



**Town of Arlington  
Legal Department**

Douglas W. Heim  
Town Counsel

50 Pleasant Street  
Arlington, MA 02476  
Phone: 781.316.3150  
Fax: 781.316.3159  
E-mail: [dheim@town.arlington.ma.us](mailto:dheim@town.arlington.ma.us)  
Website: [www.arlingtonma.gov](http://www.arlingtonma.gov)

To: Arlington Select Board  
Cc: Adam Chapdelaine, Town Manager  
From: Douglas W. Heim, Town Counsel  
Date: February 18, 2022  
Re: Annual Town Meeting Warrant Articles:

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I write to provide the Board a summary of the above-referenced warrant articles to assist in the Board's consideration of these articles at its upcoming hearing on February 23, 2022. The Warrant has not yet been finalized or numbered, but these articles are presented in their anticipated order.

- Bylaw Amendment/Updating Human Rights Commission Bylaw
- Bylaw Amendment/Civilian Police Advisory Commission
- Bylaw Amendment/Tree Preservation and Protection
- Vote/Establish a Committee on Insurance Cost and Issues
- Resolution/Support of the Mass. Fair Share Constitutional Amendment
- Resolution/Alewife Brook is a Valuable Natural Resource

**ARTICLE**

**BYLAW AMENDMENT/UPDATING HUMAN RIGHTS COMMISSION BYLAW**

To see if the Town will vote to amend Title II, Article 9 of the Town Bylaws (“Human Rights Commission”) to update and amend its preamble, policy, procedures, definitions, and administrative provisions, including but not limited to clarifying: the Commission’s role in responding to both incidents and complaints, bylaw provisions for professional staff support, and the Commission’s powers, procedures, and responsibilities in investigating and seeking to resolve complaints; or take any action related thereto.

(Inserted at the Request of the Human Rights Commission)

This Article proposes to update Title II, Article 9 the Town Bylaws (“Human Rights Commission Bylaw”) in a variety of administrative and substantive ways. This Office expects a representative of the Human Rights Commission will detail the specific changes sought and rationale for same. However, the expected amendments fall primarily into three categories:

1. Administrative changes which simplify language, modernize phrasing, or eliminate unnecessary provisions (these make up the bulk of the proposed updates);
2. Adding definitions and clarifying Commission processes for receiving and investigating complaints;
3. Updating provisions regarding the Commissions’ purpose, powers, roles, and resources to better reflect the realities of its experience and modernized presentation of equity concerns.

It should be emphasized of course that the updates to be proposed are not critiques of the Commission or the original bylaw, but rather reflect an effort to strengthen the Commission and reinforce its operations using the experience of its members over the last several years.

**ARTICLE**

**BYLAW AMENDMENT/CIVILIAN POLICE ADVISORY COMMISSION**

To see if the Town will vote to amend the Town Bylaws to establish a Commission to provide a public forum for feedback on policing in the Town, to educate the public about their options for filing complaints and commendations regarding police conduct, to guide community members in filing complaints and commendations, to work with the Arlington Police Department to analyze and publish data on policing, and to comment on police policies and procedures; setting forth the

membership, duties and responsibilities, administration, and requirements of such Commission; or take any action related thereto.

(Inserted at the Request of the Police Civilian Advisory Board Study Committee)

This article represents one of the recommendations of the Police Civilian Advisory Board Study Committee (“PCABS”) to be reported to the 2022 Annual Town Meeting – a new bylaw establishing a civilian advisory body for policing matters. As the Select Board may recall, PCABS was charged by the 2021 Annual Town Meeting with the following:

## *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.*

(emphasis added).

As set forth in the Study Committee’s Interim Report and its October 25, 2021 Presentation to the Select Board (which may be found at: <https://www.arlingtonma.gov/town-governance/boards-and-committees/civilian-police-advisory-board-study-committee/reports-presentations>) the Committee studied a wide variety of models for civilian review, surveyed community stakeholder experiences and concerns, and consulted national civilian review experts within the specific context of Arlington’s policing data, the recent passage of the Justice Equity and Accountability in Law Enforcement Act (“JEALE”), and other local and statewide considerations. As representatives of the Committee will convey to the Board, their ultimate recommendation is to create a permanent commission oriented towards cultivating and maintaining trust and understanding between the Town’s police department and the community, assisting individuals in navigating state and local tools for pursuing complaints

regarding police misconduct, and providing a public forum for feedback about policing policies, procedures and data in Arlington.

It is important to highlight the Study Committee is not recommending the creation of an independent investigative body to prosecute complaints, especially in light of the establishment of the Commonwealth's Peace Officer Standards and Training Commission ("POST"), and its significantly expanded role in both certifying police officers (including maintaining their certification) and independently receiving and investigating allegations of police misconduct in every city and town in Massachusetts. Rather, the Study Committee's recommendations are focused more on helping individuals navigate both the POST complaint system and the Arlington Police Department's internal complaint system (known as "Professional Standards"), alongside fostering the exchange of information and perspective between stakeholders and the police department with respect to both patterns and policies of concern as well as what is being done well by APD.

