



**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 & Michael Cunningham, Deputy Town Counsel

Date: February 26, 2021

Re: Warrant Articles 6, 15, 18

I write to provide the Select Board a summary of the above-referenced 2021 Annual Town Meeting warrant articles to assist in the Board's consideration of these articles at its upcoming hearings on March 1, 2021. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

ARTICLE 6 BYLAW AMENDMENT/CPAC MEMBER TERM LIMITS

To see if the Town will vote to amend Title II Article 12 (“Community Preservation Act Committee”) Section 1(c) of the Town Bylaws remove term limits for CPAC at-large members, and replace it with a provision for member removal based upon a majority vote of the member’s appointing authority; or take any action related thereto.

(Inserted at the request of the Town Manager)

This Article is inserted at the request of the Town Manager based upon discussions with members of CPAC their experience working with Community Preservation Act planning and grant process in Arlington. In short, at present at-large CPAC members may not serve for more than six consecutive years and cannot be appointed again for three years following a full six consecutive year membership. However, the learning curve for CPAC members is steep and as such, it can take several years for CPAC members to become fully versed and comfortable with the work of the Committee in all of its program areas. Moreover, the present slate of at-large members, who provide significant professional expertise to the Committee may not be readily replaced with similar levels of experience.

As an alternative to hard term limits, the CPAC bylaw can be amended to create a clearer mechanism for removal of any at-large member without cause and thereby equip their respective appointing authorities to ensure that at-large members remain representative and committed to the CPAC’s work over long tenures. Finally, it bears noting that other, statutorily-appointed CPAC members do not carry hard term limits.

If the Board is inclined to endorse this Article, an appropriate motion would be:

VOTED: That Title II, Article 12 (“Community Preservation Act Committee”) of the Town Bylaws is hereby amended so as to read as follows:

ARTICLE 12 COMMUNITY PRESERVATION COMMITTEE (Art. 11 - ATM - 04/29/15)

Section 1. Establishment and Membership

a. There is hereby established a Community Preservation Committee consisting of a total of nine (9) members pursuant to G.L. c. 44B § 5. The membership shall be composed of one member of the Conservation Commission as designated by such Commission, one member of the

Historical Commission as designated by such Commission, one member of the Arlington Redevelopment Board (which serves as the Town's Planning Board) as designated by such Board, one member of the Park and Recreation Commission as designated by such Commission, one member of the Arlington Housing Authority as designated by such authority, and four (4) at-large members appointed by a joint vote of the approval by the Select Board and the Town Manager as follows below in Section 1(b).

b. Candidates for at-large membership shall be jointly gathered and screened by the Town Manager and the Chairperson of the of the Select Board or their designee, who shall jointly forward recommended candidates for a vote on appointment by the full Select Board plus the Town Manager (a maximum total of six votes representing the five Select Board and the Town Manager). A majority vote the Select Board and the Town Manager shall be required for appointment to an at-large member position.

c. At-large members shall be appointed to the following initial terms: One (1) for a one-year term, two (2) for two-year terms, and one (1) for a three-year term. All subsequent terms shall be for three years. All other members shall serve a term determined by their designating bodies not to exceed three years. All members, at-large and otherwise, are eligible for reappointment. Should any appointing or designating authority fail to appoint a successor to a CPC member whose term is expiring, such member may continue to serve until the relevant authority names a successor. Any at-large member may be removed at any time by majority vote of the member's appointing authority.

~~*No At Large member of the Community Preservation shall serve more than six consecutive years at a time. A waiting period of three years shall be imposed on any member of the Committee after serving six consecutive years, if they wish to rejoin the Committee.*~~

d. A vacancy of the committee shall be filled by the relevant appointing or designating authority.

ARTICLE 15

BYLAW AMENDMENT/DOMESTIC PARTNERSHIPS

To see if the Town will vote to amend Title I of the Town Bylaws to add a new provision to formally acknowledge domestic partnerships; define the parameters of domestic partnerships in Arlington, provide an opportunity to register such partnerships at the Office of the Town Clerk; and afford the ability to obtain a certificate attesting to their status; and share in certain rights and benefits conferred under such status under the Bylaw; or take any action related thereto.

(Inserted by the Select Board at the request of the Rainbow Commission)

This Article was inserted at the request of the Rainbow Commission and it is expected that the reason for its proposed amendment to the Town Bylaws will be more completely set forth by a representative of the Rainbow Commission.

It is noted that there are several cities and towns in Massachusetts that formally recognize domestic partnerships. Cities that have already acted on this issue include Boston, Cambridge and Somerville. Towns include Brookline, Nantucket, Provincetown and Truro. In general, these cities and towns recognize domestic partnerships after applicants satisfy certain criteria and complete and sign a Statement of Domestic Partnership that is then filed with the Town Clerk. Typical rights that come with a formally recognized domestic partnership include: visitation rights at town operated and maintained health-care facilities; visitation rights at town operated and maintained correctional facilities; and access to school records and personnel at town operated and maintained schools that relate to the child of a domestic partner, who is the custodial parent or legal guardian of that child.

