

WARRANT

Burlington Town Meeting



September 27, 2023
7:00 P.M.

Burlington, MA
Burlington High School
Fogelberg Auditorium

**INDEX OF ARTICLES
BURLINGTON TOWN MEETING
WEDNESDAY
SEPTEMBER 27, 2023**

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**COMMONWEALTH OF MASSACHUSETTS / CONSTABLE'S REPORT
TOWN COUNSEL'S LETTER**

**BURLINGTON TOWN MEETING
WEDNESDAY
SEPTEMBER 27, 2023
7:00 P.M.**

In accordance with the provisions of Chapter 686 of the Acts of 1970 of the Commonwealth of Massachusetts, you are hereby notified that the Town Meeting Representatives of the Town of Burlington will meet in general assembly at the Burlington High School, Fogelberg Auditorium to act on the following articles of the warrant.

GENERAL ARTICLES

ARTICLE #1

RE: Reports of Town Officers & Committees

To hear and act on the reports of the Town Officers and Committees including but not limited to: Housing Needs Assessment Report; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request
of various Boards and Committees

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #2

RE: Annual Town Election Date

To see if the Town will vote to set the Annual Town Election for April 6, 2024; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
the Town Clerk

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

FINANCIAL ARTICLES

ARTICLE #3

RE: Will of Marshall Simonds

To see if the Town will vote to accept from the Trustees under the will of Marshall Simonds in an amount **\$74,907.15**, for the improvement of Simonds Park, same to be expended under the direction of the Recreation Commissioners; or to act in any other manner in relation thereto.

(Submitted by the Select Board at
Request of the Recreation Commissioners)

At a regular meeting of the Board of Recreation Commissioners, held on August 10, 2023 it was voted unanimously to submit the above article for September Town Meeting.

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

GENERAL BYLAW ARTICLES

ARTICLE #4

RE: Rescind Article XIV, Section 2.14

To see if the Town will vote to rescind Article XIV, Environment, Section 2.14 Control of Toxic and Hazardous Material in its entirety; or to act any other manner thereto.

Submitted by the Select Board at the request of
The Board of Health

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #5

**RE: Amend General Bylaw Article XIV,
Section 1.0, Burlington Wetlands Bylaw**

To see if the Town will vote to amend the General Bylaws Article XIV, Section 1.0, by deleting sections 1.1,1.2 and 1.5 and replacing them with the following (**underline and bold new**):

1.1. Purpose

The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Burlington by controlling activities deemed by the Conservation Commission likely to have a significant effect on resource area interests deemed important to the community (collectively, the “resource area interests protected by this bylaw”). These include but are not limited to the following:

- public or private water supply
- groundwater supply
- flood control
- erosion and sedimentation control
- storm damage prevention including water quality
- prevention and control of pollution
- fisheries
- wildlife habitat
- rare species habitat including rare plant and animal species

- recreational and educational values
- **carbon/greenhouse gas storage and sequestration (i.e. carbon/greenhouse gas mitigation),**
- **prevention and reduction of heat islands**
- **protection of biodiversity**
- **mitigation of impacts from climate change**

This bylaw is intended to utilize the Home Rule authority of Burlington so as to protect the resource areas under the Wetlands Protection Act (M.G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Burlington. **Some of the foregoing interests are climate adaptation and resilience interests.** This Bylaw shall not be applicable to projects for which a Determination of Applicability, Order of Conditions, Order of Resource Area Delineation or other permit under the Massachusetts Wetlands Protection Act has been issued and is valid or if an application for one of the foregoing is pending at the effective date of this Bylaw. The Bylaw provisions in effect prior to the effective date of this Bylaw shall apply to a project for which such approval has been issued or for which such application is pending.

1.2. Jurisdiction

Except as permitted by the Conservation Commission no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas as defined in the Burlington Wetland Bylaw Regulations: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; springs; banks; reservoirs; lakes; ponds; beaches; lands under water bodies; lands subject to flooding by groundwater or surface water; or lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone. **The buffer zone is integral to the protection of wetland resource areas.** The Commission may establish performance standards for work within the buffer zone to protect the aforementioned resource areas, however, the buffer zone itself is not a resource area.

