



**Town of Arlington  
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager  
John Leone, Town Moderator  
Resident Petitioners

From: Douglas W. Heim, Town Counsel

Date: February 1, 2019

Re: Annual Town Meeting Warrant Articles: Recycling Committee Membership and Mission, Regulation of Polystyrene Food Containers, Regulation of Outdoor Lighting, Notice of Demolition (Trees), Library Parking Costs, Home Rule – CPA Surcharge Exemption, and Local Option (Short Term Rental Impacts).

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I write to provide the Board a summary of the above-referenced, yet-to-be-numbered 2019 Annual Town Meeting warrant articles to assist in the Board's consideration of these articles at its upcoming hearing on February 11, 2019. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

## ARTICLE

## BYLAW AMENDMENT/RECYCLING COMMITTEE

**To see if the Town will vote to amend the Town Bylaws, Title II, Article 7: Arlington Recycling Committee to expand Committee membership from eight to ten; and further to revise the purpose and mission of the Committee to encompass a wider array of solid waste reduction methods; amend the charge of the Committee and associated Departments to achieve such revised purposes; and to remove Section 3 “Cost Effectiveness;” or take any action related thereto.**

(Inserted at the request of the Recycling Committee)

This article seeks first to expand the number of registered voters appointed by the Town Moderator serving on the Town’s Recycling Committee from eight to ten (for a total committee of eleven); and second to revise the Committee’s purpose and mission to address a broader range of solid waste reduction activities. A representative of the Recycling Committee will present the reasons for expanding the number of committee members and revising their charge and purview. They will likely also suggest specific solid waste reduction methods, policies and practices to be referenced in the revised bylaw. Should the Board be inclined to support this article, a motion to expand committee members and otherwise revise the Committee’s bylaw could be based upon the model set forth as below:

*VOTED: That Title II, Article 7 of the Town Bylaws, “Recycling Committee” be and hereby is amended to expand the number of registered voter members appointed by the Moderator from eight to ten for a total of eleven members in Section 1: Membership; and further by revising the scope of solid waste management activities addressed by the Committee in Section 2: Purpose and Mission; and further by striking Section 3. Cost Effectiveness in its entirety, so as to read in full as follows:*

### *ARTICLE 7: RECYCLING COMMITTEE*

#### *Section 1. Membership*

*ART. 27, A.T.M., 5/1/95*

*There shall be an Arlington Recycling Committee to be appointed by the Moderator. The committee shall consist of ~~9~~ 11 persons. The committee shall consist of the Town Manager or their designee, and ~~8~~ 10 members to be selected from the registered voters of the town. The terms of appointment to the committee initially shall be 3 members appointed for 3 years, 3 members appointed for 2 years, and 3 members appointed for 1*

*year. All reappointments upon the expiration of the original term of appointment shall be for 3 years. Members shall serve until their successors are appointed and qualified.*

## *Section 2. Purpose and Mission*

*The mission of the Recycling Committee is to advise the Town of opportunities to improve and expand recycling and solid waste reduction policies and practices in the Town, to educate and advocate recycling, source reduction ~~and~~ reuse of waste, and other forms of solid waste reduction to the citizens, offices and businesses of the Town, and to conduct research and programs to increase participation in recycling, composting, and proper disposal and reduction of waste.*

*Among other actions, the Recycling Committee should monitor the activity of the trash and recycling contractor and report any problem areas to the Director of Public Works, monitor collection of white paper in the Town for recycling, manage collections of household hazardous waste and inform residents of non-toxic alternatives to hazardous substances, and publicize the benefits of and opportunities for recycling and composting of waste in Arlington.*

## *Section 3. Cost Effectiveness*

*~~In carrying out this mission, the Committee shall ensure that its recommendations are cost effective (or will become cost effective with sufficient participation), or are necessary to comply with state and federal regulations.~~*

## ARTICLE

## BYLAW AMENDMENT/REGULATION OF POLYSTYRENE FOOD CONTAINERS

**To see if the Town will vote to regulate or prohibit the sale or distribution of polystyrene products at retail, food service, and other establishments, or take any other action thereto.**

