



**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: November 2, 2020

Re: STM Warrant Article 8 Supplement

I write to provide the Select Board a supplementary memo regarding Article 8 of the November 16, 2020 Special Town Meeting.

**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)

While I expect the Director of Planning and Community Development will provide the Board a memo regarding the purpose and rationale for establishing an Arlington Affordable Housing Trust, I write to supplement such information with an outline of how an AHTF is

adopted and the subsequent process for developing the Trust's plan and operating goals, as well as to provide a draft bylaw for the Board's consideration incorporating language recommended by the Finance Committee.

In brief, the Warrant Article before you proposes to adopt c. 44 sec. 55C and create a new bylaw to establish the governing body of the AHTF, enumerate its authorities and responsibilities, and set forth some further criteria for the proposed Board of Trustees. The first step is of course Town Meeting's acceptance of c. 44 sec. 55C. Thereafter, the bylaw proposed to Town Meeting must be approved by both the Meeting and later, the Attorney General's Office. If successful, the AHTF's Board of Trustees must be appointed and the "Declaration of Trust should be further developed and recorded by the Trustees.

The Declaration of Trust's primary purpose is to provide a record notice of the Trust's creation and the organization of the Board of Trustees for the purposes of exercising the Trusts' powers to hold and convey title to real estate, mortgages, etc. However, it also invites the Board of Trustees to develop a set of rules and regulations for the Trust's operation that are not well-suited for a bylaw's summary, and would benefit from a dialogue among the Board of Trustees.

Finally, of the 70 or more Massachusetts cities and towns with an affordable housing trust, under c. 44 sec 55C, the majority (including Arlington's frequent comparator communities like Andover) also adopt an "Action Plan" for the Trust for a period of up to five (5) years for the after finalizing the Declaration. The Action Plan can incorporate appropriate sections of other town planning documents such as the Master Plan and the Community Preservation Plan, and further provides an early opportunity for fresh and focused community engagement that incorporates perspectives from residents and other stakeholders on affordable housing. The overall goal of an Action Plan is to tailor the Trusts work and existing resources to the priorities and needs of Arlington.

If the Board is inclined to support the adoption of an Affordable Housing Trust, a vote to also establish a bylaw to outline the authorities of the Trust and outline its governance is recommended as follows:

VOTED, that the Town Bylaws, Title II: “Committees and Commissions” be and hereby is amended to add a new article as follows:

Article 14. AFFORDABLE HOUSING TRUST FUND & BOARD OF TRUSTEES

Section 1. Name of the Trust

The Trust shall be called the “Arlington Affordable Housing Trust Fund.”

Section 2. Purpose

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Arlington as defined by the Arlington Zoning Bylaw for the benefit of households earning at or below 80 percent area median income.

Section 3. Board of Trustees

- A. Composition. There shall be a Board of Trustees (“Trustees”) of the Arlington Affordable Housing Trust Fund composed of one ex officio non-voting member and seven voting members. The Town Manager or the Town Manager’s designee shall serve as the ex officio member. The voting members shall include: a member of the Select Board (designated by the Select Board) and six members appointed by the Select Board. The voting members shall be residents or representatives of local housing organizations who may have relevant experience in the fields of real estate, housing, banking, finance, law, architecture, social services, or other areas of expertise applicable to advancing the purpose and goals of the Trust. Of the Select Board appointees, at least one shall be a tenant who earns a low- or moderate-income, and resides in subsidized housing units as defined by G.L. c.40B or who receives state- or federally-sponsored rental subsidies and demonstrates knowledge of tenant issues, and at least two shall be representatives of local housing organizations such as a housing authority or housing corporation dedicated to the creation and maintenance of affordable housing.*
- B. Appointment of Trustees. Trustees shall serve for a term of two years, except that two of the initial Trustee appointments shall be for a term of one year, and may be re-appointed at the discretion of the Select Board.*
- C. Officers. The Trustees shall designate a chair, vice chair, treasurer, and clerk.*
- D. Removal. A Trustee may be removed by the Select Board for cause following a hearing.*
- E. Declaration of Trust. The Trustees are authorized to execute a Declaration of Trust and Certificate of Trust for the Arlington Affordable Housing Trust Fund, to be recorded with the Middlesex South Registry of Deeds and filed with the Middlesex South Registry District of the Land Court, following approval by the Select Board.*

F. Trustees shall serve without compensation, except for expenses which shall receive prior approval from the comptroller.

