



**Town of Arlington
Legal Department**

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MEMORANDUM

TO: Board of Selectmen

FROM: Douglas W. Heim

DATE: March 23, 2017

RE: **Votes and Comments for Articles: 11, 12, 13, 14, 17, 26 and 59**

I write to provide the Board the following as draft Votes and Comments for your consideration at Monday's Board of Selectmen meeting regarding the previously heard, above-referenced warrant articles. I note that where existing bylaw provisions are amended by a vote, underlined text signifies new or additional wording, while strikethrough text signifies words and clauses to be eliminated.

**ARTICLE 11 BYLAW AMENDMENT/RESIDENTIAL CONSTRUCTION, OPEN
EXCAVATION, AND DEMOLITION ACTIVITY REGULATIONS:
NEIGHBOR NOTIFICATIONS AND MEETINGS**

VOTED: That Title VI, Article 7, be and is hereby amended as follows to add new categories of construction required for notice and additional substantive notice requirements:

ARTICLE 7 NOTICE OF DEMOLITION, OPEN FOUNDATION EXCAVATION, NEW CONSTRUCTION, OR LARGE ADDITIONS

- A.** The owner of any building or parcel who intends to have such building demolished, engage in open foundation excavation, engage in new residential construction, or build a large addition must, ~~at the least~~ within at least seven (7) calendar days prior to the commencement of any site work (including demolition or open foundation excavation) or within seven (7) calendar days of the filing of an application for a Building Permit, whichever date is earlier ~~prior thereto~~, give notice by first-class mail to all abutters and current occupants (to the extent practicable) within 200 feet of such building or construction site before such demolition, construction or open foundation excavation can commence.
- B.** The notice required herein shall, at a minimum, contain a site plan for any applicable residential demolition, open foundation excavation, alteration or construction project, as well as information detailing the hours of operation for the project, anticipated completion date, work schedule, and health, safety, and abutting property protections, and as appropriate, noise abatement measures applied by the developer or contractor of the project.
- C.** “Demolition” shall be defined as the act of pulling down, destroying, removing, or razing 50 % or more of a building, or commencing the work of total or substantial destruction with the intent of completing the same.
- “Open foundation excavation” shall be defined as an open and exposed excavation for the purposes of constructing or expanding a residential building foundation. Satisfaction of open foundation excavation requirements of this Article shall not be construed to satisfy any additional requirements set forth in Title V Article 3 of these bylaws.
- “Large additions” shall be defined as an alteration or addition in any residential district which increases the size of a building by 750 square feet or more, or by 50% or more of the existing building's gross floor area.
- D.** ~~When applying for~~ Prior to issuance of a demolition or building permit, or commencing an open foundation excavation the applicant shall demonstrate to the satisfaction of the Inspector of Buildings that he or she has given the notice required herein, by providing a list of those notified, a copy of the notice, and an affidavit stating when it was mailed.
- E.** Violators of this bylaw will be subject to a fine of \$200 per day upon notification of the Building Inspector.

(4-0) Mr. Greeley was absent.

COMMENT: This bylaw amendment is the first of a suite of recommendations from the Residential Study Group established at the 2016 Annual Town Meeting to examine and address some broadly shared concerns about the impacts of residential construction on neighbors and neighborhoods throughout Arlington. Specifically, the proposed motion expands: a) the categories of residential construction activities that trigger the requirement of owners, contractors, and/or developers to send a notice to abutters (neighboring owners and/or occupants) within 200 feet of the project site; and b) the required content of such notices to include site plans, project timelines and working hours, as well as other valuable information specific to a given project.

The Residential Study Group's believes that these expanded notices will help improve awareness of residential construction before it commences, foster shared expectations between contractors/builders and residents, and encourage communication and dialogue to address concerns and enable residents to plan accordingly. For example, it is particularly important for residents who work from home, or with young children or children with special needs to be apprised of potentially disruptive construction activities so they may plan accordingly; and similarly advise contractors of important circumstances to consider.

Finally, the Town Meeting action recommendations by the Group will be accompanied by both increased staffing in Inspectional Services and the development of a residential construction "good neighbor agreement" or set of rules that codifies all the relevant Town and State bylaws and regulations (including those before Town Meeting if approved) in one place so that contractors/builders and residents to further add clarity and mutual understanding to the rules and expectations of the Town. Thus, the Board, grateful for the time, energy, and teamwork of the Residential Study Group, highly recommends Town Meeting's approval of this amendment.