(Inserted at the request of the Recycling Committee)

While I expect a representative of the Recycling Committee will detail their proposal at hearing, my understanding is that the intention of this article is similar to that of Article 17 of the 2017 Annual Town Meeting, which resulted in a bylaw aimed at reducing use of plastic bags by Arlington retailers. Similar bylaws have been enacted regulating polystyrene containers to varying degrees in approximately thirty communities throughout the Commonwealth including Andover, Brookline, Cambridge, Concord, and Wayland. Concord's bylaw for example prohibits use of several types of polystyrene food service ware and packaging in its food establishments, but allows the sale of certain polystyrene product themselves so long as better alternatives are on display and available for purchase. The majority of these bylaws offer time tables for compliance similar to the phased approach of Arlington's plastic bag bylaw, as well as exemption criteria (also similar to Arlington plastic bag bylaw).

In the interests of public clarity on the authority of Town Meeting to enact this kind of bylaw, I note that while the Legislature has considered at least one bill to regulate polystyrene, it has yet to take any further action which would preempt local ordinances.

## ARTICLE

## BYLAW AMENDMENT/NOTICE OF DEMOLITION

**To see if the Town will vote to amend the Town Bylaws to include trees subject to the Tree Protection and Preservation Bylaw as requiring a notice of demolition by amending TITLE VI, BUILDING REGULATIONS, ARTICLE 7, NOTICE OF DEMOLITION to include reference to the removal of trees subject to the Tree Protection and Preservation Bylaw in paragraphs A and B.**

(Inserted at the request of Elizabeth Pyle and 10 Registered Voters)

This resident petition article from Ms. Elizabeth Pyle seeks to add to the categories of activities which prompt the notice requirements of the Town's Notice of Demolition Bylaw (Title VI, Article 7). In other words, under this proposal a project triggering the Town's Tree Protection and Preservation Bylaw (Title V, Article 16), would now also trigger the Notice of Demolition bylaw. The Notice of Demolition bylaw requires that abutters and occupants within 200 feet of an appropriate project site be provided certain information by owners or their agents in advance of commencing construction activities covered by the bylaw. The notice must include, among other things, contact information for a developer or contractor, a site plan, and information about the anticipated work schedule and other features of the project. For example, presumably a "notice of demolition" involving Protected Trees would include any Tree Plan submitted pursuant to the Tree Protection Bylaw.

It should be noted that many if not all projects which would trigger the Tree Protection Bylaw already trigger the Demolition Delay Bylaw (demolitions of buildings, large additions, and new construction), but because Tree Protection itself is not the reason for the notice, tree plans are not presently required to be included in the notices to abutters and occupants.

## ARTICLE

## BYLAW AMENDMENT/ REGULATION OF OUTDOOR LIGHTING – DARK SKIES BYLAW

**To see if the Town will vote to amend the Town Bylaws to further regulate outdoor lighting; to reduce or eliminate light pollution (artificial light which causes a detrimental effect on the environment, interferes with the enjoyment of the night sky, causes undesirable glare, or unnecessary illumination of adjacent properties); determine the penalty for violation thereof; or take any action related thereto.**

(Inserted at the request of Paul Schlichtman and 10 Registered Voters)

By vote of the 2014 Annual Town Meeting, the Town's previous ordinance regulating outdoor lighting on private property was deleted and replaced by Mr. Schlichtman's then proposed "dark skies" bylaw, now codified in the Town Bylaws within Title V Article 14. The revised bylaw applies light pollution protections to residents abutted by not only other residential properties, but commercial and industrial properties as well. Mr. Schlichtman's 2014 proposal under identical warrant article language originally envisioned an even more expansive bylaw. However, the intent of his present article has not been provided to date.

