



**Town of Arlington
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager
John Leone, Town Moderator

From: Douglas W. Heim, Town Counsel

Date: October 15, 2020

Re: Draft Votes and Comments re: Nov. 2020 STM Articles 3, 4, 7, 9, 11, 12, 13, 14 and 15

I write to provide the Board Draft Votes and Comments regarding the above-referenced November 16, 2020 Special Town Meeting Warrant Articles, based upon hearings conducted on the same articles in the 2020 Annual Town Meeting cycle. For the public's understanding, permit me to note that the articles discussed herein were procedurally disposed in the 2020 Annual Meeting of due to the constraints of the delayed, in-person, and truncated Town Meeting due to the COVID-19 emergency, with the promise to bring such matters back before Town Meeting at the next special or regular town meeting. The Board may incorporate the record from its previous hearings on these same subjects and adopt the votes herein.¹

¹ It should be noted that Select Board member Diggins was not yet on the Board at such prior hearings, but may vote in support or opposition of the Votes and Comments contained herein, abstain, or request further hearing on any of these articles.

ARTICLE 3

BYLAW AMENDMENT/REGULATION OF OUTDOOR LIGHTING – UPLIGHTING

To see if the Town will vote to amend Title V Article 14 Section 3D of the Town Bylaws to include structures used for religious purposes, and structures used for commercial purposes, among the exemptions to the prohibition of uplighting; or take any action related thereto.

(Inserted the Select Board at the request of Paul Schlichtman and ten registered voters)

VOTED: That Title V, Article 14, Section 3D of the Town Bylaws be and hereby is amended as follows:

3(D). Up-lighting, the direct light illumination distributed above a 90 degree horizontal plane through the lowest direct light emitting part of the luminaire, is prohibited, except for signage governed by and permitted under the Arlington Zoning Bylaw, illumination of the United States Flag, the Flag of the Commonwealth of Massachusetts, or other flags on Town and/or school property, Town, School, public building façades, buildings used for religious purposes, buildings used for commercial purposes, or a public monument. For any up-lighting, the luminaire shall be equipped with shields so that the lamp is not visible from a street, or a lot that is in Residential or Conservation use.

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting.* During the 2019 Annual Town Meeting, revisions were made to the Town’s “Outdoor Lighting” Bylaw, including revised provisions for the regulation of so-called “uplighting.” These revisions may have had the unintended effect of regulating houses of worship and commercial buildings in a way not contemplated by Town Meeting. The instant motion proposed by the Outdoor Lighting (or “Dark Skies”) Bylaw’s chief proponent Mr. Paul Schlichtman, affords Town Meeting the opportunity to correct any unintended regulations by adding buildings used for religious or commercial purposes to the list of properties exempt from uplighting restrictions. The Select Board endorses positive action on this motion for the purposes of such a discussion at Town Meeting.

ARTICLE 4

BYLAW AMENDMENT/MINUTEMAN BIKEWAY HOURS

To see if the Town will vote to amend Title III, Article 1, Section 10 of the Town Bylaws (Minuteman Bikeway Hours) to extend the operating hours of the Minuteman Bikeway; or take any action related thereto.

(Inserted by the Select Board at the request of Adam MacNeill and ten registered voters)

VOTED: That that Title III, Article 1, Section 10 of the Town Bylaws (“Minuteman Bikeway Hours”) be and hereby is amended as follows:

Section 10. Minuteman Bikeway Hours

The Minuteman Bikeway shall be open to the use of the public between the hours of 5:00 A.M. and such evening hour as set and posted by the Town Manager no earlier than 9:00 P.M. Anyone found on said premises between the posted evening hours ~~of 9:00 P.M. and 5:00 A.M.~~ shall be considered trespassers and subject to a fine of up to \$20.