**ARTICLE 12 BYLAW AMENDMENT/RESIDENTIAL CONSTRUCTION, OPEN
EXCAVATION, AND DEMOLITION ACTIVITY REGULATIONS:
BUILDING SITE MAINTENANCE**

AND

**ARTICLE 13 BYLAW AMENDMENT/RESIDENTIAL CONSTRUCTION, OPEN
EXCAVATION, AND DEMOLITION ACTIVITY REGULATIONS:
ABUTTER AND PUBLIC PROPERTY PROTECTIONS**

VOTED: That Title VI be and hereby is amended to add a new article, “Article 9: Residential Construction Site Control and Maintenance,” to read as follows:

ARTICLE 9: RESIDENTIAL CONSTRUCTION SITE CONTROL AND MAINTENANCE

A. Purpose and Applicability

The purpose of this article is to establish construction site maintenance requirements for residential demolition, open foundation excavation, new construction, and large addition projects in the interests of minimizing adverse impacts on the neighboring community and promoting public health and safety.

B. Definitions

1. “Demolition shall be defined as the act of pulling down, destroying, removing, or razing a removing, or razing 50 % or more of a building, or commencing the work of total or substantial destruction with the intent of completing the same.
2. “Open foundation excavation” shall be defined as an open and exposed excavation for the purpose of constructing or expanding a residential building foundation. Satisfaction of open foundation excavation requirements of this Article shall not be construed to satisfy any additional requirements set forth in Title V Article 3 of these bylaws.
3. “Large additions” shall be defined as an alteration or addition in any residential district which increases the size of a building by 750 square feet or more, or by 50% or more of the existing building's gross floor area.

C. Site Maintenance Requirements

Throughout the course of any demolition, open foundation excavation, new construction, or large addition project as defined herein, the primary contractor, builder, or developer shall be required to keep the residential construction in neat and orderly condition. Specifically, the construction site shall be required to be maintained as follows:

1. All waste shall be managed and secured daily so as not to impact site abutters or the surrounding area and at a minimum, dumpsters shall be cleaned or removed every thirty (30) calendar days;
2. Portable restrooms shall be secured, maintained, free from the public way and placed at least ten (10) feet from adjacent residential properties unless otherwise permitted by the Town through the Building Inspector or his or her designee;

3. **Construction equipment and materials shall be stored in safe, secure and non-obstructive locations on the site or as otherwise permitted by the Town through the Building Inspector or his or her designee;**
4. **Construction equipment and materials no longer to be used on the site, shall be removed from the site within 14 calendar days, unless otherwise permitted by the Town through the Building Inspector or his or her designee;**
5. **A drive entrance pad, or its equivalent, shall be placed, utilized, and maintained on site to provide an area where construction vehicles entering and exiting the building site can remove mud and sediment from tires prior to driving on public or private ways, unless determined technically infeasible by the Building Inspector or his or her designee;**
6. **In interests of public safety and protecting abutting property owners, lateral supports shall not be removed from any footing or foundation without first protecting such footings or foundations against settlement or lateral translation.**

D. Violations and Fines

Violations of the foregoing requirements shall be determined by the Inspectional Services Department. A fine of \$50 per category of violation per day for the first seven (7) calendar days of such violations or violations shall be imposed upon notification of the Building Inspector. A fine of \$100 per category of violation or violations per day shall be imposed thereafter until conditions are corrected and the construction site is in compliance with each of the foregoing requirements.

(4-0) Mr. Greeley was absent.

COMMENT: The Board of Selectmen also recommends favorable, consolidated action on Articles 12 and 13, through the creation of a new Article 9 under Title VI to mandate rules of residential project site maintenance and care, which will mitigate adverse impacts on direct abutters and the Town generally. The proposal sets forth a series of straightforward rules covering a wide range of issues the Town and the Residential Study Group has received feedback on as problematic during the course of construction.

**ARTICLE 14 BYLAW AMENDMENT/RESIDENTIAL CONSTRUCTION, OPEN
EXCAVATION, AND DEMOLITION ACTIVITY REGULATIONS:
NOISE ABATEMENT**

VOTED: That Title V, Article 12, Section 3.A. be and is hereby amended as follows:
Section 3.Daytime-Only Activities.

The following acts are specifically prohibited.

**A. Prohibited Times. Operating, or permitting the operation of, any of the
following devices or vehicles:**

- 1. before ~~8:00~~9:00 A.M. or after 5:00 p.m. on Saturday, Sunday or legal holiday**
- 2. before ~~7:00~~ 8:00 A.M. or after 6:00 P.M. on all other days, ~~or:~~**
- ~~3. after 8:00 P.M. on any day, in any zone in the Town:~~**
 - a. Heavy equipment (as defined in Section 1), and**
 - b. All electric motors or internal combustion engines, or other construction
devices, tools or equipment, used in construction, drilling, demolition,
maintenance, or earth moving, including but not limited to bulldozers,
backhoes, concrete mixers, dump trucks, pneumatic tools, rollers,
scrapers, air compressors, generators, jackhammers, cranes, pavement
breakers, pile drivers, rock drills, and chainsaws.**

(4-0) Mr. Greeley was absent.

