



**Town of Arlington  
Legal Department**

Douglas W. Heim  
Town Counsel

50 Pleasant Street  
Arlington, MA 02476  
Phone: 781.316.3150  
Fax: 781.316.3159  
E-mail: [dheim@town.arlington.ma.us](mailto:dheim@town.arlington.ma.us)  
Website: [www.arlingtonma.gov](http://www.arlingtonma.gov)

To: Select Board

Cc: Adam Chapdelaine, Town Manager  
John Leone, Town Moderator  
Jennifer Raitt, Planning Director  
Arlington Tree Committee  
Resident Petitioners

From: Douglas W. Heim, Town Counsel

Date: February 21, 2019

Re: Annual Town Meeting Warrant Articles: 31, 32, 33, 36, 37, 42, 46, and 47

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I write to provide the Board a summary of the above-referenced 2019 Annual Town Meeting warrant articles to assist in the Board's consideration of these articles at its upcoming hearing on February 25, 2019. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

## ARTICLE 31

### BYLAW AMENDMENT/RENAME COMMUNITY PRESERVATION COMMITTEE

**To see if the Town will vote to amend the Town Bylaws to rename the Community Preservation Committee; or take any action related thereto.**

(Inserted at the request of the Community Preservation Committee)

The purpose of this straightforward article is to rebrand the Community Preservation Committee in the interests of better highlighting the Committee's work and avoiding confusion with the Capital Planning Committee, both of which of course are abbreviated as "CPC." I expect representatives of the Committee will provide the Board their proposed new name. Permit me to note that G.L. c. 44B sec. 5 requires all CPA communities to have a "community preservation committee." However, such a requirement does not signify that Arlington's committee cannot be named something distinctive in its own bylaws. Moreover, any concern is easily managed by some form of the following inserted within Title II, Article 12 of the Town Bylaws:

*The \_\_\_\_\_ Committee shall serve all functions of a "community preservation committee" as defined and required by M.G.L. c. 44B.*

## ARTICLE 32

### BYLAW AMENDMENT/TREE PROTECTION AND PRESERVATION

**To see if the Town will vote to amend the Town Bylaws, Title V Regulations Upon the Use of Private Property, Article 16: Tree Protection and Preservation to: amend the definition of Protected Trees so as to include smaller trees (in diameter at breast height or "DBH"), and amend the definition of tree removal so as to include intentional or unintentional damage to Protected Trees during and construction which results in the death of Protected Trees; amend requirements of tree plans to further require identification of public shade and/or street trees and critical root zones of Protected Trees; remove the option to mitigate loss of Protected Trees by planting of replacement trees; and further detail the Select Board's authority to establish rules and regulations to administer the bylaw for the purposes of carrying out the intent of this bylaw, including but not limited to review and approval of tree plans, and presiding over enforcement actions as necessary; or take any action related thereto.**

While I expect representatives of the Tree Committee to present the reasons and full scope of the changes requested to the Tree Protection and Preservation Bylaw, my understanding

is that the current bylaw continues to be insufficient to protect the Town's tree canopy. Specifically, the Committee proposes to:

1. Increase the number of protected trees by changing the minimum size of trees subject to protections from 10 DBH (diameter breast height) to 8 DBH;
2. Remove the mitigation option which invites property owners and developers to plant their own replacement trees because such trees are often inadequately planted or cared for such that they fail to thrive;
3. Require additional information on already requisite Tree Plans, including representing public shade trees and detailing how critical root zones of "protected trees" will be protected from fatal damage during construction;
4. Refine the definition of tree removal such that trees which are intentionally or unintentionally fatally harmed without being cut down are covered by the bylaw; and
5. Explicitly and transparently empower the Select Board to promulgate regulations necessary to achieve the intent of the bylaw.