If the Select Board were inclined toward positive action, PCABS has made a detailed recommended motion, which includes a novel appointment process, training requirements for Commission members, duties, purpose, and operations as follows:

*VOTED: That Title II of the Town Bylaws ("Committees and Commissions") be and hereby is amended by inserting a new article to provide for the creation of the Arlington Civilian Police Advisory Commission under Article 15 as follows:*

*Article 15: Arlington Civilian Police Advisory Commission*

*Section 1. Arlington Civilian Police Advisory Commission Established*

*There is hereby established an Arlington Civilian Police Advisory Commission, charged with serving as a civilian resource and forum for Arlington residents and visitors and members of the public, the Arlington Police Department, and other appropriate Town personnel.*

*Section 2. Purpose*

*The purpose of the Arlington Civilian Police Advisory Commission is to provide an opportunity for increased understanding and trust between the community and the Arlington Police Department, assist members of the public as a resource in the event they have complaints or concerns about policing in Arlington or specific police personnel,*

*and to provide the Arlington Police Department and Town management with a public forum for feedback about police personnel, policies, procedures and data.*

### *Section 3. Commission Composition, Eligibility, Qualification & Terms*

#### *A. Appointment of the Commission*

*The Commission shall consist of nine (9) members, appointed by the Town Manager. To be considered for appointment members shall be nominated by the following public bodies, persons, or community entities:*

- 1. One (1) member nominated by the Arlington Human Rights Commission;*
- 2. One (1) member nominated by the LGBTQIA+ Rainbow Commission;*
- 3. One (1) member nominated by the Disability Commission;*
- 4. One (1) member nominated by the Board of Youth Services;*
- 5. One (1) member nominated by the Envision Arlington Diversity Task Group co-chairs;*
- 6. One (1) member nominated by the Council on Aging;*
- 7. One (1) member nominated by the Menotomy Manor Tenants Association; and*
- 8. Two (2) members nominated by the Select Board*

*The Manager shall notify the above “nominating bodies” of vacancies and expiring terms. If any nominating body fails to act upon a notification from the Manager within ninety (90) days or in the event a nominating body is inactive, the Manager may request the Select Board to make a nomination in their place.*

#### *B. Eligibility to Serve*

- 1. All members of the Commission shall be Arlington Residents and as a total body, shall reflect racial, ethnic, gender, sexual, age, and other forms of diversity in Arlington. Additionally, the Town Manager shall appoint at least one member respectively with experience in following areas:*
  - a. Criminal defense or civil rights relative to police searches, arrests, or detainments;*
  - b. Data Analysis; and*
  - c. Working with underserved communities such as, but not limited to social workers, mental health counselors, or civil forms of legal aid.*
- 2. The following persons are not eligible to serve on the Commission:*
  - a. Current employees of the Town;*
  - b. Current or former law enforcement officers whether in Arlington or elsewhere;*
  - c. Immediate family members of current or former Arlington Police Department employees.*

### *C. Qualifications for Service*

1. *In addition to all other requirements for appointment on the Commission under the general laws of the Commonwealth, members must receive initial and continuing training in the following subjects:*
  - a. *Arlington Police Department complaint and discipline procedures;*
  - b. *Arlington Police Department policy and operations;*
  - c. *Relevant State Laws regarding law enforcement accountability including “An Act Relative to Justice, Equity and Accountability in Law Enforcement;”*
  - d. *Filing civilian complaints and commendations about police conduct with the Commonwealth of Massachusetts and the Arlington Police Department;*
  - e. *Data handling and privacy;*
  - f. *Analysis of policing data;*
  - g. *Other topics the Commission deems relevant*
2. *Commission members, as deemed appropriate by the Commission may also be required to participate in the Citizen Police Academy when offered, and participate in Arlington Police Department ride-along opportunities at intervals established by the Commission.*
3. *The Commission shall affix a reasonable period of time for appointed members to complete initial and follow-up training. Failure to meet training requirements within such period shall be grounds for removal.*
4. *The original Commission appointees shall be deemed qualified upon completion of requirements for all committees and commissions under the laws of the Commonwealth, and be afforded a reasonable time period to establish and complete training requirements for the Commission consistent with foregoing.*

### *D. Initial & Subsequent Terms*

*Member terms shall be for three (3) years, except that initial appointment terms of members shall be staggered such that three (3) initial appointees shall serve a one (1) year term; three (3) a two (2) year term; and three (3) a three (3) year term as designated by the Town Manager.*

*Members shall serve until their successors have completed training and been sworn in to service.*

### *E. Removal of Members*

*At the request of the Manager, members may be removed for cause by a vote of the nominating body.*

### *Section 3. Administration and Operation*

*The Arlington Civilian Police Advisory Commission shall not meet or conduct business without the presence of a quorum, which shall require a majority of the members of the Commission at any given time. The Commission shall approve its actions by majority vote of the quorum, but in no event shall action be approved by fewer than 4 members.*

### *Section 4. Duties and Responsibilities*

#### *A. General Duty*

*It shall be the duty of the Arlington Civilian Police Advisory Commission to serve as qualified advisors to the general public, the Arlington Police Department, and other Town staff with respect to policing in Arlington from a civilian perspective. The Commission shall serve as a technical resource for persons wishing to file specific complaints against or commendations of Arlington Police Department personnel, a forum for both positive and negative feedback about police conduct and policy in Arlington, and collaboratively engage the Arlington Police Department in its development or revision of police policies.*