COMMENT: As the final piece of the Residential Study Group's recommended Town Bylaw actions, this amendment proposes a simple adjustment to the existing noise abatement regulations on the permissible hours of certain construction activities. While disruptive noise is impossible to entirely extract from residential construction, and the bylaw as presently constructed or amended only applies to heavy equipment operation and other specific activities as listed in Section 2(b), this proposal would better reflect and protect the needs of residents during early morning and evening hours. Accordingly, with gratitude for the excellent and extensive work of the Study Group, the Board of Selectmen strongly urges favorable action on this matter.

ARTICLE 17

BYLAW AMENDMENT/REGULATION OF PLASTIC BAGS

VOTED: That Title VIII (Public Health and Safety) be and hereby is amended by adding a new “Article 9: Plastic Bag Reduction” to read as follows:

ARTICLE 9: PLASTIC BAG REDUCTION

Section 1. Purpose and Intent

The reduction in the use of disposable single-use plastic shopping bags by retail establishments in the Town of Arlington (“Town”) is a public purpose that has positive impacts on the environment, including, but not limited to: protecting the marine environment, reducing solid waste and unnecessary strains on recycling resources, minimizing litter, reducing the Town’s carbon footprint, and protecting local water ways.

The purpose of this bylaw is to reduce the number of single-use plastic bags provided by all retail establishments in the Town by banning, after a reasonable phase-in period, the distribution of single-use plastic bags provided at checkout.

Section 2. Definitions

- A. ***Checkout Bag:*** A carry-out bag provided by a retail establishment to a customer at the point of sale. Checkout bags shall not include:
- (1) Bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or checkout area of the retail establishment;
 - (2) Laundry or dry cleaner bags;
 - (3) Newspaper bags; or
 - (4) Bags used to contain or wrap frozen goods, meat or fish, whether prepackaged or not, to prevent leakage or contain moisture.
- B. ***Department:*** The Arlington Department of Health and Human Services
- C. ***Director:*** The Director of Health and Human services
- D. ***Disposable, Single-Use Plastic Shopping Bag:*** Any checkout bag made predominately of plastic derived from either petroleum, natural gas, or a biologically based source, such as corn or other plant sources, which is provided to

a customer at the point of sale. The term, “disposable single-use plastic shopping bag” includes:

- (1) Degradable plastic bags; and
- (2) Biodegradable plastic bags that are not commercially compostable as well as commercially compostable plastic bags.

The term “disposable single-use plastic shopping bag” shall not include:

- (1) Reusable bags;
- (2) Produce bags; or
- (3) Product bags.

As used in this definition, the terms “produce bag” or “product bag” mean any bag without handles used exclusively to carry produce, meats or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

E. ***Reusable Bag:*** A sewn bag with stitched handles that is: specifically designed and manufactured for multiple reuse; manufactured from polyester, polypropylene, cotton or other durable material excluding polyethylene or polyvinyl chloride; and which also meets the following requirements:

- (1) Can carry at least 25 pounds over a distance of 300 feet;
- (2) Is machine washable or is made of a material that can be cleaned or disinfected at least 125 times; and
- (3) Is at least 4 millimeters thick.

F. ***Recyclable Paper Bag:*** A paper bag that is 100 percent recyclable and contains at least 40 percent post-consumer recycled content, and displays the words “Recyclable” and “made from [at least] 40% post-consumer recyclable content” in a visible manner on the outside of the bag.

G. ***Retail Establishment:*** Any commercial enterprise, whether for or not-for-profit, including, but not limited to the following: restaurants, pharmacies, convenience and grocery stores, liquor stores, seasonal and temporary businesses, jewelry stores, household goods stores and any other business that offers the sale and display of merchandise.

