actual fee levied upon? The rent collected? The property taxes? The assessment?
- 2) How would collection of the fee be enforced?
- 3) Do we know how many units would be subject to the fee and what the projected revenue might be?

Article 3

Amend General Bylaws – Noise Control

To see if the Town will vote to amend Chapter 80 of the Code of the Town of Lexington, Noise Control, to reduce the impact of construction noise, by requiring a noise mitigation plan for construction impacting residentially zoned areas as a condition for obtaining a building permit.

This article would require and enforce a noise mitigation plan as follows:

- 1) A noise mitigation plan will be required for construction projects which entail rock removal via heavy machinery and/or blasting, including ledge removal, rock pounding, rock crushing, rock drilling or rock cutting;
- 2) Such a plan will only be required for large projects where these activities are expected to be of extended duration;
- 3) Noise mitigation plans must include effective sound barriers surrounding the perimeter of the construction site;

or act in any other manner in relation thereto.

(Inserted by the Select Board on behalf of Varda Haimo and 9 or more registered voters)

DESCRIPTION: This article proposes revisions to the Noise Bylaw to better protect residents from noise pollution due to residential and other construction projects.

TMMA Summary

Article 3 proposes that a noise mitigation plan be required for construction projects entailing rock removal with “heavy machinery”, including ledge removal, rock pounding, rock crushing, rock drilling or rock cutting. Such construction equipment is simply referred to as “heavy machinery” below. Furthermore, the article requires that the mitigation plan is designed to reduce noise by 10 dB(A) or more.

Generally, the noise complaints arising from the use of heavy machinery for blasting, breaking of rock or pavement, and drilling or demolition operations are caused by a) High noise source levels, b) Large number of machinery operation hours permitted daily, c) Unrestricted number of days permitted for heavy machinery operations, d) Absence of noise source mitigation or transmission path mitigation, and e) Ground vibration at affected nearby residences.

Part (i) of Article 3 proposes modifications to items (c) and (d) above in order to reduce exposure to noise generated by heavy machinery. Specifically, it proposes that operations of heavy machinery without noise mitigation be permitted for up to 15 days, and that their operation beyond such 15-day period be permitted only after implementation of noise mitigation measures, as described in an approved noise mitigation plan.

Portable (temporary) noise barriers are identified as the minimum noise mitigation measure. Such barriers shall be installed as close as practicable to the heavy machinery. The article calls

for a minimum 10 dB(A) barrier noise reduction based on use of rated barriers, with a goal of 85 dB(A) or lower noise level at the property line.

The article stipulates that when the noise mitigation plan is poorly implemented (and presumably nullifies the plan's noise reduction benefits), then heavy machinery work will stop until the problem is corrected. Furthermore, it defines the process for cases where ledge is discovered unexpectedly after a permit is issued with no noise mitigation plan. In such cases, the ledge work may be undertaken only after a noise mitigation plan is submitted and approved.

Finally, the article identifies the Building Department and the Public Health Department as the enforcers of the by-law.

The proposed motion (on 09/21/20):

That Chapter 80 of the Code of the Town of Lexington, *Noise Control* be amended by inserting the following as a new § 80-8 and renumbering the existing §§ 80-8 to 80-11 as §§ 80-9 to 80-12.

§ 80-8 Noise mitigation plan for construction

- (i) A noise mitigation plan shall be required prior to the issuance of a building permit for construction projects in or adjacent to residentially zoned areas where:
 - 1. the project entails rock removal with heavy machinery, including ledge removal, rock pounding, rock crushing, rock drilling or rock cutting (collectively defined as "Ledge Work"); and
 - 2. Ledge Work activities are anticipated to take place on more than fifteen days over the course of the project.
- (ii) A noise mitigation plan required under this § 80-8 shall, at a minimum, require portable sound barriers, designed to reduce sound levels outside the barriers by at least 10 dB(A), surrounding and installed as close as practicable to the source of the noise. These barriers must reduce construction noise to prevent noise injury to town residents. The objective of this amendment is to keep maximum noise levels under 85 dB(A) at the property line.
- (iii) In the event that a building permit is issued under the assumption that none of the § 80-8 provisions apply, and it is discovered that such provisions do apply after the project begins, then no Ledge Work shall begin or continue until a noise mitigation plan is submitted and accepted in accordance with § 80-8 (ii).
- (iv) In the event that the builder does not submit or follow a specified noise plan, whether by using inadequate barriers, poor barrier installation, poor maintenance, failure to move them to a new work area on site, or any other problem, then work must cease until the issue is corrected. and a penalty of \$50 per day may be assessed in accordance with provisions of § 80-7 for any days that Ledge Work took place without a plan, or not in accordance with a submitted plan.

Article 5

Amend General Bylaws – Running Bamboo Control (Citizen Petition)

To see if the Town will vote to amend the General Bylaw of the Town of Lexington by adding a chapter to control the planting and presence of Running Bamboo plants-any monopodial (running) tropical or semi-tropical bamboo grasses or bamboo species, or act in any other manner in relation thereto.

(Inserted by Michael Reamer and 9 or more registered voters)

DESCRIPTION: This purpose and intent of this bylaw is to preserve and protect private and Town owned property and Town owned rights of way from the spread of Running Bamboo and to protect indigenous biodiversity threatened by Running Bamboo. All Running Bamboo owners shall be required to confine Running Bamboo in a manner that will prevent the Running Bamboo from encroachment onto any other private or Town owned right of way. The proposed bylaw specifies requirements, enforcement and penalties.

TMMA Summary

Running bamboo is a potentially invasive plant, sometimes sold for decorative use. It can quickly spread, taking over a large area. Not all bamboos behave this way. There are clump forming bamboos, which are not likely to spread and can be planted for decorative purposes. Running bamboos must be regularly controlled to keep them in the desired areas. Bamboos are a perennial grass, identified by a large woody stem that is often round and segmented. Golden bamboo, or *Phyllostachys Aurea*, is the most common culprit in control issue situations. These spreading bamboos move by thick underground stems called rhizomes, which can grow over 100 feet from the original planting. Running bamboo is not currently listed as one of the 69 species that are *Invasive*, *Likely Invasive*, or *Potentially Invasive* in the Massachusetts *Invasive Plant List* prepared by the Massachusetts Invasive Plant Advisory Group <https://www.mass.gov/doc/invasive-plant-list/download>. For the 69 plant species that have been recognized by "MIPAG", the Massachusetts Department of Agricultural Resources has issued a Rulemaking, adding them to a list of noxious weeds regulated with prohibitions on importation, propagation, purchase and sale in the Commonwealth. Running Bamboo is restricted or prohibited in the states of New York, Connecticut, New Jersey, and Rhode Island, and in Cambridge, MA.

TMMA Questions:

1) Where in Lexington has running bamboo been located?

Answer: Adjacent to 34 Parker Street, 534 Lowell Street, 165 Lowell Street

2) Are any of those locations on public lands?

Answer: At 165 Lowell Street it is approaching the street.

3) What is the specific text of the proposed bylaw?

Answer: The legal wording is still under review at the deadline for this booklet.

Article 6

Authorize Special Legislation Development Surcharge for Community Housing (Citizen Petition)

To see if the Town will vote to establish a surcharge on specific residential development activities for the purpose of funding affordable and community housing construction, renovation, associated land acquisition or easements; and further to authorize the Select Board to petition the Massachusetts General Court to enact legislation to enable this surcharge in the Town of Lexington, and further to authorize the Select Board to approve amendments to said act before its enactment by the General Court that are within the scope of the general objectives of the petition, or act in any other manner in relation thereto.

(Inserted by Matt Daggett and 9 or more registered voters)

DESCRIPTION: The purpose of this article is to address the loss of moderate-income housing by developing a targeted and measured surcharge on specific residential development activities, that will fund the creation of community housing that will address identified housing gaps, such as housing attainable by Lexington municipal employees.

TMMA Summary

The intent of this article is create a new mechanism to fund the creation of community housing, in order to offset the spectrum of the housing stock being lost to redevelopment and to address the widening affordability gap for moderate income housing. The article seeks to have the Select Board petition the Massachusetts General Court to enact legislation authorizing a surcharge that would be added to the permit fee when new development involves demolition of an existing house. The amount of the surcharge would be set by the Select Board and the surcharge payments would be made to the Affordable Housing Capital Stabilization Fund.

