



**Town of Arlington
Legal Department**

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To: Select Board

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

From: Douglas W. Heim, Town Counsel

Date: March 8, 2019

Re: Draft Votes and Comments re: Articles: 31, 32, 33, 36, 37, 42, and 50

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**

VOTED: That Title I, Article 12 of the Town Bylaws, “Community Preservation Committee” be and hereby is amended to rename the Community Preservation Committee, the “Community Preservation Act Committee” by adding the word “Act” wherever the Committee’s name appears in the bylaw, and replacing the term CPA with “CPAC” throughout, so as to read as follows:

ARTICLE 12
COMMUNITY PRESERVATION ACT COMMITTEE
(Art. 11 - ATM - 04/29/15)

Section 1. Establishment and Membership

- a. There is hereby established a Community Preservation Act Committee consisting of a total of nine (9) members pursuant to G.L. c. 44B § 5. The membership shall be composed of one member of the Conservation Commission as designated by such Commission, one member of the Historical Commission as designated by such Commission, one member of the Arlington Redevelopment Board (which serves as the Town's Planning Board) as designated by such Board, one member of the Park and Recreation Commission as designated by such Commission, one member of the Arlington Housing Authority as designated by such authority, and four (4) at-large members appointed by a joint vote of the approval by the Select Board and the Town Manager as follows below in Section 1(b).
- b. Candidates for at-large membership shall be jointly gathered and screened by the Town Manager and the Chairperson of the of the Select Board or their designee, who shall jointly forward recommended candidates for a vote on appointment by the full Select Board plus the Town Manager (a maximum total of six votes representing the five Select Board and the Town Manager). A majority vote the Select Board and the Town Manager shall be required for appointment to an at-large member position.
- c. At-large members shall be appointed to the following initial terms: One (1) for a one-year term, two (2) for two-year terms, and one (1) for a three-year term. All subsequent terms shall be for three years. All other members shall serve a term determined by their designating bodies not to exceed three years. All members, at-large and otherwise, are eligible for reappointment. Should any appointing or designating authority fail to appoint a successor to a CPAC member whose term is

expiring, such member may continue to serve until the relevant authority names a successor.

No At-Large member of the Community Preservation Act Committee shall serve more than six consecutive years at a time. A waiting period of three years shall be imposed on any member of the Committee after serving six consecutive years, if they wish to rejoin the Committee.

- d. A vacancy of the committee shall be filled by the relevant appointing or designating authority.

Section 2. Duties and Responsibilities

The Community Preservation Act Committee shall have all the duties and powers as set forth in G.L. c. 44 §5, including, but not limited to the following:

- a. The Community Preservation Act Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Select Board, Conservation Commission, the Historical Commission, The Redevelopment Board, the Park and Recreation Commission, the Council on Aging, the Housing Authority, the Finance Committee, and the Capital Planning Committee. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities, and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding the hearing in a newspaper of general circulation in the Town.
- b. The Community Preservation Act Committee shall make recommendations to the Town Meeting for the acquisition, creation, and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation, preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation, and support of community housing; and for rehabilitation or restoration of such open space and community housing that is acquired or created with CPA funds. With respect to community housing, the Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. Recommendations to Town Meeting shall include their anticipated costs.

- c. The Community Preservation Act Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose, or to set aside for later spending funds for general purposes that are consistent with community preservation.
- d. Prior to making its final recommendations to Town Meeting for approval, the Committee shall present draft recommendations to the Select Board, the Finance Committee, and the Capital Planning Committee for comment. Further a designated member of the Select Board, Finance Committee, and Capital Planning Committee shall be permitted, but not required, to serve as a liaison to the Committee

Section 3. Administration and Operation

- a. The Community Preservation Act Committee shall not meet or conduct business without the presence of a quorum. A Majority of the members of the Community Preservation Act Committee all constitute a quorum.
- b. The Community Preservation Act Committee shall approve its actions by majority vote of the quorum.
- c. Each fiscal year, the Committee shall recommend to Town Meeting an operational and administrative budget. The timing of such budget recommendation shall be coordinated with the Town Manager's annual operating budget submission to the Select Board.

