



**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

Date: March 4, 2021

Re: Warrant Articles 8, 9, 10, 17, 19, 23, 24, and 26

The Legal Department writes 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 8, 2021. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

ARTICLE 8 BYLAW AMENDMENT/CANINE CONTROL FEES & FINES

To see if the Town will vote to amend the Town Bylaws, Title VIII, Article 2 ("Canine Control") Section 4 to clarifying canine licensing and registration deadlines, and adjust penalties; or take any action related thereto.

(Inserted at the request of the Town Clerk)

This Article, inserted at the request of the Town Clerk, seeks to update the Town's "Canine Control" Bylaw with respect to annual licensing and registration deadlines, as well as fees and fines relate thereto based on the practical experience of the Clerk's Office with administering same and achieving compliance. The Article represents a more comprehensive overhaul of the provisions in question than a similar article shelved during the COVID-shortened meeting last year. The Town Clerk is expected to provide a detailed memo on the rationale for these changes, but in brief, these updates should make the licensing section of the bylaw easier to understand and enforce. If the Board is inclined to move positive action, the Clerk has worked with this Office to proposed the following vote:

VOTED: That Title VIII, Article 2 ("Canine Control") Section 4 ("Licensing") be and hereby is amended throughout to establish clearer and more efficient deadlines and penalties for annual dog licensing, enhance clarity for residents, and provide for minor grammar and syntax adjustments as follows:

**ARTICLE 2
CANINE CONTROL**

Section 4. Licensing

(ART. 25, ATM – 04/27/88)

(ART. 23, ATM – 05/04/2009)

(ART. 13 -04/29/13)

A. Licensing Requirement.

1. License required. The owner or keeper of any dog over the age of six months kept in the Town of Arlington shall obtain a license for the dog from the Town Clerk.

2. Annual renewal. Licenses issued under this section shall be renewed on an annual basis in accordance with procedures to be determined by the Town Clerk. Licenses are issued for the calendar year and must be renewed every January, although there is a grace period established in sub-section F before fines are assessed.

3. Transfer. Within 30 days of moving into the Town ~~within a licensing period~~, the owner or keeper of a dog must apply to the Town Clerk ~~to transfer the dog's~~ for a license. ~~The Town Clerk shall issue a transfer license for a fee and in accordance with procedures that the Town Clerk shall determine.~~

B. Conditions.

1. Rabies vaccination. The Town Clerk shall not grant a license unless (i) the license applicant provides a veterinarian's certification or notarized letter that the dog has been vaccinated

against rabies; or (ii) the dog is exempted from the vaccination requirement by the Town of Arlington Board of Health or the Town Clerk in accordance with Section 145B of Chapter 140 of the General Laws.

2. *Control.* Any license granted under this section is granted on the condition that the licensed dog shall be controlled and restrained from killing, chasing, or harassing livestock or fowl.

3. *Previous conviction of animal cruelty.* Town Clerk shall not grant a license under this section or Section 5, below, to an applicant who has been convicted of one or more of the offenses set forth in Section 137D of Chapter 140 of the General Laws within the preceding five years.

C. License Forms.

1. *Symptoms of rabies.* Every license issued to the owner of a dog shall have a description of the symptoms of rabies printed thereon, as supplied by the state Department of Public Health.

2. *Description of dog.* The owner of a dog to be licensed under this section may add to the license application form up to ten descriptive words indicating the dog's color, breed, weight, or any special markings.

D. Tags.

1. *Issuance.* ~~Along with the~~ As proof of license licensure, the Town Clerk shall issue a durable tag inscribed with the license number, designation of the Town of Arlington, and the year of issue.

2. *Affixed to dog.* The owner or keeper of the licensed dog shall keep a collar or harness of leather or other suitable material affixed around the dog's neck or body to which the tag shall be securely attached.

3. *Lost tags.* If the tag is lost or destroyed, the owner or keeper shall immediately secure a substitute tag from the Town Clerk for a fee to be determined by the Town Clerk.

E. Exemptions. The requirements of this section shall not apply:

(1) to a person to whom the applicable kennel license has been issued under this Bylaw and remains in force; or (2) to a dog housed in a research institution.