1.5. Notice and Hearings

Any person filing any application permit other than an RDA, shall at the same time give written notice thereof, by certified mail (return receipt requested), **certificate of mailing**

or hand delivered, to all abutters at their mailing addresses; or to act in any other manner thereto.

Submitted by the Select Board at the request of the Conservation Commission.

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #6

RE: Renumber Burlington Housing Partnership Committee – Article V – Section 2.0 Moderator Appointments – Paragraph 2.9

To see if the Town will vote to move the Burlington Housing Partnership Committee from Article V – Section 2.0 Moderator Appointments – Paragraph 2.9 to Article V – Section 1.0 Town Administrator Appointments – Paragraph 1.6. The moved article would appear renumbered as follows:

1.6 Burlington Housing Partnership Committee

The Burlington Housing Partnership Committee (hereinafter referred to as BHPC) shall consider all matters relating to the housing needs in Burlington with particular attention to housing opportunities that are affordable to residents of all income levels and abilities. The Committee shall seek to expand the inventory of decent, safe, and affordable housing and housing related programs.

1.6.1 Committee Purpose

The BHPC will make recommendations to the Select Board on steps the Town may take to support the creation of new housing options to address those needs as described in Section 1.6, and to maintain existing affordable housing in Burlington. The Committee will promote the creation and preservation of housing and housing programs that:

- Enable people with incomes below the area median to access an affordable place to live.

- Create and maintain adequate affordable housing in Burlington to exceed the state’s benchmark for 10 percent of the town’s total housing units to be affordable to those with incomes at or below 80 percent of the area median income.

- Promote a diverse, economically vibrant, and welcoming community with housing choices and opportunities free from housing discrimination.

1.6.2 Committee Composition

Committee Members shall consist of seven (7) voting members total, to include one (1) representative from the Select Board, one representative appointed by the Planning Department, and five (5) resident members appointed by the Town Administrator who have experience or interest in housing, real estate, law, finance, or other relevant areas and who live in a diverse mix of housing types (homeowners and renters).

In the absence of an active committee, members shall be appointed as follows: three (3) members will be appointed for three (3) years, three (3) members will be appointed for two (2) years and one (1) member will be appointed for one (1) year. Thereafter, all appointments shall be three (3) years. The Committee shall elect a chairperson, vice-chairperson and recording clerk every two (2) years; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of the
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #7

RE: Home Rule Petition to Amend Chapter 686 of the Acts of 1970, as Amended – An Act to Amend Section 9 – Town Meeting Vacancy

To see if the Town will vote to authorize the Select Board to file a Home Rule Petition with the Great and General Court amending Chapter 686 of the Acts of 1970, as amended by replacing Section 9 in its entirety as follows:

SECTION 9. (a) The office of a Town Meeting Member shall become vacant upon their death, resignation or removal from office in any manner authorized by law. (b) A vacancy in the town meeting membership shall be filled for the remainder of the unexpired term, if any, at the next regular town election if resignation or removal from office in any manner authorized by law. (b) A vacancy in the town meeting membership shall be filled for the remainder of the unexpired term, if any, at the next regular town election. When a vacancy in the Town Meeting membership shall occur and no Town election is to be held within sixty (60) days, the Moderator shall direct the Town Clerk to post notice of any such vacancy and a request for candidates. Said notice shall be published by the Town Clerk not less than fourteen (14) days prior to the next

scheduled Town Meeting:

- (i) In a newspaper;
- (ii) on the bulletin board outside the Town Clerk’s office; and
- (iii) on the Town’s website

All candidate information received by the Clerk shall be forwarded to the remaining members prior to the vote; said vote to take place at the next scheduled Town Meeting. The vacancy shall be filled by a majority vote of the remaining precinct members in attendance at the next scheduled Town Meeting; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #8

**RE: Amend Burlington General Bylaws
Article II – Representative Town Meeting –
Section 2.1 Town Meeting Member Vacancy**

To see if the Town will vote to amend Article II – Representative Town Meeting – Section 2.1 by replacing Section 2.1 in its entirety as follows: (**underline and bold new**):

