



**Town of Arlington
Legal Department**

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MEMORANDUM

TO: Select Board
Marie Krepelka, Board Administrator
Adam Chapdelaine, Town Manager

FROM: Douglas W. Heim

DATE: November 9, 2018

RE: **Draft Final Votes and Comments for Articles:
STM Articles 3, 4, 5, and 6**

Please find below, draft final votes and comments for the above-referenced articles in advance of the November 14, 2018 Select Board meeting.

STM ARTICLE 3

**ACCEPTANCE/ LOCAL OPTION: RECREATIONAL
MARIJUANA EXCISE TAX**

VOTED: That the Town of Arlington accept G.L. c. 64N, § 3 to impose an excise on the retail sales of marijuana for adult use at the rate of 3 percent.

(5-0)

COMMENT: In anticipation of Special Town Meeting's potential approval of a zoning bylaw amendment to allow for siting of recreational marijuana facilities under STM Article 2, the Select Board unanimously supports the acceptance of a local excise tax on gross retail sales of recreational marijuana. In short, if retail marijuana sales are to be made in Arlington, the Select Board believes such sales should be subject to the maximum allowable local tax rate of 3%.

As of this vote, the Finance Committee has not yet had the opportunity to weigh in on the adoption of this excise tax, but the Committee has previously supported local option taxes on meals and hotels as important revenue sources for the Town. Particularly given the anticipated financial needs of the Town in coming years, the Board believes the adoption of the highest allowable rate is appropriate, but also looks to the Finance Committee for corroboration of this perspective.

**ARTICLE 4 BYLAW AMENDMENT/ LGBTQIA+ RAINBOW
COMMISSION MEMBERSHIP**

VOTED: That Title II, Article 13 Section 2 of the Town bylaw be and is hereby amended as follows:

Section 2. Membership

The Commission shall consist of seven (7) to nine (9) members, six (6) to eight (8) of which are to be appointed by the Town Manager subject to the approval of the Board of Selectmen, and one (1) of which shall be appointed by the School Committee. Members shall be appointed to the following initial terms:

Two (2) members to a one-year term, two (2) members for two-year terms, and three (3) members for three-year terms, as determined appropriate by the Town Manager and School Committee. All subsequent terms shall be for three years.

The Manager may, by the majority vote of the Rainbow Commission appoint up to two additional registered voters of the town for a maximum total of eight (8) commissioners. Additional members appointed pursuant to this section shall serve a single three-year term unless the majority vote of the Commission requests reappointment.

(5-0)

COMMENT: The Rainbow Commission's record to date of programs and events in its first year evidences not only the significant workload of the Commission, but the high demand for the Commission's activities. An expansion of membership would aid the Commission in meeting such demand. Furthermore, the Commission represents a wide range of groups, and an expansion of membership would allow for greater representation among such groups on the Commission. The Board also appreciates the flexibility in the number of commissioners the revised bylaw affords, similar to amendments made to the Capital Planning Committee at last

year's Town Meeting. If the Commission has difficulty filing seats at any time, it can contract to its original number of members.

ARTICLE 5

BYLAW AMENDMENT/CERTAIN PERSONNEL

VOTED: That Title I, Article 4 ("Treasury") of the Town Bylaws be and hereby is amended as follows:

ARTICLE 4: TREASURY & COLLECTIONS DIVISION

Section 1. Duty

The Town Treasurer shall administer the Treasury & Tax Collections Division.

ARTICLE 4: TOWN TREASURER'S DEPARTMENT & COLLECTIONS DIVISION

Section 1. Duty

The Town Treasurer shall administer the ~~Town Treasurer's Department~~ Treasury & Tax Collections Division.