#### *B. Specific Responsibilities*

*To fulfill its duties, the Commission shall specifically be charged with:*

- 1. Establishing a process for community members to provide information about police interactions, both positive and negative, to the commission anonymously and non-anonymously;*
- 2. Guiding community members through the civilian complaint or commendation process, including:*
  - a. Providing education to a community member about options for filing complaints and commendations about police conduct;*
  - b. Providing complaint and commendation forms to a community member;*
  - c. Connecting a community member with appropriate town officials and committees;*
  - d. Accompanying a community member to meetings*
  - e. Following up with both the APD and the community member on any resultant investigation;*
  - f. Providing periodic updates to a community member;*
  - g. Collecting information about a community member's satisfaction with complaint processes'*
  - h. However, at no point in time shall Commission members individually or as a public body provide legal advice or representation, mental health*

*counseling, or social services advocacy to community members engaging commission members for the purpose of filing complaints;*

3. *Working with the Arlington Police Department to regularly publish and analyze data which can offer insight into the quality and effectiveness of the department, especially in its interactions with the public, including but not limited to:*



- a. *Complaints, including their nature, status and disposition;*
  - b. *Police use of force incidents, including all use of firearms;*
  - c. *Vehicle pursuits and traffic collisions;*
  - d. *Injuries and deaths in custody;*
  - e. *Stops, searches, citations and arrests, including demographic data;*
  - f. *Civil lawsuits and other claims brought against the town or department*
  - g. *Database of training; and*
  - h. *Database of awards and commendations;*
4. *Regularly reviewing Arlington Police Department complaint, investigation, and discipline policies and procedures, comparing them with the latest practices in other communities locally and nationally;*
  5. *Regularly reviewing other Arlington Police Department policies and procedures, especially new or changing policies, and make recommendations to the Chief of Police, Town Manager, and the public;*
  6. *Regularly reviewing the by-law creating this commission and make recommendations to Town Meeting;*
  7. *Providing a yearly report to Town Meeting covering the work and findings of the commission as well as priorities for the upcoming year; and*
  8. *Providing education to the public about policing and the Arlington Police Department, their options for filing complaints and commendations, the complaint process and the various data they are charged with analyzing.*

*Section 5. Effective Date*

*Following Town Meeting approval of this bylaw, this Title shall take effect upon the approval by the Attorney General of the Commonwealth and compliance with bylaw advertising and notice requirements.*

**ARTICLE BYLAW AMENDMENT/ TREE PRESERVATION AND PROTECTION**

To see if the Town will vote to amend the Town Bylaws, Title V Regulations Upon the Use of Private Property, Article 16: Tree Protection and Preservation, Section 2, Definitions, to change the definitions of: “Demolition” to be more specific about activities that can damage protected trees, “Protected Tree” to increase the number of trees protected, and “Tree Plan” to require certification by a landscape professional; and further, to amend Section 4, par. B, to add the requirement of an affidavit that no Tree Plan is required, if applicable; or take any action related thereto.

(Inserted at the Request of the Tree Committee)

This article from the Tree Committee seeks to further update and adjust to the Town' Tree Protection Bylaw to further optimize the Town's efforts to identify, and where possible, discourage unnecessary tree removal and damage to trees. The three areas of adjustment are:

1. Expanding the definition of "protected trees" under the bylaw to include smaller trees in diameter;
2. Expanding the definitions of "demolition" to encompass a wider range of construction activities; and
3. Clarifying and strengthening tree plan requirements by requiring plan certification by arborists or landscape architects; and requiring owner's affidavits where applicants represent no tree plan is needed.

While I expect the Tree Committee will provide further detail on the rationale for these amendments, if the Board is inclined to support same, the Tree Committee's draft motion is as follows (additions underscored and deletions struck through):

*VOTED: That Title V, Article 16, Sections 2 and 4 be and hereby are amended as follows:*

**ARTICLE 16  
TREE PROTECTION AND PRESERVATION**

*A. The following definitions shall apply to this By-law:*

*"Demolition" - Any act of, or commencing the work of, destroying, pulling down, removing or razing a building ~~or commencing the work of total or substantial destruction of a building;~~ or removing the roof structure, or removing two exterior walls, of a building.*

*"Protected Tree" - Any existing healthy tree on private land with a DBH of ~~eight (8)~~ six (6) inches or greater located in the setback area, which does not pose an immediate hazard to persons or property or is not under imminent threat of disease or insect infestation.*

*"Tree Plan" - A site plan drawn and stamped by a certified land surveyor or engineer, and stamped by a certified arborist or landscape architect, showing all Protected Trees ~~in the setback areas~~ as defined herein and public shade trees near the property, and indicating, on the site plan or in a separate document, which Protected Trees will be retained, which will be removed, and, how critical root zones of each Protected Tree and public shade tree will be protected from damage during site work.*

*B. In all instances of construction or demolition as defined and applicable herein, the owner of the property shall submit a Tree Plan accompanied by a fee of \$50, to the Tree Warden prior to*

*or concurrent with an application for a building or demolition permit. Additionally, if any Protected Trees were removed during the 12 months preceding the application for a building or demolition permit, such trees shall be accounted for on the Tree Plan to the best of the owner's ability and shall be mitigated pursuant to paragraph 4.C. If no Tree Plan is required, the owner shall sign an affidavit on the Building Permit Application that no Tree Plan needs to be filed per the Tree Bylaw.*

**ARTICLE                      VOTE/ESTABLISH A COMMITTEE ON INSURANCE COSTS AND ISSUES**

To see if the Town will vote to establish a committee to examine issues related to insurance, and undertake a survey of the costs of auto and property insurance premiums and claims of Arlington residents. These issues shall include, but not be limited to, cost and efficiency, the possibility of consolidation, and timely public access to information; or take any action related thereto.