Article II Representative Town Meeting

Section 2.1

When a vacancy in the Town Meeting membership shall occur and no Town election is to be held within sixty (60) days, the Moderator shall direct the Town Clerk to post notice of any such vacancy and a request for candidates. Said notice shall be published by the Town Clerk not less than fourteen (14) days prior to the next scheduled Town Meeting:

- (i) In a newspaper;**
- (ii) on the bulletin board outside the Town Clerk’s office; and**
- (iii) on the Town’s website**

All candidate information received by the Clerk shall be forwarded to the remaining members prior to the vote; said vote to take place at the next scheduled Town Meeting. The vacancy shall be filled by a majority vote of the remaining precinct members in attendance at the next scheduled Town Meeting; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #9

**RE: Amend Article I – General Provisions,
Section 3.0**

To see if the Town will vote to amend Article I, General Provisions, Section 3.0 by adding the following definitions:

3.19 Remote Access – the word “remote access” shall mean the ability for an authorized person to access public meetings or any and all sessions of Town Meeting via a computer or network from a geographical distance through a network connection using a software application like Zoom, Team Meet, or WebEx.

3.20 Hybrid Meeting(s) – the word “hybrid meeting(s) shall mean public meetings or any and all sessions of Town Meeting that feature at least one group of in-person/face-to-face attendees connecting virtually with other meeting attendees using remote access.

3.21 Virtual Meeting(s) – the word “virtual meeting(s) shall mean public meetings or any and all sessions of Town Meeting that feature all attendees connected using remote access.

3.22 Newspaper(s) – the word “newspaper(s)” shall include, but not be limited to, printed newspaper(s) as well as electronic media publication(s), as recognized by the Town Clerk and may, depending on the context in which it is used, only mean the printed newspaper(s) depending on the requirement of a specific General Law.

3.23 Notice(s) – the word “notice(s)” shall mean information that is legally required to be disseminated to the public; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #10

**RE: Amend Article II, Representative Town
Meeting, Section 1.2 - Warrants**

To see if the Town will vote to amend Article II, Representative Town Meeting, by amending Section 1.2 – Warrants, Paragraph 1.2.1 with the following:

1.2.1 Warrants for Town Meeting sessions shall be issued by the Select Board to the Town Meeting Members, Moderator and Town Clerk, and a copy shall be posted on the Town Bulletin Board at least fourteen (14) days before the meeting is to convene. The Select Board shall include in the warrant all subjects which are requested of them in writing by any elected Town Meeting Member, the Moderator, the School Committee, or any other person authorized by State

Statute or Town Bylaw. **Any Town Meeting Member that prefers an electronic copy of the warrant and associated backup materials, must notify the Select Board, Moderator and Town Clerk at least thirty (30) days before the meeting is to convene. Included with the notification shall be the Town Meeting Member’s full name, street address, Precinct and email address;** or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #11

RE: Home Rule Petition to Amend Chapter 686 of the Act of 1970, as Amended – An Act to Add a New Section – Exempting the Town of Burlington from In-Person Quorums

To see if the Town will vote to authorize the Select Board to file a Home Rule Petition with the Great and General Court amending Chapter 686 of the Acts of 1970, by adding a new Section 15A, as set forth below:

AN ACT EXEMPTING THE TOWN OF BURLINGTON FROM IN-PERSON QUORUMS.

Provided that, the General Court may reasonably vary the form and substance of this requested legislation which shall be within the scope of the general public objectives of this petition, be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same as follows:

1. The Town of Burlington Town Meeting, Boards, Committees, Commissions, Departments or any duly appointed subcommittee(s) thereof, shall be exempt from the provision of the M.G.L. c. 30A Sections 18-25 as they apply to remote participation and 940 CMR 29.10 which requires that a quorum of the body, including the chair, be present at an in-person meeting location (specifically, from “and provided further, that a quorum of the body, including the chair, are present at the meeting location”).
2. This Act shall take effect upon its passage; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #12

RE: Home Rule Petition to Amend Chapter 686 of the Acts of 1970, as Amended – An Act to Add a New Paragraph, Section 12 (h) – Town Meeting Accessibility