It is further noted that the Somerville ordinance that recognizes domestic partnerships was passed by its City Council on June 25, 2020 and expands the rights conferred upon members of a domestic partnership by previous ordinances/bylaws passed by other cities and towns in Massachusetts. Specifically, Somerville's ordinance does not limit a domestic partnership to just two people and "shall afford persons in domestic partnerships all the same rights and privileges afforded to those who are married." Accordingly, it appears that more than two persons could enter into a domestic partnership. Somerville's ordinance to broaden the definition of domestic partnership to include relationships between three or more adults and potentially expand access to benefits appears to be the first of its kind in the country. The validity of the relatively new Somerville ordinance has not been tested, but it may be challenged by health insurance companies or other potential objectors.

The question of whether the filers of this Article seek to amend the Town Bylaws to establish domestic partnerships of two persons, or more than two persons, will be addressed by its proponents. However, a draft motion to establish domestic partnerships of two persons, that can be amended to establish domestic partnerships of more than two persons, is set out below. If the Board is inclined to endorse this article, an appropriate motion would be:

VOTED: That the Town Bylaws are hereby amended to include a new section to read as follows:

TITLE I
ARTICLE 23
DOMESTIC PARTNERSHIPS

SECTION 1. Purpose and Intent

The Town of Arlington ("Town") recognizes the diverse composition of its citizenry and realizes that a perpetuation of the traditional meaning of "family" can exclude a segment of the Town's population by: (1) depriving them of recognition and validation; and (2) denying them certain rights that should be afforded to persons who share their homes, hearts, and lives. Recognizing its commitment to fair treatment of its citizens, the Town adopts this Bylaw that acknowledges domestic partnerships. People in committed relationships who meet the criteria established by the Town as constituting a domestic partnership are provided an opportunity by this Bylaw to register at the office of the Town Clerk, obtain a certificate attesting to their status, and share in certain rights and benefits conferred under this Bylaw.

SECTION 2. Definitions

A. "Domestic partnership" shall mean two persons who meet all of the following requirements and who register their domestic partnership in accordance with Title I, Article 23, Section 3.

- (1) They have made a commitment of mutual support and caring for each other;
- (2) They reside together and intend to do so indefinitely;
- (3) They share basic living expenses;
- (4) They are at least eighteen (18) years of age;
- (5) They are competent to enter into a contract;
- (6) They are each other's sole domestic partner; and/(or omit this requirement)
- (7) They are not married to anyone or related to each other by blood closer than would bar marriage in the Commonwealth of Massachusetts.

B. "Dependents" shall mean a child or step-child of either domestic partner.

C. "Basic living expenses" shall mean the cost of food, shelter, utilities and essential household goods. The individuals need not contribute equally to the cost of these expenses. Labor or services in kind shall be recognized as contributions to basic living expenses.

D. "Domestic Partner" shall mean a person who meets the requirements set forth in Title I, Article 23, Section 2(A) of this Bylaw and registers pursuant to Title I, Article 23, Section 3 of this Bylaw.

SECTION 3. Registration, Amendment and Termination

A. Registration

(1) Statement of Domestic Partnership

(a) Domestic partners who meet the requirements set forth in Title I, Article 23, Section 2(A) of this Bylaw may make an official record of their domestic partnership by completing, signing and submitting to the Town Clerk a statement of domestic partnership. Persons submitting a statement of domestic partnership must declare under penalty of perjury that they meet the requirements set forth in Title I, Article 23, Section 2(A) of this Bylaw.

(b) The domestic partnership statement shall be on a form prescribed by the Town Clerk, which form shall include, but shall not be limited to, the names of the domestic partners and the date on which they became each other's domestic partners.

(c) The names and dates of birth of any dependents of the domestic partnership.

B. Amendment

Domestic partners may file a Domestic Partnership Amendment Form with the Town Clerk to add or delete dependents or change an address. Any amendment shall be signed, under the pains and penalties of perjury, by both of the domestic partners.

C. Termination

(1) Domestic partners shall notify the Town Clerk of the termination of their domestic partnership. Either member of a domestic partnership may terminate the domestic partnership by filing a termination statement with the Town Clerk. Termination of a domestic partnership shall become effective ninety days (90) days after the termination statement is filed with the Town Clerk; provided, however, that a domestic partnership shall terminate immediately upon the death of either of the partners. Any person filing a termination statement must declare under the pains and penalties of perjury that the domestic partnership is thereby terminated and that the other domestic partner has been notified of such termination either personally or by mailing a copy of the termination statement to the other domestic partner's last and usual address by certified mail.

(2) No person may file a new statement of domestic partnership until any previous domestic partnership of which he or she was a member has been effectively terminated.

SECTION 4. TOWN CLERK

A. The Town Clerk shall maintain records of the registration, amendment and termination of domestic partnerships as permanent records. The Town Clerk shall provide appropriate forms for a Statement of Domestic Partnership, for the registration of the Statement and for the amendment and termination of a domestic partnership.