F. Fees. (ART. 10, ATM – 04/23/18)

1. *Annual license fees.* The annual license fees are as follows:

a. *female:* \$20

b. *spayed female:* \$15

c. *male:* \$20

d. neutered male: \$15

To be charged the lower fee for licensing a spayed or neutered dog, the license applicant must provide proof of spay or neuter in the form of either: (a) a certificate from the veterinarian who spayed or neutered the dog; (b) a veterinary bill for performing the procedure; or (c) a statement signed under the penalties of perjury by a veterinarian registered and practicing in the Commonwealth describing the dog and stating that the veterinarian has examined the dog and that the dog appears to be spayed or neutered and therefore incapable of propagation.

2. Failure to comply; penalties.

a. Penalty for failure to comply with licensing requirements.

Failure to comply with this section shall be punishable by a fine of ~~\$50~~ \$25.

Grace period. ~~Failure to comply with this section within~~ *satisfy licensing requirements before the first Thursday following 45 business days of the date that the licensing or re-licensing obligation arises will constitute failure to comply with licensing requirements.*

b. Additional late fees.

Missed year. ~~An additional \$50~~ *\$25 fine shall be applied where owners fail to register a dog for an entire calendar year, due upon registration the following calendar year, and the license fee for the missed year must be paid in full. These late fees shall be in addition to any other applicable penalty provided for in this Bylaw.*

Multiple penalties. ~~If the owners fail to register a dog for an entire calendar year and apply for registration outside of the grace period, the fine will consist of the \$25 late fee and the \$25 skipped year fee, due upon registration in the current year.~~

3. Waiver of fees.

a. Service animal.

No fee shall be charged for the licensure of a service animal as defined by the Americans with Disabilities Act or regulations promulgated thereunder. Late fees apply.

b. Owner aged 70 and over.

If the Town so votes in accordance with Section 139(c) of Chapter 140 of the General Laws, no fee shall be charged for the licensure of a dog owned by a person aged 70 years and older. Late fees apply.

4. No refund of fees. *No license fee paid under this section shall be refunded, in whole or in part, due to mistake or due to the subsequent death, loss, spay or neuter, removal from the Town or the Commonwealth, or other disposal of the licensed dog.”; ~~and~~*

ARTICLE 9

BYLAW AMENDMENT/DISPLAY OF NOTICE FINES

To see if the Town will vote to amend the Town Bylaws, Title V, Article 1 Section 2 to reduce fines for violations greater than twenty days from \$500 to \$300 in accordance with state law; or take any action related thereto.

(Inserted at the request of the Town Manager)

As the Board may recall, this Article addresses the need to update the bylaw fine set forth in Title V, Article I (“Display of Notices”), Section 2 of the Town Bylaws following 2019 Town Meeting’s successful updates to Arlington signage regulation at Town Meeting; the overwhelming majority of which is now set forth in the Zoning Bylaw rather than in multiple ordinances. A side effect of the successful vote on a comprehensive signage Zoning Bylaw was that the Town Bylaws’ regulation temporary of “Notices,” such as lost-pet, yard sale, and Town committee temporary flyers and signs often placed in or around public ways or on Town property, was no longer tethered to state laws governing outdoor advertising (as had been the case in years past when certain types of accessory signage were not regulated by the Zoning Bylaw). Accordingly, the Town’s fine for violations of the Bylaw cannot now exceed \$300, and it is respectfully requested that the Board support the following motion:

VOTED: That Title V, Article I (“Display of Notices”), Section 2. Fines for Violations be and hereby is amended by striking the word and number “five” and “500” respectively and replacing them with the words “three,” and “300” respectively so as to read as follows as follows:

*ARTICLE 1
DISPLAY OF NOTICES*

Section 2. Fines for Violations

Whoever violates any of the provisions of this By-Law shall be punished by a fine of not more than one hundred dollars (\$100), and whoever, after conviction for such violation unlawfully maintains such notice for twenty (20) days thereafter shall be punished by a fine of not more than five three hundred dollars (~~\$500~~300).

ARTICLE 10

BYLAW AMENDMENT/STREET PERFORMANCE DEFINITIONS

To see if the Town will vote to amend the Town Bylaws, Title III, Article 1, Section 18 (“Street Performances”) to expand the definition of “Perform” to allow the creation of items for sale; and further to remove or amend the prohibition of street performances in Town parks and recreation areas; or take any action related thereto.