To see if the Town will vote to authorize the Select Board to file a Home Rule Petition with the Great and General Court amending Chapter 686 of the Acts of 1970, as amended by adding a new paragraph, Section 12 (h). This new paragraph would read as follows:

(h) The Town Meeting or any public meeting by any Board, Committee or Department shall be accessible by all who wish to attend, either in person or via an electronic communications platform. This communications platform will allow users to connect via video, audio, phone, and chat, using an internet connection and a supported device. Members of these meetings shall be able to be recognized by the Moderator or Chair, and their vote, where applicable, be recorded via the electronic communications platform; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #13

RE: Amend Article II – Representative Town Meeting – Section 1.0 by Adding Paragraph 1.4 – Town Meeting Accessibility

To see if the Town will vote to amend Article II – Representative Town Meeting – Section 1.0 by adding a new paragraph, 1.4 that would read as follows:

SECTION 1.4 – Town Meeting Accessibility:

Notwithstanding any general or special law, charter provision, ordinance or by-law to the contrary, the Town of Burlington may hold Town Meetings at which participants may attend either in person or remotely (hereinafter sometimes called a “hybrid meeting”), subject to the following:

- 1.4.1 The Town Meeting shall be a hybrid meeting, and the warrant shall contain such provisions as shall be deemed by the Moderator and Town Counsel to be necessary to properly notify participants in such meeting of the requirements set forth in this Section.
- 1.4.2 Except as otherwise set forth in this Section, Town Meeting Members and other participants in a hybrid meeting may elect to attend such meeting either in person,

at the location designated in the warrant for such meeting, or remote access via of a video conferencing platform.

- 1.4.3 All Town Meeting Members attending a hybrid meeting, whether in person or via remote access, shall be counted for purposes of determining the presence of a quorum at the meeting.
- 1.4.4 The video conferencing platform shall afford all participants in a hybrid meeting the ability to identify and hear the Moderator and each Town Meeting Member who attends the meeting, as well as any other persons who participate in the meeting. All remote participants in a hybrid meeting shall have substantially the same access as in-person participants to the content of handouts, presentations and other material distributed or displayed, prior to or during the meeting.
- 1.4.5 All participants in a hybrid meeting, whether attending in person or via remote access, shall have a substantially equal opportunity to request recognition by the Moderator, make a motion or raise a point of order or question of privilege.
- 1.4.6 All Town Meeting Members participating in a hybrid meeting, whether attending in person or via remote access, shall have the opportunity to vote on all matters put to a vote of Town Meeting Members; such votes shall to the extent feasible be taken substantially contemporaneously; and such votes shall in the case of recorded votes be published as soon as practicable subject to the abilities of the respective voting systems used for in-person and remote access votes. All votes at a hybrid meeting shall be taken by such means and in such a manner as shall be determined by the Moderator to accurately and securely record the votes of those entitled to vote at the meeting.
- 1.4.7 All actions taken during a hybrid meeting held pursuant to sub-sections 1.4.1 through 1.4.6 are hereby ratified, validated and confirmed to the same extent as if the hybrid meeting had been conducted entirely in person, and such actions shall be deemed to comply in all respect with all other applicable laws, charter provisions, ordinances and bylaws; or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
General Bylaw Review Committee

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ZONING ARTICLES

ARTICLE #14

RE: Amend the Town of Burlington Zoning Bylaws, Article IV Use Regulations, Section 4.2.0 Principal Use Regulation Schedule by adding a new Section 4.2.5.11, as follows:

4.2.5	AUTOMOBILE SALES AND SERVICE USES	RO	RG	RC	BN	BL	BG	BT	IG	I	IR	OS	A	WR	CC	CBD
4.2.5.11	Automobile Dealership (including redevelopment and/or expansion of existing facilities only) which may include integrated structured parking (notwithstanding any structured parking limitations or restrictions elsewhere in the Zoning By-laws), provided said Automobile Dealership use is in existence and is engaged in the sale of new motor vehicles as of the date of the adoption of this subsection (4.2.5.11). Any redevelopment or expansion may extend onto abutting BG zoned lots, provided however that the building footprint for said Automobile Dealership may not exceed a total of 20,000 square feet in size (inclusive of any accessory Building). Said lots comprising the existing and proposed dealership uses shall be deemed one lot for density regulation and parking purpose (consistent with Section 5.2.0, Note 9.)	NO	NO	NO	NO	NO	SP	NO	NO	NO	NO	NO	NO	YES	NO	NO

or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of
Herb Chambers 93 Cambridge Street, LLC

