



**Town of Arlington  
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager  
John Leone, Town Moderator  
Resident and Committee Petitioners

From: Douglas W. Heim, Town Counsel

Date: October 15, 2020

Re: STM Warrant Articles 5, 6, 8, 10 and 25

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I write to provide the Select Board a summary of the above-referenced 2020 November Special Town Meeting warrant articles to assist in the Board's consideration of these articles at its upcoming hearings on October 19, 2020. Three of these articles represent matters which appeared in sum and substance on the 2020 Annual Town Meeting Warrant, but were not taken up due to the limitations upon the 2020 Town Meeting caused by the COVID-19 State of Emergency. Of those articles previously discussed to varying degrees by the Board, two (Articles 5 and 6) are presented with changes in form and substance to their prior iterations.

## **ARTICLE 5**

### **HOME RULE LEGISLATION/BYLAW AMENDMENT/ FOSSIL FUEL INFRASTRUCTURE**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to allow the Town of Arlington to regulate fossil fuel infrastructure in new construction and/or major renovation and rehabilitation projects in Arlington for the purposes of reducing greenhouse gas emissions and encouraging renewable energy production and use, notwithstanding the State Building Code, the Gas Code, M.G.L. c. 164 or any other law of the Commonwealth regulating natural gas as a residential utility; and further to vote to establish a new section of Title VI of the Town Bylaws prohibiting or otherwise regulating the installation of fossil fuel infrastructure in new construction projects and/or major renovation and rehabilitation projects in Arlington, and to set forth the terms and scope of such prohibition, including exemptions or waivers to same; or take any action related thereto.

(Inserted by the Select Board and at the request of the Clean Energy Future Committee)

This article returns to the warrant from the 2020 Annual Town Meeting. As the Board will recall from prior warrant articles hearings on this subject, the purposes of this article are address the threat of climate change by joining with other communities in the Commonwealth in pursuing a prohibition on installation of infrastructure for fossil fuel-based systems in new construction and major renovation projects. The Town of Brookline led efforts in this area, passing a bylaw to such an effect at its November 2019 Special Town Meeting. Unfortunately, the Attorney General’s Office determined that Brookline could not pre-empt state law in regulating fossil fuel infrastructure through a bylaw alone. Accordingly, Brookline has now sought special legislation through the Home Rule process to empower it to further regulate fossil fuels in the manner contemplated by its proposed, but rejected bylaw.

The Clean Energy Future Committee now recommends that Arlington follow suit in seeking special legislation to allow Arlington to regulate new fossil fuel infrastructure following the same general parameters as those considered in advance of the 2020 Annual Town Meeting. Thus, a proposed Arlington Town would seek to prohibit the installation of new fossil fuel pipe infrastructure (natural gas, propane, fuel oil) in new construction and what the petitioner termed “Significant Rehabilitations” in both residential and commercial buildings. Exemptions would likely include:

- All cooking appliances;
- Backup generators;
- Outdoor cooking and heating;
- Large central hot water heaters;
- Labs and certain medical offices;
- Repairs to unsafe conditions

Further, Arlington could afford waivers for qualifying projects where non-fossil fuel infrastructure is “financially infeasible or impractical,” as well as an appeal mechanism.

If the Select Board is inclined towards favorable action, the special legislation could be as simple as follows:

*“AN ACT AUTHORIZING THE TOWN OF ARLINGTON TO ADOPT AND ENFORCE LOCAL  
REGULATIONS RESTRICTING NEW FOSSIL FUEL INFRASTRUCTURE IN CERTAIN  
CONSTRUCTION”*

*Be it enacted as follows:*

*SECTION 1. Notwithstanding chapter 164 of the General Laws, section 13 of chapter 142 of the General Laws, the State Building Code, or any other general or special law or regulation to the contrary, the town of Arlington is hereby authorized to adopt and further amend general or zoning by-laws that restrict new construction or major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act.*

*SECTION 2. Notwithstanding section 7 of chapter 40A of the General Laws, or any other general or special law or regulation to the contrary, the Building Inspector of the town of Arlington, or any designee thereof, shall be authorized to enforce restrictions on new construction and major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act, including through the withholding of building permits.*

*SECTION 3. As used in this act, the term “fossil-fuel-free” shall refer to construction or renovation that results in an entire building or an entire condominium unit that does not utilize coal, oil, natural gas or other fossil fuels in support of its operation.*

*SECTION 4. This act shall take effect upon its passage.*

## **ARTICLE 6**

### **VOTE/ESTABLISHMENT OF POLICE CIVILIAN ADVISORY BOARD STUDY COMMITTEE**

To see if the Town will vote to form\_a Committee to study the creation of an Arlington police civilian review board independent from the police department with the authority and resources to receive and investigate complaints, review police services and make recommendations for their improvement. The study committee shall be comprised of seven (7) voting members and three (3) non-voting members. The study committee will make its decisions based on the vote of a simple majority of the committee's voting members who shall be appointed to the committee by: the Envision Arlington Standing Committee (1); the Arlington Human Rights Commission (1); the LGBTQIA & Rainbow Commission (1); the Disability Commission (1); the Board of Youth Services (1); the Equal Opportunity Advisory Committee (1); and the Town Moderator (1). Non-voting members of the committee shall include one (1) representative from the Arlington Police Department, the Town's Diversity, Equity and Inclusion Coordinator, and the Town Counsel. The membership of the study committee's voting members will include at least one Town Meeting member and shall reflect racial/ethnic and other forms of diversity of Town residents. The study committee will complete its work and recommendations and shall report to the 2021 Annual town Meeting. Or take any action related thereto.