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting. The Select Board strongly supports this effort to increase Minuteman Bikeway hours beyond 9:00 p.m. in recognition of the Bikeway’s increased use in later evening hours. Rather than affix a specific time in the Bylaws, the Board urges Town Meeting to vest discretion in the Town Manager to set and post evening hours (with a curfew no earlier than 9:00 p.m.) as appropriate for conditions. For example, if summer month conditions are appropriate, the Bikeway could be open for longer periods than in winter months. It bears noting that several Bikeway communities, including Lexington and Bedford have no hour restrictions whatsoever. This proposal would maintain control of Bikeway hours, but afford appropriate flexibility as seasonal or infrastructure conditions allow.*

ARTICLE 7

**VOTE/BYLAW AMENDMENT/ENVISION
ARLINGTON UPDATED LANGUAGE**

To see if the Town will vote to amend Title I, Article 15 to change the name of “Vision 2020” to comport with its current name “Envision Arlington;” to revise the Bylaw’s articulation of “Goals” as a “Statement of Community Values” or similar term; and to modernize the “Goals” as set forth in the vote of the 1993 Town Meeting (Article 19) with more inclusive language; or take any action related thereto.

(Inserted at the request of the Envision Arlington Standing Committee)

VOTED: That the 1993 vote of Town Meeting (Article 19) as subsequently amended is hereby amended as follows:

Article 19 (1993). Town Adoption of ~~Vision 2020 Goals~~ Envision Arlington Statements of Community Values

To see if the Town will vote to accept, endorse and adopt the following nine ~~vision~~ statements as statements of our community values ~~goals for the Town;~~ or take any action related thereto.

The Goals Statements are:

Article 1. Community ~~and Citizen Service~~

We value Arlington's geographic neighborhoods, common interest groups, and the sense of community in our Town. We value ~~an~~ active and compassionate ~~citizenry~~ volunteers and programs delivering services in our community. We will be known for the vitality of our neighborhoods and as a community of people helping others.

Article 2. Diversity, Equity and Inclusion

We value the diversity of our population. Our Town's mix of ethnic, religious and cultural backgrounds, as well as economic and personal circumstances, enriches us. We will be known for the warm welcome and respect we extend to all.

Article 3. Education

We value learning for all Arlington residents ~~citizens~~. We are responsible as a community for educating our youth and providing all ages with opportunities for educational growth. We will be known for demonstrated excellence in public education and our commitment to life-long learning.

Article 4. The Environment and Sustainability

We value the physical beauty and natural habitats of our Town – parks, ponds and wetlands, dramatic vistas and tree-lined streets – as they contribute to the well-being of our community. Recognizing the fragility of our natural resources, we must ensure that Arlington's residential areas, commercial centers, and infrastructures are developed in harmony with environmental concerns. We will be known for our commitment to the preservation of Arlington's beauty, limited open space and resources, as well as our place in the regional and global community.

Article 5. Culture & Recreation

We value the many opportunities to meet, play, and grow in Arlington while treasuring and preserving our unique historical resources. Our social, cultural, artistic, historic, athletic, recreational, and other community groups strengthen Town life. We will be known for the breadth and richness of our resources and activities available to Arlington residents ~~citizens~~.

Article 6. Communication

We value public dialogue. Communication and information-sharing build trust. Our goals are true openness and accountability. Arlington will be known as a community that thoughtfully searches beyond divisive issues for the opportunities that bind us together.

Article 7. Fiscal Resources

We value Arlington's efficient delivery of public services providing for the common good. The benefits from these services and the responsibility of taxation will be equitably

distributed among us. We will be known for our sound fiscal planning and for the thoughtful, open process by which realistic choices are made in our Town.

Article 8. Governance

We value our representative Town Meeting system and the community spirit it fosters. Participatory governance is both responsive and innovative. We will be known as a community where government provides effective and efficient services, insures open two-way communication, promotes the lively exchange of ideas, and encourages active ~~citizen~~ participation of all residents.

Article 9. Business

We value Arlington's diverse and accessible mix of merchants and service providers. We will be known for our vibrant, attractive commercial centers supporting the primarily residential and historic character of the Town.

AND FURTHER VOTED: That the Town hereby accepts, endorses and adopts the nine "vision statements" set forth in Article 19 of the 1993 as "statements of our community values," in place of "goals for the Town."