Section 4. Amendments

The Community Preservation Act Committee shall, from time to time, review the administration of this by-law, making recommendations, as needed, for changes in the by-law and in administrative practice to improve its operations.

Section 5. Construction and Severability

At all times this by-law shall be interpreted in a manner consistent with G.L. c. 44B, the Community Preservation Act.

Should any section, paragraph or part of this chapter be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph, or part shall continue in full force and effect.

Section 6. Effective Date

Following Town Meeting approval of this by-law, this Title shall take effect immediately upon the approval by the Attorney General of the Commonwealth. Each appointing authority shall have forty five (45) calendar days after approval by the Attorney General to make their initial appointments. Should any appointing authority fail to make their appointment within that allotted time, the Town Manager shall make the appointment from the membership of such appointing authority.

(5 – 0)

COMMENT: The Select Board endorses this straightforward effort to disambiguate the Community Preservation Committee, often known as the “CPC” from the Capital Planning Committee, also known as the “CPC,” by renaming it the Community Preservation Act Committee, or “CPAC.”

ARTICLE 32

BYLAW AMENDMENT/TREE PROTECTION AND PRESERVATION

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 prior to the commencement of work on the property, 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 trees, 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.

(5 – 0)

COMMENT: Upon the recommendation of the Tree Committee and the Tree Warden, the Select Board unanimously urges Town Meetings approval of five adjustments to the Town’s Tree Protection and Preservation Bylaw, which are as follows:

1. Increasing the number of protected trees covered by the bylaw by changing the minimum size of trees subject to protections from 10 DBH (diameter breast height) to 8 DBH because an insufficient number of trees in the canopy are protected at present;
2. Removing the mitigation option which invites property owners and developers to plant their own replacement trees. Unfortunately, because mitigation trees are often inadequately planted or cared for they fail to thrive. Moreover, holding contractors accountable for dead or dying mitigation trees has proved impracticable;

3. Requiring additional information to be included on Tree Plans, including representing public shade trees and detailing how critical root zones of protected trees will be inured from fatal damage during construction activities.
4. Refining 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 empowering the Select Board to promulgate regulations necessary to achieve the intent of the bylaw, which also serves to keep the bylaw itself relatively simple.

ARTICLE 33

BYLAW AMENDMENT/NOTICE OF DEMOLITION

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.

(5 – 0)

COMMENT: The Select Board requests Town Meeting support this article which builds upon the recently revised notice of demolition bylaw to ensure that neighbors are also alerted to pre-construction activity which removes trees protected by the Town’s Tree Protection and Preservation bylaw. The revised notice bylaw would also ensure that Tree Plans, already required by the Tree Protection Bylaw, are included in the “Good Neighbor Agreement” documents contractors and owners provide to neighbors. The Board notes the Tree Committee’s support for positive action on this score.

ARTICLE 36

VOTE/ELECTION MODERNIZATION STUDY GROUP

VOTED: That Town Meeting hereby establishes an Election Modernization Study Committee to be structured, organized, and charged as follows:

Election Modernization Study Committee

1. Committee Membership and Organization

A. The Committee shall consist of eleven (11) members

- **The Town Clerk or their designee**
- **One member of the Board of Registrars to be determined by such Board;**
- **The Select Board Administrator or their designee**
- **The Town Moderator or their designee;**
- **One member of the School Committee as determined by the Committee;**
- **One member of the Disability Commission as determined by the Commission;**
- **One representative of the Town Republican Committee;**
- **One representative of Town Democrat Committee;**
- **Three residents to be appointed by the Town Moderator, one of whom is to be a green card-holding resident, one of whom is to have been a resident for less than five (5) years, and one of whom is to be a high school student;**

B. The Town Moderator or their designee shall serve as chair of the committee for the purposes of the committee's first organizational meeting, in which the Committee may elect officers as it deems appropriate.

