




**Town of Arlington  
Legal Department**

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**MEMORANDUM**

TO: Select Board

FROM: Douglas W. Heim 

DATE: February 22, 2019

RE: **Draft Votes and Comments for Articles: 28, 29, 34, 44, and 45**

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I write to provide the Board the following as draft Votes and Comments for your consideration at Monday's Select Board meeting regarding the previously heard, above-referenced warrant articles. I note that where existing bylaw provisions are amended by a vote, underlined text signifies new or additional wording, while strikethrough text signifies words and clauses to be eliminated.

**ARTICLE 28                      BYLAW    AMENDMENT/RECYCLING    COMMITTEE  
MEMBERSHIP AND MISSION**

**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~~ - ZERO WASTE ADVISORY COMMITTEE**

**Section 1. Membership**

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

There shall be an Arlington Reeyeling Zero Waste Advisory 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 Reeyeling-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 Reeyeling 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.~~

(5 - 0)

**COMMENT:** The Select Board requests Town Meeting's support for the substantive and administrative changes proposed by the Town's Recycling Committee to rebrand itself as the "Zero Waste Advisory Committee" and expand their work to more comprehensive and current waste reduction strategies. The Committee was initially formed in 1994 and has enjoyed great success in reducing waste and providing highly utilized recycling programs and services. However, as waste reduction, reuse, and recycling issues are changing, so too must our chief committee charged with advising the Town of appropriate strategies related thereto. Furthermore, expanded interest in the Committee's activities invites an expansion in membership. By offering two additional seats on the committee we can better take advantage of the increasing number of skilled volunteers available to help tackle the Town's waste challenges.

## **ARTICLE 29                      BYLAW AMENDMENT/REGULATION OF POLYSTYRENE**

**VOTED:** That Title VIII (Public Health and Safety) be and hereby is amended by adding a new "Article 10: Polystyrene Reduction" to read as follows:

### **ARTICLE 10 POLYSTYRENE REDUCTION BYLAW**

#### **Section 1. Purpose and Intent**

**The use and disposal of polystyrene has significant detrimental impacts on the Town and our local and regional environment, including:**

- A. Harm to aquatic life when ingested;**
- B. Pollution of waterways;**
- C. Human health risks from potential exposure to chemicals leaching from polystyrene food containers and consumption of aquatic wildlife that contains polystyrene microplastics; and**
- D. Limited recycling options for polystyrene containers and other polystyrene products.**

**With the goal of protecting the health of residents and our natural resources, consistent with the Town Goals adopted by Town Meeting in 1993, and given that inexpensive, safe alternatives to polystyrene are easily obtained, the Town will phase out the use of certain polystyrene plastics by January 1, 2020.**

#### **Section 2. Definitions**

- A. "Polystyrene Disposable Food Services Containers" shall mean single-use disposable products used for serving, consuming, or transporting food or beverages, including**

without limitation take-out foods and/or leftovers from partially consumed meals prepared by a restaurant and/or retail food establishment. This includes but is not limited to plates, cups, bowls, trays, hinged or lidded containers, straws, cup lids, and cutlery. It shall also include single-use disposable packaging for uncooked foods prepared on the premises, as well as disposable catering trays.

- B. “Expanded or Foam Polystyrene” and “Polystyrene” shall mean blown polystyrene (polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam) and expand and extruded forms, which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion blown molding (extruded foam polystyrene) sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam. Products containing polystyrene bear the recycling number “6” or “PS 6”.
- C. “Food Establishments” shall mean any operations, including without limitation, restaurants, schools, farmers markets, and public venues that store, prepare, package, serve, vend or otherwise provide food for human consumption. Any establishment requiring a permit to operate in accordance with the State Sanitary Code (standards for food), 105 CMR 590.000, et. seq., shall be considered a Food Establishment for the purpose of this bylaw.
- D. “Retail Establishments” shall mean any commercial business facility, whether for-profit or not-for-profit, that sells goods directly to consumers including, but not limited to, grocery stores, pharmacies, liquor stores, convenience stores, retail stores, and vendors selling clothing, food, and personal items, dry cleaning services, theaters and all other food service establishments.
- E. “Public Venues” shall mean operations including, but not limited to, meeting halls, churches, Town offices, the Senior Center, Recreation Department facilities, libraries, and public schools operating in Arlington.
- F. “Department” shall mean the Arlington Department of Health and Human Services.
- G. “Director” shall mean the Director of Health and Human Services.

