



**Town of Arlington  
Legal Department**

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To: Arlington Select Board

Cc: Adam Chapdelaine, Town Manager

From: Douglas W. Heim, Town Counsel; Michael Cunningham, Deputy Town Counsel

Date: March 3, 2022

**Re: Annual Town Meeting Warrant Articles: 9, 15, 17, 19, 20, 22, 24, 25 and 73**

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We write to provide the Select Board a summary of the above-referenced warrant articles to assist in the your consideration of these articles at your upcoming hearing on March 7, 2022. The Warrant remains in draft form, but articles are presented in and with their anticipated order and numbers.

**Bylaws, Town Governance Structure & Home Rule Limitations**

As an initial matter, permit this Office to offer a brief overview of Home Rule in Massachusetts (as it relates to local bylaws) and the structure of Arlington government under the Arlington Town Manager Act because such background information is germane to a wide range of warrant articles for your review of the 2022 Annual Town Meeting Warrant. Our intention is

to highlight important considerations in Home Rule generally, but particularly the intersection of the Arlington's version of a Town "Charter"<sup>1</sup> and Town Meeting's general legislative powers under Section 6 of the Home Rule Amendment to the Massachusetts Constitution.

## **I. General Limitations on the Town's Legislative Authority**

As the Board will recall, the Town may pass only those bylaws which are authorized under the so-called Home Rule Amendment (Article 89 of the Massachusetts Constitution) under Section 6, which reads as follows:

*Section 6. Governmental Powers of Cities and Towns .*

*Any... town may, by the adoption, amendment, or repeal of local ... bylaws, exercise any power or function which the general court has power to confer upon it, **which is not inconsistent with the constitution or laws enacted by the general court** in conformity with powers reserved to the general court by section eight, and **which is not denied, either expressly or by clear implication, to the ...town by its charter...***

Massachusetts Constitution Article 89, Section 6 (emphasis added).

The Board has frequently maintained a role in informing Town Meeting of first of the two limitations on the subjects of Town Bylaws – that the Town cannot pass bylaws which are inconsistent with state law. Indeed, in addition to the broad requirement of “not inconsistent with [the laws of the Commonwealth]” Section 7 of Article 89 even further details six specific limitations on local power which are explicitly reserved for the General Court.<sup>2</sup>

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<sup>1</sup> As an early innovator in local government, Arlington's Town Manager Act is a kind of “proto-charter,” which predates the passage of the Home Rule Amendment. In brief, the Manager Act is a special act, approved by the Legislature and the Governor detailing the basic structure, duties, and authorities of the Town's government, which has repeatedly been updated and amended by further special acts. In substance, it functions much the same way as a Town “Charter” adopted after the Commonwealth's recognition of the need for a Home Rule process which could afford local governments more flexibility and self-determination.

<sup>2</sup> The Town may not by local bylaws: 1) regulate elections (with limited exceptions); 2) levy, assess and collect taxes; 3) borrow money; 4) dispose of park land; 5) enact private or civil

## II. Limitations on Legislative Authority Relative to the Town Manager Act

The Board) has held fewer occasions to consider types of Town Bylaws subject to a more complex limitation – those things which are “expressly or by clear implication” denied by the town’s “charter” – in our case the Town Manager Act. This is so for two chief reasons.

First, the Attorney General’s Office Municipal Law Unit typically only examines new or newly amended Town Bylaws to ensure consistency with state law (the first clause of Section 6 and Section 7 of the Home Rule Amendment). Thus, if a bylaw is consistent with state law, but inconsistent with the Town Manager Act, the Attorney General’s Office will not typically withhold or qualify approval.

