




**Town of Arlington  
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager  
John Leone, Town Moderator  
Resident and Committee Petitioners

From: Douglas W. Heim, Town Counsel 

Date: March 5, 2020

Re: Warrant Articles 13, 16, 17, 21, 23, 24, 25, 26, 27 and 52

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I write to provide the Select Board a summary of the above-referenced 2020 Annual Town Meeting warrant articles to assist in the Board's consideration of these articles at its upcoming hearings on March 9, 2020. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

## ARTICLE 13

## BYLAW AMENDMENT/FOSSIL FUEL INFRASTRUCTURE

To see if the Town will vote to amend Title VI of the Town Bylaws to add a new provision prohibiting the installation of fossil fuel infrastructure in new construction projects and/or major renovation and rehabilitation projects in Arlington; to set forth the terms and scope of such prohibition, and to provide for exemptions to same; or take any action related thereto.

(Inserted by the Select Board at the request  
of the Clean Energy Future Committee)

As the Board will recall from prior correspondence, this Article was inserted at the request of the Clean Energy Future Committee for the purposes of exploring whether or not Arlington should join with several other communities in the Commonwealth<sup>1</sup> in consideration of a prohibition on installation of new infrastructure for fossil fuel-based systems in new construction and major renovation projects.

Most notably, at its November 2019 Special Town Meeting, the Town of Brookline passed Article 21, a Town Bylaw which with enumerated exemptions, prohibited the installation of new fossil fuel pipe infrastructure (natural gas, propane, fuel oil) in new construction and what the petitioner termed “Significant Rehabilitations” in both residential and commercial buildings. The Brookline Bylaw – “On-Site Fossil Fuel Infrastructure” includes exemptions for:

- All cooking appliances;
- Backup generators;
- Outdoor cooking and heating;
- Large central hot water heaters;
- Labs and certain medical offices;
- Repairs to unsafe conditions

It also affords waivers for qualifying projects where non-fossil fuel infrastructure is “financially infeasible or impractical,” as well as an appeal mechanism.

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<sup>1</sup> To my understanding, the Town of Brookline is the only community in Massachusetts to have passed such an ordinance to date, but a number of other communities are considering similar measures, including Lexington, Concord, and Newton.

The overall purpose of the Brookline Bylaw and similar ordinances is to take action to reduce carbon emissions in response to the climate change crisis. Indeed, the Bylaw is tethered to Brookline's goal of eliminating its greenhouse gas emissions by 2050. I expect the Clean Energy Future Committee will provide further context and recommendations to the Board with respect to Arlington's needs and goals.

It must be noted that to my understanding, the Attorney General's Office Municipal Law Unit has not yet approved (or disapproved) Brookline's Bylaw. There are many issues to consider, most significantly whether such a local bylaw is pre-empted by state law, including the Massachusetts Building Code, and or the Federal Gas Code. In theory, a local bylaw that focuses its regulation on greenhouse gas emissions reductions and does not interfere with the safety standards or other regulations of gas, fire, or building codes is analogous to other successful local efforts to reduce use of plastic bags or water bottles. The matter has been briefed sufficiently to give this Office confidence that a carefully constructed bylaw is *possibly, but not certainly, feasible*. In that vein, the Committee to my understanding will present either a draft or an outline of their proposal for your review that I believe to be feasible in good faith, if not certain upon review by the Attorney General's Municipal Law Unit. To further your examination of these issues, I have also attached for reference some of the substantial documentation of these efforts set forth in Brookline's reports to its Town Meeting for your review.

**ARTICLE 16                    VOTE/ESTABLISHMENT OF TOWN COMMITTEE ON AUTO  
AND PROPERTY INSURANCE CLAIMS AND LOSSES**

To see if the Town will vote to establish a committee to learn the annual cost of auto and property insurance premiums and insurance claims in the Town of Arlington; or take any action related thereto.

(Inserted at the request of Andrew Fischer and ten registered voters)

While I expect this Article's proponents will provide further detail on their proposal, to my understanding, this article seeks to create a committee of Town Meeting to examine whether or not the Town of Arlington can and should develop a municipal automobile insurance policy for residents administered by the Town. At the 2009 Annual Town Meeting, both the Select Board and the Town Meeting voted to support Article 68 – a resolution to support the creation of

a Task for of the Attorney General’s Office to study the issue of municipalities as auto-insurers , following a bill submitted to the Legislature on the same score.