AND FURTHER VOTED: That Title I, Article 15 ("Consideration of Vision 2020 Goals") of the Town Bylaws is hereby amended by replacing the term "Vision 2020" with "Envision Arlington" and replacing the term "Goals" with "Statements of Community Values" throughout so as to read as follows:

ARTICLE 15
CONSIDERATION OF ~~VISION 2020~~ ENVISION ARLINGTON ~~GOALS~~ STATEMENTS
OF COMMUNITY VALUES
(ART. 19, ATM – 05/05/93)

All Town officials including, but not limited to the Select Board, Town Manager, School Committee, and Superintendent of Schools shall consider the Goals of ~~Vision 2020~~ Envision Arlington Statements of Community Values as delineated in Article 19 of the 1993 Annual Town Meeting, or as same is subsequently amended by any future town meeting, in establishing their respective policies and in performing their various public functions.

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting.*
Envision Arlington's Standing Committee requests the foregoing updates to:

- Redefine the "Town Goals" as "value statements" in the interests of the operational clarity of their purpose and greater inclusivity;

- Updating the Town Bylaws to reflect such changes in Envision Arlington’s charter vote; and
- Updating the Town Bylaws to reflect 2018 Town Meeting’s vote to change the name of “Vision 2020” to “Envision Arlington,” and the foregoing re-branding of “Goals” as “Statements of Community Values.”

The Select Board respectfully requests Town Meeting join with the Board in supporting each and all of these measures.

ARTICLE 9

VOTE/ELECTIONMODERNIZATION COMMITTEE

To see if the Town will vote to extend the life of the Election Modernization Committee, change its structure, objectives, or membership; or take any action related thereto.

(Inserted by the Select Board and at the request of the Election Modernization Committee)

VOTED: That Town Meeting hereby amends its vote on Article 36 of the 2019 Town Meeting, wherein the “Election Modernization Study Committee” was formed, by renaming the committee to the “Election Modernization Committee” and by extending the date of the Committee’s dissolution to the close of the 2022 Annual Town Meeting.

Further, the committee membership shall be changed to consist of the following fifteen (15) members, all of whom shall be voting members:

- The Town Clerk or their designee
- One member of the Board of Registrars or their designee, as determined by such Board;
- One member of the Select Board or their designee, as determined by such Board;
- The Town Moderator or their designee;
- One member of the School Committee or their designee, as determined by the Committee;
- One member of the Disability Commission or their designee as determined by the Commission;
- One representative of the Republican Town Committee;
- One representative of the Democratic Town Committee;
- Five residents to be appointed by the Town Moderator;
- One member of the Arlington League of Women Voters or their designee, as determined by that organization;
- One resident under the age of 25 to be appointed by the Select Board.”

A majority of the members of the Election Modernization Committee shall constitute a quorum.

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: *This articles returns to the Warrant from the 2020 Annual Town Meeting.* The Select Board urges Town Meeting’s positive action on this straightforward vote to extend the life of the Election Modernization Committee to further study and recommend additional measures to improve elections in Arlington as appropriate. The reforms presented under this motion include offering all Committee members voting privileges, adding flexibility to appointing authorities, and providing a seat on the Committee for a member of the League of Women Voters and a Town resident under the age of 25.

ARTICLE 11

HOME RULE LEGISLATION/JUSTIN BROWN

To see if the Town will vote to request and authorize the Select Board to file Home Rule Legislation so as to enable Justin Brown, a resident of the Town, to be eligible for appointment as a firefighter in the Town of Arlington notwithstanding and the fact that he has attained the age of 32; or take any action related thereto.

(Inserted by the Select Board at the request of Justin Brown and ten registered voters)

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT TO PERMIT TOWN RESIDENT, JUSTIN BROWN, TO TAKE THE CIVIL SERVICE TEST FOR THE POSITION OF FIREFIGHTER IN THE TOWN OF ARLINGTON.