If the Board is inclined to support the Article, a motion to amend the current bylaw would be substantially as follows:

*VOTED: That Title V, Article 16, sections 2.A, 4.C, and 6 be and hereby are amended as follows:*

## *ARTICLE 16 TREE PROTECTION AND PRESERVATION*

### *Section 2. Definitions*

*A. The following definitions shall apply to this By-law:*

*"Protected Tree" - Any existing healthy tree on private land with a DBH of ~~ten (10)~~ eight (8) inches or greater, located in the setback area, which does not pose an immediate hazard to person or property or is not under imminent threat of disease or insect infestation.*

*"Tree Plan" - A site plan drawn and stamped by a certified land surveyor or engineer showing all Protected Trees in the setback areas, public shade trees on the property, and indicating, on the site plan or in a separate document, which Protected Trees will be retained, which will be removed, and, how critical root zones of each protected tree and public shade tree will be protected from damage during site work as to Protected Trees which will be removed, as well as whether mitigation will be by replacement on the property or by payment into the Tree Fund;*

*“Tree Removal” - The cutting down or effective destruction during demolition or construction activities of a tree intentional or unintentionally.*

#### *Section 4. Procedures and Requirements for the Preservation of Trees*

- C. *For each Protected Tree removed, there shall be either (1) ~~a replacement tree planted on the property no later than 180 days after the Certificate of Occupancy is issued, of a minimum caliper of two and a half (2.5) inches and of a species native to the area and expected to reach a height of 50 feet or more at maturity;~~ or (2) a payment made to the Tree Fund in the amount set by a mitigation schedule approved by the Select Board assigning a value per inch of DBH of Protected Tree(s) to reflect the cost of planting and caring for new public, prior to the commencement of work on the property, which the Town shall use to plant replacement trees in the vicinity of the tree removal or in other locations in the discretion of the Tree Warden.*

#### *Section 6. Administration*

*The Select Board shall establish further administrative rules and regulations for the review and approval of Tree Plans, as well as enforcement determinations necessary to effectuate the purposes of this bylaw, including, but not limited to further definitions, tree plan requirements, and procedures. Failure to issue rules and regulations will not have the effect of suspending or invalidating this By-law.*

### **ARTICLE 33**

### **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.**

This resident petition article from Ms. Elizabeth Pyle follows a recommendation of the Residential Study Group to add to the categories of activities which prompt the notice requirements of the Town’s Notice of Demolition Bylaw (Title VI, Article 7), and as such will be presented by this Office and the Manager with a supporting memorandum from the Planning Department.

As the Board will recall, the 2017 Town Meeting amended the Bylaws to expand the categories of activities subject to a Notice of Demolition (alternately known as a “Residential Construction Notification” or “Good Neighbor Agreement”). These notifications are intended to foster communications between neighboring residents and parties engaged in significant

residential construction activities, including foundation excavations, demolitions, and new construction for a variety of substantive purposes including quality site management, noise abatement, etc. One activity that involves similar substantive concerns – noise, site management, compliance with other bylaws, but is outside the scope of the present notice bylaw is clear-cutting lots of trees prior to new construction commencing. A separate bylaw provision, Title V, Article 16: Tree Protection and Preservation, applies to such activities, but does not require a notice.

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.

Were the Board inclined to support favorable action on this Article, a motion would appear along the lines of the follow:

*VOTED: That Title VI, Article 7 (“Notice of Demolition”) of the Town Bylaws be and hereby is amended to add “Protected Tree Removal” to the categories of activities requiring notice to abutters, as follows:*

*NOTICE OF DEMOLITION, OPEN FOUNDATION  
EXCAVATION, PROTECTED TREE REMOVAL,  
NEW CONSTRUCTION, OR LARGE ADDITIONS*

*A. The owner of any building or parcel who intends to have such building demolished, engage in open foundation excavation, engage in new residential construction, remove protected trees in advance of new residential construction, or build a large addition must at least seven (7) calendar days prior to the commencement of any site work (including demolition, tree removal, or open foundation excavation), or within seven (7) calendar days of the filing of an application for a Building Permit, whichever date is earlier, give notice by first-class mail to all abutters and current occupants (to the extent practicable) within 200 feet of such building or construction site before such demolition, construction, or open foundation excavation can commence.*

*B. The notice required herein shall, at a minimum, contain contact information for the developer or contractor, a site plan and/or tree plan for any applicable residential demolition, open foundation excavation, protected tree removal, alteration or construction project, as well as information detailing the hours of operation for the project, anticipated completion date, work schedule, and health safety, and abutting property protections, and as appropriate, noise abatement measures applied by the developer or contractor of the project.*

