



**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 6, 2020

Re: Draft Votes and Comments re: Nov. 2020 STM Articles 8 and 25.

I write to provide the Board Draft Votes and Comments regarding the above-referenced November 16, 2020 Special Town Meeting Warrant Articles, based upon your November 4, 2020 hearings. Each of these articles is either new to the Special Town Meeting Warrant or was materially changed from the 2020 Annual Town Meeting Warrant.

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)

VOTED, that the Town hereby accepts Chapter 44 § 55C of the General Laws to authorize the establishment of a municipal affordable housing trust for the Town of Arlington;

AND FURTHER 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.

(5 – 0)

COMMENT: **This article returns to Town Meeting from the 2020 Annual Town Meeting Warrant. The Select Board strongly recommends that Town Meeting vote to join 117 Massachusetts cities and towns in establishing a municipal affordable housing trust fund (“AHTF”) by voting to accept G.L. c. 44 § 55C and establishing a new Town bylaw to create a Board of Trustees and set forth the basic parameter, powers, and requirements of an Arlington Affordable Housing Trust. Specifically, the Board recommends the vote and bylaw thoughtfully developed, adjusted, and recommended by the Housing Plan Implementation Committee and the Finance Committee, so that like our neighbors in Winchester and Belmont, Arlington may avail itself of an additional, complementary, and flexible tool to execute the Town’s larger affordable housing goals, but tailored to Arlington’s substantive and operational needs and practices.*

Once approved, an affordable housing trust fund (“AHTF”) is charged with the support, creation, and maintenance of affordable housing through a variety of mechanisms. It may receive funds through donations, grants, appropriations, and other special sources of revenue, and it may

expend such resources through its Board of Trustees without a lengthy approval process, which is often necessary to take advantage of affordable housing opportunities, or to safeguard affordable units from becoming market rate units within short time frames. For example, the Trust can act to acquire a parcel or unit for affordable housing purposes that become available without having to line up with the Town Meeting cycle or call a Special Town Meeting so long as it has sufficient resources to take such actions in the trust. To assure responsible management, the Finance Committee recommended, and this Board concurs with several measures included in the bylaw to maintain this flexibility while also implementing additional checks and balances. Any borrowing by the Trust would also be required to obtain approval of the Select Board. Borrowing is also limited in scope relative to the assets of the Trust (80 percent of the Trust's assets). Further, any debt of the Trust is not a debt that can be attributed to, or collected from the larger Town.

The Board notes that Town Meeting previously declined to adopt and create an AHTF because the Town had not yet accepted the Community Preservation Act. The CPA now having been adopted, the Board concurs with the finding and recommendation of the Housing Plan Implementation Committee that an AHTF greatly assists in leveraging CPA affordable housing funds to maximum effect.

Finally, the Board advises that there are a variety of steps after the creation of the Trust and its Board of Trustees that afford both opportunities for community and stakeholder engagement on identifying the Trust's priorities, and development further technical rules and regulations of the Trust. Among these steps is the creation of an annual (or longer-term) "Trust Action Plan," to set forth the Trust's targets and strategies to achieve Housing Production Plan and other Town affordable housing goals in light of its resources for such time period. If the Trust is approved by Town Meeting, this Board hopes that the Board of Trustees will prioritize low-income housing maintenance and opportunities, understanding that there are a broad range of needs and means of achieving them and further that conditions and priorities may change over time.

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)

VOTED: That Town Meeting hereby resolves to support the display of a "Black Lives Matter" banner on Arlington Town Hall until such time that Town Meeting recommends its removal.

(4 – 1) Mr. Diggins voted in the negative.

COMMENT: After much debate and consideration the Select Board advances this article to Town Meeting for the purposes of its discussion and vote, but without recommendation on the Meeting's course of action in support of or opposition to the substance of the resolution itself. The Select Board takes this unorthodox position in light of two distinct, but related concerns: town governance; and the substantive questions regarding how the Town best advances its racial equity goals.

With respect to town governance, on one hand, the Board often opposes resolutions of Town Meeting aimed at symbolically appealing or controverting a specific decision or action within the authority of another Town board or official. Here, the decision to display flags and banners on or at Town Hall is solely within the jurisdiction of the Select Board. Town Meeting may express its perspective and collective opinion on many subjects including this matter, but the decision – including if and when the banner would be placed on Town Hall again – is not ultimately within Town Meeting's duties or powers. The Board therefore holds some concern about both the potential for overuse of Town Meeting resolutions in other contexts to simply express disagreement with Town commissions or officials charged with making specific decisions; as well as public misapprehension of the way the Town's government works and the relative responsibilities of its officers.

On the other hand, Town Meeting presents an opportunity for this Board to hear from a wider net of elected representative voices on one of the many hard questions about race and equity that have been the subject of challenging, but valued discourse between residents, the Select Board, Town staff, and Town officials. As discussed in greater detail below, the Board chose to display the Black Lives Matter for roughly four (4) months, but following its decision to erect new signage affirming the Town's commitment to equity in a different manner, the discussion and public comments before the Board on the banner have been marked by tension and widening entrenchment even as our community has been deepening its commitments to racial equity and taking substantive steps in furtherance of those commitments. On balance, the majority of the Board believes that its own further discussion of this specific banner would be aided by Town Meeting's viewpoint despite these governance concerns.

With respect to the substance of the resolution, this Board notes that it entered a proclamation in support of "Black Lives Matter" on June 8, 2020, including a vote to display a Black Lives Matter banner throughout June (including in commemoration of Juneteenth) and to maintain the banner through July 13, 2020, which was declared "Black Lives Matter" day by the same vote. The banner was initially to be lowered on July 14, 2020 according to the terms of the Proclamation, but based upon subsequent feedback from residents and the Manager, the Board voted on July 20, 2020 to maintain display of the banner until an appropriate measure of transition could be developed. On September 14, 2020, the Board voted to maintain the banner on Town Hall until September 30, 2020, when it would be replaced by a statement from the Town's Bylaws affirming the Town's commitment to diversity, equity, and inclusion outside Town Hall. The end result was the display of an eight (8) foot by (4) four foot sign directly outside Town Hall's main entrance and steps (presently affixed to fencing due to construction activities) paraphrasing a section of the Town's Human Rights Commission Bylaw which sets forth the policy of the Town with respect to standing against discrimination in its many forms.

The resolution before Town Meeting posits that the foregoing is deficient, and therefore that the Town of Arlington fails to signal sufficient support to the concerns of people of color

without a continuous display of the Black Lives Matter banner on Town Hall until such time as an authority other than the Select Board determines it appropriate. The Board does not agree, in part due to the aforementioned issues of governance, and in part because it does not believe the choices before it are binary ones between indefinite display of one message about racism and discrimination on Town Hall and other messages or locations for the specific banner at issue. Nonetheless, the Board values and recognizes the earnest effort by the proponents and the many persons who signed their petition to place such a proposal before Town Meeting, has heard many of its supporters messages, and is interested to now hear Town Meeting's collective perspective.

The Board intends to work with the petitioners to identify potential areas of agreement in light of an overall belief that the petitioners and Board members share many common goals. The Board will update its position to Town Meeting as appropriate, but at this juncture intends to focus its efforts on cultivating further options and recommendations on when, where, how, and how long to display the Black Lives Matter banner in question in the future, as well as other appropriate displays of the Town Government's commitments to racial equity, diversity, and inclusion without limiting its options to a permanent or indefinite display of the banner on Town Hall. It is the Select Board's expectation and hope that whatever Town Meeting's vote on this resolution, it and the Town at-large will be more informed by the Meeting's discussion and vote.