Second, conflicts between proposed Town Bylaws and the Manager Act may present close questions without the benefit of clear precedent. For example, if a proposed bylaw sought to provide a specific process for the appointment of the Park and Recreation Commission, such an ordinance would present a clear conflict with Section 20 of the Town Manager Act “Appointment of a Park and Recreation Commission.” Similarly, a proposed Bylaw to govern the removal of elected officials would likely run afoul of both Section 7 of the Home Rule Amendment *and* Section 38 of the Manager Act (“Removal and Election”).<sup>3</sup>

If on the other hand, a proposed bylaw sought to direct or limit the authorities of Town Departments, such an ordinance must be read for consistency with the powers and duties afforded to the Town Manager under the Town Manager Act, which are considerable. Section 15(a) of the Manager Act notes:

*The Town Manager shall supervise and direct the administration of all departments, commissions, boards and offices, except the Select Board, the School Committee, Moderator, Town Clerk, Town Treasurer and Collector, Board of Assessors, Registrars of Voters, Election Officers, Boards of Appeal, the Finance*

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laws governing civil relationships except as an incident to an exercise of an independent municipal power; or 6) provide for punishment of a felony or to impose imprisonment as a punishment for any violation of local bylaws.

<sup>3</sup> Such a hypothetical provides an opportunity to remind the public of the purpose of Home Rule Petitions/Special Legislation. While the Town cannot make local bylaws governing elections, it may provide for local election law by a Home Rule Petition to pass a “Special Act” of the Legislature. As the Board knows, those Special Acts are consistent with State Law because the State Legislature and the Governor are passing them, not Town Meeting alone. They are in fact, “state laws” which apply only to Arlington.

*Committee, the Capital Budget Committee and the Personnel Review and Appeals Board.*

Similarly, the Manager is vested with broad, near-exclusive authority to direct organize (and abolish) town Departments (subject to very specific limitations) in Section 15 (b):

*The Town Manager, in accordance with the provisions of this act and except as otherwise expressly prohibited by the General Laws, may reorganize, consolidate or abolish departments, commissions, boards or offices under their direction and supervision, in whole or in part, may establish such new departments, commissions, boards and offices as they deems necessary and make appointments to such boards, subject to the approval of the Select Board. The Town Manager may in connection with such transfer of such powers or duties transfer the duties and powers of one department, commission, board or office to another and may, with the approval and consent of the finance committee, transfer the appropriation of such one department, commission, board or office to another. The Town Manager may temporarily establish such new positions, as they deems necessary and appoint temporary employees thereto. Such positions shall be placed under the Classification and Pay Plans at the next succeeding special or annual town meeting.*

The Manager shall further (among other things and with enumerated limitations and exceptions):

- “appoint upon merit and fitness alone, and may transfer and remove all officers and employees of the town, including maintenance employees of the school department and school custodians, but excluding other employees of the school department...;” (Section 15(c));
- “have jurisdiction over the rental and use of all town property, except schools...shall be responsible for the maintenance and repair of all town property including school buildings... (Section 15(g));
- “perform such other duties, consistent with their office, as may be required of them by the by-laws or vote of the town or by vote of the select board.” (Section 15(j)).

The final duty of the Manager per the Act is particularly important to examine in fact-specific contexts because it authorizes the Manager to perform such other duties as required by the Town Bylaws (or vote the Town or Select Board), but those requirements should be “consistent with their office.” As such, a Town Bylaw can inform the Manager’s duties, but should remain consistent with the Manager’s role, responsibilities and other authorities under the Manager Act. This is so in part because the Bylaws and the Manager Act should not contain contradictory

terms and in part because the Manager Act can be amended by Special Legislation to reflect a conscious decision to alter the fundamental structures of the Town's government, rather than to address a specific policy concern through local general legislation (a bylaw).