2. Committee Charge

The Committee is charged with comprehensively examining how to improve the Town's electoral practices and systems, including but not limited to:

- A. Voter eligibility rules in town elections;**
- B. Voter registration policies and practices;**
- C. Public engagement in the local election process;**
- D. The status of the Town's voting equipment and options for improvements thereof;**
- E. The Town's process for counting votes;**
- F. Ranked-choice voting;**
- G. Early voting policies and practices; and**
- H. Polling locations;**
- I. Polling location accessibility.**

3. Committee Reports

A. The Committee shall provide an interim report to the Town Clerk and the Select Board on or before [insert date] to:

- i. Make ranked recommendations on any and all improvements which can be made to Town electoral systems and practices before the 2019 Fall election cycle; and**

ii. Offer any recommended Town Meeting warrant articles for inclusion on the 2020 Annual Town Meeting Arrant.

B. The Committee shall provide a final report to the 2020 Town Meeting on all of the subjects listed herein.

4. Dissolution

Absent a vote of the 2020 Annual Town Meeting to maintain it, the Committee shall dissolve following the close of the 2020 Annual Town Meeting.

(5 – 0)

COMMENT: As more opportunities are being afforded to cities and towns to modernize their management of local elections, encourage wider participation in elections, and increase voter access, the Select Board strongly urges Town Meeting to establish a study committee to comprehensively examine the Town's election practices, policies, and opportunities for improvement. The Board further urges such action with an aggressive and clear timeframe for recommendations that incorporates the perspective of a wide group of stakeholders. By doing so, the Select Board is hopeful that we can start by identifying and committing to capitalizing on "low-hanging fruit" prior to the Fall 2019 Election cycle, and then carry momentum forward, proactively assessing and availing ourselves of best practices in local elections.

ARTICLE 37

VOTE/REMOVE POLICE CHIEF FROM CIVILSERVICE

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, 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.

(3 – 2)

Ms. Mahon and Mr. Hurd voted in the negative.

COMMENT: A majority of the Select Board supports the request of the Town Manager to remove the Police Chief position from civil service. In short, civil service in Massachusetts provides and requires certain procedures and criteria for hiring, promotion, and termination of civil service classified positions. Under the current system, the Town's options for hiring a new permanent police chief are determined in part by who opts to take the civil service exam for the position and what each candidates' score on the exam yields.¹ As such, whether the Town engages in a police chief search internally or in a so-called "open search," the Town is limited to the pool of candidates that take and score well on the civil service exam.

¹ There are additional factors, which can favor a candidate's overall score including for example their status as a veteran of the armed services.

Members of the Board voting in the negative rightly point out that civil service affords an additional layer of process before civil service employees can be terminated or disciplined, and as such greater autonomy from the Manager. Further, officers have presented individual members of the Select Board nuanced views of the positives and negatives of keeping the position in civil service. Mindful of quality arguments and with great confidence in excellence of the acting chief, captains, and other ranking officers, the majority of the Board still believes that the value of being able to set the criteria for qualifications and engage in as broad of a search as possible weighs in favor of a positive recommendation to Town Meeting.

Finally, the Manager represents that he is committed first to putting the minimum qualifications for the chief position and the proposed hiring process before the Select Board for feedback and endorsement if the position is successfully removed from civil service. Second, the Manager is also committed to looking to fill the chief position with an internal candidate who meets such criteria.

ARTICLE 42

HOME RULE LEGISLATION/TOWN TREASURER

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 THE APPOINTMENT AND MANAGEMENT OF THE TOWN TREASURER”

Section 1. Chapter 503 of the Acts of 1952 (The Town Manager Act of Arlington) as subsequently amended, is hereby amended as follows:

First, by amending Section “8” Election of Other Officers so as to strike the words and punctuation the “treasurer and town collector,” so as to read as follows (strike through text indicating words and punctuation to be deleted):

Section 8. Election of Other Officers.

The election of Town Clerk, ~~treasurer and town collector~~, and assessors shall continue as presently provided. Notwithstanding the election of the officers named in this section, by voters of the town, they shall be subject to the call of the manager for consultation, conference and discussion on matters relating to their respective offices.