For the proposed Motion on the Town website, please go to:

http://www.lexingtonma.gov/town-meeting/pages/2020-2-and-2020-3-special-town-meetings#anchor_2020-3

TMMA Questions:

- 1) Do any of our peer communities have a similar surcharge?
- 2) Has an estimate been done of how much housing could be created over time given a specific surcharge amount set by the Select Board?
- 3) What entity would be involved in purchasing properties using the Affordable Housing Capital Stabilization Fund, e.g., LexHAB?

Article 7

**Resolution for Establishment of a Monument
(Citizen Petition)**

To see if the Town will vote to adopt a resolution requesting the Select Board to erect a new monument in a highly visible and public outdoor location to honor the contributions women have made to improve Lexington; that the Select Board take this request into account when preparing the next year’s budget; and that the Select Board help facilitate this effort through coordination of or delegation to the relevant committees so that a recommendation will come to Town Meeting in Spring 2021, with some visible progress made by August 26, 2021, or act in any other manner in relation thereto.

(Inserted by Jessie Steigerwald, Betty Gau and 100 or more registered voters)

DESCRIPTION: This article seeks Town Meeting approval to request the Select Board to erect a new and intersectional monument in celebration of the 100th anniversary of the 19th amendment to the United States Constitution. This monument would celebrate and pay tribute to the many contributions that women have made across time to Lexington’s place in history and to our community.

TMMA Summary

This Citizen’s article seeks to balance the many prominent monuments in and near the Battle Green in Lexington that honor historic figures who are male with a significant monument to honor Lexington’s historic figures who are female, including those who are non-white. Since the close of the Warrant, the proponents have committed to privately funding the monument. No Town funding is requested.

As of this writing, the motion that the proponents intend to put forth is:

That the Town urge the Select Board, acting through the Town Manager or their designee, to permit use of a highly visible space near the Visitor Center or Cary Library for the installation of a privately-funded permanent monument that is intersectionally sensitive and honors the contribution women have made to this community across time; or act in any other manner thereto.

TMMA Questions:

- 1) Who will determine the form, style and location of the monument?

- 2) Is the Stone Building under consideration as the monument?

Article 8

Systemic Racism Resolution (Citizen Petition)

To see if the Town will pass a non-binding resolution to consider racial and other equity impacts in all its decisions and planning processes, including the role of systemic racism, with the goal of making Lexington a truly equitable community; or act in any other manner in relation thereto.

(Inserted by Deborah Strod and 100 or more registered voters)

DESCRIPTION: This article seeks Town Meeting approval to adopt a resolution that seeks to make Lexington a more diverse, inclusive, equitable, and anti-racist community by actively considering racial and other equity impacts in all current and future decisions and planning processes with the goal to end systemic racism.

TMMA Summary

The Motion in support of this Citizen Article is a non-binding resolution which seeks to express the consensus of Town Meeting that the Town:

(a) consider racial and other equity impacts in all decisions and planning processes; (b) take action to integrate racial equity tools and concepts into routine operations and policy-making; (c) build capacity to collect, interpret and act on data related to inequities, particularly those related to health, housing, education, policing, representation, and economic and environmental justice; and (d) develop and implement a comprehensive racial equity plan with public input, to include staff training, hiring, and public education.

The sponsors of the motion state that the above directions should be interpreted to apply not only to the professional and elected Town Government, but to all committees and other entities which may participate in Town polices and activities. They expect the Town Government to lead and coordinate with other entities.

Although initially focusing on racism, they envision a systemic effort that will address the broadest range of “equity impacts” to include such categories as women, disabled persons, seniors, LGBTQ+, etc. They support the hiring of consultants to design and implement measurement tools and remedial policies with

measurable goals, and to help determine sequences and timeframes. They specifically support the hiring of a DEI (diversity, equity and inclusion) officer, an idea raised by the Lexington Human Rights Committee and Select Board members, to direct the implementation of these policies as the Town may determine, to start immediately.

TMMA Question:

- 1) Rather than attempting to address all potential ills at once, have the proponents of this Article considered a more targeted approach to known inequities existing in Lexington, for example: a serious, funded effort to provide moderately priced and affordable housing for those who may have been shut out of the opportunity to buy homes in the Town; or a publically reviewed, mandatory training program for police and other municipal employees with regard to their A with the public?

ANSWER: This article would influence the operations and training of staff once they been reviewed. The equity lens should be applied in the areas mentioned: housing, schools, hiring, etc – in every municipal function. The Town can't do everything at once, but we need to be systematic.

Article 9

Amend Zoning Bylaw – Distance from Basement Slab or Crawl Space and Groundwater

To see if the Town will vote to amend the Zoning Bylaw to regulate the distance between groundwater elevations and building basements, crawl space floors, or slab elevations; or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: This zoning amendment is in response to residents' requests to address the impacts on their property of displaced groundwater from abutting new construction being built in the water table. This will also help prevent new illegal connections to the Town system from new construction in the water table.

TMMA Summary

This article would regulate the minimum distance between the groundwater and the bottom of basements in new construction. The purpose of this bylaw is to avoid basements flooding and to minimize the impact on neighbors of the displacement of groundwater.

Groundwater elevation is defined as the Estimated Seasonal High Groundwater Table (ESHGWT). This elevation is determined by a qualified soil scientist or licensed soil evaluator by taking a soil boring and analyzing the coloration and texture of the soil to see the presence of water in recent years. The elevation is not determined by digging a hole to see at what level it fills with water.

The proposed minimum distance to the ESHGWT is 2 feet. If the distance is greater than or equal to 2 feet, then this bylaw introduces no new regulations. Construction can still take place if the distance is less than 2 feet but only if water management systems are installed. Plans for such systems must be approved by various Town departments, and the applicant must pay for third party review.

There was a similar bylaw in Lexington from 1976 to 1998, which established a minimum distance of 4 feet. It's not clear why Town Meeting voted to remove the bylaw. The Building Department is in favor of reestablishing a minimum distance.

There is a well at the Mass DOT Maintenance Depot, near the intersection of Route 2A and Interstate 95, that has been measured for groundwater level every month since 1964. The monthly readings show variations of a foot or more from the mean. A linear regression of the data shows that the average groundwater level has risen from about 3 feet from the surface in 1964 to about 1 foot 9 inches in 2020 (https://nwis.waterdata.usgs.gov/nwis/gwlevels/?site_no=422627071154002). The author of this report does not know why the level has been rising or how representative this is of Lexington.

Prince Georges County in Maryland has a similar regulation but adds an additional requirement that basements cannot be built less than zero feet above the ESHGWT, even with mitigation measures (that is, the basement cannot be built into the groundwater under any circumstances). <https://www.princegeorgescountymd.gov/DocumentCenter/View/11822/Techno-gram-005->

[2016-Setting-Basement-Elevation-above-the-Groundwater-Table](#). However, it's unlikely that the state Attorney General would approve such a provision in Lexington because the bylaw cannot be more restrictive than the state building code.

TMMA Questions:

- 1) The proposed bylaw originally set a minimum distance of 30 inches in December 2019. It was later changed to 2 feet. Why?

Answer: From the Building Commissioner: “After considerable review and investigations, including research on other community’s bylaws, meetings with professional engineers, architects, land surveyors and builders, the distance of two feet was determined to be consistent with all best engineering practices.”

- 2) How far back in the geologic record can a soil scientist detect the previous presence of water at a certain height?

Answer: The Building Commissioner received this response from a soils scientist: “I don't know of any scientific consensus on how long the evidence would remain in a soil after a water table is lowered, or even if there is any direct research on that question. I have heard different soil scientists speculate it could be anywhere from decades to centuries. But soils that have an existing seasonal water table usually look a little different than soils which once had a water table which has long since disappeared. The evidence may still be there, you might even be able to determine the depth where the seasonal high-water table used to be, but usually there are signs that it is not a current water table.”

Article 10

Amend Zoning Bylaw – Short Term Rentals

To see if the Town will vote to amend the Zoning Bylaw to regulate short term rentals; or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: This article would amend the Zoning Bylaw to regulate short term rentals.