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #15

**RE: Amend Zoning Bylaw Article IV
Section 4.2.7 Principal Use Regulation
Schedule**

To see if the Town will vote to amend Section 4.2.7 of the Principal Use Regulation Schedule as follows:

4.2.0 PRINCIPAL USE REGULATION SCHEUDLE																
	USE DESIGNATION	DISTRICT											OVERLAY DISTRICTS			
4.2.7	INDUSTRIAL USES	RO	RG	RC	BN	BL	BG	BT	IG	I	IR	OS	A	WR	CC	CBD
4.2.7.11	Solar (See Section 10.9.0)															
4.2.7.1 1 2	Generation or storage of hazardous waste, limited to the volumes classified as a very small quantity generator (VSQG)	NO	NO	--	NO	NO	NO	NO	SP	SP	SP	NO	SP	SP	YES	YES
4.2.7.1 2 3	Generation or storage of hazardous waste, in excess of the volumes classified as a very small quantity generator (VSQG)	NO	NO	--	NO	NO	NO	NO	SP	SP	SP	NO	NO	SP	YES	YES

or to act in any other manner in relation thereto.

Submitted by the Select Board at the request of the Planning Board

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

ARTICLE #16 RE: General Traffic Parking Requirements and Shared Parking

To see if the Town will vote to amend the Burlington Zoning Bylaws, Article II “Definitions” and Article VII “General Regulations” Section 7.2.0 “General Traffic and Parking Requirements” to add the following new language:

Article Section A: Definitions

Section 2.13 “M”

Mixed Use Development

A development containing a mix of residential uses and non-residential uses, including, without limitation: commercial, institutional, industrial or other uses on one lot or a group of contiguous lots owned or controlled by the same entity or unrelated entities that have developed a common development scheme. It also refers to a land use pattern that seeks to increase concentrations of population and employment in well-defined areas with a mix of diverse and compatible land uses all conceived, planned and integrated to create vibrant, workable, livable and attractive neighborhoods.

Section 2.20 “T”

Transportation Demand Management (TDM)

Strategies aimed at guiding, distributing and reducing travel demand with a focus on shifting travel away from single occupancy vehicles toward mass transit, walking, biking, and ridesharing.

Article Section B: Purpose

To see if the Town will vote to amend the Burlington Zoning Bylaws, Article VII “General Regulations” to add the following new language to Section 7.2.0 “General Traffic and Parking Requirements”:

7.2.1 Purpose

- a) To promote traffic safety by assuring the adequate storage of motor vehicles off the public street and for their orderly access and egress to and from the public street;
- b) To prevent the creation of surplus amounts of parking spaces which contribute to additional Single Occupancy Vehicle (SOV) trips, traffic congestion and traffic service level deterioration on roadways;

- c) To advance the efficiency of vehicular traffic on Burlington streets to reduce excessive delay and/or congestion;
- d) To consider and allow for safe and convenient routes for pedestrians and bicyclists;
- e) To permit emergency vehicles to reach homes and businesses with a minimum of delay and to reduce motor vehicle and pedestrian accidents on Town streets;
- f) To prevent, reduce, and mitigate the impacts of development on parking demands, transportation system, neighborhood livability, public safety and the environment through the use of Transportation Demand Management (TDM) measures;
- g) To promote shared parking as a means to reduce the need for an excess pavement in an effort to curtail the heat island effect.

Article Section C: Shared Parking

To see if the Town will vote to amend the Burlington Zoning Bylaws, Article VII “General Regulations” to add the following new language to Section 7.2.0 “General Traffic and Parking Requirements”:

7.2.8 Shared Parking

7.2.8.1 On-Site Shared Parking

To implement shared on-site parking, the applicant shall provide analyses as part of a Site Plan or Special Permit demonstrating that proposed uses are either competing or non-competing.

