



**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 6, 2020

Re: Draft Votes and Comments re: Articles 9, 10, 11, 15, 18, 22, and 66

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I write to provide the Board Draft Votes and Comments regarding the above-referenced 2020 Annual Town Meeting Warrant Articles. As the Board will recall, new or additional bylaw language is underscored, while removed language is provided in “strikethrough.”

**ARTICLE 9 BYLAW AMENDMENT/CANINE CONTROL FEES & FINES**

**VOTED:** That Title VIII, Article 2 (“Canine Control”), Section F.2(a) (“Failure to Comply), be and hereby is amended by striking the number “50” in paragraph 2(a) and replacing it with “25;” so as to read as follows as follows:

**2. Failure to comply; penalties.**

**a. Penalty for failure to comply with licensing requirements.**

**Failure to comply with this section shall be punishable by a fine of \$5025.**

**b. Additional late fees.**

**Failure to comply with this section within the first Thursday following 45 business days of the date that the licensing or re-licensing obligation arises shall be punishable by a fine of \$50. An additional \$50 fine shall be applied where owners fail to register a dog for an entire calendar year, due upon registration the following calendar year. These late fees shall be in addition to any other applicable penalty provided for in this Bylaw.**

**(5 – 0)**

**COMMENT:** The Select Board unanimously supports this recommended bylaw adjustment from the Town Clerk’s Office to reduce the fines for late dog licensing. The Clerk’s Office reports that the present fines are redundant and counter-productive. Accordingly, the Board urges Town Meeting’s favorable action as well.

**ARTICLE 10 BYLAW AMENDMENT/DISPLAY OF NOTICE FINES**

**VOTED:** That Title V, Article I (“Display of Notices”), Section 2. Fines for Violations be and hereby is amended by striking the word and number “five” and “500” respectively and replacing them with the words “three,” and “300” respectively so as to read as follows as follows:

**ARTICLE 1  
DISPLAY OF NOTICES**

**Section 2. Fines for Violations**

**Whoever violates any of the provisions of this By-Law shall be punished by a fine of not more than one hundred dollars (\$100), and whoever, after conviction for such violation unlawfully maintains such notice for twenty (20) days thereafter shall be punished by a fine of not more than five three hundred dollars (~~\$500~~300).**

**(5 – 0)**

**COMMENT:** The foregoing motion represents an administrative update to Title V, Article I following last year’s successful updates to Arlington signage regulation at Town Meeting wherein the overwhelming majority of sign regulation is now set forth in the Zoning Bylaw rather than in multiple Town ordinances. As a result, regulation temporary of “Notices,” such as lost-pet, yard sale, and temporary flyers and signs often placed in or around public ways or on Town property, are no longer tethered to state laws governing outdoor advertising (as had been the case in years past). Accordingly, the Town’s fine for violations of the Bylaw cannot now exceed \$300, the maximum amount for Town Bylaw violations.

**ARTICLE 11 BYLAW AMENDMENT/STREET PERFORMANCE DEFINITIONS**

**VOTED:** That Title III, Article I8 (“Street Performances”), Section B, Definitions to amend the definitions of “Perform” and “Public Ways” so as to read as follows:

- 1. Perform – Includes, but is not limited to, the following outdoor activities: acting, singing and playing of musical instruments, pantomime, juggling, magic acts, dancing, reading and reciting of literary works, puppetry, sidewalk art working**

with non- permanent, water-soluble media (i.e., chalk, pastels, watercolors directly on the pavement), and creation of original items for sale (such as paintings) on site, conducted live and in-person, but shall not include presentations of audio/visual reproductions of such activities or the production of items for sale.;

3. **Public Ways – Any Town way or in any place to which the public has a right of access, is dedicated for public access, or upon any way or in any place to which members of the public have access as invitees or licensees, consistent with this Article’s definition and use of the term “public Ways”, which includes, but is not limited to Town public sidewalks and streets, but does not include ~~Town parks and recreation areas or~~ Town school property.**

(5 – 0)

**COMMENT:** The Select Board urges favorable action under this article developed by the Arlington Commission on Arts and Culture (“ACAC”) for the purpose of supporting a wider variety of artists and creative vendors to engage in street performance in compliance with the Town Bylaws by enabling them to sell qualifying works and goods on public ways. The Board emphasizes that only original goods made on site, such as paintings are eligible to be considered “street performance” under the Bylaw and that street performers are already required to obtain a permit under the Bylaw. As an additional matter, the motion before Town Meeting would also remove a barrier to allowing sale of street performance-qualifying goods in and in park and recreation areas, if, and only if, the Park and Recreation Commission allows such sales.