*C. "Demolition" shall be defined as the act of pulling down, destroying, removing, or razing 50 % or more of a building, or commencing the work of total or substantial destruction with the intent of completing the same.*

*"Open foundation excavation" shall be defined as an open and exposed excavation for the purposes of constructing or expanding a residential building foundation. Satisfaction of open foundation excavation requirements of this Article shall not be construed to satisfy any additional requirements set forth in Title V Article 3 of these bylaws.*

*"Large additions" shall be defined as an alteration or addition in any residential district which increases the size of a building by 750 square feet or more, or by 50% or more of the existing building's gross floor area.*

*"Protected tree removal" shall be defined as removal of "Protected Trees" as defined in Title V Article 16 ("Tree Protection and Preservation"), Section 2.A and set forth in Title V Article 16, Section 3.A(3).*

*D. Prior to issuance of a demolition or building permit, or commencing an open foundation excavation or protected tree removal the applicant shall demonstrate to the satisfaction of the Inspector of Buildings (or the Tree Warden in the case of protected tree removal prior to new residential construction) that they have given the notice required herein, by providing a list of those notified, a copy of the notice, and an affidavit stating when it was mailed.*

*E. Violators of this bylaw will be subject to a fine of \$200 per day upon notification of the Building Inspector.*

## **ARTICLE 36**

## **VOTE/ELECTION MODERNIZATION STUDY GROUP**

**To see if the Town will vote to establish a study group to examine ways of modernizing the Town's electoral system and make recommendations to the Town Clerk, the Select Board, and Town Meeting, including, but not limited to, voter registration practices, early voting practices, non-citizen voting, and ranked choice voting at the next Annual Town Meeting; or take any action related thereto.**

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

This 10-registered voter article seeks to organize a study group by Town Meeting vote to examine and make recommendations on a variety of Town voting and election matters, including, but not limited to the Town's voter registration and early voting practices, in part in recognition of the wider policy choices afforded cities and towns by the Commonwealth. While I anticipate Ms. Kelleher and others will provide the Board with additional information, it is my understanding that members of the Board share an interest in garnering a better understanding of options, logistics, and limitations upon expanding voter access at the polls in Arlington.

## **ARTICLE 37**

## **VOTE/REMOVE POLICE CHIEF FROM CIVILSERVICE**

**To see if the Town will vote to remove the position of Chief of Police from Civil Service in the Town of Arlington including taking all necessary measures to effectuate such a vote; or take any action related thereto.**

(Inserted at the request of the Town Manager)

This article proposes to have Town Meeting vote to remove the Police Chief position from civil service. As the Board knows, civil service in Massachusetts provides and requires certain procedures and criteria for hiring, promotion, and termination of civil service classified positions. Chapter 19 of the Revised Laws, sec. 37<sup>1</sup> provided the mechanism for Arlington to classify its police chief (and police force) as a civil service position(s), and the 1911 Town Meeting (or 1912) voted to do so.<sup>2</sup> See Reference Materials attached hereto for excerpts of relevant legislative history.

Given that the police chief entered civil service by vote of Town Meeting, a vote of Town Meeting is the only mechanism for removing said position from civil service. Without any comment on the merits of civil service removal, should the Board be inclined to move favorable action, a vote to such effect would be as follows:

*VOTED: That the Town of Arlington hereby removes the position of 'Chief of Police' of the Arlington Police Department from civil service, thereby divesting said position from all the rights and obligations set forth in G.L. c. 31 and its civil service predecessors in law including,*

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<sup>1</sup> "Revised Laws" are collections of acts predating the general laws as revised by subsequent legislative acts. The earliest civil service laws in Massachusetts are codified therein, but began in the late 1800s.

<sup>2</sup> Town Human Resources records reflect that "Police" were entered into civil service on March 6, 1911, the "Police Chief" subsequently on March 4, 1912, and "all other" Police employees in 1943. Examination of the votes of the 1911 Town Meeting suggest the chief position was indeed added in 1911, but in either case, the chief position has been in civil service since 1912 at the latest.