TMMA Summary

The purpose of this article is to regulate short terms rentals (STR), such as would be found on Airbnb or VRBO rentals. It is in response to citizen complaints about disturbances and concerns over commercial competition for real estate and concerns expressed by local hotel owners.

This bylaw defines a rental of fewer than 30 consecutive days as a STR. A rental of 30 or more days is a long-term rental (LTR). The bylaw defines two types of STRs: owner-occupied and owner-adjacent. In both cases, the dwelling must be the primary residence of the operator. In both cases, the number of rental days per year when the operator is absent from the property cannot exceed 90.

If owner-occupied, either the entire dwelling can be rented (that is, the whole house), or up to 3 bedrooms can be individually rented. During any period of 7 or more consecutive days when the operator is away, the dwelling can be rented as only a whole unit and not as individual bedrooms. As an example, if the operator is away on a 6-week vacation, then the operator can rent the entire unit to several consecutive short-term renters (each for less than 30 days) or to a long-term renter of 30 or more days. If the operator is away for 6 months, then the operator can rent the whole unit to a combination of short-term and long-term renters, but the total of STR days cannot exceed 90.

The typical case of an operator-adjacent unit is a two-family dwelling owned by the operator where the operator lives in one family unit and rents the other unit.

Accessory apartments, which are defined in Section 6.7 (<https://ecode360.com/27630229>), may not be used as STRs. The intention is to prevent the removal of units from the affordable house inventory.

Other requirements:

- A given STR unit (for example, a bedroom) is limited to one car per 2 occupants.
- Rentals for less than 10 consecutive hours is not allowed.
- The operator must maintain a log of all the occupants' names and ages (even minors).
- On an annual basis, operators of STR units must secure a certificate of registration, pay a registration fee, and have the dwelling unit inspected.

TMMA Question:

1) If an operator rents a unit via Airbnb to a single renter for more than 30 consecutive days, is this rental subject to the proposed bylaw?

Answer: From the Zoning Administrator: "No, if it was rented out for more than 30 consecutive days, it would be considered a long-term rental and would not be subject to the same provisions. However, we would deal with each "case" as it came along. If someone came to me and requested enforcement, I would look at how the unit is being

advertised, etc. I also would like to make sure that the public understands that we have been advised by Town Counsel that we cannot prohibit short-term rentals, so this regulation is our solution to ensure the safety of the renters and neighborhood.”

Article 11

Amend Zoning Bylaw – Site Plan Review

To see if the Town will vote to amend the Zoning Bylaw of the Town of Lexington to adjust applicability of, exceptions to, and notice requirements for site plan review, or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: This article would adjust the existing exceptions to site plan review to require review when parking areas are significantly expanded, limit it for small changes to large buildings, and modernize notice requirements.

TMMA Summary

The proposed motion on (9/28/20):

That the Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, be amended as follows, (~~struck through~~ text is to be removed and underlined text is to be added), and further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Lexington.

PROPOSED LANGUAGE

A. Delete § 135-9.5.2 as follows:

~~9.5.2 — Applicability.~~

~~The following types of activities and uses require site plan review by the Planning Board or its designee:~~

- ~~1. Where required elsewhere in this bylaw, exterior construction or expansion of a structure resulting in an increase of 500 SF or greater of total building gross floor~~

~~area or an increase in 500 SF or greater of site coverage.~~

2. ~~Any changes to an approved site plan.~~

B. Replace § 135-9.5.2 as follows:

9.5.2 Applicability.

1. This section applies to activities and uses for which site plan review is required elsewhere in this Zoning Bylaw. The Planning Board or its designee will conduct site plan review in accordance with this Section of the Zoning Bylaw and the Planning Board Zoning Regulations. The following shall be exempt from site plan review:

- a. Any new or expanded buildings resulting in an increase in total gross floor area of less than 2000 square feet;
- b. Any new or expanded structures resulting in an increase in total site coverage of less than 1000 square feet;
- c. Any new or expanded parking areas resulting in eight or fewer additional parking spaces; and
- d. Any use of lands, buildings or structures for educational purposes by the Lexington Public Schools on land owned or leased by the Town of Lexington or Lexington Public Schools.

C. Amend § 135-9.5.4.3 so that it reads:

3. A public meeting shall be ~~required~~ held for all projects requiring major site plan review. ~~The meeting will be advertised in the local newspaper once in each of two successive weeks prior to the meeting and~~ Notice will be sent to landowners within 300 feet of the affected lot at least two weeks before the meeting.

D. Delete § 135-9.5.6.6.

~~6. Notwithstanding any other provision of this chapter, the use of land or structures for educational purposes by the Lexington Public Schools on land owned or leased by the Town of Lexington or Lexington Public Schools shall not be subject to site plan review pursuant to § 9.5.~~

(09/28/2020)

Article 12

Amend Zoning Bylaw – Financial Services

To see if the Town will vote to amend the Zoning Bylaw of the Town of Lexington regarding the regulation of financial, drive-up, and auto-oriented services; or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: The article would adapt a variety of financial services regulations to be consistent with current industry practice and regulate drive-up and auto-oriented service uses consistently.

TMMA Summary

The intent of this Article is to adopt the use of the term “banking services” to include banks, drive-ups and ATMs. Banking services is a broader term to use for banks and ATMs combined. Therefore, there will be no further distinction between banks and ATMs in the Bylaws.

The Planning Board unanimously voted that Town Meeting APPROVE the motion under Article 12.

BACKGROUND (Extracted from Planning Board Report)

A zoning amendment in 2016 limited bank use in the Central Business (CB) District, allowing it by special permit where it had previously been allowed by right. At that time Automatic Teller Machines (ATMs) were thought of as an accessory use attached to a larger bank. They were not generally regarded as competition for active storefronts.

In 2019, the Building Department received an application for a storefront containing several ATMs. At that time Banks or Credit Unions were allowed by special permit in the CB District and ATMs were allowed by right. The Building Commissioner determined, and the Board of Appeals agreed (after an appeal), that a special permit is required for a standalone ATM facility in the CB District because it constitutes a banking use. The applicant did not apply for a special permit.

Because ATMs are an accessory use to a bank or another business, the Building Commissioner considers a stand-alone ATM as a bank. This is an interpretation of the by-law and as-such may not be defensible should another applicant appeal the determination to the Court.

At the request of the Center Committee the Planning Board sponsored a zoning amendment at the 2019 Special Town Meeting to change the ATM use in the CB District from a Y to N in the use table.

In the Planning Board 2019 Special Town Meeting Article 6 Recommendation the Board stated that this was stop-gap measure to a rapidly changing industry.

This zoning amendment more broadly defines banks as ‘banking services’ to encapsulate the evolving industry and removes ATMs from Table-1, Permitted Uses and Development Standards, as a traditional ATM as we consider it today is accessory to another use.

An accessory use as defined under Lexington Zoning Bylaws Section 3.2.1: “*Any use or structure not listed as an accessory use in Table 1 is permitted as an accessory use provided it is a use or structure that is customary and incidental to a principal use or structure permitted by Table 1, conforms to all other provisions of this bylaw, and complies with all other Town bylaws or General Laws.*”

TMMA Question:

1) What specifically does this Article do?

Answer: It amends row H.1.05 of Table 1, Permitted Uses and Development Standards, to consolidate the current 3 rows into 2 rows. The change would preserve the current limit on drive-up tellers both in the Center and elsewhere.

Article 13

Amend Zoning Bylaw – Solar Energy Systems

To see if the Town will vote to amend the Zoning Bylaw to reduce restrictions on solar energy systems, or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: The article would encourage construction of solar energy systems by exempting these systems from certain setback, height, site coverage, and roof coverage standard and permitting them in all districts.

TMMA Summary

This amendment includes relaxing a variety of rules that currently limit deployment of solar energy systems for both commercial and residential properties.

There are 5 primary intents to this Article:

1. Amend the Bylaws to comply with Massachusetts State Law MGL c. 40A. Per State Law, the Town must permit solar energy systems and cannot unreasonably prohibit such systems.
2. Provide reasonable regulation to the deployment of commercial and residential solar energy systems.
3. Provide landowners with the ability to meet Zero Net Energy goals.
4. Meet Historical District Commission's requirement for ground mounted solar energy systems to be out of sight of public view.
5. Support Article 29, Declare Climate Emergency resolution.