Section 1 Notwithstanding the provisions of any special or general law to the contrary including without limitation Chapter 31 of the General laws, the Civil Service law, Justin Brown, a resident of the Town of Arlington is authorized to take the civil Service examination for appointment to the position of Firefighter notwithstanding the fact that he has attained the age of 32. The authority under this act will expire on December 31, 2022.

Section 2 THIS ACT WILL TAKE EFFECT UPON ITS PASSAGE.”

(Mr. Brown is 38 years old.)

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting. The Select Board unanimously supports Town resident Justin Brown’s request to for special legislation to be permitted to sit for the fire fighter civil service exam in pursuit of a position as a firefighter in Arlington. In brief, Civil Service Law (as applied in Arlington), does not ordinarily permit a candidate aged 32 or older to be appointed to the position of Firefighter. While there may be circumstances in which the Town would not be inclined to permit a potential candidate to take the exam, the Board has historically supported affording the opportunity for each applicant on his or her own merits. The exemption the Board urges Town Meeting to approve, offers Mr. Brown only the opportunity to apply and be considered for appointment to the position of Firefighter. Mr. Brown would still be required to pass all other Civil Service requisites including a physical fitness examination and is not guaranteed a position. Therefore, the Board respectfully requests Town Meeting’s vote in the affirmative.*

ARTICLE 12

HOME RULE LEGISLATION/CONSOLIDATION OF TOWN MEETING MEMBER ELECTIONS

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to reform the nomination and election process for Town Meeting seats to permit the consolidation of elections of Town Meeting Members when there are vacant seats into a single election per precinct, such that the highest vote-getters win the longest available terms, to promulgate regulations to effectuate the same; or take any action related thereto.

(Inserted by the Select Board and at the request of the Election Modernization Committee)

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT AMENDING THE TOWN MANAGER ACT OF ARLINGTON RELATIVE TO THE ELECTION OF TOWN MEETING MEMBERS”

Section 1. Chapter 503 of the Acts of 1952 (The Town Manager Act of Arlington) as subsequently amended, is hereby amended by inserting after Section 8 the following new Section 8A.

Section 8A. Election of Town Meeting

The election of the members of Town Meeting shall continue as presently provided subject to the following exception.

In the event of a vacancy or vacancies in the office of town meeting member, the Town Clerk shall determine the number of full terms and the number of unexpired terms to be filled at the annual election. The ballot shall indicate the total number of town meeting members to be elected, and the candidates shall be listed together on the ballot. The candidates receiving the highest number of votes shall be elected to the 3-year terms to be filled at the election; the candidates receiving the next highest number of votes shall be elected to the 2-year terms to be filled at the election; and the candidates receiving the next highest number of votes shall be elected to the 1-year terms to be filled at the election. In case of a tie vote affecting

the division of terms, the members elected from the precinct, including those receiving the same number of votes to gain election, shall by a precinct ballot administered by the Town Clerk, determine the division.

Section 2. This Act shall take effect upon its passage.”

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: *This articles returns to the Warrant from the 2020 Annual Town Meeting.* The above-requested special legislation proposes to improve the election of Town Meeting members by amending the Town Manager Act in two ways. First, it aims to consolidate all seats within a given precinct, including vacancies into the same competition for votes. Second it rewards candidates who obtain the most votes regardless of which types of terms were open, a full term or the remainders of vacated seat terms. Thus, the candidates for Town Meeting who obtain the most votes in any given election would be seated for three year seats, and the successful candidate who gains the least number of votes, the shortest term available (one or two year remainders). Similar provisions exist in other town meeting communities including Lexington, and the Select Board endorses these adjustments in favor of awarding those candidates receiving the most votes, the longest terms and providing greater incentives to run for vacated Town Meeting seats.

ARTICLE 13

HOME RULE LEGISLATION/RANKED CHOICE VOTING

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to elect Town offices by Ranked Choice Voting; or take any action related thereto.