### Section 3. Use Regulations

Effective January 1, 2020, polystyrene disposable food service containers, polystyrene cutlery, new polystyrene packing peanuts, and other polystyrene disposable products shall not be used, sold, or distributed by food establishments or retail establishments within the Town of Arlington.

This bylaw shall not apply to:

- A. Polystyrene packing peanuts and foam packaging from shipments coming to Arlington or the reuse of such products coming to Arlington;
- B. Prepackaged meat and produce trays, egg cartons, and other food or beverage products bought from or packaged by any supplier located outside of Arlington; or
- C. Polystyrene foam freezer chests.

#### Section 4. Penalties and Enforcement

- A. Each food establishment or retail establishment, as defined in Section 2, located in the Town shall comply with this by-law.
  - 1. If it is determined that a violation has occurred, the Director, or his or her designee in the Department, shall first issue a "warning notice" to the food establishment or retail establishment for a first time violation.
  - 2. If after 14 days from receipt of the warning notice, the food establishment or retail establishment continues to violate this by-law or commits a second violation, the Director shall issue a notice of violation and shall impose a penalty against the food establishment or retail establishment.
  - 3. The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
    - (i) \$50 for the first offense;
    - (ii) \$100 for the second offense;
    - (iii) \$150 for the third and all subsequent offenses.
  - 4. No more than one penalty shall be imposed upon a food establishment or retail establishment within a seven calendar day period.
  - 5. Food establishment or retail establishment shall have 15 calendar days after the date that a notice of violation is issued to pay the penalty or request a hearing in writing to the Director.
- B. The Director may promulgate additional guidelines and regulations necessary for the effective enforcement of this bylaw, consistent with the foregoing.

#### Section 5. Waivers

In the event that compliance with the effective date of this by-law is not feasible for a food establishment or retail establishment because of either unavailability of alternative containers or products or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or owner's representative. The Director

may provide one additional six-month waiver upon showing of continued infeasibility or hardship, as set forth above.

#### **Section 6. Severability**

The provisions of this bylaw are severable; and if any of the provisions of this bylaw shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

(5 – 0)

**COMMENT:** The Select Board urges Town Meeting to vote in support of this measure to join communities such as Andover, Brookline, Cambridge, Concord, and Wayland in prohibiting the use of a limited class of polystyrene products at food and retail establishments – specifically a limited kind of plastic food service containers, cutlery, and packaging materials. These products pose risks to human health and the environment, are difficult to recycle, and have cost-effective readily available alternatives.

The Board emphasizes that only plastics bearing recycling number 6 (primarily single-use plastics) would be covered by this prohibition, and a variety of exceptions are woven into the bylaw such as exceptions for polystyrene coolers and food products which come to grocery stores and other retailers in pre-packaged in polystyrene containers. Furthermore, while Arlington residents are permitted to purchase polystyrene products online or outside of Arlington, the cost difference between banned polystyrene products and alternatives is expected to be between ten and twenty cents, which should have minimal impact on consumers.

Finally, this well-researched proposal is modeled after a successful plastic bag reduction bylaw passed by Town Meeting in 2017. As such, it includes advanced notice to retailers and establishments, graduated penalties, and a temporary waiver system for appropriate businesses.

#### **ARTICLE 34**

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

**VOTED:** That Title V, Article 14 (Regulation of Outdoor Lighting) of the Town Bylaws be and hereby is amended as follows:

#### **Section 1. Introduction**

It is the intention of this by-law to regulate the use of outdoor lighting so as 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), and to conserve energy and resources to

~~the greatest extent possible not unduly inconvenience and/or disturb residential abutters by having outdoor lighting shining directly into their windows or onto their properties, or by creating observable and unreasonable glare shining into their windows or onto their properties. This by-law is enacted with the understanding that enforcement shall be based upon any complaint issued by any resident or residential property owner with the Town.~~

## Section 2. Definitions

- A. A "luminaire" shall be defined as a complete outdoor lighting unit or fixture including a lamp or lamps, together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply, but not including a pole on which the luminaire may be mounted.

A luminaire shall be considered shielded if it is constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected above a horizontal plane passing through the lowest direct-light-emitting part of the luminaire.

