



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: November 3, 2020

Re: Draft Votes and Comments re: Nov. 2020 STM Articles 5, 6 and 10

I write to provide the Board Draft Votes and Comments regarding the above-referenced November 16, 2020 Special Town Meeting Warrant Articles, based upon your October 19, 2020 hearings. Each of these articles is either new to the Special Town Meeting Warrant or was materially changed from the 2020 Annual Town Meeting Warrant. Where a vote addresses a new bylaw or amendment to an existing bylaw, additional language is underscored and removed language is noted in “strikethrough.”

ARTICLE 5

HOME RULE LEGISLATION/BYLAWS AMENDMENT/ FOSSIL FUEL INFRASTRUCTURE

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to allow the Town of Arlington to regulate fossil fuel infrastructure in new construction and/or major renovation and rehabilitation projects in Arlington for the purposes of reducing greenhouse gas emissions and encouraging renewable energy production and use, notwithstanding the State Building Code, the Gas Code, M.G.L. c. 164 or any other law of the Commonwealth regulating natural gas as a residential utility; and further to vote to establish a new section of Title VI of the Town Bylaws prohibiting or otherwise regulating the installation of fossil fuel infrastructure in new construction projects and/or major renovation and rehabilitation projects in Arlington, and to set forth the terms and scope of such prohibition, including exemptions or waivers to same; or take any action related thereto.

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

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 THE TOWN OF ARLINGTON TO ADOPT AND ENFORCE LOCAL REGULATIONS RESTRICTING NEW FOSSIL FUEL INFRASTRUCTURE IN CERTAIN CONSTRUCTION”

Be it enacted as follows:

SECTION 1. Notwithstanding chapter 164 of the General Laws, section 13 of chapter 142 of the General Laws, the State Building Code, or any other general or special law or regulation to the contrary, the town of Arlington is hereby authorized to adopt and further amend general or zoning by-laws that restrict new construction or major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act.

SECTION 2. Notwithstanding section 7 of chapter 40A of the General Laws, or any other general or special law or regulation to the contrary, the Building Inspector of the town of Arlington, or any designee thereof, shall be authorized to enforce restrictions on new construction and major renovation projects that do not qualify as fossil-fuel-free, as defined in section 3 of this act, including through the withholding of building permits.

SECTION 3. As used in this act, the term “fossil-fuel-free” shall refer to construction or renovation that results in an entire building or an entire condominium unit that does not utilize coal, oil, natural gas other fuel hydrocarbons (including synthetic equivalents), or other fossil fuels in support of its operation.

SECTION 4. This act shall take effect upon its passage and shall authorize any pending bylaw already approved by Arlington’s Town Meeting consistent with Sections 1 through 3 above.

SECTION 5. If any provision or section of this act is invalidated, the remainder shall survive in full force and effect.

AND FURTHER VOTED, that at Title VI of the Town Bylaws be and hereby is amended to add a new Article 10 entitled “Prohibition on New Fossil Fuel Infrastructure in Major Construction” as follows:

ARTICLE 10. PROHIBITION ON NEW FOSSIL FUEL INFRASTRUCTURE IN MAJOR CONSTRUCTION

Section 1 Purpose

This Bylaw is adopted by the Town of Arlington, under its home rule powers and its police powers under Massachusetts General Laws, Chapter 40, Sections 21 (clauses 1, 18) and 21D, and Chapter 43B, Section 13, to protect the health and welfare of the inhabitants of the town from air pollution, including that which is causing climate change and thereby threatens the Town and its inhabitants.

Section 2 Definitions

“New Building” shall mean a new building or new accessory building (a building devoted exclusively to a use accessory to the principal use of the lot) that is associated with a valid building permit application on or after the Effective Date.

“On-Site Fossil Fuel Infrastructure” shall mean piping for fuel gas, fuel oil, or other fuel hydrocarbons, including synthetic equivalent that is in a building, in connection with a building, or otherwise within the property lines of premises, extending from a supply tank or from the point of delivery behind a gas meter (customer-side of gas meter).

“Major Renovation” shall mean a renovation project associated with a valid building permit application on or after the Effective Date of this article that:

(1) For existing structures regulated by the current edition of the International Residential Code as amended by 780 CMR 51: Massachusetts Residential Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 75% of the Gross Floor Area, as defined in Section 2 of the Arlington Zoning Bylaw, prior to the project;

(2) For existing structures regulated by the current edition of the International Building Code as amended by 780 CMR 34: Massachusetts Commercial Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 50% of the building floor area prior to the project, as defined by the Massachusetts Building Code.

“Work Area” shall mean the portions of a building affected by renovations for the reconfiguration of space and/or building systems, as indicated in the drawings associated with a building permit application. Areas consisting of only repairs, refinishing, and/or incidental work are excluded from the Work Area.

“Effective Date” shall mean July 1, 2022, or six months following the date by which the Town is authorized by Special Act to regulate fossil fuel infrastructure by the Commonwealth of Massachusetts, whichever is later in time.