*but not limited to c. 19 of the Revised Laws and c. 320 of the Acts of 1884. This vote has no effect on the civil service status of any other Town of Arlington employee.*

## **ARTICLE 42**

## **HOME RULE LEGISLATION/TOWN TREASURER**

**To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to update the Town Manager Act to reflect the transition of the Treasurer's Office from an elected to appointed position; or take any action related thereto.**

**(Inserted by the Select Board)**

This article is inserted at your request in the interests of bringing the Town Manager Act up to date with the conversion of the Town Treasurer from an elected to an appointed office. Modifications to the Town Bylaws to the same effect were recently acted upon positively by Special Town Meeting and await Attorney General approval. The three primary areas of the Town Manager Act which require updates are:

- Section 8, which lists the Treasurer as an elected office along with the Select Board, Board of Assessors, and Town Clerk;
- Section 15(a), which includes the Treasurer among those offices which are not supervised by the Manager; and
- Section 15(c), which provides for the manner of appointment of Town officers and employees by the Town Manager.

Sections 8 and 15(a) require straightforward administrative changes. An amended Section 15(c) could provide for appointment of a Treasurer in the same manner as the recent changes to the Town Comptroller appointment process, wherein the Comptroller is hired and terminated by the Manager, but upon the consent of the Select Board. If the Board were inclined to similarly afford the Select Board a role in the Treasurer appointment process and/or some level of insulation for the Treasurer, a new section of the Manager Act could read as follows:<sup>3</sup>

*The town manager shall also appoint upon merit and fitness alone, the Town's Treasurer subject to the approval of the Select Board. Appointment of the Treasurer shall become effective upon the approval of the Select Board. If the Select Board fails to act by approving, rejecting, or requesting additional reasonable time to consider a candidate however, appointment shall become effective on the thirtieth day following the day on*

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<sup>3</sup> Alternatively, Section 15(c) could be amended to add the Treasurer as a position utilizing the same process.



*The Treasurer may be removed by the town manager subject to the approval of the Select Board. Removal of the Treasurer shall become effective upon approval of the Select Board. If the Select Board shall fail to act, by approving, rejecting, or requesting additional reasonable time to consider a termination however, removals made by the town manager shall become effective on the fifteenth day following the day on which notice of the proposed removal is filed with the Select Board. For the purposes of this section, notice of removal shall be considered filed with the Board when such notice is filed at an open meeting of the Select Board. Nothing in this paragraph shall supersede or abridge the Treasurer's employment rights afforded by state law.*

**ARTICLE 46**                      **ACCEPTANCE OF LEGISLATION/ESTABLISHMENT OF  
A COMMISSION ON DISABILITIES FUND**

**(Inserted at the request of the Commission on Disabilities)**

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Should the Board be inclined towards positive action, a recommended vote would be substantially as follows:

*VOTED: That the Town hereby accepts G.L. c. 40 sec. 22G and establishes a dedicated fund for fines assessed for violations of handicap parking in the Town of Arlington; such funds to be expended as recommended by the Arlington Commission on Disabilities upon the approval of the Town Manager/Select Board.*

## **ARTICLE 47**

## **ACCEPTANCE OF LEGISLATION/PEG ACCESS FUND**

**To see if the Town will vote to establish a Cable Access Fund, pursuant to Massachusetts General Laws, Chapter 44, Section 53F<sup>3</sup>/<sub>4</sub>, said fund to be funded by fees received pursuant to the Town's cable franchise agreements, and furthermore, to transfer all funds currently held by the Town for the purpose of cable PEG access operations to said fund, said transfer to be effective upon passage of this article; or take any action related thereto.**

(Inserted at the request of the Town Manager)

The Massachusetts' Enterprise Fund Law (G.L. c. 44) now requires the Town to establish a dedicated Cable Access Fund for its PEG Access provider (ACMI) in order to avoid having cable franchise fees and related revenues deposited into the general fund. The most effective option for Arlington is to reserve the franchise fees and other cable related revenues for appropriation by accepting G.L. c. 44, § 53F<sup>3</sup>/<sub>4</sub> and establishing a PEG Access and Cable Related Fund. A vote to adopt c. G.L. c. 44, § 53F<sup>3</sup>/<sub>4</sub> would be as follows:

*VOTED: That the Town hereby accepts General Laws Chapter 44, Section 53F<sup>3</sup>/<sub>4</sub>, which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year 2020 which begins on July 1, 2019.*

I look forward to discussing these articles further at hearing with the Board.