



**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

A handwritten signature in dark ink, appearing to read "D. Heim", enclosed within a hand-drawn oval.

Date: March 8, 2019

Re: Warrant Articles 27, 30, 35, 41, 53, 78

I write to provide the Select 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 hearings on March 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 27

BYLAW AMENDMENT/TOWN MEETING SPEAKING TIMES

To see if the Town will vote to amend Title I, Article 1, Section 7(C) of the Town Bylaws ("Town Meetings: Regulation of Speakers, Time Limits") to reduce the time limit for speakers at Town Meeting for the first time on the floor from seven minutes to five minutes, and for the second time from five minutes to three minutes; or take any action related thereto.

(Michael Jacoby Brown and 10 Registered Voters)

This resident petition article calls for a straightforward amendment to the Town Bylaws to reduce the default time limits for Town Meeting speakers by two minutes. As previously reported, I expect Mr. Jacoby Brown to present his rationale for decreasing speaking times at hearing, but now informed by the position of the Town Meeting Procedures Committee and the Moderator. Permit me to note both that Town Meeting may of course extend speakers' time by vote of same, and that the Moderator is vested with authority to ensure the good conduct of the meeting.

Were the Board inclined to endorse this article, an appropriate motion would be:

VOTED: That Title I, Article 1 (Town Meetings), Section 7(C) "Time Limits" be and hereby is amended by striking the word "seven" in the first paragraph and replacing it with "five;" and further striking the word "five" in the second paragraph and replacing it with the word "three," so as to read as follows:

C. Time Limits

No person shall speak, or otherwise hold the floor, for the first time on any subject for more than ~~seven~~ five minutes, unless, prior to beginning his or her presentation, the person requests of the Town Meeting a specific extension of time, and the request is granted by a majority vote of the Town Meeting members present and voting.

No person shall speak, or otherwise hold the floor, for a second time on any subject for more than ~~five~~ three minutes.

ARTICLE 30

BYLAW AMENDMENT/WATERLINE REPLACEMENT

To see if the Town will vote to amend the Town Bylaws to require inspection, and as needed, repair or replacement of all residential and commercial water connections prior to the sale of any privately owned property within the Town of Arlington; or take any action related thereto.

(Inserted by the Select Board)

The instant article was inserted by the Select Board at the request of the Director of Public Works to address the problem of lost water due to decayed waterlines owned by residents and commercial and industrial property owners. The Town is responsible for the maintenance of water mains and water meters. However, significant volumes of water are unaccounted for each year because waterlines between Town mains and homes and business, which are owned and maintained by property owners are cracked or otherwise broken and seeping water into the ground.

Foremost, waterlines in poor condition waste a valuable natural resource. Second, the Town must pay for its all of its water. The cost of "lost" water is shifted onto residents on the whole rather than those with faulty water lines because water meters only capture the water actually going into a home or business, not that which is lost between the main and the meter. In recognition of the cost burden of inspecting, servicing, and/or repairing or replacing these lines as necessary, the Town proposes to address this likely pervasive problem by requiring waterline servicing as a lien certification condition before selling or otherwise transferring a property. In most instances, a sale should be a time when property owners will have additional resources to accomplish such work. Further, the proposed bylaw as drafted below would afford a non-compliant property the option to place funds in escrow rather than complete repair or replacement work prior to the final transfer of property as an element of additional flexibility. If the Board were inclined towards positive action, a vote could be as follows:

VOTED: That the Town does and hereby Amends Title VI of the Town Bylaws ("Building Regulations") to add a new Article "Water Line Inspection & Replacement"

Section 1: Purpose

The purpose of this bylaw is to prevent the loss of Town water due to degraded and/or damaged privately owned waterlines which connect residential, commercial, and industrial premises to Town owned water mains. The loss of water through seepage wastes natural resources and increases the water service costs borne collectively by the Town and its residents.

Section 2: Waterline Inspection and Working Order Compliance

- A. No person shall cause or permit the transfer of any residential, commercial or industrial real property served by Town water mains without first obtaining from the Town*

Engineer a certificate of compliance that such premises are properly connected to the Town Water main and there are no conditions with allow for loss of water between the Town water main and the connection to homes or commercial or industrial buildings.