The State is encouraging construction of solar energy systems and the amendment to the Town Bylaws which would relax or remove barriers to deployment of such systems in order to comply with the State Law.

Highlights of amendments to the Bylaws include:

1. The Bylaw amendment removes the existing 25% limit (for accessory systems).
2. Adding that a solar energy system is permitted over any paved parking lot, except for parking for one-family and two-family homes.
3. Adding the term solar energy systems to various lines of the Bylaws as detailed in the full Amendment.
4. Revising the Permitted Uses and Development Standards table to include the 4 types of solar energy systems listed below.
5. Add new sections to the Bylaws to further describe details about solar energy systems.
6. A site plan review will be required for all ground-mount systems.
7. Ground-mount systems will be prohibited in yards, with the exception of canopies over commercial parking lots.

There are 4 types of solar energy systems to be defined in this Amendment:

1. Building-Mounted – A Solar Energy System that is designed to be securely mounted on a building.
2. Canopy – A Solar Energy System structure that is built to cover a parking lot or other open-air use that is not a Building-mounted Solar Energy System or Residential Solar Energy System, (such as at the recycling center on Hartwell Avenue).

3. Large Scale - A Solar Energy System that is not a Building-mounted Solar Energy System, Canopy Solar Energy System, or Residential Solar Energy System.
4. Residential - A Solar Energy System that is not a Building-Mounted Solar Energy System on a residential lot where the total capacity of all solar energy systems on the lot is less than or equal to 25 kilowatts (25 kW) of electricity, or equivalent, per dwelling unit.

The intent of this Article is to comply with the Massachusetts State Law MGL c. 40A to support the State law encouraging construction of solar energy systems. Amending the Town Bylaws would relax or remove barriers to deployment of solar energy systems.

TMMA Question:

1. Given the article description in the warrant, would setback standards in residential areas be impacted? **Answer: No**

Article 14 Amend Zoning Bylaw – Wireless Communication Facilities

To see if the Town will vote to amend the Zoning Bylaw to conform to changes in Federal law and regulations regarding wireless communication facilities, including streamlining permitting processes and standards, adding design guidelines; or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: This article would update the Zoning Bylaw to reflect changes in federal law and regulations regarding wireless communication facilities. These changes include streamlining the permitting process for wireless facilities on private property to meet federal 'shot clock' deadlines by not requiring special permits and expanding acceptable justifications for adding new facilities.

TMMA Summary

Article 40 Amend Zoning Bylaw Wireless Communication Facilities

This article will amend section 6.4 Wireless Communications Facilities of the Zoning Bylaw, Chapter 135 of the Code of Lexington. At present the Board of Appeals is asked to grant a special permit for a new or expanded wireless commercial communications facility though

Federal Law supersedes local regulations while providing for rapid siting of commercial facilities.

Under “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment”, the Federal Communications Commission (FCC) establishes short time limits for action on small wireless facilities. There is a time limit of 60 days for colocation on preexisting structures and 90 days for new builds. Preexisting structures include wireless facilities attached to utility poles, municipal streetlights and existing wires located in public ways.

To meet rapidly increasing demand for wireless services and prepare our national infrastructure for 5G, providers must deploy infrastructure at significantly more locations using new, small cell facilities. The national strategy of the FCC is to promote the timely buildout of this new infrastructure across the country by eliminating regulatory impediments that unnecessarily add delays and costs to bringing advanced wireless services to the public. Thus, Lexington will continue to regulate noncommercial installations, but Federal regulations will govern commercial installations.

TMMA Questions:

1) What is 5G technology?

Answer: 5G technology is the next step in mobile connectivity. 5G will rely upon high frequency wavelengths which cannot travel through walls, windows or rooftops and get considerably weaker over distance. 5G will provide download speeds of over one gigabyte per second and allow a full movie to be downloaded in under 30 seconds.

2) How safe is 5G technology?

Answer: Studies of existing cell towers seem to show that there is a higher risk from cell phone use than from living near a cell tower. According to the American Cancer Society, there is no direct correlation between cancer and the radiofrequency waves (RF) from cell towers at this time. The National Institute of Environmental Health Science linked extremely high whole body exposure to RF radiation to adverse effects in male rats, but female rats and mice appeared unaffected. Source: Celltowerleaseexperts.com

3) How many 5G wireless antennas might be installed in Lexington?

Answer: Eventually hundreds of 5G wireless antennas would be installed in Lexington if not more. 5G technology will require antennas as close as every 500 feet. Thus, millions of 5G installations will be required to provide 5G service across the United States. Autonomous driving will require similar density of wireless antennas along roadways.

4) What are the privacy and security concerns with 5G?

Answer: Experts wonder about the security threats and risks of cyberattacks and identity theft associated with a massive number of devices that are interconnected. Stingrays (fake cell towers) could track people and intercept phone calls, emails and messages. More complex authentication processes will be required to protect privacy and provide security

Article 15

Amend Zoning Bylaw – Technical Corrections

To see if the Town will vote to amend the Zoning Bylaw to correct internal references, remove unreferenced definitions, and reformat sections of the Bylaw to help clarify the intent of the Bylaw; or act in any other manner in relation thereto.

(Inserted by the Select Board at the request of the Planning Board)

DESCRIPTION: These changes are clerical in nature and are not intended to change interpretation of the Zoning bylaw in any substantive way.

TMMA Summary

The proposed changes are as follows:

That Chapter 135 of the Code of the Town of Lexington, the Zoning Bylaw, be amended as follows (underline is new language):

- 1. Amend Chapter 135 §4.1.1 Table 2, Schedule of Dimensional Controls, line “Minimum side yard in feet “and add an additional note (i) to read as follows:

	Zoning Districts										
	GC	RO	RS & RT	CN	CRS	CS	CB	CLO	CRO	CM	CSX
Minimum side yard in feet	NR	15(d) <u>(i)</u>	15(d) <u>(i)</u>	20	20	15	NR	30	50(f)	25(f)	15

Notes:

- (i) For non-conforming one and two-family residential structures, the side yard setback may be reduced as allowed in Section 8.4.1 “No Increase in Nonconforming Nature.”

Article 16 **Amend Zoning Bylaw and Map – Hartwell Avenue Area
(Citizen Petition).**

To see if the Town will vote to amend the Zoning Bylaw and Zoning Map to alter and supplement dimensional and other standards for the CM district to permit additional development; rezone lots not used for residential purposes near Hartwell Avenue and southwest of Bedford Street into the CM or GC districts; or act in any other manner in relation thereto.

(Inserted by the Select Board on behalf of Charles Hornig and 9 or more registered voters)

DESCRIPTION: The changes proposed under this article would allow additional desirable commercial development along Hartwell Avenue and Bedford Street.

TMMA Summary

The changes proposed under this article would allow additional desirable commercial development along Hartwell Avenue and Bedford Street.

The proposed changes include:

- Consolidate the existing CSX (commercial service expanded), CD-3 (planned commercial development), and CRO (regional office) districts into the existing CM (manufacturing) district to provide consistent development standards across the area;
- Move various lots already dedicated to open space wetlands or utility right of way use into the GC (government-civic) district; and
- Replace many of the fixed dimensional standards for buildings and lots in the CM district with more carefully tailored design standards.

For the proposed Motion on the Town website, please go to:

http://www.lexingtonma.gov/town-meeting/pages/2020-2-and-2020-3-special-town-meetings#anchor_2020-3

This article is being proposed to encourage and facilitate commercial development on the Hartwell Avenue corridor and for the town to enjoy the resultant tax revenue. The proponent and others believe that the current buildings are obsolescent and less desirable than those in nearby towns. As a result, Lexington is missing out on commercial tax revenue because businesses are choosing not to rent property here.

Some members of the Planning Board feel that more time is needed to develop a more comprehensive plan including mixed residential uses.

TMMA Questions:

1) What is the intent of the article?

Answer: The purpose is to permit significant additional development in the area. One major goal is to generate additional commercial tax revenue. That revenue could be more than \$1M/year per new building, not in total. The proponent's back-of-the-envelope calculation estimated about \$14M/year after 10 years (slide 14). That would help pay for the large upcoming capital projects.

2) What specifically does the article do?