### III. Applied to the 2022 Warrant

Applying the foregoing to 2022 Annual Town Meeting Warrant Articles, interested parties should be mindful of the Board's responsibility to not only ensure that a given proposal is a good idea substantively, but also that it is also consistent with State Law and the Town Manager Act. There may indeed be valuable ideas which require more procedurally intensive means to achieve their objectives (such as a Home Rule Petition for Special Legislation) or the converse (policies which are firmly under the discretion of the Town Manager and do not require Town Meeting action). Further, there may be worthwhile policy objectives which pursued as a bylaw may not be compatible with our chosen form of government because these seek to codify as an ordinance, that which is vested in the Town Manager, the Select Board or some other entity either by the Manager Act or by the General Laws. Those objectives need not be abandoned, but any dialogue about them should include a full consideration of both the proper vehicles for those objectives (for example, an amendment to the Town Manager Act), and the implications for same to the Town's overall government structure.

## ARTICLE 9

# BYLAW AMENDMENT/ACHIEVING NET ZERO GREENHOUSE GAS EMISSIONS FROM TOWN FACILITIES CONSISTENT WITH THE TOWN OF ARLINGTON'S NET ZERO ACTION PLAN

To see if the Town will vote to update and replace Title I Article 16, Section 4 (“LEED”) to effectuate a policy of eliminating greenhouse gas emissions from municipal buildings consistent with the Town’s Net Zero Action Plan; or take any action related thereto.

(Inserted at the request of the Clean Energy Future Committee)

This Article is inserted at the request of the Clean Energy Future Committee. As indicated above, the Article seeks to effectuate a policy of eliminating greenhouse gas emissions from municipal buildings, consistent with the Town's Net Zero Action Plan. As discussed above

it is noteworthy that pursuant to the Town Manager Act, the Town Manager is responsible for maintenance of all town property, including construction, reconstruction, alterations and improvements, with exceptions for instances where responsibility for such activities is otherwise voted by the town. As such, the Manager Act contemplates specific conditions placed upon public construction as voted upon by the Town. Specifically, Section 15(g) of the Town Manager Act reads:

“(g) The Town Manager shall have jurisdiction over the rental and use of all town property, except school. They shall be responsible for the maintenance and repair of all town property including school buildings. *Except as otherwise voted by the town*, the school committee shall be responsible for the study, consideration and recommendations as to construction, reconstruction, alterations, improvements and other undertakings pertaining to school buildings or property. *Except as otherwise voted by the town*, the Town Manager shall be responsible for the preparation of plans and supervision of work relating thereto, authorized by the town. Except as otherwise voted by the town, the Town Manager shall be responsible for the preparation of plans and the supervision of work on all other construction, reconstruction, alterations, improvements and other undertakings authorized by the town.”

(emphasis added).

Thus, in accordance with the language from the Town Manager Act cited above, the town could vote to amend or replace Title I, Article 16, Section 4 of the Town’s By-laws – which essentially holds the Town to a policy of seeking “LEED” (Leadership in Energy and Environmental Design) certification for public buildings to an even higher “Net-Zero” standard , if so voted by Town Meeting. It is understood that the proponents of the article will speak on what language they propose to replace the current language contained in Title I, Article 16, Section 4, and the rationale for same, but the proposal is anticipated to be along the following lines:

*It shall be the policy of the Town to eliminate greenhouse gas emissions from municipal buildings. To that end, newly built Town of Arlington municipal buildings and Town of Arlington buildings undergoing major renovation shall be constructed or updated to include all-electric building systems and appliances. This includes heating, ventilation and air conditioning (HVAC) systems, hot water heaters, stoves, and other appliances. No fossil fuel-powered systems or appliances will be installed or used in newly constructed municipal buildings or buildings undergoing major renovation. In addition, newly constructed Town of Arlington buildings and Town of Arlington buildings undergoing major renovation shall meet the highest standards for energy efficiency that is practicable, shall include the installation of electric vehicle supply equipment (EVSE) and on-site solar panels, but at a minimum shall be designed to accommodate EVSE and onsite solar panels in the future (i.e., they shall be “EVSE ready” and “solar ready”). Should it be impractical or infeasible to meet any of these requirements, a technical and economic analysis should be conducted and submitted to the Town, and the newly built or renovated facilities shall be electrified, to the greatest extent technically and economically feasible.*

## **ARTICLE 15**

## **BYLAW AMENDMENT/NOISE ABATEMENT**

To see if the town will vote to amend the Town Bylaws by replacing Title V Article 12 Noise Abatement with Title VIII Article 11 Noise Abatement, and to further regulate non-emergency work by the Arlington Department of Public Works, public utilities, and/or their contractors, or take any action related thereto.