(Inserted by the Select Board and at the request of the Election Modernization Committee)

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT AMENDING THE TOWN MANAGER ACT OF ARLINGTON RELATIVE TO RANKED CHOICE VOTING”

Section 1. Chapter 503 of the Acts of 1952 (The Town Manager Act of Arlington) as subsequently amended, is hereby amended by inserting a new Section 8B “Ranked Choice Voting” as follows:

Section 8B. Ranked Choice Voting

The offices of Select Board, School Committee, Town Clerk, Moderator, Housing Authority, and Assessor shall be elected by ranked choice voting at the annual election.

“Ranked choice voting” shall mean a method of casting and tabulating ballots in which voters rank candidates for office in order of preference. Ranked choice voting shall apply to a single-seat office only when the number of candidates exceeds two and to a multi-seat office when the number of candidates exceeds the number of seats to be elected. Ranked choice voting elections shall be tabulated in rounds as follows.

(a) For the purposes of this section, the following terms have the following meanings:

- 1. "Batch elimination" means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected.**
- 2. "Concluded ballot" means a ballot that does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking.**
- 3. "Continuing candidate" means a candidate who has not been defeated or elected.**
- 4. “Election threshold” means the number of votes above which a candidate is elected in a multi-seat election. It is calculated by dividing the total number of votes counting for continuing candidates in the first round by the sum of one and the number of seats to be elected.**
- 5. "Highest-ranked continuing candidate" means the continuing candidate with the highest ranking on a voter's ballot.**
- 6. "Last-place candidate" means (i) the candidate with the lowest vote total in a round of the ranked-choice voting tabulation; or (ii) a candidate that is defeated in batch elimination.**
- 7. "Overvote" means a circumstance in which a voter ranks more than one candidate at the same ranking.**
- 8. "Ranking" means the number assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number two is the next-highest ranking and so on.**
- 9. "Skipped ranking" means a circumstance in which a voter does not use a ranking and ranks a candidate with a subsequent ranking.**
- 10. “Surplus fraction” is a number equal to the difference between an elected candidate’s vote total and the election threshold, divided by the candidate’s vote total.**
- 11. “Transfer value” means the proportion of a vote that a ballot will count to its highest-ranked continuing candidate. Each ballot begins with a transfer value of one. If a ballot counts to the election of a candidate under subsection (c)(1), it receives a lower transfer value.**

(b) In any single-seat election, each round begins by counting the number of votes for each continuing candidate. Each ballot counts as one vote for its highest-ranked continuing candidate. Concluded ballots are not counted for any continuing candidate. Each round then ends with one of the following two outcomes:

- 1. If there are more than two continuing candidates, the last-place candidate is defeated, or the last-place candidates are defeated in batch elimination, and a new round begins.**
- 2. Otherwise, the candidate with the fewest votes is defeated, the candidate with the most votes is elected, and tabulation is complete.**

(c) In any multi-seat election, each round begins by counting the number of votes for each continuing candidate. Each ballot counts, at its current transfer value, for its highest-

ranked continuing candidate. Concluded ballots are not counted for any continuing candidate. In the first round only, the election threshold is then calculated. Each round then ends with one of the following three outcomes:

1. If at least one candidate has more votes than the election threshold, then all such candidates are elected. Each ballot counting for an elected candidate is assigned a new transfer value by multiplying the ballot's current transfer value by the surplus fraction for the candidate. Each elected candidate is deemed to have a number of votes equal to the election threshold in all future rounds, and a new round begins.
2. If no candidate has more votes than the election threshold and the sum of the number of elected candidates and continuing candidates is more than the sum of one and the number of seats to be elected, the last-place candidate is defeated, or the last-place candidates are defeated in batch elimination, and a new round begins.
3. Otherwise, the continuing candidate with fewest votes is defeated, all other continuing candidates are elected, and tabulation is complete.

(d) A candidate is defeated in "batch elimination" if the number of elected and continuing candidates with more votes than that candidate is greater than the number of seats to be elected, and if one of the following applies: (i) The candidate's current vote total plus all votes that could possibly be transferred to the candidate in future rounds is not enough to equal or surpass the candidate with the next-higher current vote total; or (ii) the candidate has fewer votes than a candidate described in (i).