## **ARTICLE 12 BYLAW AMENDMENT/STORMWATER MANAGEMENT**

**VOTED:** That Title V, Article 15 of the Town Bylaws (“Stormwater Management”) be and hereby is retitled and amended as follows:

### **ARTICLE 15 ~~STORM WATER MITIGATION~~ STORMWATER MANAGEMENT**

#### **Section 1. Purpose**

**The purpose of this bylaw is to protect, maintain, and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction and post-development stormwater runoff, decreased groundwater recharge, and nonpoint source pollution associated with new development, redevelopment, and other land alterations. Stormwater runoff can be a major cause of:**

- (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, coastal waters, wetlands, groundwater, and drinking water supplies;**
- (2) Contamination of drinking water supplies;**
- (3) Contamination of downstream coastal areas;**
- (4) Alteration or destruction of aquatic and wildlife habitat;**
- (5) Overloading or clogging of municipal stormwater management systems; and**
- (6) Flooding.**

**The objectives of this bylaw are to:**

- (1) Protect wetland and water resources;**
- (2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements;**
- (3) Prevent and reduce pollutants from entering Arlington's municipal separate storm sewer system (MS4);**
- (4) Prohibit illicit connections and unauthorized discharges to the MS4 and require their removal;**
- (5) Establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality and the control of sedimentation and erosion on disturbed sites;**
- (6) Establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed, and pose no threat to public safety; and**
- (7) Establish Arlington's legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.**

**Section 1. Section 2. Definitions**

**A. "Building footprint" – the outline of the total area covered by a building's perimeter at the ground level**

**B. "Development" – the modification of land to accommodate a new use or expansion of use, usually involving construction**

**~~B.C.~~ "Impervious surface" – a hard-surfaced, human-made area that does not readily absorb or retain water, preventing the infiltration of storm water runoff; including but not limited to building roofs, parking and driveway areas, sidewalks, paved recreation areas, structural additions, accessory structures, roads, pools, and play areas**

**D. "Land Alteration" – Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing and grading; or results in an alteration of drainage characteristics**

**~~C.E.~~ "Predevelopment" – the status of a property at the time prior to request for a permit for new construction or increase to the impervious surface area of a lot**

**~~D.F.~~ "Runoff Rate" – the speed and volume of stormwater which flows over the surface of the land**

**~~E.G.~~ "Runoff" – rainfall, snowmelt, or irrigation water flowing over the ground surface or directed through a pipe or culvert**

**~~F.H.~~ "Stormwater" – storm water, snow melt; the flow of water which results from precipitation and which occurs following rainfall or snowmelt runoff from precipitation or snow melt and surface water runoff and drainage**

**Additional definitions may be set forth in the Rules and Regulations promulgated by the Department of Public Works.**

**Section 3. Authority**

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

~~Section 2.~~ Section 4. Applicability

~~This bylaw is applicable to the following development or redevelopment:~~

- ~~A. All development of a previously undeveloped vacant lot, resulting in a structure where building footprint and other impervious surfaces exceeds 500 square feet;~~
- ~~B. Alteration of a developed property resulting in an increase to the impervious area of a lot by more than 350 square feet.~~

~~This bylaw shall not apply, however, to the paving of private ways that are owned in common with abutting lot owners, and that serve purposes similar to that of public ways, and that are not driveways entirely located on a single lot or on multiple lots under the same ownership.~~

This bylaw shall be applicable to all development, redevelopment, or land alteration activities resulting in either an increase in impervious surface of 350 square feet or more, or land alteration of 1 acre or more, including such activities that may also require a permit issued by the Redevelopment Board, Conservation Commission, Zoning Board of Appeals, and/or the Inspectional Services Department. A development shall not be segmented or phased in a manner to avoid compliance with this bylaw.

Project Categories. The Permitting Authority may by regulation establish categories of projects ranging from “minor” to “major” based on project size, scope, nature, or location. Project Application requirements and submittals, fees, and criteria for permit issuance shall be scaled appropriately based on project category.