Section 3 Applicability

The requirements of this article shall apply to all permit applications for New Buildings and Major Renovations proposed to be located in whole or in part within the Town, except that:

- A. The requirements of this article shall not apply to utility service piping connecting the grid to a meter, or to a gas meter itself.**
- B. The requirements of this article shall not apply to piping required to fuel backup electrical generators.**
- C. The requirements of this article shall not apply to piping required for cooking appliances and related appliances.**
- D. The requirements of this article shall not apply to the use of portable propane appliances for outdoor cooking and heating.**
- E. The requirements of this article shall not apply to the piping required to produce potable or domestic hot water from centralized hot water systems in buildings with building floor areas of at least 10,000 square feet, provided that the Engineer of Record certifies that no commercially available electric hot water heater exists that could meet the required hot water demand for less than 150% of installation or operational costs, compared to a conventional fossil-fuel hot water system.**
- F. So long as new fossil fuel piping is not installed, the requirements of this article shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping.**
- G. The requirements of this article shall not apply to research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a healthcare facility.**
- H. The requirements of this Article shall not apply to repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.**

Section 4 Enforcement

Upon the Effective Date, no permits shall be issued by the Town for the construction of New Buildings or Major Renovations that include the installation of new On-Site Fossil Fuel Infrastructure, except as otherwise provided in Sections 3, 5, and 6 of this bylaw

Section 5 Waivers

A. In the event that compliance with the provisions of this bylaw makes a project financially infeasible or impractical to implement, the Building Inspector may grant a waiver subject to reasonable conditions. Where appropriate, such waivers shall be issued narrowly for specific portions of a project that are financially infeasible or impractical to implement under the requirements of this Article. Waiver requests shall be supported by a detailed cost comparison, inclusive of available rebates and credits. A waiver request may be made at any time and may be based upon submission of conceptual plans. Particular consideration for waivers will be given to projects sponsored by non-profit or government-sponsored affordable housing entities.

B. Guidance regarding the granting of waivers and prescription of conditions shall be provided by the Select Board prior to the Effective Date and periodically extended or amended in the light of experience and changing circumstances.

Notwithstanding the foregoing, Compliance with this bylaw may be considered financially infeasible if:

1. As a result of factors beyond the control of the proponent the additional cost of the project over the long term, including any available subsidies, would make the project commercially unviable; and/or

2. If technological or other factors would make the project unsuitable for its intended purpose.

C. The Building Inspector's decision with respect to the granting of a waiver, the scope thereof, and any conditions prescribed, shall be appealable to the Town Manager in accordance with procedures established by the Town Manager.

Section 6 Appeals

The Town Manager shall hear appeals from decisions by the Building Inspector on the applicability of this bylaw under section 3 in accordance with such procedural rules as may be adopted from time to time by the Town Manager.

(4 – 0) Mr. DeCoursey recused himself from discussion.

COMMENT: *This article returns to Town Meeting from the 2020 Annual Town Meeting with revisions. The Select Board urges Town Meeting's support for this two-pronged effort to take firm action to reduce dependence on fossil fuels and reduce pollution in Arlington as recommended by Arlington's Clean Energy Future Committee. In short, this article would seek a Special Act to allow the Town to regulate the installation of fossil-fuel based infrastructure on new residential and commercial construction and major renovations (with major renovations for most projects defined in a manner consistent with special-permit triggering work) while also enacting a local bylaw detailing such regulations. It is likely that an approved bylaw would be put on hold until the requested special legislation were passed.

Substantively, the Town would seek to prohibit the installation of new fossil fuel pipe infrastructure (natural gas, propane, fuel oil) so as to require what are essentially new or significantly renovated buildings to use cleaner fuel sources in the interests of protecting both health and safety and the natural environment. It is important to highlight that the list of exemptions to the proposed bylaw is extensive, addressing common concerns and needs including:

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

Furthermore, the proposal creates a system of waivers for qualifying projects where non-fossil fuel infrastructure are not feasible or would frustrate important goals such as the creation and maintenance of affordable housing. In sum, the Board believes this coordinated effort is a valuable incremental step in reducing pollution and investing in clean energy technologies for future generations, and highly recommends positive action.

ARTICLE 6

VOTE/ESTABLISHMENT OF POLICE CIVILIAN ADVISORY BOARD STUDY COMMITTEE

To see if the Town will vote to form a Committee to study the creation of an Arlington police civilian review board independent from the police department with the authority and resources to receive and investigate complaints, review police services and make recommendations for their improvement. The study committee shall be comprised of seven (7) voting members and three (3) non-voting members. The study committee will make its 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. The study committee will complete its work and recommendations and shall report to the 2021 Annual Town Meeting. Or take any action related thereto.