Answer: The article, if passed, will modify dimensional controls for buildings in the CM district, rezone specific lots as described above.

3) What will be the impact to Hartwell Ave and Bedford St?

Answer: Traffic is legitimately everyone's #1 concern (and usually only concern) about this change. The proponent's story on traffic is:

- **It is bad, and it will get worse, especially if we do nothing**
- **This change will have only incremental negative impact due to the fact that most traffic is 'through' traffic**
- **The Town is actively pursuing major roadway improvements to make these streets safer and more livable**
- **These changes will help fund that work, through impact fees and TDM measures, and by making state and federal funding more likely**

4) Who is opposing this article?

Answer: Although the Planning Board voted 3-2 to support this article, some members oppose it.

5) What are some reasons for opposing the article?

Answer: For the past 2 – 3 years, the Select Board, the Planning Board and the Economic Development Advisory Committee have been working with a paid consultant. The advice of the paid consultant is to pursue an integrated or mixed use approach similar to that of 3rd Avenue in Burlington.

One member of the Planning was also concerned about the lack of public outreach for this project.

Article 17

Amend the Zoning Bylaw and Map – Bedford Street Near Hartwell Avenue (Citizen Petition)

To see if the Town will vote to amend the Zoning Map to rezone lots not used for residential purposes northeast of Bedford Street near Hartwell Avenue into the CM and TMO-1 districts, or act in any other manner in relation thereto.

(Inserted by the Select Board on behalf of Charles Hornig and 9 or more registered voters)

DESCRIPTION: This article would expand the CM (manufacturing) and TMO-1 (transportation management overlay) districts by moving the #475 (Boston Sports Club) Bedford Street property into the existing CM and TMO-1 districts to allow additional commercial development.

TMMA Summary

This article is a request for a zoning change to a specific lot to match other nearby lots on Hartwell Avenue.

For the proposed Motion on the Town website, please go to:

http://www.lexingtonma.gov/town-meeting/pages/2020-2-and-2020-3-special-town-meetings#anchor_2020-3

TMMA Questions:

1) What is the intent of the article?

Answer: The intent is to rezone the property for the Town's preferred use (commercial), not for its current use. It is currently zoned one-family residential and has a sports club (which is permitted in residential districts). If the club went away, it could be replaced by houses. The proponent does not want to see one-family houses built here.

2) What specifically does the article do?

Answer: The article would rezone the property to match the rest of the Hartwell Avenue area.

3) Has anyone expressed any concern about unintended consequences of the changes described in the article?

Answer: The proponent has heard two expressions of concern; one about how close development could be to Drummer Boy (which would be protected by the required setbacks) and one about additional traffic (for which the answer is the same as above).

4) Who is opposing this article?

Answer: The Planning Board voted 3-1 to refer this article to the Planning Board. One member recused himself because he is an abutter.

5) What are some reasons for opposing the article?

Answer: There is concern that the town would lose control over the use of the lot if it were to be rezoned as proposed in this article.

Article 18

Amend Zoning Bylaw- Front Yard, Transition, and Screening Areas (Citizen Petition)

To see if the Town will vote to amend the Zoning Bylaw to regulate front yard, transition, and screening areas along streets consistently within each district, or act in any other manner in relation thereto.

(Inserted by the Select Board on behalf of Charles Hornig and 9 or more registered voters)

DESCRIPTION: The changes proposed under this article would allow consistent streetscapes within a zoning district by requiring consistent front yard, transition, and screening areas along a street independent of the zoning district of lots across the street.

TMMA Summary

The sponsor of this article would like to remove certain requirements from these bylaws first established in 1987. He believes that three areas covered by this bylaw: front yardage, screening and landscaping; offer no value to the town and these rules are constantly being ignored. They are a possible barrier to new development

For the proposed Motion on the Town website, please go to:

http://www.lexingtonma.gov/town-meeting/pages/2020-2-and-2020-3-special-town-meetings#anchor_2020-3

Special Town Meeting 2020-3

Article 2

Appropriate for Prior Years' Unpaid Bills

To see if the Town will vote to raise and appropriate money to pay any unpaid bills rendered to the Town for prior years; to determine whether the money shall be provided by the tax levy, by transfer from available funds, or by any combination of these methods; or act in any other manner in relation thereto.

(Inserted by the Select Board)

FUNDS REQUESTED: Unknown at press time

DESCRIPTION: This is an annual article to request funds to pay bills after the close of the fiscal year in which the goods were received or the services performed and for which no money was encumbered.

TMMA Summary

This is a placeholder article should bills from prior years be received from any of the departments. At the time of printing, no prior year bills are known, and it is anticipated that this article will be indefinitely postponed (I/P).

Article 3

Establish, Dissolve and Appropriate To and From Specified Stabilization Funds

To see if the Town will vote to create, amend, dissolve, rename and/or appropriate sums of money to and from Stabilization Funds in accordance with Massachusetts General Laws, Section 5B of Chapter 40 for the purposes of: (a) Section 135 Zoning By-Law; (b) Traffic Mitigation; (c) Transportation Demand Management/Public Transportation; (d) Special Education; (e) Center Improvement District; (f) Debt Service; (g) Transportation Management Overlay District; (h) Capital; (i) Payment in Lieu of Parking; (j) Visitor Center Capital Stabilization Fund; (k) Affordable Housing Capital Stabilization Fund; (l) Water System Capital Stabilization Fund; and (m) Ambulance Stabilization Fund; determine whether such sums shall be provided by the tax levy, by transfer from available funds, from fees, charges or gifts or by any combination of these methods; or act in any other manner in relation thereto.

(Inserted by the Select Board)

FUNDS REQUESTED: Unknown at press time DESCRIPTION: This is an annual article to establish, dissolve, and/or fund Stabilization Funds for specific purposes and to appropriate funds

therefrom. Money in those funds may be invested and the interest may then become a part of the particular fund. These funds may later be appropriated for the specific designated purpose by a two-thirds vote of an Annual or Special Town Meeting, for any lawful purpose.

TMMA Summary

At the 2007 Annual Town Meeting, various stabilization funds were created as repositories for money to be reserved for later use as appropriated at subsequent Town Meetings. Funds received by the Town since the last Town Meeting for purposes designated under any of the existing specified stabilization funds are recommended for appropriation into those funds under this article. The Debt Service Stabilization Fund is covered under Article 26 and is not listed below. In 2008 Town Meeting approved a new fund for Special Education.

At the 2012 Annual Town Meeting, two new Funds were created. The Transportation Management Overlay District Fund will collect fees specified under the new zoning regulations. The Avalon Bay School Enrollment Mitigation Fund collects money per the agreement with the developer. That agreement specifies that if actual school enrollment exceeds those projected at the time of the negotiation with the Town, payments are required up to a maximum of \$700,000.

The 2012 Fall Special Town Meeting approved creation of the Capital Projects / Debt Service Reserve / Building Renewal Stabilization Fund now known as the Capital Stabilization Fund. The Town is planning for a number of significant future capital projects over the next three to five years potentially including schools, a new fire station, police station, Center Streetscape improvements, Hartwell Avenue infrastructure improvements, expanded Visitor's Center and Community Center expansion.

It is proposed that the following to/from appropriations be made to the following stabilization funds:

- a) That \$1,100,000 be appropriated from the Capital Stabilization Fund for projects excluded from the limits of Proposition 2½. This is to mitigate the impact of excluded debt on the tax rate. It will cover debt service principal payments for the Hastings, Lex. Children's Place and fire station projects.
- b) That \$47,352 be appropriated to the Transportation Demand Management Stabilization Fund to account for payments received since the last Town Meeting. Of this, approx. \$1,600 was received from Brookhaven the rest from Avalon.

TMMA Question:

1. What are the current balances of the individual stabilization funds?

Answer: A history of the funds' balances may be found in the "Brown Book" on Appendix C-3. The balance of the Capital Stabilization Fund on 6/30/2019 was \$27,727,713.

Article 4

Rescind Prior Borrowing Authorizations

To see if the Town will vote to rescind the unused borrowing authority voted under previous Town Meeting articles; or act in any other manner in relation thereto.

(Inserted by the Select Board)

DESCRIPTION: State law requires that Town Meeting vote to rescind authorized and unissued debt that is no longer required for its intended purpose.