~~Section 3.~~ Standard

~~No project subject to this bylaw may increase the surface water runoff rate relative to the predevelopment runoff rate.~~

~~Section 4.~~ Section 5. Procedure

~~A. Application: Prior to the issuance of a building permit for any activity subject to this bylaw, a grading and drainage plan shall be submitted to the Engineering Division, consistent with specifications to be developed by the Arlington Department of Public Works. A fee of \$25.00 shall be assessed to cover the costs of review of the plan.~~

~~B. Review: The Engineering Division will review the application, and within 14 days approve, approve subject to conditions, or reject the plan.~~

~~C. Relief: The applicant may request relief when strict adherence to this bylaw can be shown to constitute significant hardship due to unique topographical aspects of the site or due to serious financial hardship. Relief may be granted by the Director of Public Works, after consultation with the Engineering Division which decision shall be made within 14 days after the request for same is made. Further relief from the decision of the Director of Public Works may be sought from the Zoning Board of Appeals, which will make a de novo determination after a hearing on the merits. The Zoning Board will convene such hearing within 21 days of a request for relief from the applicant and make a decision within 14 days of the hearing.~~

~~D. Prior to project completion, the Town Engineer or the Engineer's representative shall determine if there has been compliance with the storm water plan; if found to be not in compliance, the applicant will be notified of remaining work to be done; if found in compliance, a certificate of completion will be issued.~~

~~E. Any attempt to occupy the premises by the applicant or anyone else without compliance with the provisions of this bylaw shall be punishable by a fine of \$200 each day of noncompliance to be considered a separate offense.~~

Permit procedures and requirements shall be defined in the Rules and Regulations promulgated pursuant to Section 6.C. of this bylaw.

~~Section 5.~~ Section 6. Administration

~~A. The Engineering Division, subject to approval by the Director of public Works and the Town Manager, shall establish administrative procedures for the review and approval of storm water management plans. Failure to promulgate rules and regulations will not have the effect of suspending or invalidating this bylaw.~~

~~B. The Engineering Division shall utilize the policy, criteria, and information, including specifications and standards, of the latest edition of the Massachusetts Department of Environmental Protection's revised Surface Water Discharge Permit Regulations at 314 CMR 3.06(11)(b)5 Storm Water Management Policy for execution of the provisions of this bylaw.~~

A. The Engineering Division or its Designee shall administer this bylaw.

B. The Engineering Division may designate additional authorized agents (Designees) of the Conservation Commission, Redevelopment Board, Zoning Board of Appeals, or Building Inspector to issue Stormwater Permits concurrent with other permitting processes for projects when the land alteration or change in impervious cover is wholly under their jurisdiction.

C. The Engineering Division, subject to approval by the Director of Public Works and the Town Manager, shall adopt, and may periodically amend, Stormwater Management Rules and Regulations including terms, conditions, definitions, enforcement, fees, delegation of authority, procedures and administration of this Bylaw. A public hearing must be held at least 2 weeks prior to the adoption or amendment of such Rules and Regulations, and a draft of the proposed Rules and Regulations must be made publicly available at least 2 weeks prior to the public hearing. Failure of the Engineering Division to issue such Rules and Regulations or legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this Bylaw.

D. Stormwater Management Standards. For execution of the provisions of this Bylaw, the Permitting Authority shall define stormwater management standards within the Rules and Regulations. These standards shall incorporate into the Rules and Regulations the minimum standards of the EPA NPDES Small MS4 Permit and the specifications and

standards of latest editions of the Massachusetts Stormwater Management Standards and Technical Handbooks, or approved local equivalents. The stormwater management standards may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience.

#### Section 7. Enforcement

The Engineering Division or its Designee shall enforce this Bylaw, Regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

A. Civil relief. If a person violates the provisions of this Bylaw, or any associated Regulations, permit, notice, or order issued thereunder, the Engineering Division or its Designee may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

B. Orders. If the Engineering Division or its Designee determines that a person's failure to follow the requirements of this Bylaw, any regulatory provision issued hereunder, or any authorization issued pursuant to this Bylaw or Regulations is creating an adverse impact to a water resource, then the Engineering Division or its Designee may issue a written order to the person to remediate the adverse impact, which may include requirements to:

- (1) Cease and desist from land-disturbing activity until there is compliance with the Bylaw or provisions of an approved Stormwater Management Permit;
- (2) Maintain, install, or perform additional erosion and sediment control measures;
- (3) Perform monitoring, analyses, and reporting;
- (4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
- (5) Comply with requirements in the Stormwater Management Permit for operation and maintenance of stormwater management systems;
- (6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems; and/or
- (7) Eliminate discharges, directly or indirectly, into a watercourse or into the waters of the Commonwealth.