G. Authority and Responsibilities.

1) The powers of the Trustees, all of which shall be carried on in furtherance of the purposes set forth in G.L. c.44, §55C, and inclusive of any future amendments, and pursuant to the provisions of a Declaration of Trust to be approved by the Select Board, shall include the following:

- a) To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B; provided, however, that any such money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the Trust, and such funds shall be accounted for separately by the Trust; and provided further, that at the end of each fiscal year, the Trust shall ensure that all expenditures of funds received from said chapter 44B are reported to the Arlington Community Preservation Act Committee for inclusion in the community preservation initiatives report, form CP-3, to the Department of Revenue;*
- b) To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;*
- c) To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deem advisable notwithstanding the length of any such lease or contract;*
- d) To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;*
- e) To employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;*
- f) To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;*
- g) To apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;*

- h) *Beginning in the fiscal year ending on June 30, 2023, all non-incidental expenses incurred by the Town, as determined by the Town Manager, shall be reimbursed by the Trust.*
 - i) *The Trust shall carry sufficient insurance, as determined by the Town Manager, to protect the Town from any liability resulting from their operations.*
 - j) *To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;*
 - k) *To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;*
 - l) *To carry property for accounting purposes other than acquisition date values;*
 - m) *With Select Board approval, to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge Trust assets as collateral. Any borrowing by the Trust may not exceed 80 percent of the Trust's total assets. Any debt incurred by the Trust shall not constitute a pledge of the full faith and credit of the Town of Arlington, and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Arlington, with an acknowledgement of said statement by the holder*
 - n) *To make distributions or divisions of principal in kind;*
 - o) *To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the Trustees may deem appropriate;*
 - p) *To manage or improve real property and to abandon any property which the Trustees determine not to be worth retaining;*
 - q) *To hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate; and*
 - r) *To extend the time for payment of any obligation to the Trust.*
- 2) *The powers and duties enumerated above are intended to encompass all powers and duties of the Trustees. Any action, power or duty not enumerated above shall require prior approval of the Select Board.*

Section 4. Acts of Trustees

- A. *A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees, with the exception that any purchase, sale, lease,*

exchange, transfer or conveyance of any interest in real property, borrowing, and mortgaging and pledging of assets must be approved by at least two-thirds of the appointed Trustees.

B. No Trustee shall be required to post bond.

C. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

D. Any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property, borrowing, and mortgaging and pledging of assets must be approved by a majority of the Select Board.

Section 5. Funds Paid to the Trust

Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any zoning bylaw, exaction fee, or private contribution shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. General revenues appropriated into the Trust become Trust property and these funds need not be further appropriated to be expended. All moneys remaining in the Trust at the end of any fiscal year, whether or not expended by the Trustees within one year of the date they were appropriated into the Trust, remain Trust property set forth in G.L. c.44, §55C. All funds, property and other assets shall be accounted for by the comptroller of the Town of Arlington who shall issue quarterly reports to the Trustees, Select Board, Town Manager and the Finance Committee and an annual report to the Town Meeting.

Section 6. Meetings of the Trust

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, G.L. c. 39, §§ 23A, 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

Section 7. Custodian of Funds

The Arlington Treasurer/Collector shall be the custodian of Trust's funds and shall maintain separate accounts and records for such funds. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust Fund. In accordance with G.L. c. 44, § 55C, the books and records of the Trust shall be audited annually by an independent auditor, appointed by the Select Board, in accordance with accepted accounting practices or take any other action relative thereto. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Select Board. The Trustee designated as treasurer shall also liaise with the custodian of the funds on a monthly basis.

Section 8. Legal Status

- A. The Trust is public employer and the Trustees are public employees for the purposes of G.L. c. 258.*
- B. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G.L. c. 268A.*
- C. The Trust is exempt from G.L. c. 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.*
- D. The Trust is a governmental body for purposes of Sections 23A, 23B and 23C of G.L. c. 39.*
- E. The Trust is a board of the Town for purposes of G.L. c. 30B and G.L. c. 40 § 15A but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the town shall be exempt from said Chapter 30B.*

Section 9. Duration of the Trust

This Trust shall be of indefinite duration, until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

Finally permit me to note a few features of the draft bylaw as developed by the Housing Plan Implementation Committee and revised on recommendation of the Finance Committee;/ With respect to borrowing, which is a typical power of affordable housing trusts, both procedural and substantive checks have been installed to ensure responsible management of the Trust. Any borrowing by the Trust (which is distinct from the bonded borrowing placed before Town Meeting), must be approved by the Select Board even though such borrowing is not a general liability of the Town. Furthermore, the Trust may not borrow more than 80 percent of its total assets.

Permit me also to clarify some potential areas of misunderstanding. The aforementioned procedural and substantive safeguards do not however prevent the Trust from remaining a flexible and efficient entity for the purposes of taking advantage of affordable housing opportunities. Unlike other real estate acquisitions, sales, or conveyances, the Trust does not have to wait until Town Meeting to act, which is crucial to maximizing the Trust's efficacy.

Similarly, while Town Meeting has the ability to appropriate funds into the Trust through CPA grants and the power to determine if a real estate transfer fee or other similar tools would be available to the Trust, the Trust would have the ability to received grants from other sources, donations, and specific sources of revenue to expend on a rolling basis consistent with the powers enumerated in the bylaw.