

MEMO

To: Select Board, Town Manager Sheehan

From: Len Simon, Jack Ryan, Carl Offner, Mariklyn Riepe, Frank Riepe

Re: Permitting gun shops in Sudbury

Date: January 18, 2024

I THE SELECT BOARD MUST HAVE PUBLIC INPUT FROM RESIDENTS BEFORE ANY GUN SHOP ARTICLE IS PROPOSED FOR THE WARRANT.

A.

At the January 9, 2024, Select Board meeting (timestamp 1:59:40) Select Board member Charlie Russo, referring to the gun shop issue, said “This is the biggest issue that the Select Board is facing.”

B.

At the December 19, 2023 Select Board meeting, member Jennifer Roberts, stated, in the midst of the gun shop bylaw discussionsaid that: she always welcomes the feedback.’ At the same time she said the gun shop article was not yet ready for discussion at a town forum.

C.

The question of having a gun shop in Sudbury is of profound importance to Sudbury residents because:

- An epidemic of gun violence has long been, and continues to be, a major public safety concern.
- Gun violence involves the safety of our children in our schools and classrooms. [Columbine High School (1999), Sandy Hook (2012) , Marjorie Stoneham Douglas High School (2018),), Robb Elementary School, Uvalde, Texas, (2022) , Perry High School, Iowa, (January 2024) and many more.] In some of these cases the guns were purchased locally.
- Multiple residents have written to or communicated with individual members of the Select Board about gun shops.

- The issue of gun shops and gun violence have been a high profile issue in several other Massachusetts cities and towns, and nationally.
- An article to ban gun shops in Sudbury was on the warrant at last year's Town Meeting.
- Other Massachusetts communities have wrestled with gun shops articles at town meetings, with varying results: some adopted a restriction, others rejected restrictions.
- There is confusion regarding the Second Amendment, which addresses owning and carrying a firearm, and the issue of having gun shops in the community that sell firearms and ammunition. The Massachusetts Attorney General has said the *Bruen* decision does not apply to zoning of gun shops.

The issue of gun violence is on everyone's mind. Add in the matter of firing ranges and the issues become even more confusing.

II INDEFINITELY POSTPONING A TOWN MEETING ARTICLE

A Select Board member has suggested that a gun shop article could be 'indefinitely postponed' if questions or concerns arose before or at town meeting. This suggestion ignores the basic fact, and good governance principle: Any article brought before town meeting by the Select Board ought to be fully vetted and understood before it is placed on the warrant. The time for explanation and obtaining resident support is before the article goes on the warrant, not afterwards.

Mr. Russo's comment on January 9 that a gun shop bylaw is "not ready for prime time" at Town Meeting and could be IP'd (indefinitely postponed) at any time before it was voted on, is an acknowledgement that the article is not a run-of-the-mill funding article which could be amended on the floor at Town Meeting. Either the proposed bylaw has undergone the scrutiny, and open and transparent discussion it deserves (by a subcommittee, task force, town forum, or other procedure where residents have been given the opportunity to have their say) and is actually ready for Town Meeting, or it is not. In this case, it is not.

III SUGGESTION: APPOINT A TASK FORCE TO CONSIDER THE BEST PATH FORWARD REGARDING GUN SHOPS

Residents have legitimate questions about why any article on gun shops needs to be voted on at 2024 Annual Town Meeting. These questions and concerns deserve clear answers to allow residents to make an informed decision about how they will vote before it is placed on the warrant.

The Select Board's stonewalling of community input by not forming a subcommittee or holding a town forum raises questions of why the Select Board determined to move ahead without resident input. What is the rush? Why is it operating in a way that is not open and transparent?

The Select Board should pause its efforts to get a gun shop bylaw on the warrant for the May Town Meeting.

A proper path forward would be for the Select Board to convene a Task Force which would include members of the public. The Task Force could then do an open and transparent assessment and provide answers to questions and concerns, in which the community could have confidence. Right now, residents are being put in the confusing and dismaying position of trying to decide if three members of the select board were correct, or if the two members who strongly oppose the proposed bylaw are correct. A margin of three to two is not persuasive and does not instill confidence, especially when there is no clear answer, and strongly held opinions differ.

IV LEGAL EXPOSURE AND ASSOCIATED FINACIAL EXPENSE WOULD NOT BE ELIMINATED BY THE PROPOSED BYLAW

Select Board member Lisa Kouchakian asked Attorney Smith on January 9 whether (my paraphrasing) 'What Charlie is proposing could also trigger a lawsuit?' Attorney Smith's response, which he qualified as a 'blanket statement' (my paraphrasing) was that 'The town can be sued at any time for any reason.' While this truism does not provide reassurance to a gun shop opponent or proponent, it demonstrates that the legal landscape is far from settled, in both state and federal court.

As Adam Burney pointed out, a gun shop is just not commercially feasible in Sudbury. That is because there are several gun shops in the abutting communities of Framingham, Marlboro, and Hudson, as well as multiple gun shops in Natick. The risk of a gun shop opening imminently in Sudbury is very low, but fear is being

used to coerce residents into taking a position they do not want. There is no drumbeat for a gun shop, and virtually every resident who has expressed an opinion, including all members of the Select Board, have said they don't want a gun shop in Sudbury. The all too frequent reports of school shooting, with guns purchased locally, have put us all on edge. Adopting a bylaw that would allow a gun seller in Sudbury is not likely to quell those fears.

V. LEGAL CONSIDERATIONS

One fact we all know is this: There is no Massachusetts law and no trial court or appellate court decision that could provide guidance on which an attorney could rely to form an opinion on the legality of a ban or restriction. Moreover, there is no guideline or benchmark to gauge whether a ban or restrictive bylaw would be challenged in court.

In Sudbury, no gun shop has tried to open. However, a bylaw with restrictions so severe that almost the entire town would be off limits risks a legal challenge for being a de facto ban. If a ban could be challenged, who is to say the proposed bylaw could not also be challenged.

The effect of the bylaw being proposed is to promote the ability of one or more gun shops to open in Sudbury.

Prudence would counsel waiting until the legal landscape becomes more settled, allowing the town could move ahead with confidence in its decision. Or, at least until residents' questions and concerns have been answered to the extent possible.

There are other avenues to be considered, such as an advisory opinion from the Attorney General or a declaratory decision from the courts.