C. If the Engineering Division or its Designee determines that abatement or remediation of pollutants is required, the order shall set forth a deadline for completion of the abatement or remediation. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Engineering Division or its Designee within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the Engineering Division or its Designee affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a special assessment against the property owner of said

costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. c.59, § 57 after the 30th day at which the costs first become due.

**Section 8. Fee Schedule**

**A. Permit fees are payable at the time of Application and are nonrefundable.**

**B. Permit fees shall be calculated by the Engineering Division and shall be approved by the Director of Public Works and Town Manager. Fees shall be outlined within the Rules and Regulations.**

**C. Town, County, State, and Federal projects are exempt from fees.**

**D. Consultant Fee. Upon receipt of a Stormwater Permit Application the Engineering Division is authorized to require an Applicant to pay a fee for the reasonable costs and expenses borne by the Engineering Division for specific expert engineering and other consultant services deemed necessary by the Engineering Division to come to a final decision on the Application. The fee is called the consultant fee. The consultant shall be chosen by, and report only to, the Engineering Division. The exercise of discretion by the Engineering Division in making its determination to require payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision. The Engineering Division shall return any unused portion of the consultant fee to the Applicant. Any Applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provision of the Massachusetts General Laws.**

**Section 9. Severability**

**If any provision, paragraph, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.**

(5 – 0)

COMMENT: The Select Board strongly recommends Town Meeting approve the suite of updates to the Town’s present Stormwater Mitigation Bylaw requested by both the Town’s Engineering Department and the Town’s Environmental Planner. The primary goals of these updates are to provide a clearer bylaw for residents and contractors, better align our local ordinance with MADEP and EPA NPDES Municipal Separate Storm Sewer Systems permitting (better known as the “MS4 Permit”), and improving the efficient and coordinated administration of the Bylaw. The updated bylaw achieves these goals in part by enhancing definitions and substantive terms, but affording greater discretion over process to Town staff. Such process shall be outlined in rules and regulations, a draft of which shall be available for Town Meeting’s reference.

**ARTICLE 15**

**VOTE/ESTABLISHMENT OF TOWN COMMITTEE ON RESIDENTIAL DEVELOPMENT**

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





## **Article 1. Community ~~and Citizen Service~~**

We value Arlington's geographic neighborhoods, common interest groups, and the sense of community in our Town. We value an active and compassionate ~~citizenry~~ volunteers and programs delivering services in our community. We will be known for the vitality of our neighborhoods and as a community of people helping others.

## **Article 2. Diversity, Equity and Inclusion**

We value the diversity of our population. Our Town's mix of ethnic, religious and cultural backgrounds, as well as economic and personal circumstances, enriches us. We will be known for the warm welcome and respect we extend to all.

## **Article 3. Education**

We value learning for all Arlington residents ~~citizens~~. We are responsible as a community for educating our youth and providing all ages with opportunities for educational growth. We will be known for demonstrated excellence in public education and our commitment to life-long learning.

## **Article 4. The Environment and Sustainability**

We value the physical beauty and natural habitats of our Town – parks, ponds and wetlands, dramatic vistas and tree-lined streets – as they contribute to the well-being of our community. Recognizing the fragility of our natural resources, we must ensure that Arlington's residential areas, commercial centers, and infrastructures are developed in harmony with environmental concerns. We will be known for our commitment to the preservation of Arlington's beauty, limited open space and resources, as well as our place in the regional and global community.

## **Article 5. Culture & Recreation**

We value the many opportunities to meet, play, and grow in Arlington while treasuring and preserving our unique historical resources. Our social, cultural, artistic, historic, athletic, recreational, and other community groups strengthen Town life. We will be known for the breadth and richness of our resources and activities available to Arlington residents ~~citizens~~.

## **Article 6. Communication**

We value public dialogue. Communication and information-sharing build trust. Our goals are true openness and accountability. Arlington will be known as a community that thoughtfully searches beyond divisive issues for the opportunities that bind us together.

## **Article 7. Fiscal Resources**

We value Arlington's efficient delivery of public services providing for the common good. The benefits from these services and the responsibility of taxation will be equitably

distributed among us. We will be known for our sound fiscal planning and for the thoughtful, open process by which realistic choices are made in our Town.