At that time, support was afforded to exploring whether or not a municipal auto-insurance operation could serve a source of revenue for the Town as well as providing an alternative to private insurance carriers. Among the myriad issues the Committee would need to assess should the Board be inclined towards favorable action, is how the Town would organize an auto-insurance arm of the government, determine and raise the initial amount of money necessary to write and back up insurance policies, market and sell policies, and project the subsequent staff needed to operate a municipal insurance agency.

**ARTICLE 17**

**VOTE/ESTABLISHMENT OF POLICE CIVILIAN  
ADVISORY BOARD STUDY COMMITTEE**

To see if the Town will vote to form a committee of Town Meeting to study, craft and submit a Warrant Article to Town Meeting in 2021 for the creation of an Arlington police civilian advisory board comprised of seven (7) voting members and three (3) non-voting members, or take any action related thereto. The study committee would make decisions based on the vote of a simple majority of the committee’s voting members who shall be appointed to the committee by: the Envision Arlington Standing Committee (1); the Arlington Human Rights Commission (1); the LGBTQIA & Rainbow Commission (1); the Disability Commission (1); the Board of Youth Services (1); the Equal Opportunity Advisory Committee (1); and the Town Moderator (1). Non-voting members of the committee shall include one (1) representative from the Arlington Police Department, the Town’s Diversity, Equity and Inclusion Coordinator, and the Town Counsel. The membership of the study committee’s voting members will include at least one Town Meeting member and shall reflect racial/ethnic and other forms of diversity of Town residents.

(Inserted at the request of Jordan Weinstein and ten registered voters)

This resident petition Article proposes to create a committee of Town Meeting to study the development of a “police civilian advisory board.” I trust that the proponents of this article will present both the general rationale for the creation of the committee and perspectives on its proposed scope and goals, composition, and the timing of its reports. It should be noted at the outset that police review bodies vary widely in their responsibilities, roles, and authorities, as well in the facts and circumstances of their creation. Should the Board be inclined towards favorable action, a Study Committee would need to consider a wide range of issues for the tailoring of a police review board for Arlington including the central goals and mission of such a



**ARTICLE 23**

**HOME RULE LEGISLATION/CONSOLIDATION OF  
TOWN MEETING MEMBER ELECTIONS**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to reform the nomination and election process for Town Meeting seats to permit the consolidation of elections of Town Meeting Members when there are vacant seats into a single election per precinct, such that the highest vote-getters win the longest available terms, to promulgate regulations to effectuate the same; or take any action related thereto.

(Inserted by the Select Board and at the request of the Election Modernization Committee)

While I expect the EMC to also provide a detailed proposal to the Board, the goal of this Article is twofold. First, it aims to consolidate all seats within a given precinct, including vacancies into the same competition for votes. At present, any vacant seats due to resignation of Town Meeting Members or a failure to elect a full complement of Members in a precinct are appointed until the next Annual Election, at which juncture interested candidates can choose to run for the remainder of a vacated seat term or if available, a full term. The result is that seats for two, or even one-year offices for Town Meeting are voted on separately from standard three year terms.

The second is to reward candidates who obtain the most votes regardless of which types of terms were open – full terms or the remainders of vacated seat terms.

Hence, the EMC's proposal would amend the Town Manager Act to afford the candidates for Town Meeting who obtain the most votes three year seats, and the successful candidate who gains the least number of votes, the shortest term available (one or two year remainders). It should be noted that similar provisions exist in other town meeting communities including Lexington and Stoughton; and further that any ties among successful candidates would be resolved by a vote of then-current Arlington Town Meeting representatives.

**ARTICLE 24**

**HOME RULE LEGISLATION/RANKED CHOICE VOTING**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to elect Town offices by Ranked Choice Voting, or take any action related thereto.

(Inserted by the Select Board and at the request of the Election Modernization Committee)

This Article, also requested by the EMC, proposes to amend the Town Manager Act to employ “ranked choice voting” for qualifying elected Town Offices. The EMC will present the Board with a full proposal, but in summary a “ranked choice voting” (“RCV”) is an electoral method by which voters rank candidates by preference rather than voting for a single candidate in each individual seat (or even multiple candidates where more than one seat is available). In a standard race for a single seat with multiple candidates, if any one candidate achieves a majority of so-called “first-preference” votes, they are the winner and the election is over.