- B. Any person intending to transfer real property served by Town water mains shall request a certificate of compliance from the Town Engineer as part of the lien certificate application process, providing the Town Engineer a report from a licensed plumber or drainlayer (or other professional licensed to inspect and install water or sewer connections deemed appropriate by the Town Engineer) that demonstrates the good and working order the waterline connecting to the Town main.*

Properties not subject to the lien certificate process are also required to obtain a certificate of compliance from the Town Engineer on the substantially same terms set forth in this section, but need only obtain the certificate of compliance for their records.

- C. The Town Engineer shall issue a certificate of compliance or a determination of non-compliance within 14 days of receipt of the report required by Section 2(b) of this bylaw. The Town Engineer may conduct a Town inspection of the waterline if the Engineer determines further examination is necessary.*
- D. Non-compliant waterlines in need of replacement or major repair shall also replace any existing lead connections regardless of the condition of such connections.*

Section 3. Escrow Alternative for Non-compliant Properties

- A. Any person who wishes to transfer real property subject to this bylaw which has been determined to be non-compliant by the Town Engineer may alternatively hold in escrow an amount sufficient to cover the costs of the water line repair or replacement necessary to bring the property into compliance. To do so, a non-compliant transferor must file with the lien certificate application a statement from the real estate closing agent that 110% of the cost of repair or replacement shall be held in an escrow account until the Town issues a certificate of compliance.*
- B. The escrow amount shall be based upon a detailed estimate by a licensed plumber or drainlayer, or other professional licensed to inspect and install water or sewer connections deemed appropriate by the Town Engineer.*

Section 4 Applicability

This bylaw shall apply to transfer of real property regardless of the price paid for such transfer, except that it shall not apply to the transfer of real estate between immediately family members, including, but not limited to spouses for nominal consideration.

Section 5. Penalties

In addition to liabilities for transfer of real estate without lien certification compliance, persons found in violation of this bylaw shall be subject to a fine of \$300 for each day of non-compliance from the date of the sale or transfer of subject real property until waterlines are certified as compliant by the Town Engineer.

Section 6. Rules and Regulations

The Select Board shall promulgate rules and regulations necessary for the implementation and enforcement of this bylaw.

ARTICLE 35 BYLAW AMENDMENT/SHORT-TERM RENTAL REGULATIONS

To see if the Town will vote to amend the Town Bylaws to require registration, inspection, and other regulations governing the operation of short-term rentals as defined by c. 64G in Arlington; or take any action related thereto.

(Inserted by the Select Board)

As the Board will recall, “An Act Regulating and Insuring Short-Term Rentals” authorizes an additional local “community impact” excise fee on Airbnb-style rentals for periods of less than 31 days. However, the Act also authorizes municipal regulation of short-term rentals in order to:

- Control the location of short-term rentals and number of local licenses and permits available;
- Require registration of short-term rental operators;
- Demonstrate compliance with other local laws and regulations, including notices to cure, orders of abatement, and correction notices;
- Require health and safety inspection of short-term rental units; and
- Establish both penalties for non-compliance and fees for reasonable costs associated with administration and enforcement of local regulations.

Discerning the exact number of qualifying short-term rentals in Arlington is difficult. Informal surveys of various sites suggest the number is likely less than 100 and largely

comprised of smaller one and two bed units, many of which may be located within owner operated and occupied premises. Accordingly, at this juncture relatively modest regulations are likely in order within the scope of a Town bylaw,¹ focusing on ensuring short-term rentals provide safe accommodations to customers, comply with other relevant local laws, and maintain the peace and good order of neighborhoods.