TMMA Summary

This article is an annual place-holder asking Town Meeting to rescind unused debt authorized in prior years. It is proposed that 3 projects have unneeded funding. These are:

- \$14,374 for School Facilities modular classrooms approved at the 2016 STM5
- \$59,073 for the Concord Ave. sidewalk approved at the 2013 ATM, and
- \$5,887 for the Bridge/Bowman schools construction approved at the 2011 STM

Article 5

Amend FY2021 Operating, Enterprise and CPA Budgets

To see if the Town will vote to make supplementary appropriations, to be used in conjunction with money appropriated under Articles 4, 5, 9 and 10 of the warrant for the 2020 Annual Town Meeting to be used during the current fiscal year, or make any other adjustments to the current fiscal year budgets and appropriations that may be necessary; to determine whether the money shall be provided by tax levy, by transfer from available funds including the Community Preservation Fund or by combination of any of these methods; or act in any other manner in relation thereto.

(Inserted by the Select Board)

FUNDS REQUESTED: Unknown at press time

DESCRIPTION: This is an annual article to permit adjustments to current fiscal year (FY2021) appropriations.

TMMA Summary

TMMA Summary (as of 10/2/20)

This article is an annual place-holder should adjustments be needed to the current year's budgets.

At the 2007 Annual Town Meeting, various stabilization funds were created as repositories for money to be reserved for later use as appropriated at subsequent Town Meetings. Funds received by the Town since the last Town Meeting for purposes designated under any of the existing specified stabilization funds are recommended for appropriation into those funds under this article. The Debt Service Stabilization Fund is covered under Article 26 and is not listed below. In 2008 Town Meeting approved a new fund for Special Education.

At the 2012 Annual Town Meeting, two new Funds were created. The Transportation Management Overlay District Fund will collect fees specified under the new zoning regulations. The Avalon Bay School Enrollment Mitigation Fund collects money per the agreement with the developer. That agreement specifies that if actual school enrollment exceeds those projected at the time of the negotiation with the Town, payments are required up to a maximum of \$700,000.

The 2012 Fall Special Town Meeting approved creation of the Capital Projects / Debt Service Reserve / Building Renewal Stabilization Fund now known as the Capital Stabilization Fund. The Town is planning for a number of significant future capital projects over the next three to five years potentially including schools, a new fire station, police station, Center Streetscape improvements, Hartwell Avenue infrastructure improvements, expanded Visitor's Center and Community Center expansion.

The proposed adjustments to the current year FY2021 budgets are:

To the operating budget (on 10/2/20):

	<u>From</u>	<u>To</u>
1) Line Item 2410, Payments on Funded Debt	\$6,147,000	\$6,292,000
2) Line Item 2420, Interest on Funded Debt	\$1,030,508	\$1,101,674
3) Line Item 2430, Temporary Borrowing	\$3,339,936	\$2,977,909
4) Line Item 7100, Land Use, Health and -7400, Development Expenses	\$ 510,687	\$ 526,987

To the enterprise funds budgets:

1) MWRA Water Assessment	\$8,030,101	\$8,006,399
2) MWRA Wastewater Assessment (Based on final assessments made by the MWRA board)	\$8,248,093	\$7,922,359
3) Recreation & Comm. Programs Dept., Personal	\$1, 535,363	\$ 962, 170
Recreation & Comm. Programs Dept., Expenses	\$1,480,045	\$1,041,051

Please refer to the Appropriation Committee and Capital Expenditures Committee reports for more complete information.

Article 6

Amend Post Employment Insurance Liability Fund

To see if the Town will vote to make supplementary appropriations, to the Town of Lexington Post Retirement Insurance Liability Fund, to be used in addition to appropriations made pursuant to Article 17 of the 2020 Annual Town Meeting during the current fiscal year, or make any other adjustments to the current fiscal year budgets and appropriations regarding post-employment benefits that may be necessary; determine whether the money shall be provided by the tax levy, by transfer from available funds, including enterprise funds, or by any combination of these methods; or act in any other manner in relation thereto.

(Inserted by the Select Board)

FUNDS REQUESTED: Unknown at press time

DESCRIPTION: This article will allow the Town to continue to fund its liability for post-employment benefits for Town of Lexington retirees. Beginning with the FY2007 audit, the Town was required to disclose this liability. Special legislation establishing a trust fund for this purpose was enacted in 2002.

TMMA Summary

At the time of this report printing, it is proposed to Indefinitely Postpone (IP) this article.

This is an annual article to fund the Town's OPEB responsibility. The Town is obligated to provide health benefits for retirees that are equivalent to those for current employees. These retiree health benefits (usually referred to as Other Post-Employment Benefits, or OPEB) are part of the compensation that retirees earned during their years of employment with the Town. As with pensions, OPEB is a future financial liability for the Town.

At the Annual Town Meeting, the requested amount for FY 2021 was \$1,935,486. However, this not a normal year. Because of Covid-19, the Town has experienced revenue losses and "we're" not sure what money Lexington will get from the State. Based on so much uncertainty, the intent is to hold as much "free cash" as possible to have money for unforeseen contingencies.

Article 7

Land Acquisition

To see if the Town will vote to authorize the Select Board to purchase, take by eminent domain, or otherwise acquire for Open Space, Community Housing and Preservation of Historic Resources a particular parcel or parcels of land; and to appropriate a sum of money therefor and determine whether the money shall be provided from the tax levy, by transfer from available funds, including the Community Preservation Fund, or by borrowing, or by applying and receiving funding from available grant sources to reimburse the Town for a portion of the purchase price of the property; to enter into any contracts and agreements related to the application or the award of funds; or any combination of these methods; or act in any other manner in relation thereto.

(Inserted by the Select Board at the Request of the Community Preservation Committee)

FUNDS REQUESTED: unknown at press time

DESCRIPTION: This article requests funds to purchase land.

TMMA Summary

This is a placeholder since negotiations are still underway with the landowner. The parcel is adjacent to an existing conservation area, and it may be a potential site for affordable housing as well as for conservation purposes, including wildlife habitat preservation, wetland protection and recreational trails, such as greenway corridor connections.

Article 8

Reduce Legal Expenses (Citizen Petition)

This citizen's proposal is to reduce the appropriation in the line item 8120 (legal expenses for the town) for fiscal year 2021 from the \$410,000 to \$110,000 and increase the amount appropriated for town in line item 8200 (town manager office and human resources) by \$100,000. During FY 14-18 the town (exclusive of the school department) has annually spent on average more than \$620,000 in legal expenses. More than 80% of this legal work is of a routine nature that could be done by in-house counsel.

(Inserted by the SelectBoard on behalf of Richard Neumeier and 9 or more registered voters)

DESCRIPTION: This article seeks Town Meeting approval to hire in-house counsel for legal services for the Town for fiscal year 2021. This proposal would reduce the appropriation in line item 8120, legal expenses for the Town, from \$410,000 to \$110,000 and increase the appropriation in line item 8200 of the Town Manager's budget by \$100,000.

TMMA Summary

This article would reduce the appropriation for Legal online item 8120 and add an allocation of \$100,000 for an in-house legal counsel position within the Lexington town government to handle routine legal affairs. Typical duties for municipal legal counsel include personal injury, employment, contracts, affirmative recovery, civil rights, police legal advisor, and general review, counsel and advice on legal affairs.

While Lexington appropriated \$410,000 under line item 8120 for Legal expenses in FY2020, this does not cover all legal costs as total legal costs including School, Capital Projects, Bond Counsel and Assessor have ranged from \$500,000 to over \$700,000 during recent years. A study prepared by Former Town Manager Carl Valente showed that Lexington was paying the highest billing rate for legal services of the municipalities that responded. A report of the Legal Services Review Committee in 2006 showed Lexington spending about \$100,000 per year more on Legal counsel than similarly situated towns and about \$300,000 per year more when capital projects were included. The 2006 report was never acted upon.

Finding In-house counsel should be easy and inexpensive. A survey by the American Bar Association showed that in 2018, 50% of Massachusetts lawyers were not employed in practicing law. A recent advertisement for a Municipal in-house counsel offered a pay range of up to \$88,000. On a large scale, the city of Boston has 9 in-house lawyers.