This article returns to Town Meeting following a vote of “no action” on a similar article in the 2021 Annual Town Meeting cycle. I expect Mr. Fischer will again provide further detail on his proposal, including any updates or changes to his prior proposal. However, to my understanding, this article seeks to create a Town commission to survey residents about costs of their insurance and claims, but is not necessarily proposing to start a Town insurance program for residents, which was discussed at the 2009 Town Meeting.

**ARTICLE                      RESOLUTION IN SUPPORT OF THE MASS. FAIR SHARE CONSTITUTIONAL AMENDMENT**

To see if the Town will vote to or take any action related thereto: support the Mass. Fair Share Constitutional Amendment, which would create an additional tax of 4 percentage points on the portion of a person’s annual income over \$1 million. The new revenue would be spent on, “quality public education and affordable public colleges and universities, and for the repair and maintenance of roads, bridges, and public transportation.”

(Inserted at the request of Linda Hanson and ten registered voters)

As the Board knows, resolutions of Town Meeting are not binding policy upon any Town or State authority. However, they do provide an opportunity to poll the perspective of Town Meeting as a body on a range of issues, including those which otherwise would not be within the Town’s jurisdiction. Ms. Hanson should present the Board and public with information about the “Fair Share” Constitutional Amendment for your consideration.

However, to further inform the Board and the public in advance of your discussion, the Commonwealth's Constitution requires income a single tax rate for all income levels. As such, by law, high earners and low earners must taxed at the same percentage (currently 5 percent). There are a variety of tax credits and other provisions which may impact individual tax liabilities differently, but the base rate remains the same for all persons.

The Fair Share Amendment however proposes to amend the state's constitution to specifically create an additional tax or "surtax" of four percentage points on the portion of an individual's annual income above \$1 million to be earmarked for "quality public education and affordable public colleges and universities, and for the repair and maintenance of roads, bridges and public transportation." Having been approved for placement on the ballot at the June 2021 Constitutional Convention voted, Massachusetts voters will have their opportunity to vote directly on this proposal on the November 2022 statewide election ballot.

## **ARTICLE ALEWIFE BROOK IS A VALUABLE NATURAL RESOURCE**

To see if the Town will vote to endorse a resolution declaring that the Alewife Brook in East Arlington is a valuable natural resource area for Arlington residents, but degraded by sewage contaminated discharges from the Combined Sewer Outfalls (CSO) that then can flood onto Arlington lands and houses; and further urging Town officials to engage with this problem and the regulatory process and to take actions to clean up Alewife Brook so that it can become a beautiful asset and a safe place to live near; or take any action related thereto.

(Inserted at the request of Kristin Anderson and ten registered voters)

This resolution seeks Town Meeting's support for declaring the Alewife Brook as a valuable natural resource and urging Town officials to engage the Massachusetts Water Resource Authority ("MWRA"), Cambridge and Somerville decision makers, as well as Massachusetts Department of Environmental Protection ("MADEP") and Environmental Protection Agency ("EPA") regulators to take further actions to reduce, and wherever possible eliminate Combine Sewer Outfall ("CSO") discharges into the Alewife Brook. I expect Ms. Anderson and representatives of the Save the Alewife Brook coalition to present information regarding both this article and the underlying context of the sought resolution. However, it may be helpful for me to briefly summarize both the history and the present posture of CSO discharges, which members of the Select Board and the Manager are already working to assess and address in upcoming state permitting processes.

As the Board may recall, the present day Massachusetts Water Resource Authority (“MWRA”) was created following a series of legal actions under the Clean Water Act which sought to address long-standing wastewater pollution of Boston Harbor and associated tributaries (including the Charles River and Alewife Brook) known as the “Boston Harbor cases.” Among the most significant sources of regional water pollution has historically been CSOs, events in which heavy rains or other saturations result in sewage being directly released into waterways from combined sewer and storm water pipes rather than funneling through wastewater treatment infrastructure. The MWRA, along with municipal sources of CSOs like Somerville and Cambridge were charged under order from the federal court with eliminating or significantly reducing CSO discharges and their impacts on water quality. While the MWRA has been highly successful in meeting benchmarks and requirements set by the Court in the ensuing thirty five years since its creation, it has not eliminated CSO discharges entirely or ensured that every body of water meets state and federal water quality standards. This is especially true for the Alewife Brook, which experienced significant CSO discharge events even as the MWRA closed many of its CSO sources and completed infrastructure improvements to otherwise manager CSOs as required by the Court.

Parallel to its obligations under the Boston Harbor Court orders, the MWRA, Somerville and Cambridge are required to obtain “variances” for state and federal water quality standard deficiencies from MADEP. The current variance extension runs through August, 31, 2024, but the process for seeking further variances (which essentially allow CSOs to continue) begins this year. The MWRA, Cambridge and Somerville must issue an updated “Long Term Control Plan” in April, which will ultimately require MADEP’s review and approval to extend the variance beyond August of 2024. The Control Plan sets forth both what the MWRA, Cambridge and Somerville believe they must continue to work on, and how they believe they can make progress. The Town, its officials and the public will have the opportunity to attend hearings on the control plan, and CSO abatement alternatives, and the variances, provide comment, and engage in other forms of advocacy.