If the Board is inclined to take action as this relatively new area of regulation emerges for communities similarly situated to Arlington, an appropriately bylaw may be as follows:

VOTED: *The Town Bylaws be and hereby are amended to add a new section 18 to Article V ("Regulation of the Use of Private Property") to provide for regulation of short-term rentals as follows:*

ARTICLE 18: SHORT TERM RENTALS

Section 1. Purpose

The purposes of this bylaw are to:

- A. provide a process through which certain residential premises and rooms within same not otherwise regulated and licensed as lodging houses or bed and breakfasts may be registered with the Town of Arlington for use as "short-term rentals";*
- B. ensure relevant health and safety standards are met at short-term rentals; and*
- C. provide for orderly operation of short-term rentals within the Town's residential neighborhoods as assess the community impacts of such rentals.*

Section 2. Definitions

"Short Term Rental" – an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where:

- (i) at least 1 room or unit is rented to an occupant or sub-occupant; and*
- (ii) all accommodations are reserved in advance;*

provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

¹ Future regulation of allowable locations for and the authorized number of short-term rentals may or may not be warranted, but is likely better managed through the Zoning Bylaw.

“Operator” – a person operating a short-term rental including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such short-term rental.

Section 3. Applicability & Prohibitions

- A. No residential premises may be used as a short-term rental except those in compliance with this bylaw.*
- B. The following residential housing units are ineligible from being used as short-term rentals:*
 - 1. Residential premises designated as affordable or otherwise income-restricted, which are subject to the affordability covenants or are otherwise subject to housing or rental assistance under local, state, or federal programs or law;*
 - 2. Residential Units that are the subject of 3 or more findings of violations of this section within a six-month period, or 3 or more violations of any town bylaw or regulation or state law or code relating to excessive noise, improper disposal of trash, disorderly conduct, or other similar conduct within a six-month period.*

Section 4. Registration, Certifications and Fees

A. Registration Process.

An Operator of short-term rental shall register with the Office of the Select Board to be listed on the Short-Term Rental Registry, providing all information required by this bylaw and the Office of the Board, certifications required in this section, and the registration fee.

Registration shall be valid for a one-year term, from January 1 through December 31 of each year or for such alternative twelve-month period as determined by the Board.

B. Required Information

At a minimum, an Operator shall provide the following:

Operator name, address of each short-term rental unit or units, the number of bedrooms within each unit, Operator's relationship to the unit (i.e. owner, professional manager, tenant, etc.), whether Residential Unit being offered is within a an owner-occupied home, condo, apartment, or two or three family home, and an authorized local agent able to act on behalf of the Operator in their event of their absence.

- C. The Operator shall also certify that the short-term rental complies with the all of the following:*

1. *The State Sanitary Code;*
2. *Food Safe certification (if serving meals);*
3. *The Arlington Health Code;*
4. *Fire and carbon monoxide alarm requirements;*
5. *Fire escape route requirements;*
6. *The Building Code, including holding a valid certificate of occupancy; and*
7. *The Arlington Zoning Bylaw*

D. Fees

Units shall be annually recorded in the Short-Term Rental Registry for a fee of \$25.00 per bedroom, per unit.

Section 5. Complaints, Enforcement, and Violations

A. Complaints

A complaint alleging that a short-term rental is in violation of this bylaw or any applicable law, code, or regulation may be filed with Select Board. The complaint must contain the Residential Unit's address, unit number, date and nature of alleged violation(s), and name and contact information of complainant.

B. Review of Complaint.

Within thirty (30) days after receipt of a complaint, the Select Board shall review the Complaint and refer it to the appropriate Town Department, official, Board, or Commission for findings. The Select Board shall not make a determination of a violation under any bylaw, regulation or law vested within another body or official's jurisdiction, but may utilize such determinations as evidence of a violation of this bylaw.

Upon a finding of a potential violation, the Select Board, or its designee shall serve notice of the violation upon the Operator of the short-term rental at issue, if such unit is listed on the Short-Term Rental Registry, and upon the owner or resident agent or owner of record of the premises at issue, if such unit is not listed on the Short-Term Rental Registry.

C. Right to Hearing.

A person upon whom a notice of violation has been served under this bylaw may request a hearing from Select Board by filing a written petition requesting a hearing on the matter within fourteen (14) days of receipt of a notice of violation. The Board shall render a decision within a reasonable time after the close of hearing. Any direction to correct conditions at the short-term rental and fines assessed shall be stayed until the Board issues its decision.