If however there is no candidate winning a majority, rather than award the seat to a person who achieved under 50% of first-preference votes, a second tally is performed of *the same ballots*. Under this second tally, the candidate or candidates who received the fewest first-place votes are eliminated and the ballots that ranked them first are re-tabulated, elevating the second-preference of such voters to their first. These new tallies are conducted until any candidate has won a majority of the rank-adjusted votes.

I note for the Board’s information, that forms of RCV are already employed in some Massachusetts jurisdictions for some offices, including the Cambridge City Council and School Committee. Furthermore, an RCV ballot question has been certified for the 2020 Massachusetts Statewide Election on November 3, 2020, and would apply a similar electoral system to Massachusetts’ elected state officials and races for Congress. If the Board is inclined toward favorable action, a positive motion could be based on the model RCV Ordinance, attached hereto in reference materials.

## **ARTICLE 25**

### **HOME RULE LEGISLATION/FINANCIAL ESTIMATES AND BUDGET DOCUMENTS**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to amend the Town Manager Act sections 31 (Estimates of Expenditures) and/or 32 (Preparation of and Annual Budget and Final Budget) so as to afford additional time for the Town Manager to submit, and the Select Board and Finance Committee to consider financial estimates and budget documents required by such sections; or take any action related thereto.

(Inserted by the Select Board)

As the Board will recall, the purpose of this Article is to amend the Town Manager Act to afford Town Departments and the Town Manager additional time to make estimated expenditure

submissions to the Manager and the Select Board and Finance Committee respectively. Section 31 of the Town Manager Act reads as follows:

*On or before the **second business day of January each year**, all boards and departments not under the control of the Town Manager shall submit to the Town Manager in writing detailed estimates for their respective boards or departments of the fiscal requirements for the ensuing fiscal year. These submissions shall include detailed estimates of any revenues that support their budgets and shall be in a format as required by the Town Manager or as provided by Town bylaws. No later than the **fifteenth day of January each year**, the Town Manager shall submit to the Select Board, with copies to each member of the Finance Committee, a careful detailed estimate in writing of the fiscal requirements for the ensuing fiscal year of each fund and department of the Town along with a detailed listing of all projected revenues to support these requirements.*

*The Town Manager shall state the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the Town. All the estimates required by this section shall include a statement of the budgeted amount for the current year and the actual expenditures for the two preceding years.*

(emphasis added).

To my understanding, the contemplated change would essentially shift financial estimate deadlines by approximately two weeks such that Departments would provide their estimates to the Manager on or before January 15<sup>th</sup> each year, and the Manager would provide an estimate to the Select Board and Finance Committee on February 1<sup>st</sup> each year.

There are two primary purposes for adjusting these financial reporting deadlines. First, it would ease the schedule for budget submissions for Town Departments in advance of the December holidays and New Year. Second, it would enable the Manager to submit the “detailed estimate...of fiscal requirements for the ensuing fiscal year” after the Governor releases a proposed budget (including local aid funds) on the 4<sup>th</sup> Wednesday of January, as required by law in most years. As such, the Manager’s estimates could be adjusted positively or negatively by the Governor’s proposals for relevant local funding.



**ARTICLE 26**

**HOME RULE LEGISLATION/SENIOR WATER DISCOUNT**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation or other Special Legislation which would permit the Town to discount fees charged to qualifying, means-tested Arlington Seniors for water and sewer usage; or take any action related thereto.

(Inserted by the Select Board)

While a number of municipalities have enacted water and sewer discount programs for local seniors based solely on the authority conferred them under M.G.L. c. 41, sec. 69B, the Town can currently only safely offer such discounts to individuals who meet the qualifications for 17D and 41C property tax exemption criteria under Department of Revenue interpretation of the Select Board's discretion. Additional discounts of the water and sewer fees could be extended, for example, to eligible seniors who participate in the Arlington's Tax Deferral program and Senior Tax Work-off Exemption programs via Home Rule Legislation that ensures the Select Board has the authority to extend same.

As the Board will recall, under those programs, to be eligible, residents must be 65 years old, a resident of Massachusetts for 10 years, and homeowner for 5 years, and income eligible. I pause to note that obtaining this authority via Home Rule Legislation does not mandate that Select Board offer such discount. It merely shores up the Board's ability to do so, as was recently done in Brookline in light of the Department of Revenue's concerns.