(Inserted at the request of Paul Schlichtman and ten registered voters)

To our understanding, this resident-petition article from Mr. Paul Schlichtman article seeks to achieve two objectives. First, the article proposes to move the Town’s Noise Abatement regulations from Title V (“Regulations Upon the Use of Private Property”) to Title VIII (“Public Health and Safety”). Second, it proposes to further restrict the hours in which the Town, public utilities, and their contractors may conduct work that would otherwise trigger the bylaw. While I expect Mr. Schlichtman will outline the details of his proposals, permit me to offer two comments.

First, moving the bylaw from Title V to Title VIII would resolve a long-term ambiguity in favor of more clearly restricting Town-related activities which generate noise such as public works and public construction. The bylaw under Title V is on one hand aimed at “Regulations on the Upon the Use of Private Property.” On the other, it makes specific and inconsistent mention of regulating work on public ways, which are of course not private property. Moving

the bylaw to Title VIII, would make it very clear for good or for ill that all public construction and works activities are subject to the bylaw.

Second, at present, the Department of Public Works may conduct non-emergency public works projects on public and private ways after 9 a.m. and until 5:00 p.m. on weekends and holidays, and after 8:00 a.m. until 6:00 p.m. However, the Town Manager may permit work outside these operating hours. Our assumption is that the proposal before you will seek to change the default hours for such work or the Manager's ability to permit work outside of such constraints.

## **ARTICLE 17**

### **BYLAW AMENDMENT/CONVERSION OF GAS STATION DISPENSING PUMPS TO SELF SERVICE OPERATION**

To amend the existing bylaw requiring gas station owners to have an attendant pump gasoline to a self-service gas station operation without the need for a gas station attendant to do so; or take any action related thereto.

(Inserted at the request of Elias Elkhaouli and ten registered voters)

This resident-petition article seeks to amend Title V, Article 5 of the Town Bylaws to eliminate the requirement that gasoline in Arlington is dispensed by a full-service station attendant. I expect that Mr. Elkhaouli or another petitioner will present the rationale for allowing self-service in Arlington. However, by way of background, the bylaw at issue was passed in 1975 and is the only source of the prohibition on self-serve gas in Arlington.<sup>4</sup> Under Article 14 of the 2013 Annual Town Meeting, the Town considered a similar warrant article to allow for self-serve gasoline stations, garnering initial support under the rational that self-service would render Arlington stations more competitive with stations in neighboring communities and that technological advances reduced safety and environmental concerns previously associated with self-service.

To the best of our understanding of the record however, concern was later formed at Town Meeting that self-service would dramatically expand the number of gasoline pumps at

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<sup>4</sup> The Zoning Bylaw discourages an intensification of automotive uses on Massachusetts Avenue and the Americans with Disabilities Act ("ADA") likely requires hour of attendant service, but neither are outright prohibitions on self-service.



stations. Further, there was substantial debate about how well ADA requirements would prevent a reduction in access to refilling for disabled or elderly patrons who may require a full-service attendant's assistance. In any event, a motion for positive action before Town Meeting did not carry at such time.

## ARTICLE 19

**VOTE/STREET NAME “MAGLIOZZI BOULEVARD”**

To see if the Town will vote to designate an unnamed public way, located between 49 Spring Street and the Route 2 Frontage Road, as Magliozzi Boulevard, or take any action related thereto.