(e) If two or more last-place candidates are tied and batch elimination does not apply, the candidate with the fewest votes in the prior round is defeated. If two or more such tied candidates were tied in the prior round, the second tie shall be decided by referring similarly to the standing of candidates, in terms of votes, in the second-prior round. This principle shall be applied successively as many times as necessary, a tie shown in any prior round being decided by referring to the standing of the candidates in the round immediately preceding the tie.

(f) The Town Clerk shall have the authority to make any changes to the ranked choice voting ballot and tabulation process necessary to ensure the integrity and smooth functioning of the election, provided that ranked choice voting shall still be used and the smallest number of changes are made to achieve such purpose.

Section 2. This Act shall take effect upon its passage."

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting. The Select Board requests Town Meeting's support for this effort to join a number of other Massachusetts jurisdictions in employing "Ranked Choice Voting" ("RCV") for Town elections regardless of the outcome of a similar question certified for the 2020 Massachusetts Statewide Election on November 3, 2020, which would apply a similar electoral system to Massachusetts' elected state officials and races for Congress.*

In summary, RCV is an electoral method by which voters rank candidates by preference rather than voting for a single candidate in each individual seat (or even multiple candidates where more than one seat is available). In a standard race for a single seat with multiple candidates, if any one candidate achieves a majority of so-called “first-preference” votes, they are the winner and the election is over. If however there is no candidate winning a majority, rather than award the seat to a person who achieved under 50% of first-preference votes, a second tally is performed of the same ballots. Under this second tally, the candidate or candidates who received the fewest first-place votes are eliminated and the ballots that ranked them first are re-tabulated, elevating the second-preference of such voters to their first. These new tallies are conducted until any candidate has won a majority of the rank-adjusted votes. The Board believes that this electoral method rewards candidates preferred by more voters overall.

ARTICLE 14

HOME RULE LEGISLATION/SENIOR WATER DISCOUNT

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation or other Special Legislation which would permit the Town to discount fees charged to qualifying, means-tested Arlington Seniors for water and sewer usage; or take any action related thereto.

(Inserted by the Select Board)

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT AUTHORIZING SENIOR WATER & SEWER DISCOUNTS IN THE TOWN OF ARLINGTON.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the Select Board of the Town of Arlington may discount fees charged to income eligible residents aged 65 and over for the use of the town's water and sewer system.

SECTION 2. This act shall take effect upon its passage.

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting. The Select Board urges Town Meeting’s positive action on this effort to extend the availability of water discounts to a broader set of qualifying Arlington seniors. At present, the Town is only afforded*

discretion to offer water and sewer discounts to seniors who meet the qualifications for 17D and 41C property tax exemption criteria. Additional discounts of the water and sewer fees could be extended to a wider set of seniors who, for example, participate in the Arlington's Tax Deferral program and/or Senior Tax Work-off Exemption programs with successful action on this Home Rule petition. As Town Meeting may recall, under those programs, to be eligible, residents must be 65 years old, a resident of Massachusetts for 10 years, and homeowner for 5 years, and income eligible. The Select Board stresses that it would still retain the discretion over whether or not it would offer discounts and the rate of discounts in any given year of water rates.

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ARTICLE 15

HOME RULE LEGISLATION/RETIRED POLICE OFFICER DETAILS

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation, as set forth below, to allow retired police officers to work police details; or take any action related thereto.

AN ACT RELATIVE TO THE APPOINTMENT OF RETIRED POLICE OFFICERS AS SPECIAL POLICE OFFICERS IN THE TOWN OF ARLINGTON

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The Town Manager of the Town of Arlington may appoint, at the recommendation of the Chief of Police and as the Chief of Police deems necessary, retired police officers as special police officers for the purpose of performing police details and any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work, when the special police officer is on detail assignment and an emergency response by the special police officer is required due to the inability of a regular police officer to timely respond to the emergency. Such retired police officers must have previously served as regular full-time police officers for the Town of Arlington who voluntarily retired based upon superannuation under the provisions of chapter 32 of the General Laws.