D. Violations, Suspensions and Fines.

- 1. Any person who offers a residential premises or units as a short-term rentals, where such premises unit is not an eligible Residential Unit, or offers otherwise eligible premises but has not complied with the registration requirements of this bylaw, shall be fined three hundred dollars (\$300) per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.*
- 2. Short-Term Rentals found to be in violation of this bylaw, or which are found to have any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, or stop work orders, or other requirements, laws or regulations that prohibit operation of the premises as a short-term rental shall be suspended from the Short-Term Rental Registry and prohibited from operation until all violations have been cured or otherwise resolved.*

Section 6. Room Occupancy Excise and Community Impact Fees

Short-term rentals subject to the provisions of this bylaw are subject to the Room Occupancy Excise under G.L. c. 64G and short-term rental community impact surcharge. Operators shall comply with the provisions of said statutes and are responsible for ensuring proper payment to the Commonwealth and the Town of Arlington.

ARTICLE 41

**VOTE/ARLINGTON REDEVELOPMENT BOARD
MEMBERSHIP AND TERMS**

To see if the Town will vote to change the membership of the Arlington Redevelopment Board from four members appointed by the Town Manager and one appointed by the State to four members elected by the voters of the Town and one appointed by the State, and change the terms of all members to five years; or take any action relate thereto.

(Inserted at the request of Christopher Loreti and ten registered voters)

This article proposes that Town Meeting should authorize and request the Board to submit Home Rule Legislation to amend the Town Manager Act so as to convert four of the five Arlington Redevelopment Board members from appointed positions to elected offices.² I expect that Mr. Loreti, the article's chief proponent will present you with his rationale for the proposal.

² Under both G.L. c. 121B and the Town Manager Act, one member of a redevelopment authority is appointed by the Department of Housing and Community Development ("DHCD") regardless of how the other four positions are filled.

By way of background, the Arlington Redevelopment Board ("ARB") was created by Special Act following the vote of the 1971 Annual Town Meeting (on the recommendation of the Board of Selectmen and Finance Committee) to abolish the then Planning Board and establish the ARB. The vote and ensuing legislation designed the ARB as an entity which served both as a redevelopment authority under G.L. c. 121B and a Planning Board under G.L. c. 41 sec. 70 and 81A. The processes outlined in c. 41 and c. 121B set forth potentially contradictory appointment processes in that town planning boards may elected or appointed, but town redevelopment authorities must be elected if they are established pursuant to c. 121B. The ARB, having been created by a special act to serve as both a planning board and a redevelopment authority however is required to follow neither approach.

ARTICLE 53 ENDORSEMENT OF PARKING BENEFIT DISTRICT EXPENDITURES

To see if the Town will vote to endorse the Parking Benefit District operating and capital expenditures for Fiscal Year 2020 prepared by the Town Manager and the Select Board consistent with the Town Bylaws; or take any action related thereto.

(Inserted by the Select Board and at the request of the Town Manager)

Pursuant to Title I, Article 11 of the Town Bylaws, "Parking Benefit District Expenditures," proposed Parking Benefit District Operating and Capital Expenditures are prepared by the Manager and the Parking Implementation Governance Committee before submission for endorsement by the Finance Committee and Capital Planning Committee respectively; and subsequently Town Meeting. Your review of proposed expenditures with the Manager constitutes the first step in this process.

ARTICLE 78 RESOLUTION/INDIGENOUS PEOPLES' DAY

To see if the Town will vote to adopt a resolution to celebrate "Indigenous Peoples' Day" on the second Monday in October, instead of Columbus Day, in order to celebrate the heritage of those people indigenous to Massachusetts; or take any action related thereto.

(Inserted by the Select Board at the request of the Arlington Human Rights Commission)

The Arlington Human Rights Commission will present the merits for resolving to celebrate Indigenous Persons to the United States, their cultures, history, and contributions to our community and nation on the state and federal holiday known as Columbus Day. Permit me to note that neither Town Meeting nor the Board not have the authority to cancel or change of the name of a state and federal holiday for official state and federal purposes. Nonetheless, the Town may resolve how it will use its own resources to celebrate a holiday and what kind of celebrations and programing it embraces.

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