Section 3. Restrictions on Use of Disposable Plastic Shopping Bags

- A. No retail establishment, as defined in section 2, shall provide a disposable plastic shopping bag to any customer for the purpose of enabling the customer to carry away goods from the point of sale.**
 - 1. This section shall not preclude any retail establishment from making reusable bags available for sale to customers or utilizing recyclable paper bags at the point of sale or other checkout point.**
 - 2. The Director may promulgate additional rules and regulations to implement this section consistent with the foregoing.**

Section 4. Penalties and Enforcement

- A. Each retail establishment, as defined in section 2, located in the Town shall comply with this by-law.**
 - 1. If it is determined that a violation has occurred, the Director, or his or her designee in the Department, shall first issue a “warning notice” to the retail establishment for a first time violation.**
 - 2. If after 14 days from receipt of the warning notice, the retail establishment continues to violate this by-law or commits a second violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.**
 - 3. The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:**
 - (i) \$50.00 for the first offense;**
 - (ii) \$100 for the second offense;**
 - (iii) \$150 for the third and all subsequent offenses.**
 - 4. No more than one penalty shall be imposed upon a retail establishment within a seven calendar day period.**
 - 5. Retail establishments shall have 15 calendar days after the date that a notice of violation is issued to pay the penalty or request a hearing in writing to the Director.**
- B. The Director may promulgate additional guidelines and regulations necessary for the effective enforcement of this bylaw, consistent with the foregoing.**

Section 5. Effective Date

All of the requirements set forth in this by-law shall take effect on or before March 1, 2018, for retail establishments with a floor area equal to or exceeding 10,000 square feet, and on or before July 1, 2018, for retail establishments with a floor area of less than 10,000 square feet.

Section 5. Waivers

In the event that compliance with the effective date of this by-law is not feasible for a retail establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or owner's representative. The Director may provide one additional six-month waiver upon showing of continued infeasibility or hardship, as set forth above.

Section 7. Severability

The provisions of this bylaw are severable; and if any of the provisions of this bylaw shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

(4-0) Mr. Greeley was absent.

COMMENT: The Board of Selectmen recommends favorable action on this detailed, well researched proposal by Town residents to reduce the number of plastic bags used for checkouts at grocery stores, pharmacies, retailers, and restaurants in Arlington. As presented to this Board, not only are plastic bags often an eyesore throughout our community and a waste of finite natural resources, but they also jam recycling machinery, do not biodegrade in landfills, release toxic emissions when incinerated, and present dangers to marine wildlife. They also have extremely low recycling rates where recycling rather than prohibition is pursued.

The proposed bylaw is endorsed by the Arlington Recycling Committee, the Arlington Board of Health, the Friends of Spy Pond Park, and a number of other civic organizations, and builds on the successes of other, similar measures in neighboring communities ranging from Concord to Somerville. Moreover, thorough research of such communities' experiences strongly suggests that there will be no added costs to consumers. Finally, several Arlington retailers and restaurants which have voluntarily ceased use of plastic bags for checkout/carry-out purposes note that their costs have generally declined or remained level as paper alternatives and reusable bags have proved more cost-effective for both them and their customers.

**ARTICLE 26 ACCEPTANCE OF LEGISLATION/ESTABLISHMENT OF A
PARKING BENEFITS DISTRICT**

VOTED: That the Town does hereby adopt provisions of Chapter 218 of the Acts of 2016 (“An Act Modernizing Municipal Finance and Government”), Sections 26, 27 and 30 regarding the authorization to establish Parking Benefits Districts in the Town of Arlington, including any subsequent amendments or modifications thereto, such adoption shall be effective upon acceptance.

(4-0) Mr. Greeley was absent.

COMMENT: The Board of Selectmen enthusiastically endorses positive action on this article, which accepts a provision of the Massachusetts Municipal Modernization Act to enable the Town to establish “Parking Benefits Districts.” Through the establishment of these districts, the Town may segregate its parking revenues for expenditure in designated geographic areas (for example, the areas with parking meters) for a wide range of purposes including parking meter maintenance, increased street sweeping or snow removal, beautification, or larger street and infrastructure improvements such as lighting improvements or roadway improvements. These districts have been tremendously successful throughout the country, and represent an innovative means of focused investment, particularly in commercial districts in Town.

It should be noted that it is the Town Manager’s intention that any operating improvements in a parking benefit district still be brought before the Finance Committee, while any capital improvements be brought before the Capital Planning Committee; and further that both would subsequently be presented to Town Meeting in a manner similar to the CDBG disbursements.

ARTICLE 59 RESOLUTION/SANCTUARY TOWN

VOTED: It is hereby resolved that:

WHEREAS, the Town of Arlington desires to provide safety, opportunity, access, and equality for all immigrants and people of all ethnicities and religions; and

WHEREAS, the federal government’s Immigration and Customs Enforcement (“ICE”) Priority Enforcement Program, uses local law enforcement data to identify suspected “criminal aliens” in local custody; and

WHEREAS, ICE issues civil immigration detainer requests which allow for prolonged detention during which ICE investigates the immigration status of suspected “criminal aliens” in local custody; and

WHEREAS, fear of detainer requests and other immigration enforcement measures inhibits many community members from seeking protection from public safety officials and from providing aid to public safety officials during investigations of crimes; and

WHEREAS, the Arlington Police Department (“APD”) has demonstrated its commitment to both the inclusionary values of the Town of Arlington and the efficacy of engendering trust throughout all facets of the Arlington community in the service of all residents without any sacrifice in its ability to protect residents from violent criminals; and

WHEREAS, Town Meeting wishes to voice its support for APD’s continuation of its present practices, and make it known that all persons are safe from discriminatory law enforcement in Arlington.