## **REFERENCE MATERIAL**

### **ARTICLE: HUMAN RIGHTS COMMISSION BYLAW UPDATE**

*From Title II, Art. 9 of the Town Bylaws:*

#### **ARTICLE 9 HUMAN RIGHTS COMMISSION (ART. 22, ATM – 05/12/93) (ART. 18, ATM - 05/02/16)**

##### **Section 1. Preamble**

The Town of Arlington has formed Vision 2020 as a long-range planning vehicle; and Vision 2020 has established the Diversity Task Group; and The goal statement of the Diversity Task Group provides that:

"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 all. We will be known for the warm welcome and respect we extend to all;" and one of the Diversity Task Group's recommendations is the formation of a Human Rights Commission; and the Vision 2020 Standing Committee, the Fair Housing Advisory Committee, the Affirmative Action Advisory Committee, and others support the creation of such a Commission to foster the policies described in Section 2 below;

**The Town of Arlington does hereby create a Human Rights Commission as provided for in this Bylaw.**

##### **Section 2. Policy of the Town of Arlington**

- A.** It is the intention of the Town of Arlington ("Town") to establish a Commission to advance issues related to the fair and equal treatment of individuals, and to create a mechanism for addressing complaints arising out of these issues.
- B.** It is the policy of the Town to protect every individual in the enjoyment and exercise of their human and civil rights and to encourage and bring about mutual understanding and respect among all people within the Town.
- C.** It is the intention of this Bylaw that all persons be treated fairly and equally. The purpose of this Bylaw is to bring about the elimination of prejudice, intolerance, bigotry, unlawful discrimination, threats, coercion or intimidation based upon an individual's race, color, religious views, national origin, sex, gender identity or expression, citizenship, age, ancestry, family/marital status, sexual orientation, disability, source of income, or military status, and the disorder occasioned thereby. Nothing in this Bylaw shall be construed as supporting or advocating any particular religious or political view or lifestyle.
- D.** It shall be considered an unlawful practice under this Bylaw for any person to deny, interfere with, threaten or subject an individual to coercion or intimidation concerning equal access to and/or discrimination in employment, housing, education, recreation,

services, public accommodation and public area where such denial, interference, threats, coercion, intimidation or unlawful discrimination against a person is based upon race, color, religious views, national origin, sex, gender identity or expression, citizenship, age, ancestry, family/marital status, sexual orientation, disability, source of income, or military status.

### **Section 3. Establishment of a Human Rights Commission**

**A. Scope** There is hereby established a Town board to be known as the Arlington Human Rights Commission ("Commission") which may implement the policy of this Bylaw by:

1. Improving the life of the Town by enlisting community-based groups in educational programs and campaigns to increase mutual respect, harmonious intergroup relations and the peaceful enjoyment of life in our community;
2. Working with Town Government, the School Department, Town Commissions and Boards to increase diversity, as well as awareness and sensitivity to human and civil rights issues;
3. Responding to complaints by persons in the Town who believe that their human or civil rights, as defined in this Bylaw or in state or federal law, have been violated in the Town;
4. Initiating investigations into circumstances which appear to the Commission to be the result of unlawful discrimination against any person(s) in the Town.

### **B. Appointment & Terms of Office of Commission Members**

*(ART. 23, ATM – 05/01/96)*

*(ART. 19, ATM - 05/01/16)*

1. The Commission shall consist of thirteen (13) members, five of whom will be appointed by the school committee, four by the Town Manager subject to the approval of the Select Board and four by the Town Moderator. The term of office shall be for three years except two of the initial appointments of the school committee shall be for a term of one year, one of the initial appointments of the Manager and Moderator respectively shall be for one year, two of the initial appointments of the School Committee shall be for two years, one of the appointments of the Manager and Moderator respectively shall be for two years.

The members shall be sworn to the faithful performance of their duties, and shall serve until their successors are appointed and sworn. There may be an Executive Director if determined necessary by the Commission, appointed by the Town Manager with consultation by the Commission.

2. The Commission shall include among its membership individuals publicly solicited and representative of the diversity of the Town.
3. If a member shall fail to attend three or more consecutive meetings of the commission, the commission by vote, may so advise the appropriate appointing authority, who may remove such member, and appoint a successor for the unexpired term of the member so removed.

- C. **Residency Requirement** All members of the Commission shall be residents of the Town at the time of their appointment and throughout their tenure.
- D. **Executive Director** Before appointing an Executive Director, the Town Manager shall consider the recommendation of the Commission. The Executive Director shall be an employee of the Town and report to the Town Manager. The prospective Executive Director shall have demonstrable experience in human and civil rights, as well as proven ability to work cooperatively in a diverse community.

Subject to the direction of the Commission, the Executive Director shall be responsible for the overall administration of the Commission's activities and shall serve as its executive officer. The Executive Director shall have the power and duty to initiate activities designed to educate and inform the Town about the effects of prejudice, intolerance, and bigotry; to receive and/or initiate complaints and investigations of discriminatory practices as defined by local, state, and federal law; to report their findings to the Commission; and to attempt mediation of any complaint alleging discrimination under applicable local, state, and federal law when there is cause for such complaint.