#### Article 8. Governance

We value our representative Town Meeting system and the community spirit it fosters. Participatory governance is both responsive and innovative. We will be known as a community where government provides effective and efficient services, insures open two-way communication, promotes the lively exchange of ideas, and encourages active ~~citizen~~ participation of all residents.

#### Article 9. Business

We value Arlington’s diverse and accessible mix of merchants and service providers. We will be known for our vibrant, attractive commercial centers supporting the primarily residential and historic character of the Town.

**AND FURTHER VOTED:** That the Town hereby accepts, endorses and adopts the nine “vision statements” set forth in Article 19 of the 1993 as “statements of our community values,” in place of “goals for the Town.”

**AND FURTHER VOTED:** That Title I, Article 15 (“Consideration of Vision 2020 Goals”) of the Town Bylaws is hereby amended by replacing the term “Vision 2020” with “Envision Arlington” and replacing the term “Goals” with “Statements of Community Values” throughout so as to read as follows:

**ARTICLE 15**  
**CONSIDERATION OF ~~VISION 2020~~ ENVISION ARLINGTON GOALS STATEMENTS**  
**OF COMMUNITY VALUES**  
**(ART. 19, ATM – 05/05/93)**

All Town officials including, but not limited to the Select Board, Town Manager, School Committee, and Superintendent of Schools shall consider the Goals of ~~Vision 2020~~ Envision Arlington Statements of Community Values as delineated in Article 19 of the 1993 Annual Town Meeting, or as same is subsequently amended by any future town meeting, in establishing their respective policies and in performing their various public functions.

(5 – 0)

**COMMENT:** Envision Arlington’s Standing Committee requests the foregoing updates to:

- Redefine the “Town Goals” as “value statements” in the interests of the operational clarity of their purpose and greater inclusivity;
- Updating the Town Bylaws to reflect such changes in Envision Arlington’s charter vote; and

- Updating the Town Bylaws to reflect 2018 Town Meeting’s vote to change the name of “Vision 2020” to “Envision Arlington,” and the foregoing re-branding of “Goals” as “Statements of Community Values.”

The Select Board respectfully requests Town Meeting join in the Board in supporting each and all of these measures.

**ARTICLE 22**

**HOME RULE LEGISLATION/JUSTIN BROWN**

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

**“AN ACT TO PERMIT TOWN RESIDENT, JUSTIN BROWN, TO TAKE THE CIVIL SERVICE TEST FOR THE POSITION OF FIREFIGHTER IN THE TOWN OF ARLINGTON.**

**Section 1 Notwithstanding the provisions of any special or general law to the contrary including without limitation Chapter 31 of the General laws, the Civil Service law, Justin Brown, a resident of the Town of Arlington is authorized to take the civil Service examination for appointment to the position of Firefighter notwithstanding the fact that he has attained the age of 32. The authority under this act will expire on December 31, 2022.**

**Section 2 THIS ACT WILL TAKE EFFECT UPON ITS PASSAGE.”**

**(Mr. Brown is 38 years old.)**

**(5 – 0)**

**COMMENT:** The Select Board unanimously supports Town resident Justin Brown’s request to for special legislation to be permitted to sit for the fire fighter civil service exam in pursuit of a position as a firefighter in Arlington. In brief, Civil Service Law (as applied in Arlington), does not ordinarily permit a candidate aged 32 or older to be appointed to the position of Firefighter. While there may be circumstances in which the Town would not be inclined to permit a potential candidate to take the exam, the Board has historically supported affording the opportunity for each applicant on his or her own merits. The exemption the Board urges Town Meeting to approve, offers Mr. Brown only the opportunity to apply and be considered for appointment to the position of Firefighter. Mr. Brown would still be required to pass all other Civil Service requisites including a physical fitness examination and is not guaranteed a position. Therefore, the Board respectfully requests Town Meeting’s vote in the affirmative.

**ARTICLE 66**

**VOTE/ COMMUNITY PRESERVATION PLAN**

**VOTED:** That the Town of Arlington hereby endorses and adopts the 2020 Arlington Community Preservation Plan as proposed by the Community Preservation Act Committee.

**(5 – 0)**

**COMMENT:** The Community Preservation Act Committee (“CPAC”) is required by the G.L. c. 44B sec. 5(b)(1) law to develop and update a “Community Preservation Plan” addressing the needs, possibilities and resources of the Town regarding community preservation. The Select Board unanimously supports the 2020 Community Preservation Plan as proposed by CPAC.