



**Town of Arlington  
Legal Department**

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**MEMORANDUM**

TO: Select Board

FROM: Douglas W. Heim

DATE: March 21, 2019

RE: **Votes and Comments for Articles: 27, 30, 34, 35, 41, 53, and 78**

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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 27**

**BYLAW AMENDMENT/TOWN MEETING  
SPEAKING TIMES**

**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.

(4 –1) Mr. Hurd voted in the negative.

**COMMENT:** The Select Board acknowledges and respects that the main motion belongs to the Town Meeting Procedures Committee, which urges a vote of no action on the instant article. The majority of the Board respectfully disagrees with such position and requests Town Meeting’s support for a substitute motion to the effect of the foregoing. In brief, the Select Board believes that reducing default Town Meeting speaking time limits will not only improve the efficiency of the proceedings, but encourage more residents to seek office and participate. Further, the Select Board is confident that the Moderator and Meeting members will grant extensions of time for constructive comments and questions on worthy subjects.

## ARTICLE 30

## BYLAW AMENDMENT/WATERLINE REPLACEMENT

**VOTED:** That the Town does and hereby Amends Title VI of the Town Bylaws (“Building Regulations”) to add a new Article 10 “Waterline Inspection & Replacement”

### ARTICLE 10: WATERLINE 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 at the curbstop valve and there are no conditions with allow for loss of water between the curbstop valve and the connection to homes

or commercial or industrial buildings, except this bylaw shall not apply to those properties outlined in Section 4 below.

- 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 curbstop valve.

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

- A. 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.

- B. This bylaw shall not apply to newly constructed buildings, buildings erected within 20 years of the date of the property transfer, or any property in which owners can demonstrate to the Town Engineer that the waterline has been replaced within the last 20 years unless the Town can establish evidence of leaking or otherwise damaged pipes.

## **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.

(4 – 1) Mr. Hurd voted in the negative.

**COMMENT:** The majority of the Select Board supports the establishment of a new bylaw to ensure that privately-owned corroded waterlines connecting buildings to Town-owned water mains (at the curbstop valve) are not leaching water through badly cracked and rusted pipes, and therefore both wasting a natural resources and increasing water costs for the Town and its residents.

The Board is sensitive to concerns about costs, and recommends this action in part because it is triggered only by the transfer of real estate and structured to flexibly provide for replacement of waterlines with the proceeds from a home sale if necessary. Further, the Board is informed by the Director of Public Works that costs of inspection of waterlines should be modest for the majority of residents and business owners because licensed plumbers and drainlayers will be able to quickly identify copper waterlines far less likely to pose any problem. The pipes that will require greater inspection meanwhile are those which are mostly likely to require service. Finally, absent evidence of leaks, the bylaw shall not apply to buildings which were newly erected or replaced waterlines within the last 20 years.

## **ARTICLE 34**

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

*\*Revised*

**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 ~~3~~2. 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 signage governed by and permitted under the Arlington Zoning Bylaw, illumination of the United States Flag, the Flag of the Commonwealth of Massachusetts, or other flags on Town and/or school property, 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 35

## BYLAW AMENDMENT/SHORT-TERM RENTAL REGULATIONS

**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.

“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.**

(5 – 0)

**COMMENT:** The Select Board unanimously endorses this article to seize upon the local regulation authority afforded to municipalities by “An Act Regulating and Insuring Short-Term Rentals.” While the number of short-term rentals in Arlington is modest (less than 100), registering such establishments and requiring basic health and safety inspections can serve to both reduce negative community impacts associated with short-term rentals, and ensure the quality, safe experiences for renters. The proposed bylaw also provides a formal process for examining complaints about common issues raised by short-term rental activity.

#### **ARTICLE 41**

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

**VOTED:** That no action be taken under this article.

(4 –1) Mr. Hurd voted in the negative.

**COMMENT:** The majority of the Select Board respectively recommends a vote of no action on this resident petition article to convert the Arlington Redevelopment Board from an appointed to an elected body. Foremost, the Board does not believe such a conversion will achieve the article’s intended effect of making the ARB more accountable or responsive by rendering it an elected, and therefore a *more political* body. Indeed the Board is concerned that the instead of doing more to attract the architects and skilled professionals which populate the

ARB now, the campaign process will dissuade otherwise interested residents from seeking seats on such board.

**ARTICLE 53                      ENDORSEMENT      OF      PARKING      BENEFIT      DISTRICT  
EXPENDITURES**

**VOTED:** That the Select Board approves the operating and capital expenditures proposed by the Town Manager and Parking Implementation Governance Committee, and recommends Town Meeting's endorsement of the votes of the Finance and Capital Planning Committee's respectively.

**(5-0)**

**COMMENT:** 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 Town Manager and the Parking Implementation Governance Committee (“PICG”) before submission for endorsement by the Finance Committee and Capital Planning Committee respectively; and subsequently Town Meeting. The Select Board approves the Manager and PICG’s proposal to the Capital Planning and Finance Committees and urges Town Meeting’s support as well.

## ARTICLE 78 RESOLUTION/INDIGENOUS PEOPLES' DAY

**VOTED:** That no action be taken on this article.

**(5-0)**

**COMMENT:** Having been advised by the proponent of this article – Arlington Human Rights Commission – that said Commission intends to pursue this matter in the future with the benefit of further study and preparation, the Select Board respectfully requests Town take no action on this article.