E. **Officers, Quorum, and Adoption of Rules and Regulations**

1. The Commission shall elect a Chairperson or two from among its members at the first meeting each year. The Commission shall endeavor to rotate the election of a Chairperson each year thereafter. The Chairperson shall preside over the meetings of the Commission.
2. Seven (7) members shall constitute a quorum for the purpose of conducting the business of the Commission and all decisions shall be by a majority vote of the Commission members present and voting.
3. The Commission shall adopt rules and regulations consistent with this Bylaw and the laws of the Commonwealth of Massachusetts to carry out the policy and provisions of this Bylaw and the powers and duties of the Commission in connection therewith. The rules shall ensure the due process rights of all persons involved in investigations and hearings.
4. Members of the Commission shall serve without compensation.
5. Members of the Commission may be removed by the appointing authority for just cause.

**Section 4. Definitions**

- A. The terms referencing the basis for discrimination as cited in Section 2 of this Article are as defined below or in applicable state and federal law, including but not limited to G.L. c.12 Sections 11H and 11I, c.93 Section 102, c.151b, the Civil Rights Act of 1964, as amended (42 USC Section 2000d et seq), the Age Discrimination in Employment Act of 1967, as amended (29 USC Section 621 et seq), the Americans with Disabilities Act (42 USC Section 1210 et seq), the Rehabilitation Act of 1974, as amended (29 USC Section 794), the Civil Rights Act of 1991 (PL 102-166), and the Equal Credit Opportunity Act (15 USC 1601 et seq).



- B.** The term "person" includes, but is not limited to, one or more individuals, partnerships, associations, agencies, corporations, legal representatives, trustee, trustees in bankruptcy and receivers, the Town of Arlington, federal or state political subdivisions, boards, committees and commissions, or employees thereof.
- C.** The term "religious views" shall encompass a belief in a specific set of religious beliefs, as well as a disbelief or skepticism about any or all religious beliefs.
- D.** The term "family status" refers to the actual or supposed condition of having or not having children.
- E.** The term "marital status" refers to the actual or supposed state of being or having been unmarried, married, separated, divorced or widowed.
- F.** The term "source of income" refers to the actual or supposed manner or means by which an individual supports themselves and their dependents excluding the use of criminal activities as a means of support.
- G.** The term "military status" refers to the actual or supposed condition being, not being, having been or not having been in the service of the military.

**Section 5. Functions, Powers & Duties of the Commission**

The function of the Commission shall be to implement the policy of this Bylaw by the exercise of the following powers and duties:

- A.** To initiate activities designed to educate and inform the Town about the effects of prejudice, intolerance, and bigotry through the following actions:
  - 1.** To hold public hearings and public forums, make studies and surveys and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination because of race, color, religious views, national origin, sex, gender identity or expression, citizenship, age, ancestry, family/marital status, sexual orientation, disability, source of income, or military status.
  - 2.** Develop and/or recommend courses of instruction for presentation in public and private schools, public libraries and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination and showing the need for mutual respect and the achievement of harmonious relations among various groups in the Town.
  - 3.** Create such subcommittees from the members of the Commission as, in the Commission's judgment, will best aid in effectuating the policy of this Bylaw.
  - 4.** Enter into cooperative working agreements with federal, state and town agencies, and enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations and other groups in order to effectuate the policy of this Bylaw.

Monitor, publicize and, where necessary, act to increase the diversity on appointed Town boards and committees.

- 5. Render each year to the Select Board, Town Manager, School Committee and Superintendent of Schools a full written report of all the Commission's activities and recommendations regarding this Bylaw for inclusion the Town Report.
- B. To receive and investigate complaints of and to initiate its own complaints and/or investigations of any violations of this Bylaw.
- C. To attempt by mediation to resolve any complaint over which it has jurisdiction and to recommend to the Town Manager, the Select Board, the Superintendent of Schools or the School Committee, as appropriate, such action as it feels will resolve any such complaint.
- D. In the case of any unresolved complaint or in the case of any investigation which would be aided thereby, to hold hearings, administer oaths, take the testimony of any person under oath and, in connection therewith, to require production of any evidence relating to any matter in question or under investigation before the Commission.

**Section 6. Relations with Town Agencies**

- A. The Commission, School Department, Community Safety Department and all other Town departments, agencies, boards and commissions shall work cooperatively to effectuate the policy of this Bylaw.
- B. So far as practicable and subject to the approval of the Town Manager, or, in the case of the School Department, the Superintendent of Schools, the services of all other Town departments, agencies, boards and commissions shall be made available to the Commission for effectuating the policy of this Bylaw.

The head of any department, agency or other commission shall furnish information in the possession of such department, agency or commission where such information relates to the duties and responsibilities of the Commission.

- C. The Town Counsel shall provide for representation of the Commission upon the Commission's request.
- D. Any contract entered into by the Town or the School Department or any of their agencies, departments or subdivisions shall contain a covenant by the contractor and each subcontractor not to violate this Bylaw. Breach of this Bylaw shall be regarded as a material breach of such contract.