No retired police officer shall be eligible for appointment under this act if such officer has reached the mandatory age for retirement of police officers specified in chapter 32 of the General Laws and regulations promulgated thereunder and the employment of any officer appointed under this act shall terminate upon attaining such age. No officer who has been retired from the Town of Arlington Police Department for more than five years shall be eligible for appointment under this act unless the officer has maintained employment since the date of retirement as an active police officer in the Commonwealth. Prior to being appointed under this act every officer who is to be appointed must pass a medical examination by a physician chosen by the Town to determine that such officer is capable of performing the essential duties of a special police officer under this act.

The cost of such examination shall be borne by the special police officer. Such officer shall provide certification to the Town that the officer is covered by personal health insurance.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws; sections 85H and 85H ½ of chapter 32 of the General Laws; sections 99A, 100, or 111F of chapter 41 of the General Laws; or chapter 150E of the General Laws. Special police officers appointed under this act shall be subject to chapter 151A of the General Laws.

SECTION 3. Special police officers appointed under this act shall, when performing their duties set forth in this act, have the same power to make arrests and to perform other police functions as do regular police officers of the Town of Arlington.

SECTION 4. Special police officers shall be appointed for a term of one year, subject to renewal in the Town Manager's sole discretion. During the term of appointment, the officer shall serve at the pleasure of the Town Manager, subject to removal by the Town Manager at any time with or without cause. Any such removal shall be preceded by a fourteen-day written notice unless considerations of public safety and welfare, determined in the Town Manager's sole discretion, require immediate removal. In such instances, the Town Manager shall provide the officer with a written statement of reasons for the immediate removal.

SECTION 5. Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the Police Department and the Chief of Police of the Town of Arlington, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms qualifications and licensing, and requirements regarding uniforms and equipment. Compliance with all requirements will be at no cost to the Town of Arlington. Special police officers appointed under this act shall not be subject to section 96B of chapter 41 of the General Laws.

SECTION 6. Special police officers appointed under this act shall be sworn before the Town Clerk of the Town of Arlington who shall keep a record of all such appointments.

SECTION 7. Appointment as a special police officer under this act shall not entitle any officer appointed as such to assignment to any specific detail or type of detail, and all such assignments shall be made in the sole discretion of the Chief of Police. Special police officers appointed under this act shall be paid the hourly detail rate applicable to regular full-time officers, including any changes to such rate, but shall not be entitled to any other Town benefits.

SECTION 8. Retired police officers appointed as special police officers under this act shall be subject to the limitations on hours worked and on earnings by retired municipal employees under paragraph (b) of section 91 of chapter 32 of the General Laws. Any such officer shall, on or before January thirty-first of each calendar year, file a sworn statement with the Arlington Contributory Retirement Board on a prescribed form identifying the compensated number of hours worked for, and all earnings therefrom, for the Commonwealth and any of its subdivisions for which the police officer worked during the preceding calendar year.

SECTION 9. This act shall take effect upon its passage.

(Inserted by the Select Board)

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

**“AN ACT RELATIVE TO THE APPOINTMENT OF RETIRED POLICE OFFICERS AS
SPECIAL POLICE OFFICERS IN THE TOWN OF ARLINGTON”**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The Town Manager of the Town of Arlington may appoint, at the recommendation of the Chief of Police and as the Chief of Police deems necessary, retired police officers *who separated from employment with the Town in good standing* as special police officers for the purpose of performing police details and any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work, when the special police officer is on detail assignment and an emergency response by the special police officer is required due to the inability of a regular police officer to timely respond to the emergency. Such retired police officers must have previously served as regular full-time police officers for the Town of Arlington who voluntarily retired based upon superannuation under the provisions of chapter 32 of the General Laws.