- a) **Non-competing Uses:** In mixed-use developments, applicants may propose a reduction in parking requirements based on an analysis of peak demands for non-competing uses. Up to [75%] of the requirements for the predominant use may be waived by the Planning Board if the applicant can demonstrate that the peak demands for two (2) or more uses do not overlap. An applicant may use the latest peak demand analyses published by the Institute of Traffic Engineers (ITE) or other source acceptable to the Planning Board.
- b) **Competing Uses:** In mixed-use developments, applicants may propose a reduction in parking requirements where peak demands do overlap. In these cases, the Planning Board may reduce the parking requirements of the predominant use by up to 15%.

7.2.8.2 Off-Site Parking

Separate from, or in conjunction with Shared Parking provisions, an applicant may use off-site parking to satisfy their parking requirements. As part of Site Plan or Special Permit Review, the applicant shall provide the Planning Board with the necessary information to comply with the following standards:

- a) Off-site parking shall be within five hundred (500) feet of the property for which it is being requested.
- b) Off-site parking may only be provided if the off-site lot has an excess number of spaces or if the applicant can demonstrate that the on-site and off-site uses have non-competing peak demands.
- c) The amount of required parking spaces being reduced on-site shall be equal to the amount being provided off-site and can account for up to 100% of the minimum required on-site parking.
- d) Off-site parking spaces provided by a separate private property owner shall be subject to a legally binding agreement securing the necessary spaces and which shall be presented to the Planning Board during the Site Plan Review process or as a condition of approval. The Planning Board may condition their approval on the continued existence of the written and binding shared parking agreement, the failure of which may render the permit null and void and subject to enforcement by the Building Inspector.
- e) On-street parking spaces that intersect or are completely contained within the frontage of the property may be counted toward the minimum parking requirements.
- f) Uses sharing a parking facility shall provide for safe, convenient walking between uses and parking, including safe, well-marked pedestrian crossings, signage, and adequate lighting.

or to act in any other manner in relation thereto.

Submitted by the Select Board at the
request of the Planning Board

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()

THE COMMONWEALTH OF MASSACHUSETTS

To either of the Constables of the Town of Burlington in the County of Middlesex Greeting. You are hereby directed to serve this warrant by posting up attested copies thereof at the billboard at the Town Hall, in said Town, at least fourteen days before the Town Meeting of September 27, 2023 at Burlington High School, Fogelberg Auditorium.

HEREOF FAIL NOT, to make due return of the warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting as aforesaid.

Given under our hands this 8th day of September in the year of our Lord 2023.

Michael S. Runyan, Chairman

Joseph E. Morandi, Vice-Chairman

Nicholas C. Priest, Board Member

James M. Tigges, Board Member

Michael W. Espejo, Board Member

SELECT BOARD OF BURLINGTON, MASSACHUSETTS

A true copy attest: _____ Constable

Dated _____

Middlesex ss

Pursuant to the within warrant, I have notified and warned the inhabitants of the Town of Burlington by posting up an attested copy of the same at the designated location at Burlington Town Hall, and Burlington High School and Town of Burlington website page <http://www.burlington.org/>, at least fourteen days before Town Meeting date of Wednesday, September 27, 2023.

s/s _____

Constable of Burlington

A copy of the warrant was mailed to each Town Meeting Member, the Town Moderator and the Town Clerk on Friday, the 8th day of September, 2023.

Attest: Amy E. Warfield, Town Clerk



Mead, Talerman & Costa, LLC
Attorneys at Law

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Newburyport, MA 01950
Phone 978.463.7700
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www.mtclawyers.com

August 28, 2023

William Beyer, Town Moderator
Selectboard
Town of Burlington
29 Center Street
Burlington MA 01803

RE: Town Meeting Warrant

Dear Mr. Moderator and Members of the Selectboard;

Reference is made to the above captioned matter. In that connection, I have reviewed the Warrant for the September 27, 2023 Town Meeting and have found it legal as to form. I will note the following:

- **Article 11** is a proposal to file a Home Rule Petition with the General Court which would exempt the Town of Burlington including Town Meeting, all boards, commissions committees and department from complying with certain provisions of the Open Meeting law as they pertain to remote participation. It should be noted, that while this is a Home Rule Petition given the breadth of the petition covering all public bodies in the Town, the General Court may find that this is repugnant to the purpose and intent of the Open Meeting law codified in G.L. c. 30A.
- **Article 12** is likewise a proposal to file a Home Rule Petition with the General Court which would require the Town to provide access to all of its public meeting via various forms of electronic facilitation. While the Open Meeting Law allows the Chair to make these decisions, this legislation would mandate this requirement for all boards and commissions and similar public bodies the Town of Burlington.
- **Article 13** proposes a general bylaw which would possibly require, although it is not clear, Town Meetings to be held in a hybrid fashion. There is a bit of a discrepancy in the language as to whether holding a hybrid town meeting is a choice of the moderator or required. The introductory paragraph provides that “the Town of Burlington may hold Town Meetings at which participants may attend either in person or remotely...” (emphasis added). However, section 1.4.1 says that “The Town Meeting shall be a hybrid meeting...” (emphasis added).

Section 1.4.7 is not necessary and is surplus language and not appropriate for a bylaw. This language is often added to a statute to fix a prior action that had not yet received authorization. Here the bylaw is being adopted, and if approved by the Attorney General, any actions taken in accordance with the bylaw would be valid. This section should be removed.

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Section 26 of Chapter 22 of the Acts of 2022 as amended by section 47 of Chapter 2 of the Acts of 2023 requires a Moderator to make a threshold finding that it is not possible to safely assemble the town meeting members in accordance with local orders or directives concerning public assemblies, after which they may request that the Select Board call for a representative town meeting to be held remotely or in a hybrid fashion. This law is still in effect. As a result, it is likely the Attorney General will find that the proposed general bylaw is repugnant to the existing state law which pre-empted the town from acting on the same subject.

The Home Rule Amendment of the Commonwealth's Constitution permits a town, by adoption, amendment, or repeal of local bylaws, to exercise any power or function which the General Court has power to confer upon it, which is not inconsistent with the Constitution or laws enacted by the General Court. Art. 2 Section 6, Amendments to the Constitution, as amended by Art. 89 of the Amendments. Under the Amendment, towns have broad authority to enact local bylaws as long as such action is not inconsistent with the Constitution or state statutes. The Have Center, Inc. v. Town of Bourne, ___ Mass. ___, 191 N.E. 3d 1052 (2022) (SJC-13198 at 6 July 28, 2022).

In determining whether a bylaw is inconsistent with any state statute, the "question is not whether the Legislature intended to grant authority to municipalities to act...but rather whether the Legislature intended to deny a municipality the right to legislate on the subject {in question}. Wendell v. Attorney General, 394 Mass. 518, 524 (1985). The intent can be either express or inferred. St. George Greek Orthodox Cathedral of Western MA, Inc v. Fire Dept. of Springfield, 462 Mass. 120, 125-126. ((2012). Town action is precluded in three areas 1) where the Legislature has made an express indication of its intent in this respect, 2) where the legislative purpose cannot be achieved in the face of a local bylaw on the same subject, and 3) where legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field. Wendell, 394 Mass. at 524. The existence of state statutes on a subject, however, is not necessarily a bar to local action on the same subject if the state purpose can be achieved even with the existence of a local bylaw on the same subject. Id. at 527-528. The question is whether the town bylaw will clearly frustrate a statutory purpose. Id. Massachusetts has the strongest type of home rule and a town act is presumed to be valid. Connors v. City of Boston, 430 Mass. 31, 35 (1999).

Here the Special Acts noted above very clearly have spoken on this same subject matter. If the Town proposed a special act regarding the use of, whether it be mandatory or permissive, hybrid town meeting, then there is a possibility that the legislature would approve same. However, in this instance, the Town is proposing a bylaw, on a matter which the General Court has already spoken and therefore it would seem has preempted the town from acting on the same matter. The Attorney General will examine this proposal closely.

- **Articles 14, 15 and 16** are proposed amendments to the Town's Zoning Bylaws and therefore in accordance with G.L. c. 40A sec. 5 a 2/3 vote is required.

Should you have any questions, please let me know. Otherwise, I will update this letter upon review of the final motions.

Regards,



Lisa L. Mead
Town Counsel