(Inserted at the request of Paul Schlichtman and ten registered voters)

This Article was developed and drafted by resident petitioner Paul Schlichtman. It is expected that Mr. Schlichtman will provide further details on the rationale for the proposal. As stated above, the Article seeks to have the Town Meeting vote to designate the public way that runs between 49 Spring Street and the Route 2 Frontage Road as Magliozzi Boulevard.

As a preliminary matter, it is noted that although there is no known judicial determination of the legal status of the roadway the petitioner seeks to name, it appears that it is a public way that may properly be named by the Town. The Town's Bylaws define a public way as, "[a]ny 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..." Title III, Article 1, Section 18(B)(3). A public way is further defined in the Bylaws in Title III, Article 1, Section 31(B)(6), which reads, "[p]ublic Way shall mean any public highway, private way laid out under authority of statute, way dedicated to public use, or way under control of park commissioners or other body having like power."

The definitions of a public way set forth the Town’s Bylaws are consistent with and very closely track the definition of a public way set forth under state statute, wherein a public way is defined as, “any public highway, private way laid out under authority of statute, way dedicated to public use, or way under the control of park commissioners or body having like powers.” G.L. c. 90, §1. In addition to these definitions, additional factors that may be considered in the determination of whether a road is a public way are whether it is paved, has street lights, traffic signals, curbing and fire hydrants, whether there are abutting houses or businesses, whether it has any crossroads intersecting it, whether it is publicly maintained and whether there is an absence

of signs prohibiting public access. See Commonwealth v. Charland, 338 Mass. 742, 744 (1959); see also Commonwealth v. Muise, 28 Mass. App. Ct, 964 (1990).

Accordingly, upon application of the definitions set forth in the Town's Bylaws, Massachusetts General Laws, as well as the understanding that the road for proposed designation is paved, is publicly maintained, and is without signs prohibiting public access, it is very likely that a judicial authority that might consider the question of its status would determine it to be a public way. Therefore, it is correspondingly likely that the authority of the Town to designate the road as Magliozzi Boulevard, if it so chooses, is on solid legal footing.

It is unclear to this Department whether the Town has historically maintained a process for naming or renaming public ways outside of the public memorials committee,<sup>5</sup> and it may be that the Select Board has the authority as the commissioners of public and private ways generally to do so without a vote of Town Meeting. At worst, Town Meeting's endorsement would serve as a support resolution. If the Board is inclined to endorse this Article, an appropriate motion would be:

*VOTED: That the unnamed public way located between 49 Spring Street and Route 2 Frontage Road in Arlington, Massachusetts be designated as Magliozzi Boulevard. It is further voted that the Department of Public Works shall create and install on said road a sign that reads, "Magliozzi Boulevard" consistent with the designation.*

## **ARTICLE 20**

## **VOTE/CODE ENFORCEMENT**

To see if the Town will vote to grant enforcement power to a Code Enforcement Officer, in the Department of Planning & Community Development, for the purpose of enforcing provisions of the Town Bylaws and Zoning Bylaws that do not pertain to building standards, or take any action related thereto.

(Inserted at the request of Paul Schlichtman and ten registered voters)

I expect that Mr. Schlichtman or another petitioner representative shall present the rationale and form for a proposal to create a position of "Code Enforcement Officer" within the Department of Planning and Community Development as it pertains exclusively to enforcement

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<sup>5</sup> Designation and construction of new private ways fall under the purview of the Board of Survey and their regulations.

Town Bylaws and Zoning Bylaws. However, permit me to comment that there are three distinct facets and possibilities under this article, each of which carries distinct substantive implications and procedural requirements:

1. Vesting Town Bylaw enforcement authority in a designee of the Department of Planning and Community Development;
2. Vesting Zoning Bylaw enforcement authority in a designee of the Department of Planning and Community Development;
3. Creating the position of “Code Enforcement Officer” within the Department of Planning and Community Development.