## Section 32. Regulation

- A. All outdoor lighting, including but not limited to: floodlighting, decorative lighting, lighting primarily designed to illuminate walks and/or walkways, driveways, flagpoles, outdoor living areas and/or outdoor recreational facilities shall be appropriately continuous, indirect, and installed and/or shielded in a manner that shall prevent unreasonably bright light from shining onto or upon any street and/or nearby residential property whether directly or by creating unreasonably bright glare.
- B. The use of mercury vapor, high pressure sodium, and metal halide bulbs is prohibited within the Town of Arlington.
- C. Any lighting, affixed to a utility pole or placed on town property, on the public right-of-way or easement, in which the purpose of the luminaire is to illuminate areas outside the public right-of-way or easement, shall be subject to a permit by the Select Board. In granting the permit, the Select Board shall establish that the permitted lighting fixture conforms to all provisions of this by-law.
- D. Up-lighting, the direct light illumination distributed above a 90 degree horizontal plane through the lowest direct light emitting part of the luminaire, is prohibited, except for illumination of the United States Flag, the Flag of the Commonwealth of Massachusetts, or other flags on Town property (including the public schools), Town and school signage providing public notices, a building façade, or a public monument. For any up-lighting, the luminaire shall be equipped with shields so that the lamp is not visible from a street, or a lot that is in Residential or Conservation use.

~~B.~~ E. The following lighting shall be exempt from the provisions of this by-law:

- i. Temporary holiday lighting.
- ii. Internally illuminated signs.
- iii. Emergency lighting such as used by the Police, Fire Department, or other official or utility emergency personnel. Placement of longer- term emergency lighting shall, to the largest extent possible, take into consideration the detrimental effects of glare on passing motorists and pedestrians and on residential lots.
- iv. Lighting during special events such as fairs, concerts, or celebrations sponsored by the Town of Arlington or approved by the Select Board;
- v. Lighting on playing fields and courts under the jurisdiction of the Town of Arlington;
- vi. Lighting of historic or architectural significance exempted by a vote of the Arlington Historical Commission.

~~E.~~ ~~Lighting installed prior to the enactment of this by-law, as amended, shall be exempt from the provisions of this by-law until April 15, 2015.~~

#### **Section 43. Enforcement**

Enforcement of this by-law shall be under the authority of the Building Inspector.

- A. For any and all lighting in violation of this by-law, in which the luminaire is owned, leased, or maintained by an electric utility, the Building Inspector shall enforce this by-law as set forth in the Fines & Fees Schedule of the by-law with the utility subject to the penalties set forth in the by-law.
- B. For any lighting that fails to conform to the terms and conditions of permit provisions of this by-law, the Building Inspector shall enforce this by-law as set forth in the Fines & Fees Schedule of the by-law.
- C. For any lighting that uses mercury vapor, high pressure sodium, or metal halide bulbs, the Building Inspector shall enforce this by-law as set forth in the Fines & Fees Schedule of the by-law.
- D. For any other instances, upon receiving a complaint in writing, the Building Inspector shall enforce this by-law as set forth in the Fines & Fees Schedule of the by-law.

~~Upon receiving a complaint in writing, from a resident or property owner in the Town, the Building Inspector shall enforce this by-law as set forth in the Fines & Fees Schedule of the by-law.~~



## **Section 54. Fines & Fees Schedule**

- A. First offense: A written warning stating a property owner/~~resident~~ or utility is in violation: Ten (10) days to meet compliance.**
- B. Second offense: \$25.00 Fine. Five (5) days to meet compliance.**
- C. Third offense and \$50.00 Fine. Five (5) days to meet compliance before each subsequent offense another ~~\$50.00~~ \$100.00 fine issues.**

**(5 – 0)**

**COMMENT:** Article 8 of the 2014 Annual Town Meeting adopted the first set of comprehensive changes to the Town's regulation of Outdoor Lighting. However, over the past four years, the scope of those changes has been insufficient to address resident concerns regarding the impact of lighting and glare on quality of life. In particular, commercial light sources using outdated lighting technologies pose significant nuisances. The proposed revisions to the Outdoor Lighting bylaw (based upon the International "Dark Skies" Association's model ordinance) will incentivize commercial lighting sources, especially utilities such as Eversource, to switch to modern LED lighting. It will also create a permit system for lights placed on the right-of-way by private entities.

The Board notes that many local businesses have already switched over entirely to LED lighting. Further, the exceptions maintained within Section 3.E., above otherwise address many common concerns about specific scenarios for the availability of non-LED residential or commercial lighting and up-lighting.

## **ARTICLE 44**

### **HOME RULE/CPA SURCHARGE EXEMPTION FOR SENIOR HOMEOWNERS**

**VOTED: That no action be taken on Article 44.**

**(5 – 0)**

**COMMENT:** The Board commends the petitioner for seeking to identify additional means by which the Town may ameliorate the property tax burden on Arlington's senior residents. However, the Town already opted to both exempt the first \$100,000 of commercial and residential value from the CPA surcharge, and exempt qualifying low and moderate income seniors entirely at the ballot when the CPA was adopted. Carving out a further exemption without going to the voters first is procedurally problematic. More importantly, the Board is asking this Town Meeting both to adopt a Senior Property Tax Deferral Income Limit (Article 38) and a Senior Means-Test "Circuit-Breaker" Tax Relief Program (Article 43). Both of those means of assisting senior homeowners meet their tax burden will provide more significant tax

relief than the proposed CPA exemption without weakening our successful CPA program, which receives matching funds from the state.