**Section 7. Complaint Resolution Procedures**

- A. Any person or class of persons claiming to be aggrieved by an alleged violation of this Bylaw shall make, sign and file with the Commission a verified complaint in writing which shall state the particulars and other such information as may be required by the Commission, including, if known, the name and address of the person alleged to have committed such violation. The Commission may also, on its own, issue a complaint whenever it has reason to believe that any person has engaged in a practice that violates this Bylaw.

- B.** No complaint shall be considered unless it is filed within four months after the occurrence of the practice alleged to violate this Bylaw, or unless it has been referred to the Commission by the Massachusetts Commission Against Discrimination or the Equal Employment Opportunity Commission after having been filed in a timely manner with either or both agencies.
- C.** The filing of a complaint, the failure to file a complaint, or the dismissal of a complaint by the Commission shall not bar the complainant from seeking relief in any other administrative or judicial forum.

Nor shall filing or failing to file a complaint with other federal, state or town agencies or courts bar the complainant from seeking relief through the Commission.

- D.** After the filing of any complaint, the Chairperson of the Commission shall designate the Executive Director or one or more of the Commissioners to oversee a prompt investigation thereof with the assistance of the staff of the Commission.
- E.** After such investigation, the Executive Director or the designated Commissioner(s), as the case may be, shall promptly file a report of such findings with the Commission, which shall determine whether or not to dismiss the complaint. The Commission shall, within ten working days from such determination, notify the complainant in writing of such determination.

- 1.** If such Commissioner(s) determine(s) after such investigations that cause does exist to support the allegations of the complaint or if the Commission so determines, notwithstanding a negative report from such Commissioner(s), the Commission shall forthwith endeavor by mediation to eliminate the practice that violates this Bylaw.

The Commission and its staff shall not disclose the terms of mediation when the complaint has been disposed of in this manner pursuant to G.L. c.233 Section 23C unless both parties agree to the disclosure. The Commission may issue orders consistent with its findings during the mediation process.

- 2.** In the case of such a finding under Section VII.E.1., as part of the mediation process the Commission may issue an informal admonition to the respondent. Such a finding shall not be published or made public, pursuant to G.L. c.233 Section 23C.
- 3.** Alternatively, in the case of such a finding of a more serious nature under Section VII.e.1., the Commission may issue a private reprimand to the respondent. A party receiving a private reprimand shall not be eligible for a similar disposition for two (2) years. Such finding shall not be published or made public pursuant to G.L. c.233 Section 23C.

- F.** The respondent shall have the right to appeal any action of this Commission to a court of competent jurisdiction, as provided by law.

**Section 8. Contributions to the Commission**

The Commission may accept contributions, grants and appropriations from other governmental agencies and from civic and charitable foundations, trusts and other organizations, private or public, to effectuate the policy of this Bylaw.

**Section 9. Construction of Bylaw**

The provisions of this Bylaw shall be construed liberally for the accomplishment of the purposes hereof. Nothing herein shall be construed to limit civil rights granted or hereinafter afforded by federal or state law.

**Section 10. Effect of State and Federal Law**

- A. Nothing in this Bylaw shall be deemed to exempt or relieve any person from any liability, duty, penalty or punishment provided by any present or future law of the Commonwealth of Massachusetts or the United States of America.
- B. Any remedies provided by this Bylaw shall be cumulative with any other remedies provided by local, state or federal law.

**Section 11. Severability**

Should any section, provision, paragraph, sentence or word of this Bylaw be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of this Bylaw as a whole, or any part thereof, which shall remain in full force and effect, other than the portion so declared to be invalid.

**ARTICLE: TREE PROTECTION AND PRESERVATION BYLAW**

*From Title V, Art. 16 of the Town Bylaws*

**ARTICLE 16**

**TREE PROTECTION AND PRESERVATION**

(ART. 22, ATM - 05/02/16)(ART. 14, ATM – 04/23/18)(ART. 32, ATM 05/01/19)

**Section 1. Findings and Purpose**

The Town of Arlington finds that preservation of the tree canopy and planting of replacement trees is essential to preserving the character and aesthetic appearance of the Town and maintaining quality of life and the environment in the Town. Trees improve air quality, protect from heat and glare, reduce noise pollution, limit topsoil erosion and storm water runoff, provide natural flood control, enhance property values, contribute to the distinct character of neighborhoods, and offer natural privacy to neighbors.

**Section 2. Definitions**

- A. The following definitions shall apply to this By-law:

“Building Footprint” - Outline the total area covered by a building's perimeter at ground level.

“Caliper” - Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

"DBH (Diameter at Breast Height)" - Diameter of a tree trunk measured in inches at a height of four and a half (4 1/2) feet above the ground; or, for multiple-trunk trees, the measured in inches at a height of four and a half (4 1/2) feet above the ground;

"Demolition" - Any act of destroying, pulling down, removing or razing a building or commencing the work of total or substantial destruction of a building.

“Protected Tree” - Any existing healthy tree on private land with a DBH of eight (8) inches or greater, located in the setback area, which does not pose an immediate hazard to person or property or is not under imminent threat of disease or insect infestation.

"Setback Area" - The Portion of the property which constitutes the minimum depth of side, rear and front yards as per the Zoning Bylaw of the Town of Arlington.