Section 2. Divisions

~~The Town Treasurer's Department shall consist of the Tax Collection Division and the Treasury Division.~~

A. Tax Collection Division

- 1. The Town Treasurer also acts as the Collector of Taxes.**
- 2. The Collector of Taxes shall seasonably collect, under the title Town Collector, all accounts due the Town which are committed to him. When the Collector of Taxes serves a written demand for the payment of any delinquent taxes, a demand fee of \$30 shall be added to the amount of the tax demanded thereby.**
- 3. Every department of the Town shall deliver to the Comptroller at least once in every month a separate statement of each account due the Town arising through any transaction with such department. Upon receipt of such statements of accounts, the Comptroller shall commit such accounts to the Town Collector for collection. This section shall not apply to taxes and special assessment, licenses and permits issued or granted by the various departments of the Town, nor to interest on investments of sinking or trust funds.**

4. Any account committed by the Comptroller which the Town Collector is unable to collect by ordinary efforts will be referred back to the department in which said account originated for further collection effort. So far as permitted by law, any account or portion thereof may be abated by the Comptroller upon recommendation by said department.

In the event the account cannot be collected within a reasonable period of time and is not abated, it shall be referred by the Town Collector to the Town Counsel for appropriate legal action and the Comptroller shall be notified of said referral.

5. The Tax Collection Division shall, once in each week or oftener, pay over to the Treasury ~~Division~~ all money received during the preceding week or lesser period on every such account, including any sums received as interest on monies received on such accounts and deposited in any bank.

B. Treasury Division

1. The Town Treasurer receives and takes charge of all monies belonging to the Town.
2. The Town Treasurer shall pay all monies of the Town which are legally due and owing, according to the order of the Town or its authorized officers.
3. The Town Treasurer shall, from time to time during the fiscal year, prepare and update a cash flow projection of anticipated receipts and expenditures and shall manage the Town's excess cash by prudently investing same to the maximum advantage of the Town as permitted by law.
4. The Town Treasurer, in addition to the estimate of the amount required for the maintenance of the Town Treasurer's Department, shall also determine the amounts of interest and maturing debt to be included in the annual budget for the ensuing year. The Town Treasurer, shall also be responsible for the preparation of the Pension Funding Budget, to be prepared in accordance with current actuarial estimate of the town's pension funding liability.
5. The Town Treasurer shall have custody of all paid matured notes, bonds and coupons issued by the Town and all canceled checks issued ~~by him~~.
6. The Town Treasurer shall manage the Town's debt ~~and recommend to the Selectmen a term of years for all authorized long term debt and whether or not the Town should accept the interest rate offered for said debt prior to its issuance.~~

~~Section 3. Financial Review~~

~~The Town Treasurer shall prepare a financial review and report to the Annual Town Meeting regarding the financial condition of the Town. The report shall be a public record and a copy shall be filed with the Board of Selectmen in accordance with Title I, Article 2, Section 3 of the Bylaws.~~

Section 3 -4. Bond

The Town Treasurer shall give bond to the Town for the faithful performance of the duties of the office in a form approved by the Commissioner of Revenue and in such a sum to be determined by the Select Board, provided the amount of the bond shall not be less than the amount set by the Commissioner. The bond must cover all funds of which the Town Treasurer has custody. A separate bond must similarly be furnished covering the Town Treasurer's duties as Town Collector.

Section 4. Appointment of Treasurer

The Town Treasurer & Collector of Taxes shall be appointed by the Town Manager in coordination with the Finance Director. If the Treasurer & Collector of Taxes is also being appointed as the Finance Director, the position shall be appointed by the Town Manager without consultation.

~~Section 5. Appointment of Assistant~~

~~The Town Treasurer may in writing appoint, with the approval of the Selectmen, an Assistant Town Treasurer – Collector of Taxes. The Assistant Town Treasurer – Collector of Taxes shall be sworn to the faithful performance of the duties of the office and a record shall be made of said appointment and oath. The Assistant Town Treasurer – Collector of Taxes shall be a citizen of the United States and a resident of the Commonwealth of Massachusetts, and shall give bond annually for the faithful performance of the duties of the office in a form approved, and in an amount determined by the Commissioner of Revenue.~~

~~Section 6. Pension Funding~~

~~The Town Treasurer, upon determining the viability and appropriateness of initiating any borrowing for the purposes of funding the unfunded pension liability through so-called Pension Obligation Bonds, shall:~~