(Inserted by the Select Board at the request of Jordan Weinstein and ten registered voters)

This resident petition article returns to the Warrant from the 2020 Annual Town Meeting with modifications in form and content to propose to creation a committee of Town Meeting to study the creation of a "police civilian advisory board." I trust that the proponents of this article will present the general rationale for the creation of the committee, the adjustments made to its prior iteration, and further perspective on this study committee's proposed scope and goals, composition, and the timing of its reports, which appears to be to the 2021 Annual Town Meeting. It should be noted at the outset that police review bodies vary widely in their responsibilities, roles, and authorities, as well in the facts and circumstances of their creation. Should the Board be inclined towards favorable action, a Study Committee would need to consider a wide range of issues for the tailoring of a police review board for Arlington including the central goals and mission of such a board, the catalyst for review actions, the scope of it authorities, and the legal ramifications for each relative to both potential complainants and police personnel, professional standards, and both union contracts and the civil service law.

## **ARTICLE 8**

### **ACCEPTANCE OF LEGISLATION/BYLAWAMENDMENT/ MUNICIPAL AFFORDABLE HOUSING TRUST FUND**

To see if the Town will vote to accept Massachusetts General Laws c. 44 § 55C, to authorize the creation of a Municipal Affordable Housing Trust Fund to support the development of affordable housing in Arlington, establish a new bylaw for the administration of same; or take any action related thereto.

(Inserted by the Select Board)

The Housing Plan Implementation Committee will report on this article, including with any recommended vote before the Board at its next meeting.

## **ARTICLE 10**

### **ACCEPTANCE OF LEGISLATION/GOLD STAR FAMILY TAX EXEMPTION**

To see if the Town will vote to accept Massachusetts General Law Chapter 59 sec. 5(22H) to provide a local to surviving parents or guardians of members of the United States armed services who died on active duty tax exemption; or take any action related thereto

(Inserted at the request of the Town Manager)

This new article for the Board's consideration proposes to accept c. 59 sec. 5(22H), which provides as follows:

*Twenty-second H: Real estate to the full amount of the taxable valuation of real property of the surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans who: (i) during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs or a branch of the armed forces that was a proximate cause of their death; or (ii) are missing in action with a presumptive finding of death as a result of active duty service as members of the armed forces of the United States; provided, however, that the real estate shall be occupied by the surviving parents or guardians as the surviving parents' or guardians' domicile; and provided further, that the surviving parents or guardians shall have been domiciled in the commonwealth for the 5 consecutive years immediately before the date of filing for an exemption pursuant to this clause or the soldier or sailor, member of the National Guard or veteran was domiciled in the commonwealth for not less than 6 months before entering service.*

*Surviving parents or guardians eligible for an exemption pursuant to this clause shall be eligible regardless of when the soldier, sailor, member of the National Guard or veteran died or became missing in action with a presumptive finding of death; provided, however, that the exemption*

*shall only apply to tax years beginning on or after January 1, 2019. Such exemption shall be available until such time as the surviving parents or guardians are deceased. No real estate shall be so exempt which has been conveyed to the surviving parents or guardians to evade taxation. This clause shall take effect upon its acceptance by any city or town.*

In brief, acceptance of c. 59 sec 5(22H), provides an full property tax exemption to the parents or guardians of those who have died in active service in the United States Armed Services in recognition of the deceased and their family's sacrifices for their country, and to further help the bereaved meet their local property tax burdens. To my understanding, there are presently four (4) Gold Star families in Arlington, only one of which is presently eligible tax relief under this provision.

## **ARTICLE 25**

## **RESOLUTION/BLACK LIVES MATTER BANNER AT TOWN HALL**

To see if the Town will vote to or take any action related thereto: Be it hereby resolved, that it is the will of Town Meeting that the Town of Arlington continue to display a Black Lives Matter banner on Town Hall until such time as Town Meeting recommends its removal, or takes any action related thereto.

(Inserted at the request of Katell Gullec and 100 registered voters)

This new article for the Board's consideration proposes to have Town Meeting resolve to support the continued display of a "Black Lives Matter Banner" on Town Hall until such time as Town Meeting recommends its removal. As the Board knows, the display of banners and flags on our outside Town Hall is a matter within the Select Board's jurisdiction, and Town Meeting may not direct the Select Board or Town personnel on such a score. Town Meeting may however resolve to express its collective will or opinion on a subject outside of its powers and authorities.