



**Town of Arlington  
Legal Department**

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To: The Select Board  
  
From: Douglas W. Heim, Town Counsel  
  
Date: November 24, 2020  
  
Re: Appointment for Housing Authority Vacancy

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I write in advance of Monday's Select Board meeting in which a joint body of the Select Board and the Arlington Housing Authority ("AHA") is scheduled to vote to fill a vacancy on the AHA. Although the AHA operates independently of the Town, G.L. c. 41, § 11, controls the procedure for filling a Housing Authority vacancies on an interim basis, which requires the Select Board's participation.<sup>1</sup> Accordingly, both relevant bodies having noticed the intent to vote on filling the vacancy, the appointment of an interim AHA member is ripe before the joint body at the scheduled November 30, 2020 meeting. This memo provides further details and suggestions with respect to both the interim appointment voting process, and the requirements of such an appointment.

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<sup>1</sup> The state law governing the Housing Authority, G.L. c. 121B, § 5, incorporates the procedure under G.L. c. 41, § 11, to fill vacancies on local housing authorities. A full copy of both statutes is attached hereto for your reference.

## **I. Procedure for Joint Meeting**

As the Board may recall from previous vacancy appointments, under c. 41 § 11, aside from requiring all votes be conducted by roll call and the standard requirements of the Open Meeting Law, significant discretion is afforded to the Select Board and AHA in terms of how to proceed in a joint meeting. The following suggested procedure therefore reflects this Board's past practices for conducting a sound and efficient joint meeting.

### **A. General Procedure:**

1. The Chair of the Select Board should call the joint body meeting to order and preside over same, though the joint body may nominate and elect and temporary chair.<sup>2</sup>
2. The joint body members may all vote on both substantive nominations and procedural matters which affect the vote on the matter before them.
3. Any votes with respect to appointment of candidates must be conducted via roll call vote.
4. Once the business of the joint body is concluded the Chair of the Select Board (or a duly elected temporary chair) should adjourn such body upon a motion from same and then re-convene the Select Board for any remaining business.

### **B. Conducting the Substantive Nominations and Votes:**

1. Any member of the joint body may move to receive nominations. Upon a second and subsequent agreement by a majority of the joint body, nominations may be received.
2. Once nominations are open, each member may nominate any qualified person, and should receive a "second" of such nomination to place a candidate before the joint body for consideration.
3. After nominations are received, the body may, but is not required to discuss such nominations before beginning the selection vote process.

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<sup>2</sup> The Board's practice is to have its Chair preside over the joint meeting, however on rare occasions a temporary chair of the joint body has been selected. For example, in 2006, Kevin Greeley, as Chair of the Select Board, requested the election of another chair from the remaining eight members of the joint board in the event that his brother was nominated to fill the vacancy, at which point he intended to recuse himself. Mr. Murray of the Housing Authority was then elected as chair to preside over the remainder of the meeting. If not for the recusal issue, it would have been appropriate for Mr. Greeley to chair the entire meeting.

- a. If three (3) or more candidates have been nominated, a rounded selection process may be initiated whereby a roll call vote is conducted to first determine which candidates should be finalists.

*For example: Mr. Grey selects Jane Adams,  
Mr. Blue selects Jane Adams,  
Ms. Green selects John Banks,  
Ms. Red selects Jane Adams,  
Mr. Gold selects Joe Cooper  
Ms. Silver selects Joe Cooper*

*Jane Adams and Joe Cooper are the finalists and four votes via roll call vote will secure either person's appointment.*

- b. If there are only two candidates, a simple majority roll call vote conducted in similar fashion will suffice. *\*Even if there is only one candidate, a simple majority approval of such person's appointment, following a seconded nomination is required.*
- c. In the event of a tie vote, the joint body may continue to discuss and vote again until a simple majority is attained for appointment of a candidate, or adjourn to a later date.

#### **C. Administrative Matters:**

1. The Select Board staff should record and prepare minutes, which may be approved by the Select Board at their next meeting.
2. All Roll call votes should be recorded.

## **II. Appointment Requirements**

Per G.L. c. 41 §11, the only requirement for an interim appointment is that the interim person selected must be a registered voter in the Town of Arlington. For the Board's information, G.L. c. 121B provides for a five member housing authority, one of which is appointed by DHCD, and the remaining of which are elected. Historically the remaining four members have been elected by town-wide ballot, however in 2014, the Commonwealth amended c. 121B § 5 and added a new §5A to Chapter 121B, which provides as follows:

*The department shall promulgate regulations establishing election procedures for tenants to elect a tenant as a member of the housing authority in the town and regulations establishing appointment by the board of selectmen of the town, if no election may be held; provided, however, that 1 member of the housing authority board shall be a tenant. The department shall provide regulations creating waiver of this section if federal law*



*requires the town to maintain a tenant member as 1 of the 5 members or if a tenant has been elected under section 5.*

While §5A calls for one member of the Housing Authority to be a tenant via tenant election, it also asserts that DHCD shall promulgate regulations establishing election procedures for such tenant elections. As such, this Office was advised by DHCD, that the Town should proceed without concern as to tenant status until regulations under §5A are finalized. In short, the joint body may consider any applicant's tenant status as informative, but it is not required to appoint a tenant at this time.

It also bears noting that neither interviews, nor formal applications for interim appointments are required to fill the vacancy, but any applications received by either the AHA or the Select Board should be placed before the joint body.

### **III. Appointment Term**

The appointed interim AHA member shall fill the vacancy until the next Town Election in April of 2021, at which point the vacancy should be on the ballot unless DHCD has promulgated regulations for tenant elections. The successfully elected candidate will then serve the remainder of the vacant seat's present term (i.e., however many years remained before his position would have been up for re-election). If the vacancy requires a special election, the Select Board should vote at its earliest convenience to hold a special election in April of 2020 to coincide with its regular Annual Town Election.