## **ARTICLE 45**

### **EXTENDING LOCAL VOTING RIGHTS TO ALL LEGAL PERMANENT ARLINGTON RESIDENTS**

**VOTED:** That the Select Board be and hereby is requested and authorized to file for Home Rule Legislation which will provide substantially as follows:

#### **“AN ACT TO EXTEND LOCAL VOTING RIGHTS TO ALL LEGAL PERMANENT RESIDENTS OF THE TOWN OF ARLINGTON.**

Be it enacted, etc., as follows:

Section 1. Notwithstanding the provision of section one of chapter fifty-one of the General Laws, or any other general or special law, rule or regulation to the contrary, permanent legal residents eighteen years of age or older who reside in Arlington may, upon application, have their names entered on a list of voters established by the Town Clerk for the Town of Arlington and may thereafter vote in any election for local office, including but not limited to Select Board, School Committee, Town Clerk, Board of Assessors, Housing Authority, and Town Meeting, as well as local ballot questions distinct to Arlington.

Section 2. The Arlington Select Board, in consultation with the Town Clerk, is authorized to formulate regulations and guidelines to implement the purpose of this act.

Section 3. For the purposes of this act, a permanent legal resident is a non-U.S. citizen with primary residence in Arlington who has been given the privilege, according to the immigration laws, of residing permanently as an immigrant with the issuance of a “green card” from the Bureau of Citizenship and Immigration Services.

Section 4. Nothing in this act shall be construed to confer upon legal resident aliens the right to run for public office, or the right to vote for any state or federal office or any state or federal ballot question.

Section 5. This act shall take effect upon its passage and its approval by the majority of registered voters of the Town of Arlington

(5 – 0)

**COMMENT:** The Select Board unanimously supports this effort to extend the right to vote in Arlington elections on local Arlington matters to legal, permanent, non-citizen residents (primarily green card holders who otherwise qualify as residents of the Town) who make their homes in Arlington, pay their share local taxes, volunteer in our schools and throughout Town, and are an essential part of the fabric of our community. It is a particularly appropriate effort given anticipated debt exclusion and override questions facing the Town.

In order to effect this change, home rule legislation is necessary given the status quo under state law because the General Laws make citizenship a prerequisite to voting. The Board is aware and acknowledges that it may be difficult to pass an individual voting rights petition in the Legislature on this score, as has been the experience in Amherst, Brookline, and a number of other communities throughout the State. However, even if there continues to be resistance to town-by-town changes, positive action by Town Meeting would bolster the work of Arlington State Representative Dave Rodgers, who has a bill before the House which calls for a statewide change to the same effect.

#### **ARTICLE 50**

#### **LOCAL OPTION/SHORT TERM RENTAL IMPACT FEES**

**VOTED:** That the Town does hereby adopt provisions of G.L. c. 64F (“Act Regulating and Insuring Short-Term Rentals”, Sections 3D(a) and 3D(b) regarding the authorization of the Town to assess two local option community impact fees from short-term rental units in Arlington, including any subsequent amendments or modifications thereto, such adoption shall be effective upon acceptance.

(5 – 0)

**COMMENT:** Recognizing the impacts that short-term rental units (such as Air BnB and VRBO) have on communities, the Commonwealth now allows municipalities to adopt two supplemental two local option “community impact fees,” which operate similarly the excise tax on hotel rooms. Thirty-five percent of the impact fee revenues must be dedicated to affordable housing or local infrastructure projects, but the remaining balance of funds may be appropriated for any legal purpose. As such, the Board urges Town Meeting to adopt this straightforward and equitable local option.

The Board notes that c. 64F allows the Town to opt to assess the fee only on certain types of short-term rental units. Were the Town to accept only c. 64G, § 3D(a), the fee would apply only to “professionally managed units,” essentially meaning rentals that do not include an operator’s primary residence within the dwelling. The Town may (but is not required to) also adopt § 3D(b), which applies to units located within dwellings that includes an operator’s primary residence. Based upon the short-term rental landscape in Arlington, the Board recommends Town Meeting adopt both sections 3D(a) and 3D(b).