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

VOTED: That Town Meeting hereby establishes a “Civilian Police Advisory Board Study Committee” to be structured, organized, and charged as follows:

Civilian Police Advisory Board Study Committee

I. Committee Membership and Organization

A. The Committee shall consist of fifteen (15) members; two (2) of whom shall be non-voting, ex-officio members, and thirteen (13) of whom shall be voting members as follows:

i. Ex-officio members:

- A member of the Select Board or their designee to be determined by such Board for the purposes of administering the organizational meeting only; and
- The Town Counsel or their designee.

ii. Voting members:

- One (1) member of the Envision Arlington Standing Committee as determined by such commission;
- One (1) member of the Arlington Human Rights Commission as determined by such commission;
- One (1) member of the LGBTQIA+ Rainbow Commission as determined by such commission;
- One (1) member of the Disability Commission as determined by such commission;
- One (1) member of the Board of Youth Services; as determined by such Board;
- One (1) designee of the Envision Arlington Diversity Task Group co-chairs;

- One (1) member of the Council on Aging as determined by such Council;
- One (1) member of the Menotomy Manor Tenants Association as determined by such Association;
- One (1) Arlington High School student, as recommended by the AHS Principal;
- One (1) graduate of the Citizens Police Academy, to be appointed by the Chief of Police, based on the recommendation of the program coordinator;
- Three (3) Town Meeting Members, to be appointed by the Town Moderator;
- The Chief of Police or their designee; and
- The Diversity, Equity & Inclusion Coordinator or their designee.

Appointing authorities shall be encouraged to designate representatives, who reflect racial, ethnic, and other forms of diversity to be found in Arlington.

iii. Quorum

A majority of voting members shall constitute a quorum, and decisions shall be based on the vote of a simple majority of those committee members present and voting.

iv. Organization and First Meeting

The initial meeting of the Study Committee shall be convened by the designee of the Select Board, and the first order of business shall be the self-organization of the study committee through the election of one or more chairs, whose responsibility shall be to convene and preside over all future meetings, as well as a clerk, whose duties shall include the proper posting of meeting agendas and minutes. The Study Committee shall designate any other officers as it sees fit.

. II. Committee Charge & Reporting

- A. The Study Committee shall study the creation of alternative mechanisms for civilians to file complaints regarding police interactions, considering various models including a police civilian review board independent from the police department with the authority and resources to receive and investigate complaints. Said committee shall also review police services,

examine the experience of comparable communities, and consider the potential impacts of pending legislation.

- B. The Study Committee shall report its findings and any recommendations to the 2022 Annual Town Meeting, any earlier Annual or Special Town Meeting, and/or other appropriate administrative, management, or elected or appointed officials.

III. Dissolution

The study committee will be dissolved concurrent with the dissolution of the 2022 Annual Town Meeting, unless there is a vote of Town Meeting to effectuate an earlier

(5 – 0)

COMMENT: **This articles returns to the Warrant from the 2020 Annual Town Meeting in revised form.* The Select Board urges Town Meeting's support for the establishment of a study committee to evaluate the creation and use of alternative, civilian-based mechanisms to examine complaints about police interactions in Arlington. While there is not universal agreement on what kind of independent police review, if any, is appropriate in Arlington, it is the Board's collective view that a study committee informed by a diverse set of perspectives, equipped with data and information about the experiences of comparable communities, and advised of the potential impacts of pending statewide police accountability legislation can and should be entrusted with researching these matters and making recommendations to Town Meeting on this important issue.

It must be stressed that the Board supports this measure as parallel and complimentary to the Police Chief's development of a Chief's Advisory Board, the quality work of the Arlington Police Department's Professional Standards team, and related work of APD, Town staff, volunteers, community groups, and residents to advance dialogues and relationships on a range of policing issues. Moreover, neither the Board nor the Committee's charge presupposes an outcome. Rather, it is the Board's hope and expectation that this Study Committee will bring together representatives of dedicated stakeholders for earnest and thorough exploration of their mission to advance our understanding of the best ways for Arlington and its police department to facilitate mutual respect and shared confidence in the discharge of police duties.

ARTICLE 10**ACCEPTANCE OF LEGISLATION/GOLD STAR
FAMILY TAX EXEMPTION**

To see if the Town will vote to accept Massachusetts General Law Chapter 59 sec. 5(22H) to provide a local to surviving parents or guardians of members of the United States armed services who died on active duty tax exemption; or take any action related thereto

(Inserted at the request of the Town Manager)

VOTED: That the Town of Arlington hereby accepts G.L. c. 59 sec. 5(22H) to provide a local property tax exemption to the surviving parents or guardians of members of the United States armed services who died on active duty in service of their country.

(5 – 0)

COMMENT: The Select Board recommends acceptance of this local option to provide a full property tax exemption to the parents or guardians of those persons who have died in active service in the United States Armed Services. While the number of “Gold Star” families in the Town of Arlington is modest, it is the Board’s firm belief that that as a community, we hold the responsibility to recognize those who gave their lives to the service their country and help the bereaved meet their local property tax burdens in the stead of the support and love they would receive from those honorably departed.