No retired police officer shall be eligible for appointment under this act if such officer has reached the mandatory age for retirement of police officers specified in chapter 32 of the General Laws and regulations promulgated thereunder and the employment of any officer appointed under this act shall terminate upon attaining such age. No officer who has been retired from the Town of Arlington Police Department for more than five years shall be eligible for appointment under this act unless the officer has maintained employment since the date of retirement as an active police officer in the Commonwealth. Prior to being appointed under this act every officer who is to be appointed must pass a medical examination by a physician chosen by the Town to determine that such officer is capable of performing the essential duties of a special police officer under this act. The cost of such examination shall be borne by the special police officer. Such officer shall provide certification to the Town that the officer is covered by personal health insurance.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws; sections 85H and 85H ½ of chapter 32 of the General Laws; sections 99A, 100, or 111F of chapter 41 of the General Laws; or chapter 150E of the General Laws. Special police officers appointed under this act shall be subject to chapter 151A of the General Laws.

SECTION 3. Special police officers appointed under this act shall, when performing their duties set forth in this act, have the same power to make arrests and to perform other police functions as do regular police officers of the Town of Arlington.

SECTION 4. Special police officers shall be appointed for a term of one year, subject to renewal in the Town Manager's sole discretion. During the term of appointment, the officer shall serve at the pleasure of the Town Manager, subject to removal by the Town Manager at any time with or without cause. Any such removal shall be preceded by a fourteen-day written notice unless considerations of public safety and welfare, determined in the Town Manager's sole discretion, require immediate removal. In such instances, the Town Manager shall provide the officer with a written statement of reasons for the immediate removal.

SECTION 5. Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the Police Department and the Chief of Police of the Town of Arlington, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms qualifications and licensing, and requirements regarding uniforms and equipment. Compliance with all requirements will be at no cost to the Town of Arlington. Special police officers appointed under this act shall not be subject to section 96B of chapter 41 of the General Laws.

SECTION 6. Special police officers appointed under this act shall be sworn before the Town Clerk of the Town of Arlington who shall keep a record of all such appointments.

SECTION 7. Appointment as a special police officer under this act shall not entitle any officer appointed as such to assignment to any specific detail or type of detail, and all such assignments shall be made in the sole discretion of the Chief of Police. Special police officers appointed under this act shall be paid the hourly detail rate applicable to regular full-time officers, including any changes to such rate, but shall not be entitled to any other Town benefits.

SECTION 8. Retired police officers appointed as special police officers under this act shall be subject to the limitations on hours worked and on earnings by retired municipal employees under paragraph (b) of section 91 of chapter 32 of the General Laws. Any such officer shall, on or before January thirty-first of each calendar year, file a sworn statement with the Arlington Contributory Retirement Board on a prescribed form identifying the compensated number of hours worked for, and all earnings therefrom, for the Commonwealth and any of its subdivisions for which the police officer worked during the preceding calendar year.

SECTION 9. This act shall take effect upon its passage.

(4 – 0) Mr. Diggins was not yet on the Board/[Insert new quantum of vote]

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting. The Select Board recommends positive action on this article in fulfillment of an agreement between the Town and its collectively bargained police unions to retain qualifying retired Arlington police officers to serve in limited scope as special officers on police details as needed and on the recommendation of the Police Chief at the discretion of the Town Manager. In doing so, Arlington would join a host of Massachusetts communities which have bolstered their ability to improve*

public safety at no additional cost by hiring retired police officers as Special Police Officers to perform police details and traffic work.

Eligible officers include only those officers who were in good standing and voluntarily retired at the time of their separation from the Town and are also able pass certain fitness tests paid for at their expense. In short, the good standing requirement signifies that an officer who involuntarily separated from employment, or had outstanding administrative discipline or disciplinary charges levied against them at the time of would not be eligible. Moreover, because appointment is contingent upon the recommendation of the Chief of Police and entirely discretionary for the Manager, it may be helpful for Town Meeting to understand that no retired officer is entitled to appointment and that the Manager may decline appointment for any non-arbitrary and non-discriminatory reasons. Similarly, it may also be valuable to the Meeting's consideration to highlight that appointed special police officers are not entitled to specific assignments, and do not retain employment rights under civil service laws or as afforded by collectively bargained agreements. As such, may be removed with or without cause. Finally, appointed officers could not work past the statutory age of 65, and must comply with all retirement restrictions on earnings and hours worked.