- ~~1. Notify the Finance Committee of any such intention to borrow, with documentation supporting said borrowing, and request a recommendation from the Finance Committee, including amount to be borrowed, in writing; said recommendation shall be rendered by the Finance Committee to the Treasurer within 30 calendar days from the Treasurer's notification,~~
- ~~2. At the same time, submit to the Commonwealth's Secretary of Administration & Finance the intention to borrow with documentation supporting, including an updated valuation study, said borrowing,~~

- ~~3. Present the results of any communication and/or determination received from Administration & Finance to the Finance Committee prior to any meeting with the Board of Selectmen,~~
- ~~4. Present to the Board of Selectmen a report stating such intention to borrow with documentation supporting said borrowing, and include:

 - ~~a. the recommendation report from the Finance Committee,~~
 - ~~b. the communication and/or determination(s) from Administration & Finance,~~
 - ~~c. the recommendation from the Town's Financial Advisor,~~
 - ~~d. the total amount to be borrowed, and the costs of said borrowing,~~
 - ~~e. any projected savings to the Town's annual operating budget,~~~~
- ~~5. Upon the approval of the borrowing by the Board of Selectmen, the Treasurer shall submit a Warrant Article requesting said appropriation in the next soonest annual or special town meeting, documentation cited in section 4, above, shall be included in materials presented to Town Meeting.~~
- ~~6. These procedures shall be incorporated into the Policy of the Office of Treasurer & Collector of Taxes, and be binding on the present and/or any future Town Treasurer(s).~~

FURTHER VOTED: That Title I, Article 6: Classification and Compensation Plans and Human Resource By-Law, Sections 9 and 21 of the Town Bylaws be and is hereby amended to remove the now appointed Town Treasurer from such sections, so as to reflect that the Town Clerk is the proper subject of such provisions alone, so as to read as follows:

Section 9. Allocation of Positions in the Town Clerk's Office ~~Departments of Various Appointing Authorities~~

A. Power of Clerk ~~and Treasurer/Collector~~

The Town Clerk ~~and the Treasurer/Collector~~, as an independent authority ~~ities~~, may reorganize, consolidate, or otherwise establish new positions in their ~~respective~~ departments without prior Town Meeting approval subject to available funds and the requirements of collective bargaining contracts and laws relating to same. Said authority ~~ies~~ may appoint persons to fill such new positions so created on a temporary basis.

B. Role of Director

Before taking any of the aforementioned contemplated actions, the Clerk ~~or the~~

~~Treasurer/Collector as the case may be~~, shall notify in writing the Personnel-Human Resources Director specifying the reasons therefore which notice shall not be dated earlier than December 1 of any calendar year.

The Director will consult with and assist the Clerk appointing authority in the contemplated action except when the Director disagrees with the contemplated action in which event the Director will so advise the Clerk appointing authority as to the reasons therefore not later than 21 days after receipt of the Clerk appointing authority's notice of contemplated action unless said date is mutually extended.

If the Director agrees with the contemplated action, then the Director will so advise the Clerk appointing authority in writing and the contemplated action shall become effective immediately.

If the Director disagrees with the contemplated action then the Director will so advise the Clerk appointing authority in writing of the reasons therefore. In such event the Director shall take immediate steps to convene a meeting of the Human Resource Board established under Section 4 of Title I, Article 6 of the bylaws. Said Board shall consider presentations of the Director and the Clerk appointing authority and will make a written recommendation regarding the contemplated action. The Human Resource Board shall convene not later than 14 days after disapproval by the Director of the contemplated action and render its advisory opinion within seven days of its consideration thereof. In any event the contemplated action may be implemented by the appointing authority at any time after the expiration of thirty days from the date of the Director's written disapproval of same notwithstanding any contrary recommendation of the Human Resource Board or its failure to timely meet to consider same.

C. Approval by Town Meeting

Any action on consolidation, reorganization, abolition of position, and the filling of positions associated therewith shall not become permanently effective until approved by the next occurring annual Town Meeting. Any new positions created shall not be placed into the Classification Plan unless so voted by the Town by amendment to the Classification Plan as established by Title I, Article 6 of the bylaws. Disapproval by the Town Meeting of the action of the Clerk appointing authority shall reestablish the status quo in said department prior to the action of the Clerk appointing authority having been taken.