On the first score, Title IX of the Town Bylaws, Articles 1 (“Prosecution and Penalties”) and 2 (“Non-Criminal Disposition of Bylaws”) provide for the *primary* enforcement agents of Town Bylaw provisions<sup>6</sup> – a combination of Arlington Police, Fire, Health, and Inspectional Services employees depending on the nature of the violation. Town Meeting may amend the bylaw to add further enforcement agents, but care should be exercised consistent with the current bylaw to identify which provisions would be carried out by the Planning Department’s Code Enforcement Officer.

On the second, Section Three (3) of the zoning bylaw firmly establishes the Building Inspector as the Zoning Enforcement Officer (and the Zoning Board of Appeals as the appellate authority under certain circumstances). In order to amend such section to vest enforcement authority in any other personnel, the proponent must have a hearing before the Arlington Redevelopment Board consistent with the requirements of c. 40A, and two-thirds of Town Meeting would need to vote to amend the Zoning Bylaw.

On the third, as outlined above, absent alterations to the Town Manager Act, the Town Manager holds the exclusive authority to supervise, create, abolish, and direct Town Departments and employees (unless otherwise explicitly stated in the Manager Act or general laws). Inclusion of provisions in the Manager Act calling for the specific appointment of a number of positions and describing their duties is not without precedent; the positions of Finance Director, Human Resources Director, Town Counsel, and Tree Warden are all provided for in the

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<sup>6</sup> There are notable exceptions based in part on administration of a combination of authorities vested under the general laws and Town Bylaws such as the Conservation Commission relative to the Wetlands Protection Bylaw.

Town Manager Act. Following suit to create a Code Enforcement Officer however would require special legislation to amend the Act alongside Town Bylaw and Zoning Bylaw amendments described above.

**ARTICLE 22**                      **VOTE/ESTABLISHMENT OF TOWN COMMITTEE TO  
EXAMINE BUDGETARY IMPACT OF OVERNIGHT  
PARKING**

To see if the Town will vote to establish a Committee of the Town Meeting to examine the cost of enforcement of the town's prohibition of overnight parking, and revenues collected through fines and permits. The committee will report recommendations for the equitable and efficient administration and enforcement of the overnight parking prohibition, or take any action related thereto.

(Inserted at the request of Paul Schlichtman and ten registered voters)

This article proposes to create a committee of Town Meeting to study the costs and benefits of establishing an overnight parking permit program in Arlington (or portions of Arlington). Town Meeting may of course create study committees on various issues and we expect Mr. Schlichtman will present further details on the objectives, staffing and operation of such a committee. It should be emphasized however at the outset however that the Select Board serves as the authority over parking on public way policy in Arlington. The Town's prohibition on overnight parking on public ways is set forth in Article V, Section 14 of Traffic Rules and Orders promulgated by this Board. Thus, while any committee created by Town Meeting may of course report to Town Meeting, the Select Board remains the sole authority to regulate overnight parking in Arlington.

## ARTICLE 24 HOME RULE LEGISLATION/FINANCIAL ESTIMATES & BUDGET DOCUMENTS

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

(Inserted by the Select Board)

As the Board may recall, this Article was tabled from previous consideration at the 2020 Annual Town Meeting. The purpose however remains the same – to amend the Town Manager Act to afford Town Departments and the Town Manager additional time to make estimated expenditure submissions to the Manager and the Select Board and Finance Committee respectively. Section 31 of the Town Manager Act reads as follows:

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

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

(emphasis added).

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

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

## **ARTICLE 25                    HOME RULE LEGISLATION/EARLY VOTING FOR TOWN ELECTIONS**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation to permit early voting options for Town elections, or take any action related thereto.