Second, by amending Section 15(a) to strike the words and punctuation “Town Treasurer and Collector” so as to read as follows:

“Section 15. Powers and Duties of Manager.

In addition to the specific powers and duties provided in this act the Town Manager shall have the general powers and duties enumerated in this section:

- (a) ***The Town Manager shall supervise and direct the administration of all departments, commissions, boards and offices, except the Board of Selectmen, the School Committee, Moderator, Town Clerk, ~~Town Treasurer and Collector,~~ Board of Assessors, Registrars of Voters, Election Officers, Boards of Appeal, the Finance Committee, the Capital Budget Committee and the Personnel Review and Appeals Board.***

While the town manager shall not supervise the board of assessors as an elected body, the town manager shall supervise and direct the administration of the assessors’ office and appoint the director of assessments in accordance with subsection (c). The director of assessments and all other assessors’ office personnel, except for the board of assessors, employed or in office when this act takes effect shall continue in their respective positions subject to chapter 31 or 150E of the General Laws, or both such chapters, if applicable, but otherwise subject to removal by the town manager as provided in this section.

Nothing in this section shall otherwise abridge the authorities or responsibilities of the board of assessors as set forth in chapter 41 of the General Laws or any other general law.

Third, by amending Section 15(c) as follows to insert the Town Treasurer and Collector as an appointee under said Section so as to read as follows (underscored text indicated new language):

- (c) ***The town manager shall also appoint upon merit and fitness alone, the Town's Comptroller (also vested with the authorities of a "Town Accountant") and the Town Treasurer and Collector subject to the approval of the Select Board. Appointment of the Comptroller and the Town Treasurer and Collector 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 which notice of the proposed appointment is filed with the Board. For the purposes of this section, notice of appointment shall be considered filed with the board when such notice is filed at an open meeting of the Select Board.***

The Comptroller or the Town Treasurer and Collector may be removed by the town manager subject to the approval of the Select Board. Removal of the Comptroller or Treasure 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 Comptroller's employment rights afforded by state law.

Notwithstanding the foregoing section (c), the Comptroller and Treasurer shall be authorized to report directly to the Chairperson of the Select Board, or any Member of the Board, on any matter in the Town at any time, without the necessity of prior approval from the Town manager or any other official..

Section 2. This Act shall take effect upon its passage.”

(5 -- 0)

COMMENT: The Select Board endorses this article to bring the Town Manager Act up to date with the conversion of the Town Treasurer from an elected to an appointed office in a manner consistent with recent Town Manager Act revisions to the appointment of the Town Comptroller. Modifications to the Town Bylaws to the same effect were recently acted upon positively by Special Town Meeting and await Attorney General approval.

ARTICLE 47

ACCEPTANCE OF LEGISLATION/PEG ACCESS FUND

VOTED: That the Town hereby accepts General Laws Chapter 44, Section 53F^{3/4}, 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.

(5 – 0)

COMMENT: The acceptance of this legislation is necessary to reserving PEG Access and cable related funds from our cable franchise license holders (Verizon, Comcast, and RCN) for our PEG Access provider, ACMI. Given ACMI's years of quality service in providing educational and government access programming, among other things, the Board respectfully requests Town Meeting's support on this article.

ARTICLE 50

LOCAL OPTION/SHORT TERM RENTAL IMPACT FEES

***REVISED**

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 Town does not possess perfect data on the number of short-term rental units in Arlington, but website surveys suggest the number of active properties may be less than 100 with many consisting of rooms or small units within owner-occupied homes. For rentals in the range of \$100 to \$200 per night, the cost of the community impact fee is between \$3 and \$6 dollars per evening. For the most expensive short-term rentals in the community, \$500 to \$1,000, the added cost would be \$15 to \$30 per night. Hence, both the expected overall community impact fee revenue collected by the Town, and the impact on local short-term rental owners is likely to be modest. Nonetheless, such fee revenues can be used to the community’s betterment.

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).

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