TMMA Questions:

1) Do other towns similar to Lexington use in-house counsel?

Answer: Arlington, Woburn, Franklin, Melrose, Milford, New Bedford and Brookline utilize in-house counsel.

- 2) Were other models of Legal services investigated by Lexington?
Answer: In 2006, the Legal Services Review Committee did site visits with Brookline for in-house counsel, Needham for sole practitioner, Burlington for Municipal Specialty firm, and Bedford for multi-purpose firm.
- 3) What attributes or disadvantages of various legal models have other towns experienced?
Answer: Based on the 2006 committee report, the key to the communities' satisfaction lay less in the model for delivery of legal services than in the person who played the lead counsel role and the nature of the Towns' leaders' relationship with that person. Several towns had migrated from a sole practitioner.
- 4) How many court cases has Lexington actually litigated in the recent past?
Answer: Few or none. The Lexington Town Report section from Town Counsel reports on all actions pending, brought by or against town and those settled or disposed of. Almost all of the cases end up either dismissed or settled in manner other than litigation.
- 5) What other recommendations does the article proponent have?
Answer: The in-House counsel must be a member of the Massachusetts Municipal Lawyers Association which would provide substantial support on both standard and newly evolving legal issues. Second, the Town of Lexington should provide for a regular cycle of review of the Town's legal services (e.g. every 3 years).
- 6) Would the person being in-house counsel have experience in all aspects of the laws need for difference situations?

Town Meeting Members Association Bylaws

Approved March 8, 1978 and amended March 20, 1985; March 20, 1986; March 11, 1998;
March 17, 2005 and March 5, 2008

Article I - Purpose

The Town Meeting Members of Lexington, Massachusetts, in order better to fulfill the obligations of the representative form of government, have established this Association to acquaint themselves more fully with the facts necessary for intelligent decisions and to assist in any other constructive way in the government of Lexington.

Article II - General Organization

Section 1 - Name

This organization shall be known as the Lexington Town Meeting Members Association or TMMA.

Section 2- TMMA Membership

Membership shall be limited to elected Town Meeting Members and Town Meeting Members-at-Large.

Section 3 - Executive Committee

- A. **Membership.** There shall be an Executive Committee consisting of the TMMA Officers elected in accordance with the provisions of Article II, Sections 4 and 5, and the Precinct Officers elected in accordance with the provisions of Article III, Sections 1 and 2. In addition, any former TMMA Officer who remains a Town Meeting Member may elect to serve as an emeritus member of the Executive Committee for up to two years after leaving office.
- B. **Meetings.** The Executive Committee shall hold regular meetings during the year for the purpose of keeping abreast of Town affairs, particularly matters that may become the subject of future Town Meeting action, or for any other purpose relating to Town Meeting. The Executive Committee shall meet upon the call of the Chair, or at the request of five (5) Executive Committee members, with reasonable notice. The presence of nine (9) members, with at least five (5) precincts represented, shall constitute a quorum. Decisions shall be made by a majority of those members present and voting.
- C. **Attendance.** Executive Committee meetings shall be open to all TMMA members. Any TMMA member who is not a member of the Executive Committee may enter into Committee deliberations upon recognition by the Chair, but shall not vote.
- D. **Activities.** The Executive Committee shall undertake such activities as it deems appropriate to educate and inform Town Meeting Members and the public at large about

pending and upcoming Town Meeting issues, including but not limited to the preparation of a warrant information booklet, the conduct of warrant information meetings, the conduct of bus tours or on-site visits, and the maintenance of a TMMA web site and email list. To this end, the Executive Committee may appoint subcommittees, working groups or task forces from among the TMMA membership from time to time when considered appropriate to the purposes of the TMMA.

- E. **Political Activity.** When supporting or opposing candidates or ballot questions, or when engaged in any other political activity, Executive Committee Members shall not use their Executive Committee title, or otherwise hold themselves out as representing the TMMA, unless specifically authorized by vote of the Executive Committee.

Section 4- TMMA Officers

- A. **Officers.** The TMMA shall elect annually from among the members of the TMMA, in accordance with Article II, Section 5C, the following TMMA officers: a Chair, a Vice-Chair, a Treasurer, a Clerk, a Communications Officer, and an Email List Moderator. These officers shall perform the duties normally associated with such offices, or as further specified by vote of the Executive Committee.
- B. **Term.** The term of each office shall be for one year, commencing on the first day of the Annual Town Meeting. Outgoing Officers shall continue in office until this date, whether or not re-elected to Town Meeting. The Chair, Vice-Chair and Treasurer shall not serve in the same office for more than two consecutive terms.
- C. **Disqualifications.** The following individuals shall not serve as TMMA Officers: town wide elected officials; members of the Appropriation Committee and the Capital Expenditures Committee; salaried employees of the Town; and Town Meeting Members-at-Large.
- D. **Leaves and Vacancies.** A TMMA Officer shall take a leave of absence in order to run for Townwide office, and may take a leave of absence for other exigent reasons with the consent of the Executive Committee. In the Chair's absence, the Vice-Chair shall perform the duties of Chair for such time as the absence shall continue. A permanent vacancy in any TMMA office, or an absence in any office other than Chair, shall be filled by vote of the Executive Committee.

Section 5- TMMA Meetings

- A. **Annual Meeting.** The Chair shall call an Annual Meeting of the TMMA to be held on a date after the annual town election, but before the commencement of the Annual Town Meeting.
- B. **Treasurer's Report.** At the Annual Meeting, the Treasurer shall present a Treasurer's report setting forth the TMMA's assets and liabilities as of December 31 of the previous calendar year, its income and expenditures during the previous calendar year, and a brief statement of major changes through the date of the Annual Meeting.
- C. **Election of Officers.** TMMA Officers shall be elected at the Annual Meeting as follows:
 - 1. Prior to the Annual Meeting, the Chair shall appoint a Nominating Committee consisting of three TMMA members who are not TMMA Officers, and at least

one of whom shall be a member of the Executive Committee. The Nominating Committee shall prepare a slate of proposed candidates for TMMA Officers for the ensuing year.

2. The Chair shall present to the Annual Meeting the slate prepared by the Nominating Committee. After entertaining any additional nominations from the floor, the Chair shall put the question of the election of TMMA Officers to a vote.
- D. **General Meetings.** Additional general meetings of the TMMA membership may be called by the Chair with reasonable notice when deemed appropriate. A general meeting shall be called upon the request in writing of twenty-five (25) TMMA members.
- E. **Quorum and Voting.** The presence of fifty (50) Members shall constitute a quorum at a general meeting. Except to amend these bylaws under Article IV, decisions of the TMMA membership, including the election of TMMA Officers at the Annual Meeting, shall be made by a majority of those present and voting, as determined in accordance with the voting procedures customarily used at Town Meeting.

Section 6 - Dues

The Executive Committee shall establish annually, prior to the TMMA Annual Meeting, dues in an amount sufficient to defray the reasonable expenses of the TMMA. Such dues shall be payable by voluntary contribution.

Article III - Precinct Organization

Section 1- Precinct Officers

- A. **Officers.** The TMMA Members of each precinct shall elect annually from among the precinct Town Meeting Members, in accordance with Article III, section 2(B), the following Precinct Officers: Precinct Chair, Precinct Vice-Chair and Precinct Clerk.
- B. **Duties.** The Precinct Officers shall represent their respective precincts at meetings of the TMMA Executive Committee, and shall participate to the best of their ability in the activities of the Executive Committee. In addition, the Precinct Officers shall have the following duties:
1. **Precinct Chair:** The Precinct Chair shall be the presiding Officer at TMMA precinct meetings; oversee the nomination of candidates for TMMA precinct offices and the conduct of TMMA precinct elections; assist in the distribution of information to precinct Town Meeting Members during the Annual Town Meeting or any special town meeting; encourage the attendance of precinct Town Meeting Members at TMMA informational meetings or other TMMA activities; promote discussions and contacts among precinct Town Meeting Members concerning Town Meeting business; and help to maintain civility and decorum during Town Meeting sessions.
 2. **Precinct Vice-Chair:** The Precinct Vice-Chair shall assist the Precinct Chair in the performance of the Precinct Chair's duties; stand in for the Precinct Chair at precinct meetings and Town Meeting sessions during the Precinct Chair's

absence; and stand in for the Precinct Clerk at Town Meeting during the Precinct Clerk's absence.