(Inserted at the request of the Election Modernization Study Committee)

This Article was developed and drafted by the Election Modernization Study Committee. It is expected that a representative or member of the Election Modernization Study Committee will provide further details on the rationale for the proposal. As stated, the Article seeks the Town's vote to authorize the filing of Home Rule Legislation to permit early voting options for Town Elections. If the Board is inclined to endorse this Article, an appropriate motion would be:

*“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 OFFER EARLY VOTING IN TOWN ELECTIONS”***

*Section 1: Notwithstanding any general or special law to the contrary, the Town of Arlington shall allow any qualified voter, as defined in section 1 of chapter 51 of the general laws, to vote early in person for any regular or special town election. Any voter wishing to vote early in person may do so at the time, manner, and location prescribed in this section.*

- (a) The early voting period shall be set by the Select Board in consultation with the Arlington Town Clerk. The early voting period shall include a minimum of three business days during the regular hours of the Arlington Town Clerk's office, and may include additional days, so long as it ends no later than the date determined by the Town Clerk as necessary to prepare a final voting list for the polls on Election Day. At least one early voting weekday shall extend until at least 7 p.m. For any Town Election held on a weekday, at least one weekend day shall be included in the Early Voting Period.*
- (b) The Select Board, in consultation with the Town Clerk, shall establish an early voting site for early in-person voting under this section that is centrally-located, suitable, and in a convenient public building. The early voting site shall be accessible to persons with disabilities. The designation of an early voting site shall be made not less than 14 days prior to the beginning of the voting period established in section (a). Notice of the early voting location, dates, and hours shall be posted in the office of the Town Clerk and on the Town's website not less than 7 days before the early voting period begins.*

*(c) The voting, processing, and counting procedures for early voting ballots shall be consistent with section 25B of chapter 54 of the General Laws and the regulations promulgated by the State Secretary for the administration of early voting appearing at 950 CMR 47.00, to the extent practicable.*

*Section 2: This act shall take effect upon its passage.*

## **ARTICLE 73                      RESOLUTION/TRUE NET-ZERO OPT-IN CODE FOR CITIES AND TOWNS**

To see if the Town will vote to endorse a resolution calling for a True Net-Zero Opt-In Code for Massachusetts Towns and Cities in which the Town would urge the State Department of Energy Resources (DOER) to promulgate a true net-zero opt-in stretch code for the control of greenhouse gases; or take any action related thereto.

(Inserted at the request of the Clean Energy Future Committee)

This Article was developed and drafted by the Clean Energy Future Committee. It is expected that a representative or member of the Clean Energy Future Committee will provide further details on the rationale for the proposal. As stated, the resolution seeks to have Town Meeting call upon the Massachusetts Department of Energy Resources (“DOER”) promulgate a true net-zero opt-in building code that will allow towns, like Arlington, that are willing to do so, to aggressively pursue policies to control greenhouse gas emissions in the building sector to achieve net-zero emissions by 2050 or before. The text of the proposed Resolution reads as follows:

### *A True Net Zero Opt-In Code for Massachusetts Towns and Cities*

*Whereas,*

- A. Global warming is an existential planetary crisis.*
- B. On June 2, 2021, Arlington’s Town Meeting adopted a resolution declaring a climate emergency and calling for an immediate urgent mobilization to protect the climate, reducing the pace of warming and slowing down ecological collapse to the maximum extent possible. Among other things, the resolution committed the town to use all of its influence to encourage climate action by other government authorities including the state in order to support rapid greenhouse gas reductions. This is important not just for the environment but the economy as well. In December 2021, the U.S. Financial Stability*

*Council reported to Congress that climate change was an “emerging threat” to the United States financial system.*