Section 21. Benefits for ~~Town Treasurer/Collector and~~ the Town Clerk

Notwithstanding the fact that the elected positions of the ~~Town Treasurer/Collector and Town Clerk~~ are is not included in the Classification and Compensation Plans, ~~those individuals who are elected to same~~ the Clerk shall be entitled to vacation leave and sick

leave as provided in Title I, Article 6, Sections 12 and 13, respectively to the same extent as if said positions were was so included.

It is the intention of the Town that any person having occupied the position of Town Clerk and Treasurer/Collector since the Annual Election in February of 1984 shall be entitled to the accumulation of sick leave as provided by Title I, Article 6, Section 13 retroactive to the date of their first having been elected to the position of Clerk and Treasurer/Collector respectively. All effected officials shall certify the number of days accrued to date to the Personnel Director and thereafter on a yearly basis.

Said elected officials shall likewise be entitled to all provisions of Section 14, 15, 16, 17, 18, 22A, and 22B, of this Article, as applicable, and the longevity benefit shall be the same as provided for positions in Schedule M of the Classification and Compensation Plan.

(5-0)

COMMENT: The Select Board urges Town Meeting's favorable action on these straightforward amendments submitted by former Town Treasurer Dean Carman, which adjust two relevant sections of Title I of the Town Bylaws to represent that the Town Treasurer is no longer an elected official. Many of the duties, authorities and obligations of the Town Treasurer reflected in the bylaws reflect said position's role as an elected office, independent from the Town Manager and the Select Board. The Town voted both to convert the Treasurer to an appointed, rather than elected position, and to amend the Town Manager Act to create a "Finance Director" position, which coordinates the Town's financial business between the Manager's Office, the Comptroller, and the Treasurer.

Along with administrative changes which reflect that the Town Clerk is now the only elected official subject to Article 6 Sections 9 and 21, the substantive changes to the Treasurer Bylaw include the process by which the Treasurer is to be appointed (by the Town Manager in consultation with the Finance Director) and the elimination the specific process for the appointment of an Assistant Treasurer, the requirement that the Treasurer submit an independent financial review to Town Meeting, and specific notification and reporting processes for unfunded pension liability. As Mr. Carman noted, many of the reporting provisions are already otherwise required and/or provided by the Town Manager's Office in its Annual Report. More importantly, among the purposes of the creation of a Finance Director position and the conversion of the Treasurer to an appointed office is to coordinate the collection and reporting of this kind of data.

Finally, the Select Board notes that subsequent changes to the Town Manager Act will likely be necessary to harmonize all relevant provisions of the Act and the Bylaws, but given the time required to modify each respectively, amending the Bylaws in this instance is be best place to start.

ARTICLE 6

**ENDORSEMENT/ THE JOHN J. BILAFER ARLINGTON
CITIZENS' SCHOLARSHIP FUND – DOLLARS FOR
SCHOLARS**

VOTED: That Town Meeting hereby establishes the Town Scholarship Review Committee to review and make recommendations to the 2019 Town Meeting on the appropriateness and need for changes to Title II, Article 1 (The John J. Bilafer Arlington Citizens' Scholarship Fund – Dollars for Scholars), and what such revisions, if any, should be; and further that the Scholarship Review Committee be comprised of five (5) members, comprised of: one (1) member appointed by the Finance Committee; one (1) member appointed by the Select Board; one (1) member appointed by the Town Treasurer; and two (2) members appointed by the Town Moderator charged specifically with exploring ways of modernizing the administration of, and growing and enhancing the Scholarship Fund.

(5-0)

COMMENT: Based upon his experience working to help manage the John J. Bilafer Citizen's Scholarship Fund, former Treasurer Dean Carman submitted the instant warrant article to invite Town Meeting to create a committee to review the present bylaw. The size of the scholarship fund is substantially more significant than those of many other comparable towns, but the bylaw has not been updated in many years and likely lags behind modernization efforts in similar communities. Mr. Carman noted that Treasury Department staff serve the Scholarship admirably, but structural and policy changes should be considered by a formal body with members with some experience in fundraising and scholarship/grant distribution. The Select Board agrees and therefore requests Town Meeting create a Town Scholarship Fund Review Committee as set forth herein.