Should you have any additional concerns or questions I encourage you to contact me at your convenience.

## **Ch. 41 Officers and Employees of Cities, Towns and Districts**

### **Section 11 Appointment to Fill Vacancy in Town Office**

As used in this section, the term "vacancy" includes a failure to elect. If a vacancy occurs in any town office, other than the office of selectman, town clerk, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, except a board whose members have been elected by proportional representation under chapter fifty-four A, the remaining members shall give written notice thereof, within one month of said vacancy, to the selectmen, who, with the remaining member or members of such board, shall, after one week's notice, fill such vacancy by roll call vote. The selectmen shall fill such vacancy if such board fails to give said notice within the time herein specified. A majority of the votes of the officers entitled to vote shall be necessary to such election. The person so appointed or elected shall be a registered voter of the town and shall perform the duties of the office until the next annual meeting or until another is qualified.

## **Ch. 121B Housing and Urban Renewal**

### **Section 5: Housing and redevelopment authorities; membership; appointment; election; term of office**

Every housing and redevelopment authority shall be managed, controlled and governed by five members, appointed or elected as provided in this section, of whom three shall constitute a quorum. Every member of a housing or redevelopment authority shall be a fiduciary of the housing or redevelopment authority.

In a city, four members of a housing or redevelopment authority shall be appointed by the mayor subject to confirmation by the city council; provided, that, the members shall be appointed to serve for initial terms of one, two, four and five years, respectively.

In a town, 3 members shall be elected by the town; provided, that of the members originally elected at an annual town meeting, the one receiving the highest number of votes shall serve for five years, the one receiving the next highest number of votes, for four years and the one receiving the next highest number of votes, for two years; provided, that upon the initial organization of a housing or redevelopment authority, if a town so votes at an annual or special town meeting called for the purpose, four members of such an authority shall be appointed forthwith by the selectmen to serve only until the qualification of their successors, who shall be elected at the next annual town meeting as provided above.

In a city or town, one member of a housing or redevelopment authority shall be appointed by the department for an initial term of three years. If the department does not fill a vacancy in the position of that member within 120 days from the date that the vacancy is created, the board of selectmen shall appoint, in writing, a person by a majority vote to fill such vacancy for the



unexpired term. In a city, the mayor shall appoint a person subject to confirmation by the city council for the unexpired term.

Thereafter, as the term of a member of any housing or redevelopment authority expires, his successor shall be appointed or elected, in the same manner and by the same body, for a term of five years from such expiration. Membership in a housing or redevelopment authority shall be restricted to residents of the city or town.

In a city, one of the four members of a housing authority appointed by the mayor shall be a resident of that city and shall be a representative of organized labor who shall be appointed by the mayor from a list of not less than two nor more than five names, representing different unions submitted by the Central Labor Council, AFL-CIO and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America of the city or of the district within which the city is included. If no such list of names is submitted within sixty days after a vacancy occurs, the mayor may appoint any representative of organized labor of his own choosing to the authority. In a city, one of the four members of a housing authority appointed by the mayor shall be a tenant in a building owned and operated by or on behalf of the local housing authority who shall be appointed by the mayor from lists of names submitted by each duly recognized city-wide and project-wide tenants' organization in the city. A tenants' organization may submit a list which contains not less than two nor more than five names to the mayor who shall make his selection from among the names so submitted; provided that, where no public housing units are owned and operated by the local housing authority and no such units are owned and operated on behalf of the local housing authority, the mayor shall appoint any tenant of the housing authority from lists submitted in accordance with this section. If no list of names is submitted within sixty days after a vacancy occurs, the mayor shall appoint any tenant of his choosing to the authority. The mayor shall notify in writing tenant organizations as specified herein not less than ninety days prior to the expiration of the term of a tenant member. Whenever a vacancy occurs in the term of a tenant member for any reason other than the expiration of a term, the mayor shall notify in writing the tenant organizations specified herein within ten working days after the vacancy occurs. The mayor shall make an appointment within a reasonable time after the expiration of sixty days after said notice.

Vacancies, other than by reason of expiration of terms, shall be filled for the balance of the unexpired term, in the same manner and by the same body, except elected members in towns whose terms shall be filled in accordance with the provisions of section eleven of chapter forty-one. Every member, unless sooner removed, shall serve until the qualification of his successor.

As soon as possible after the qualification of the members of a housing or redevelopment authority the city or town clerk, as the case may be, shall file a certificate of such appointment, or of such appointment and election, as the case may be, with the department, and a duplicate thereof, in either case, in the office of the state secretary. If the state secretary finds that the housing or redevelopment authority has been organized and the members thereof elected or appointed according to law, he shall issue to it a certificate of organization and such certificate shall be conclusive evidence of the lawful organization of the authority and of the election or appointment of the members thereof.

Whenever the membership of an authority is changed by appointment, election, resignation or removal, a certificate and duplicate certificate to that effect shall be promptly so filed. A certificate so filed shall be conclusive evidence of the change in membership of the authority referred to therein.

**Section 5A: Election procedures for tenants to elect tenant as housing authority member;  
appointment by board of selectmen**

The department shall promulgate regulations establishing election procedures for tenants to elect a tenant as a member of the housing authority in the town and regulations establishing appointment by the board of selectmen of the town, if no election may be held; provided, however, that 1 member of the housing authority board shall be a tenant. The department shall provide regulations creating waiver of this section if federal law requires the town to maintain a tenant member as 1 of the 5 members or if a tenant has been elected under section 5.