3. **Precinct Clerk:** The Precinct Clerk shall count and report precinct Town Meeting Members' votes when a standing vote is called at Town Meeting; collect TMMA dues from precinct Town Meeting Members; and stand in for or assist the Precinct Chair and Vice-Chair in the performance of their duties as may be necessary.
- C. **Term.** The term of each Precinct Officer shall be for one year. The Precinct Chair and Vice-Chair shall not serve in the same office for more than two consecutive terms.
- D. **Vacancies.** In the event of a vacancy in the office of Precinct Chair, the Precinct Vice-Chair shall assume the office of Precinct Chair. In the event of a vacancy in the office of Precinct Vice-Chair or Clerk, the remaining Precinct Officers shall appoint a replacement from among the precinct Town Meeting Members for the balance of the term.

Section 2- Precinct Meetings

- A. **Annual Meeting.** An Annual Precinct Meeting shall be held prior to the Annual Meeting of the TMMA, at such time and place as directed or approved by the TMMA Chair.
- B. **Election of Precinct Officers.** Precinct Officers shall be elected at the Annual Precinct Meeting as follows:
 1. Prior to the Annual Precinct Meeting, any precinct Town Meeting Member may notify the Precinct Chair of his or her desire to be a candidate, or to nominate another precinct Town Meeting Member, for a precinct office.
 2. The Precinct Chair shall present at the Annual Precinct Meeting the names of all candidates who have volunteered, or who have been nominated by others and consented to run, for precinct office. After entertaining any additional nominations from the floor, the Precinct Chair shall put the question of the election of Precinct Officers to a vote.
 3. Precinct Officers shall be chosen by majority vote of those present and voting at the Annual Precinct Meeting. They shall assume office immediately upon completion of the election and announcement of the results.
- C. **General Meetings.** Additional precinct meetings may be called by the Precinct Chair with reasonable notice when deemed appropriate, and shall be called upon the request of the Executive Committee or upon the written request of five (5) members from the precinct.
- D. **Quorum.** The presence of five (5) precinct Town Meeting Members shall constitute a quorum at a precinct meeting.

Article IV - Amendments

These bylaws may be amended, on the initiative of the Executive Committee or of any twenty-five (25) TMMA members, by a two-thirds vote of those present and voting at a duly called general meeting of the TMMA membership.

Summary of Parliamentary Procedures

Rules of order for the conduct of Town Meeting business are Article V of the Town Bylaws. Where rules are not dictated by statute, Bylaw or tradition, Roberts' Rules of Parliamentary Practice govern. The Town Moderator serves as Parliamentarian.

Rules of Debate

No person may speak more than once on a question if others who have not previously spoken desire to speak. No person may speak more than ten minutes at any one time without being again recognized by the Moderator.

Without first obtaining permission of the meeting, no member may speak more than twice on any issue except to correct a mistake or to make an explanation. If, however, a motion contains distinct sections dealing with dissimilar subjects which get discussed and amended separately (as is the case in Article 4) this rule of speaking once applies only to each new section and not the entire motion. Also, speaking to an amendment does not count as time toward speaking to the main motion.

Interrupting Debate

A speaker may be interrupted for:

1. a POINT OF ORDER where a member has a question about the procedures or the proceedings. The Moderator then rules on the question raised.
2. a NOTICE OF RECONSIDERATION of an article which has been previously debated and voted upon.
3. a PRIVILEGED MOTION which may be to recess, adjourn or a question of privilege.

Closing Debate

Debate may be closed by MOVING THE PREVIOUS QUESTION. It is NOT DEBATABLE. The Moderator then asks "Shall the main question now be put?" or "Shall the question on the amendment now be put?" If a majority is in favor, debate ends. (See Practices and Procedures)

The Main Motion

A main motion is made under each article by a Town Meeting member. The Moderator states "The motion is the one before you dated . . . and on file with the town clerk." The Moderator summarizes the motion; the proposing member then states I so move." Usually the wording of the motion differs from the wording of the article printed in the warrant in that more information is given, specific action requested and the amount and source of funding specified. The motion cannot exceed the scope of the warrant article. By custom no second is required. A copy of each main motion is provided to each Town Meeting member and projected on a screen for those in the audience and viewing at home on Cable TV.

Amending the Motion

A main motion may be amended, but the amendment cannot exceed the scope of the article. An amendment may be amended only once before being put to a vote. A substitute motion is an amendment which replaces the entire original motion. A simple majority carries an amendment,

and it then becomes part of the main motion. An amendment is a subsidiary motion and is governed by the limits on debate as set forth below.

Subsidiary Motions

A person may speak only once for no longer than three minutes on a subsidiary motion. Debate is limited to ten minutes except for an amendment which may be debated for 30 minutes unless changed by vote of Town Meeting. Subsidiary motions are listed below in order of precedence.

1. TO LAY UPON THE TABLE or TO TAKE FROM THE TABLE—the former means to end debate on the question to such time as a member moves to “take from the table” and resume debate. Both are NOT DEBATABLE.

2. TO MOVE THE PREVIOUS QUESTION is used to close debate and put the main motion and, or, an amendment to a vote. NOT DEBATABLE.

3. TO CLOSE THE DEBATE AT A SPECIFIED TIME sets a limit to the length of debate. To date this has been rarely used in Lexington.)

4. TO POSTPONE TO A TIME CERTAIN is to postpone action until a specified time or a specific article has been acted upon.

5. TO COMMIT, OR RECOMMIT, OR REFER sends the article to a specified Town board, committee or commission for further consideration, usually with directions to report to a future session of the meeting or to a future Town Meeting.

6. TO AMEND.

7. TO POSTPONE INDEFINITELY means to dismiss the article from consideration by the current Town Meeting. It ‘kills’ the article and is often used by the article sponsors when they have decided not to bring the matter up before the meeting.

Votes

A QUORUM (100 members) is assumed and all votes valid, unless a member rises to doubt the quorum before the results of the vote on a motion have been declared, and a count shows that fewer than 100 members are present.

If a MOTION is readily susceptible of DIVISION it may be divided, and a vote taken on each part separately if the Moderator deems best or 25 members present so request.

A SIMPLE MAJORITY VOTE is required for most articles. The Moderator will announce when more is required, e.g., the two-thirds required for eminent-domain land takings, zoning Bylaws and bond-issue authorizations.

Usually a voice vote is called first. A standing vote is called if the Moderator is in doubt or if 20 members stand to question the Moderator’s interpretation of the voice vote for a question requiring a majority, or if seven members stand for a question requiring a two-thirds vote. The tellers (currently the precinct clerks) report the count to the Town Clerk and the Moderator who announces the votes as they are reported from each precinct.

A RECORDED VOTE is taken if requested by 50 or more members. The recorded vote may be by roll call or in writing. In the latter case a list of the members is circulated in each precinct. Members record their votes in the appropriate places and affix their signatures beside their names. The recorded votes are posted in the Town Office Building within 24 hours and remain there for two weeks.

Reconsideration of Motions

A member MUST SERVE NOTICE OF RECONSIDERATION OF AN ARTICLE AT THE SAME SESSION OF THE MEETING AND WITHIN 30 MINUTES OF THE VOTE. Any member may serve notice. The member stands at their seat and says “Mme./Mr. Moderator, I serve notice or reconsideration of Article . . .” and the Clerk records the fact and time. The Moderator usually allows the server of the notice to make the actual motion for reconsideration if he/she chooses, but any other member may do so if the server does not. Debate on a motion to reconsider is limited to 30 minutes, and no one may speak for more than FIVE minutes at one time nor more than once without leave of the meeting. When a motion of reconsideration is decided that decision shall not be reconsidered, and no question shall be twice reconsidered. Reconsideration is not permitted for motions to ‘adjourn,’ ‘the previous question,’ ‘to lay’ or ‘take from the table,’ and to ‘close debate at a specified time.’

Dissolution of the Meeting

The motion to dissolve the meeting is made by the Selectmen after all the articles in the warrant have been acted upon.

Please consult the [Town Meeting in Lexington](#) handbook to review Lexington Town Meeting Practices and Procedures.