B. The Town Clerk shall charge a fee for filing a domestic partnership equal to the fee charged to file a marriage license. Payment of the filing fee shall entitle the person filing the

statement on behalf of the domestic partnership to receive one copy of the statement certified by the Town Clerk. The fee for additional certified copies of the statement, or for copies of amendment or termination statements, shall be the same fee charged for additional certified copies of a marriage license.

SECTION 5. RIGHTS OF DOMESTIC PARTNERS

Persons who have registered their domestic partnership with the Town Clerk pursuant to Title I, Article 23, Section 3 are entitled to the following rights:

A. Visitation at health-care facilities.

(1) A domestic partner shall have the same visitation rights as a spouse or parent of a patient at all health-care facilities operated and maintained by the Town. A dependent shall have the same visitation rights as a patient's child.

(2) The term "health care facilities" includes hospitals, convalescent facilities, mental health care facilities, nursing homes, and other short and long term care facilities operated and maintained by the Town.

B. Visitation at correctional facilities.

(1) A domestic partner shall have the same visitation rights at all correctional facilities operated and maintained by the Town as a spouse or parent of a person in custody. A dependent shall have the same visitation rights afforded to the child of a person in custody.

(2) The term "correctional facilities" includes, but is not limited to, holding cells, jails and juvenile correction centers operated and maintained by the Town.

C. Access to children's school records and personnel.

(1) A domestic partner who is also the custodial parent or legal guardian of a child may file a school authorization form at, or send a letter to, the child's school to indicate that the parent's domestic partner shall have access to the child's records, access to school personnel in matters concerning the child and access to the child, including the right to remove such child from the school for sickness or family emergency. The school shall afford such person access as directed by the child's parent.

(2) When a domestic partnership is terminated pursuant to Title I, Article 23, Section 3(C), it is the responsibility of the parent or guardian to notify the school, in writing, of the termination of rights of the former domestic partner.

(3) As used herein, the term "school" shall only include facilities owned and operated by the Town and shall include, but shall not be limited to, high schools, vocational schools, junior high and middle schools, elementary schools, preschools and preschool programs, after-school programs and day-care programs, provided that such are owned and operated by the Town.

SECTION 6. INTERPRETATION

It is the intention of this Bylaw that its provisions shall be enforceable to the maximum extent permitted by law.

SECTION 7. RECIPROCITY

All rights, privileges and benefits shall be extended to domestic partnerships registered pursuant to similar laws enacted in other jurisdictions.

SECTION 8. NON-DISCRIMINATION

No person who seeks the benefit of this Bylaw, registers pursuant to its provisions, or assists another person in obtaining the benefits of this Bylaw shall be discriminated against in any way for doing so.

SECTION 9. SEVERABILITY

The provisions of this Bylaw are severable. If any of its provisions are held invalid by the Attorney General, a court of competent jurisdiction or other reviewing authority, all other provisions shall continue in full force and effect.

SECTION 10. EFFECT ON OTHER TOWN BYLAWYS

When the term "spouse" is used in other Town Bylaws, it shall be interpreted to include a domestic partner. When the term "family" is used, it shall be interpreted to include domestic partnerships. When the term "marriage" is used, it shall be interpreted to include domestic partnerships.

ARTICLE 18

VOTE/APPROPRIATION/SCHOOL COMMITTEE MEMBER STIPENDS

To see if the Town will vote pursuant to M.G.L. c. 71 section 52, to provide all Arlington School Committee Members compensation consisting of an annual stipend of \$3,000 per member commencing in Fiscal Year 2022; or take any action related thereto.

(Inserted at the request of Christa Kelleher and ten registered voters)

Section 52 of Chapter 71 of the General Laws (provided below) requires that Town Meeting vote to approve compensation for members of the School Committee, set such amount, and appropriate funds for same. I expect the proponent of this article to provide a full rationale for providing a stipend for School Committee members, but it is my understanding that the goal is to provide each such member the same stipend afforded members of the Select Board. As the Board may recall, Select Board stipends do not afford health insurance or retirement benefits to any current members. Hence, absent an explicit vote to do so, affording stipends to School Committee Members would not confer such rights either.

M.G.L. c. 71 sec. 52

Section 52: Compensation of school committee members

The school committee shall serve without compensation, except that a member of a school committee of a city, town, regional school district or superintendency union may be compensated for his services by a majority vote of the city council in a city having a Plan D or Plan E charter; in a city not having a Plan D or Plan E charter by vote of the city council, subject to the provisions of the charter of such a city; in a town by a majority vote at a town meeting; and in a regional school district or school superintendency by a majority vote of the voting member towns authorized at their respective town meetings, the amount of such compensation, in each case, to be set by the respective cities, towns or groups of towns. No member of a school committee in any town shall be eligible to the position of teacher, or superintendent of public schools therein, or in any union school or superintendency union or district in which his town participates.