(Inserted at the request of the Town Manager)

This article was originally developed by the Arlington Commission on Arts and Culture (“ACAC”) in consultation with the Department of Planning and Community Development for the purpose of fostering a wider variety of artists and creative vendors by enabling them to sell their works and goods on public ways and in park and recreation areas. It is my understanding that further examination of the issues is necessary, and as such, it is respectfully requested that no action be taken in this Town Meeting cycle.

**ARTICLE 17 VOTE/ ESTABLISHMENT OF YOUTH AND YOUNG ADULT
ADVISORY BOARD, COMMISSION, OR COMMITTEE STUDY
COMMITTEE**

To see if the Town will vote to form a Committee to study the creation of a Youth and Young Adult Advisory Board, Commission, or Committee with the ability to make recommendations to the Select Board and reports to Town Meeting regarding youth and young adult involvement in governance and youth and young adult input on all issues facing the town; or take any action related thereto.

(Inserted by the Select Board)

As the Board will recall, you inserted this article to explore the options and parameters for creation of an Arlington Youth and Young Adult Advisory Board via study committee of Town Meeting. While I expect Board Member Mr. Diggins will elaborate on this proposal for hearing, the overall goal is to study whether or not a youth-based advisory board can and should be created to obtain youth perspective on government decisions, what the scope and composition of such board should be, and report back to Town Meeting. A draft vote to such an effect could be as follows:

VOTED:

That Town Meeting hereby establishes a “Youth and Young Adult Advisory Board Study Committee” to be structured, organized, and charged as follows:

Youth and Young Adult Advisory Board Study Committee

I. Committee Membership and Organization

A. The Committee shall consist of the following members:

- *Four (4) Arlington students appointed by the Town Moderator, two (2) of whom shall be currently enrolled Arlington Public Schools student; and two (2) of who shall be Arlington residents presently enrolled in middle school or high school’*
- *One (1) member of the Select Board, or their designee;*
- *One (1) member of the School Committee, or their designee;*
- *One (1) member of the Library Board of Trustees as determined by such commission;*
- *One (1) member of the LGBTQIA+ Rainbow Commission as determined by such commission;*
- *One (1) member of the Board of Youth Services; as determined by such Board;*
- *One (1) member of the Park & Recreation Commission; as determined by such commission; and*
- *One (1) member of Envision Arlington Standing Committee or their designee; as determined by such committee.*

B. Quorum

A majority of voting members shall constitute a quorum, and decisions shall be based on the vote of a simple majority of those committee members present and voting.

C. Organization and First Meeting

The initial meeting of the Study Committee shall be convened by the designee of the Select Board, and the first order of business shall be the self-organization of the study committee through the election of one or more chairs, whose responsibility shall be to convene and preside over all future meetings, as well as a clerk, whose duties shall include the proper posting of meeting agendas and minutes. The Study Committee shall designate any other officers as it sees fit.

II. Committee Charge & Reporting

- A. The Study Committee shall study the need, value, and options for the creation and operation of a permanent board or committee aimed towards fostering youth and young adult involvement in governance and youth and young adult input on all issues facing the town.*
- B. The Study Committee shall be encouraged to examine and compare models for obtaining youth and young adult input and feedback as well as the overall structures and functions of a Youth and Young Adult Advisory Board or similar entity.*
- C. The Study Committee shall report its recommendations to the 2022 Annual Town Meeting.*

III. Dissolution

The study committee will be dissolved concurrent with the dissolution of the 2022 Annual Town Meeting, unless there is a vote of Town Meeting to effectuate an earlier dissolution or other amendment.

ARTICLE 19

**VOTE/ESTABLISHMENT OF TOWN COMMITTEE
ON RESIDENTIAL DEVELOPMENT**

To see if the Town will vote to establish a Committee of the Town Meeting to examine the current issues related to residential development in the R0, R1, R2, R3, and R4 zoning districts. These issues shall include, but not be limited to, effects on the neighborhood during teardown and construction activities; new construction impacts on neighborhood character/environment; permanent negative impacts on abutters; loss of healthy tree canopy; and exacerbation of particular negative impacts on abutters with existing non-conforming lots.