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting joins and supports APD’s sound policing and human rights policies of refusing to investigate, arrest, or detain persons based purely on their immigration status without any other suspicion or cause.

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting joins and supports APD’s sound policing goal to keep all individuals, regardless of immigration status, who are violent or otherwise a threat to the public good off the streets.

BE IT FURTHER RESOLVED, that Town Meeting supports and encourages APD in fostering trust in a diverse community by specifically declining to arrest, detain, or extend the length of custody of an individual solely on the basis of a civil immigration detainer request, unsupported by a criminal warrant signed by a judge and/or probable cause.

BE IT FURTHER RESOLVED, that Town Meeting supports and encourages APD in specifically declining to respond to any ICE notification request seeking information about an individual’s incarceration status, length of detention, home address, work address, personal information, hearing information, or pending release.

BE IT FURTHER RESOLVED, that Town Meeting supports and encourages APD in specifically declining to join in any operation led by a federal agency for the sole purpose of identifying and/or detaining persons not accused of any crime for deportation purposes, which would erode parts of our community’s trust and could hamper effective law enforcement.

BE IT FURTHER RESOLVED, that Town Meeting supports and encourages APD, and other Town first responders and officials, in declining to inquire about the citizenship or immigration status of the victim of a crime, a person who is reporting a crime or a medical emergency, a person who requires aid, or witnesses, family members and/or bystanders unless required by valid federal or state law.

BE IT FURTHER RESOLVED, that Town Meeting supports and encourages each Town department and official to refuse to gather information regarding the citizenship or immigration status, or religious or ethnic identity of individuals, unless such information is required by law to be gathered, or is necessary to provide a public benefit to the individual.

BE IT FURTHER RESOLVED, that Town Meeting supports and encourages each Town department and official to refuse to gather information regarding the religious or ethnic identity of any person for the purposes of ICE detentions and deportation actions or the creation or maintenance of a registry of individuals based upon their religious affiliation, ethnicity, or national origin, unless required by valid federal or state law, or directly relevant to business between that individual and the agency or department.

BE IT FURTHER RESOLVED, nothing in this resolution shall prohibit or restrain any Town official or department from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with 8 U.S.C. section 1373.

(5-0)

COMMENT: The Board of Selectmen values and respects the thorough and civil debate that has already taken place to date on this article. There are relatively few instances where national politics on an issue as broad as immigration impacts a local government's functions and a community's values so distinctly as the issue of how our local police force should operate and expend its resources relative to the enforcement federal immigration laws. The resolution recommended by this Board and the Arlington Human Rights Commission endorses and encourages the Arlington Police Department's existing, operationally sound and humane practices with respect to gathering and disseminating information on the immigration status of the residents, workers, and visitors in Arlington.

These practices, considered consistent with a immigration "Trust Act" in other communities, will be bolstered by this resolution because one of the critical virtues of this resolution is making it clear to undocumented immigrants – as witnesses, victims of crimes, concerned residents or visitors, or others in need to assistance – that the Town of Arlington and its police force and first responders are here to protect and serve this community, not engage in deportation activities. Through advertising such a message, we believe Arlington is a safer and more welcoming community because no one will avoid providing information to APD or seeking appropriate assistance from the Town out of fear of immigration repercussions. Moreover, it maintains the tone of this community, as perhaps best reflected every year at Town Meeting, that we invite engagement and we invite dialogue with this Town's government.

Many real and important concerns have been articulated in opposition to this resolution and we do not dismiss them lightly, including the unlikely, but potential loss of federal funds (which under legal norms should be limited to homeland security-related activities). However, it must be stressed that this is not a matter of complying with one set of laws to ignore others we

find merely inconvenient. Rather, it is an occasion where conflicting laws and foundational legal principles, including the rights and powers of state and local governments versus the federal government are brought into focus. The Selectmen believe that we have the right and duty to support our police force and other Town personnel in a just practice that benefits our community; that we should not have our arms twisted to our own detriment and the detriment of others. Therefore, we unanimously recommend this resolution to Town Meeting.