



**Town of Arlington  
Legal Department**

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To: Select Board

From: Douglas Heim, Town Counsel

Date: April 8, 2019

Re: Legal Requirements for Special Election Override & Debt Exclusion Ballot Questions

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I write to provide the Board an overview of the legal requirements for Proposition 2 ½ Override (G.L. c. 59 §21C) and Debt Exclusion (G.L. c. 44 §7) ballot questions, as well as draft questions for your review and approval.

**Authority & Timing**

As the Board will recall, the Select Board possess the exclusive authority to place both override and debt exclusions questions before voters. In either instance the Board must approve the exact language of any questions to appear on a ballot. However, it should be noted that the MSBA requires we submit debt exclusion ballot question language to them for approval for any MSBA-funded project. If the Board wishes for its ballot questions to be voted upon outside the timeline of the annual Town Election or the biennial State Election,<sup>1</sup> it must also vote to call a special election on a specified date and provide written notice to the Town Clerk thirty-five (35) days in advance of such date. G.L. c. 54 §42C

**Quantum of Votes**

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<sup>1</sup> The Town may submit up to three (3) questions on the biennial state ballot rather than call a special election, but such ballot questions must be submitted to the Secretary State by the first Wednesday in August preceding the state election. G.L. c. 59, § 21C(i).

A vote to place an override question on the ballot requires a simple majority of the Board. c. 59, § 21C(g). A vote to place a debt exclusion question on the ballot requires a 2/3<sup>rd</sup> vote of the Board. G.L. c. 59 § 21C (i½), (j) and (k).

### **Form and Sequences of Votes**

To my understanding, these votes will be considered in a local, special election, so the questions will not reviewed by the attorney general, nor will be there any state-wide questions on the ballot. Therefore, how you vote on them pursuant to c. 59 sec. 21C is how they will appear on the ballot is sequence and substance.

#### **A. Override Vote**

For a general override question, a specific form of the question is required by c. 59 §21C(g), with modest discretion for stating the purpose of the additional assessment. The vote must read in form as follows, with only the amount and the purpose of the override subject to our discretion:

*“Shall the Town of Arlington be allowed to assess an additional \$5,600,000 in real estate and personal property taxes for the purposes of funding the operating budgets of the Town and the Public Schools for the fiscal year beginning July 1, 2020?”*

YES \_\_\_\_ NO \_\_\_\_”

The Town may articulate its override needs in other general terms. Examples of generally stated allowable purposes include:

- Funding the Town's operating budget.
- Funding operating expenses and capital expenditures.
- Providing for the general administrative cost of operating the schools, police department, fire department and other town departments.
- Funding the operating budget of the Public Schools and the Municipal Government.
- Defraying school operating expenses.
- Funding the Town's Regional School District assessment.

#### **B. Debt Exclusion Votes**

As debt exclusion questions are by design, oriented towards funding a specific capital project or projects, the form of the question must adequately describe the projects to be funded by the question. The form of the Arlington High School rebuild question could be as follows:

*“Shall the Town of Arlington be allowed to exempt from the provisions of Proposition two-and-one-half, so called, the amounts required to pay for the bond or bonds issued for the purposes of paying costs of a project to demolish, design, construct, reconstruct, remodel, add to, and originally equip the Arlington High School, including replacing the existing facility located at 869 Massachusetts Avenue, Arlington MA, and for the payment of all other costs incidental and related thereto?”<sup>2</sup>*

YES \_\_\_\_ NO \_\_\_\_"

The Board will note that the amount of borrowing is not required for debt exclusion votes. It also bears highlighting that the vote authorizes the Town to engage in borrowing exempt from the levy limit, but does not require such borrowing if capital projects plans are amended or cancelled.

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<sup>2</sup> This question has been submitted to the MSBA for comment, but a final approval should be garnered in advance of the special election.