Members of the Committee shall be appointed by the Town Moderator, and consist of not less than 5 nor more than 9 members. A quorum shall consist of a majority of the appointed members. Members of the Committee shall be residents of the Town, a majority of whom shall be persons who are not Town employees and/or have no financial interest (either directly or indirectly) in the development, building, or real estate communities.

The Committee’s objectives will include development of recommendations for proposing new zoning and general bylaws and/or amendments, as applicable, to provide long-term mitigation of the significant issues identified; or take any action related thereto.

(Inserted at the request of Paul Parise and ten registered voters)

This article returns from the 2020 Annual Town Meeting Warrant after such Meeting was truncated due to the COVID-19 pandemic. I expect the proponent of this resident petition article will again present his rationale for creation a new committee of Town Meeting to study residential development in Arlington and make recommendations for new Zoning and Town bylaw amendments. As noted for last year’s hearing, creation of such a study and report committee is within the authority of Town Meeting generally. However, it should be understood that only the Arlington Redevelopment Board, as the Planning Board of Arlington has the authority and obligation to hear proposals on zoning bylaw amendments and make recommendations for the purposes set forth in G.L. c. 40A sec. 5.

Additionally, the definition of financial interest in “development, building, or real estate communities” set forth in the Article remains quite broad. If the Board is inclined to move in the affirmative, some consideration should be given to sharpening the requirements or limitations of membership of such a committee for the Town Moderator’s benefit.

ARTICLE 24

VOTE/TOWN CLERK STUDY

To see if the Town will vote request and or appropriate a sum of money to study the options for conversion of the Town Clerk position from an elected to an appointed office; or take any action related thereto.

(Inserted at the request of the Town Clerk)

This article was inserted at the request of the Town Clerk and proposes to study the conversion of such office from elected to appointed, similar to the conversion of the Office of the Town Treasurer several years ago. The Finance Committee voted to support funding for the study by a vote of 14-2. As an appropriation, the controlling motion belongs to the Finance Committee, but given the nature of the matter, the Select Board can of course take the opportunity to comment or decline to do so.

ARTICLE 23

**VOTE/PROVISION OF TOWN EMAIL ADDRESSES
FOR TOWN MEETING MEMBERS**

To see if the Town will vote to provide email accounts for the use of primary contact by constituents and Town business to all members of the Town Meeting; or take any action related thereto.

(Inserted at the request of Anna Henkin and ten registered voters)

This resident-petition article, inserted at the request of Anna Henkin seeks to provide Town Meeting Members town e-mail accounts for official business. At present, the Town’s Information Technology Department makes e-mail accounts available to elected and appointed officials as deemed appropriate and necessary subject to the Town’s “Acceptable Use Policy.” However, Town Meeting Members are not provided email addresses and it is not clear to this Office that they could be required to use them, even for official purposes.

As “representative voters,” Town Meeting members are part-time representatives, but the State's Conflict of Interest Laws, and the Open Meeting Law have not been applied to Town Meeting members, Precinct Meetings, etc. because they are not considered regular or special municipal employees, but rather residents with a voting right at a “closed” Town Meeting. Similarly, the application of public records laws are likely highly fact dependent relative to Town Meeting Members. Provision of a Town email address *could* tip the scales towards making communications using such addresses matters of public record.

ARTICLE 26

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)

This Article returns to the 2021 Annual Town Meeting warrant following a request from the Election Modernization Committee to postpone its consideration at the November 2020 Special Town Meeting, which the Board previously supported. The crux of the proposal remains the same – to amend the Town Manager Act to employ “ranked choice voting” for qualifying elected Town Offices. The EMC will re-present the Board with its full proposal and any

updates, but in summary, “ranked choice voting” (“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.

While an RCV ballot question did not pass 2020 Massachusetts Statewide Election on November 3, 2020, for state officials and congressional races, RCV is utilized at the local level in several Massachusetts jurisdictions, including the Cambridge City Council and School Committee. If the Board is inclined toward favorable action, a positive motion could be as follows (based on the Board’s previous vote and comment for the Special Town Meeting).

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 Board of Assessors 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."