"Tree Fund" - An existing Town account established for the purpose of buying, planting, and maintaining trees in the Town which may receive deposit of contributions in lieu of planting new trees by property owners and fines collected under this By-law.

“Tree Plan” - A site plan drawn and stamped by a certified land surveyor or engineer showing all Protected Trees in the setback areas, public shade trees near the property, and indicating, on the site plan or in a separate document, which Protected Trees will be retained, which will be removed, and, how critical root zones of each Protected Tree and public shade tree will be protected from damage during site work.

“Tree Removal” - The cutting down of a tree, or the effective destruction, intentional or unintentional, of a tree during demolition or construction activities.

"Tree Warden" - The Tree Warden or his/her designee.

- B. Additional definitions may be provided in rules and regulations approved by the Select Board where consistent with intent and efficient execution of this By-law.

### **Section 3. Applicability**

- A. The requirements of this By-law and all applicable rules and regulations apply to the following Circumstances:
  - (1) Proposed demolition of an existing residential or non-residential structure;
  - (2) Proposed construction on a developed lot which would result in an increase of 50 percent or more of the total building footprint of the new structure(s) when compared to the total footprint of pre-existing structures; or

- (3) Proposed construction of any scope on a lot with no residential or non-residential structure on it.
- B. Sites under the jurisdiction of the Arlington Redevelopment Board ("ARB") or the ARB as the Planning Board, the Zoning Board of Appeals, or the Conservation Commission pursuant to Arlington's Wetlands Protection By-law (Title V, Article 8) may waive the requirements of this By-law in full or in part where such waiver serves the interest of the community and the reasons therefore are memorialized by such bodies.
- C. The requirements of this By-law shall not apply to trees defined as Public Shade Trees under G.L. c.87 § 1.

#### **Section 4. Procedures and Requirements for the Preservation of Trees**

- A. Removal of Protected Trees on applicable sites shall be prohibited unless such removal is authorized by a written approval of the Tree Plan and commencement of work, in accordance with this Bylaw.
- B. In all instances of construction or demolition as defined and applicable herein, the owner of the property shall submit a Tree Plan accompanied by a fee of \$50, to the Tree Warden prior to or concurrent with an application for a building or demolition permit. Additionally, if any Protected Trees were removed during the 12 months preceding the application for a building or demolition permit, such trees shall be accounted for on the Tree Plan to the best of the owner's ability, and shall be mitigated pursuant to paragraph 4.C
- C. For each Protected Tree removed, there shall be payment made to the Tree Fund, prior to the commencement of work on the property, in the amount set by a mitigation schedule approved by the Select Board assigning a value per inch of DBH of Protected Tree(s) to reflect the cost of planting and caring for new public trees, which the Town shall use to plant replacement trees in the vicinity of the tree removal or in other locations in the discretion of the Tree Warden.
- D. If the Tree Plan is consistent with the requirements of this Bylaw, the Tree Warden shall so certify in writing approving the Tree Plan and commencement of work. Said certification shall occur within 10 business days. If the Tree Plan as submitted does not satisfy the requirements of this By-law and associated rules and regulations, the Tree Warden shall so notify the applicant with recommendations to achieve compliance. The Tree Warden shall be permitted access to the site during normal business hours to verify and ensure compliance with the approved Tree Plan.
- E. An Owner aggrieved of the Tree Warden's determination on a Tree Plan, or with respect to the need for such a plan, may appeal such determinations to the Select Board at a public hearing. A written decision on such appeals shall be rendered within 14 business days of the close of such hearing(s).

#### **Section 5. Enforcement and Fines**

- A. Following a determination of violation by the Tree Warden, an owner shall be subject to fines for the activities listed below, to be paid into the Tree Fund, said fines to be set forth in rules and regulations issued by the Select Board.

Said activities are:

- (1) Removal of a Protected Tree on an applicable site without prior written approval of commencement of work per Section 4.D, \$300 per day of work. There shall also be a fine for each Protected Tree removed.
  - (2) Removal of a Protected Tree which is not identified for removal in the Tree Plan. There shall be a fine for each Protected Tree removed, \$300.
  - (3) Failure to mitigate tree removal within the time set forth in Section 4.C of this By-Law. There shall be a fine of \$300 for each day until mitigation is achieved.
- B. Wherever there is reasonable cause to believe that an owner or their agent willfully violates this By-Law or an approved Tree Plan, the Town may institute a civil action for injunctive relief in a court of competent jurisdiction ordering appropriate parties to correct a condition in violation, or to cease an unlawful use of the property.
- C. An owner aggrieved of the Tree Warden's determination of violation(s) may appeal such determination(s) to the Select Board at a public hearing.

#### **Section 6. Administration**

The Select Board shall establish further administrative rules and regulations for the review and approval of Tree Plans, as well as enforcement determinations necessary to effectuate the purposes of this bylaw, including, but not limited to further definitions, tree plan requirements, and procedures determinations. Failure to issue rules and regulations will not have the effect of suspending or invalidating this By-law.

#### **Section 7. Severability Clause**

If any provision of this By-law is declared unconstitutional or illegal by final judgment, order or decree of the Supreme Judicial Court of the Commonwealth, the validity of the remaining provisions of this By-law shall not be affected thereby.

#### **Section 8. Relationship to Other Laws**

Nothing in this By-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Arlington By-laws or laws of the Commonwealth of Massachusetts.