Were the Board inclined toward favorable action, a proposal to Town Meeting, draft special legislation would be very simple, like the following:

*VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:*

*"AN ACT AUTHORIZING SENIOR WATER & SEWER DISCOUNTS  
IN THE TOWN OF ARLINGTON.*

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

*SECTION 1. Notwithstanding any general or special law to the contrary, the Select Board of the Town of Arlington may discount fees charged to income eligible residents aged 65 and over for the use of the town's water and sewer system.*

*SECTION 2. This act shall take effect upon its passage.*

**ARTICLE \_\_\_\_\_ HOME RULE LEGISLATION/RETIRED POLICE OFFICER DETAILS**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation, as set forth below, to allow retired police officers to work police details: or take any other action relative thereto.

**AN ACT RELATIVE TO THE APPOINTMENT OF RETIRED POLICE OFFICERS AS SPECIAL POLICE OFFICERS IN THE TOWN OF ARLINGTON**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The Town Manager of the Town of Arlington may appoint, at the recommendation of the Chief of Police and as the Chief of Police deems necessary, retired police officers as special police officers for the purpose of performing police details and any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work, when the special police officer is on detail assignment and an emergency response by the special police officer is required due to the inability of a regular police officer to timely respond to the emergency. Such retired police officers must have previously served as regular full-time police officers for the Town of Arlington who voluntarily retired based upon superannuation under the provisions of chapter 32 of the General Laws.

No retired police officer shall be eligible for appointment under this act if such officer has reached the mandatory age for retirement of police officers specified in chapter 32 of the General Laws and regulations promulgated thereunder and the employment of any officer appointed under this act shall terminate upon attaining such age. No officer who has been retired from the Town of Arlington Police Department for more than five years shall be eligible for appointment under this act unless the officer has maintained employment since the date of retirement as an active police officer in the Commonwealth. Prior to being appointed under this act every officer who is to be appointed must pass a medical examination by a physician chosen by the Town to determine that such officer is capable of performing the essential duties of a special police officer under this act. The cost of such examination shall be borne by the special police officer.

Such officer shall provide certification to the Town that the officer is covered by personal health insurance.

SECTION 2. Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws; sections 85H and 85H ½ of chapter 32 of the General Laws; sections 99A, 100, or 111F of chapter 41 of the General Laws; or chapter 150E of the General Laws. Special police officers appointed under this act shall be subject to chapter 151A of the General Laws.

SECTION 3. Special police officers appointed under this act shall, when performing their duties set forth in this act, have the same power to make arrests and to perform other police functions as do regular police officers of the Town of Arlington.

SECTION 4. Special police officers shall be appointed for a term of one year, subject to renewal in the Town Manager's sole discretion. During the term of appointment, the officer shall serve at the pleasure of the Town Manager, subject to removal by the Town Manager at any time with or without cause. Any such removal shall be preceded by a fourteen-day written notice unless considerations of public safety and welfare, determined in the Town Manager's sole discretion, require immediate removal. In such instances, the Town Manager shall provide the officer with a written statement of reasons for the immediate removal.

SECTION 5. Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the Police Department and the Chief of Police of the Town of Arlington, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms qualifications and licensing, and requirements regarding uniforms and equipment. Compliance with all requirements will be at no cost to the Town of Arlington. Special police officers appointed under this act shall not be subject to section 96B of chapter 41 of the General Laws.

SECTION 6. Special police officers appointed under this act shall be sworn before the Town Clerk of the Town of Arlington who shall keep a record of all such appointments.

SECTION 7. Appointment as a special police officer under this act shall not entitle any officer appointed as such to assignment to any specific detail or type of detail, and all such assignments shall be made in the sole discretion of the Chief of Police. Special police officers appointed under this act shall be paid the hourly detail rate applicable to regular full-time officers, including any changes to such rate, but shall not be entitled to any other Town benefits.

SECTION 8. Retired police officers appointed as special police officers under this act shall be subject to the limitations on hours worked and on earnings by retired municipal employees under paragraph (b) of section 91 of chapter 32 of the General Laws. Any such officer shall, on or before January thirty-first of each calendar year, file a sworn statement with the Arlington Contributory Retirement Board on a prescribed form identifying the compensated number of hours worked for, and all earnings therefrom, for the Commonwealth and any of its subdivisions for which the police officer worked during the preceding calendar year.