## ARTICLE

## LOCAL OPTION/SHORT TERM RENTAL IMPACT FEES

**To see if the Town will vote to adopt a local option “community impact” fee for short-term rentals of residential or commercial properties pursuant to G.L. c. 64G sec. 3D(a); and/or also adopt a second local “community impact” fee for short-term rentals pursuant G.L. c. 64G sec. 3D(b); or take any action related thereto.**

(Inserted by the Select Board)

As the Board will recall, the recently passed “Act Regulating and Insuring Short-Term Rentals” codified as G.L. c. 64G, allows municipalities to assess two local option “community impact fees” relative to short-term rentals (defined as houses, condominiums, and other dwellings where at least one room or one unit is rented out for less than 31 consecutive days via advanced reservation system). Community impact fee funds are directly collected by the Town, but such revenues are partially restricted. Thirty-five percent of the impact fees must be dedicated to affordable housing or local infrastructure projects (and therefore should be placed into a reserved appropriation account. The remaining balance of funds may be appropriated for any legal purpose. Because Arlington has already adopted the room excise option, Town Meeting may now vote to adopt one or both of the “community impact” fee options for short-term rentals without further process.<sup>1</sup>

The two types of community impact fees available for local option are:

1. A c. 64G, § 3D(a) option, which applies to “professionally managed units,” consisting of one of two or more short-term rental units in same city/town not located within a single- or two- or three-family dwelling that includes the operator’s primary residence; and
2. The G.L. c. 64G, § 3D(b) option, which is assessed on short-term rental units located within a two- or three-family dwelling that includes an operator’s primary residence.

In order to adopt the second impact fee option, the Town must the first option, however Town Meeting is not prohibited from consider the former and the later at the same meeting under the same Article.

I look forward to discussing these articles with you further at hearing on the 11<sup>th</sup> and will provide supplemental materials to these comments shortly.

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<sup>1</sup> The room excise option is a prerequisite to the short-term rental community impact fee under c. 64G.

## **ARTICLE**

## **VOTE/ROBBINS LIBRARY PARKING COSTS**

**To see if the Town will vote to change the cost of parking in the spaces behind and in front of the Robbins Library, or take any action related thereto.**

(Inserted at the request of Andrew Fischer and 10 registered voters)

As the Board knows, it serves as the Parking Commissioners for the Town of Arlington pursuant to G.L. c. 90 sec. 20A and 20A 1/2, setting the parking rules and regulations for the Town, including its parking fees. Thus, while Mr. Fischer may certainly present his perspective on the fees charged for Robbins Library Parking, Town Meeting cannot supersede your statutorily granted authority to do so by vote, resolution, or otherwise. At most, Town Meeting could take a non-binding vote to express its collective opinion about parking fees.



## ARTICLE

## HOME RULE/CPA SURCHARGE EXEMPTION FOR SENIOR HOMEOWNERS

**To see if the Town will vote to or take any action related there to: Allow senior homeowners over 65 years of age and have lived in their home for ten years or more to opt out of the CPA surcharge.**

(Inserted at the request of Bob Radochia and 10 Registered Voters)

The Town of Arlington accepted sections 3 through 7 of G.L. c. 44B (the Community Preservation Act) by vote at the November 4, 2014 Election (having previously been approved for placement on the ballot by the 2014 Annual Town Meeting). Arlington's adoption of the CPA included approval of three of four statutorily available exemptions from the CPA surcharge on taxpayers provided in G.L. c. 44B sec. 3:<sup>2</sup>

- 1) \$100,000 of the value of each taxable parcel of residential real property;
- 2) property owned and occupied as a domicile by any person who qualifies for low income housing or low or moderate income senior housing in the Town; and
- 3) \$100,000 of the value of each taxable parcel of class three, commercial property, and class four, industrial property as defined in section 2A of said Chapter 59.

Mr. Radochia's proposal would create a new, broader, and somewhat overlapping exemption, relieving *all* property owning residents over the age of 65 who have lived in Town for more than 10 years from assessment of the surcharge. I expect Mr. Radochia to present his rationale for such an exemption. However, it should be noted that because it is not provided for within c. 44B sec. 3, the exemption may only be achieved by Home Rule Petition. It is likely that the Legislature would require any special legislation creating the new exemption to be approved via local ballot initiative consistent with the process for revoking the CPA or reducing the CPA surcharge set forth in c. 44B sec. 16.

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<sup>2</sup> Any taxpayer receiving a regular property tax abatement or exemption also receives a *pro rata* reduction in the CPA surcharge.