- C. Global warming is not only an environmental issue, or even an economic one. It is also a profound moral issue. Almost every disaster brought about or exacerbated by climate change disproportionately affects the poor and marginalized. This is true on a global scale, but also within countries, and states, and towns and cities. As the Climate Emergency Resolution approved by Town Meeting in 2021 stated: “the marginalized populations in Arlington, the Commonwealth of Massachusetts and worldwide, including people of color, immigrants, indigenous communities, low-income individuals, homeless persons, and people with disabilities, are already disproportionately affected by climate change, and will continue to bear an excess burden as temperatures increase.”*
- D. There is no time to lose. Global warming is not a future catastrophe. It is here already. It is causing hurricanes, fires, floods, and droughts. The sea is rising as polar ice melts. Massachusetts is not immune from any of this. Indeed, reports in early 2022 suggest that the consequences of global warming are more severe in New England than they are elsewhere in the United States. As science writer Bill McKibbin puts it, “If we don’t act quickly, and on a global scale, then the problem will literally become insoluble.” Or, more simply, “winning slowly is the same as losing.”*
- E. The fight against global warming requires action at every level. We must act globally, but we must also act locally.*
- F. Massachusetts has adopted legally binding policies for achieving net zero greenhouse gas emissions by 2050. This target is unattainable without a radical reduction in fossil fuel use in the Massachusetts building sector. Emissions from buildings account for 27% of greenhouse gas emissions in the Commonwealth, a contribution that is second only to the transportation sector.*
- G. In March 2021, the Massachusetts Legislature enacted the Next Generation Road Map on Climate Change, reasserting the Commonwealth’s commitment to leadership in the fight against global warming. Among the many features of that legislation was the requirement that the Department of Energy Resources (DOER) develop an opt-in specialized stretch building code aimed at achieving net-zero greenhouse gas emissions in buildings. This provision was passed by a large majority in the legislature, despite an earlier veto. A strong code will give towns and cities that choose to adopt it – hopefully the great majority - the tools they need to achieve their own net-zero objectives in a timely way. A weak code, however, will not only be ineffective in itself but also stand in the way of stronger actions at the local level. The “net zero stretch code” provided for in the Road Map is a critical step in the Commonwealth’s strategy to meet net zero by 2050.*
- H. DOER must promulgate an opt in specialized stretch code by late December 2022. It is required to engage in extensive public consultation, including at least 5 hearings within 18 months after the Roadmap becomes effective. The hearings must be held in various locations in the state, including urban, suburban, and rural settings, and at least one*



*hearing must be held in an underserved community or one with a high percentage of low income households. As of January 2022, DOER had not published a draft code or conducted any of the required hearings.*

- I. Arlington has been a leader in the fight against global warming. In December 2020, it became the second town in the Commonwealth to enact a “Clean Heat” Bylaw limiting the adoption of fossil-fuel infrastructure in newly constructed buildings and major renovations. That bylaw requires approval by the state legislature through a “home rule petition” because it is thought to be preempted by the existing state building code. The necessary legislation has been filed and subjected to a hearing, but it has not been reported out of committee. In the absence of the Clean Heat bylaw approved by Town Meeting, new construction and major renovations in the town have continued to install fossil fuel infrastructure, usually for natural gas, frustrating the Town’s net zero policy*
- J. In early 2021, the town adopted a comprehensive Net Zero Action Plan that called for strong action to control building emissions in the town and ensure that the town will achieve net-zero in the building sector by 2050. And in November 2021, Arlington was a leader in organizing 30 Massachusetts municipalities to encourage DOER to adopt a strong, true net-zero stretch code.*
- K. Adoption of a strong opt-in specialized net zero stretch code is essential if Arlington is to achieve the net zero objectives that its residents need and demand.*

***THEREFORE BE IT RESOLVED BY TOWN MEETING OF THE TOWN OF ARLINGTON, MASSACHUSETTS,***

- 1. Town Meeting calls upon the DOER to promulgate a true net-zero opt-in building code that will allow towns that are willing to do so to pursue aggressive policies in controlling greenhouse gas emissions in the building sector in order to achieve net zero emissions by 2050 or before. In this connection, Town Meeting considers a net-zero building to be an all-electric, highly energy-efficient building that uses renewable sources to generate at least as much energy as it uses each year, so that operations are carbon neutral and emissions of embodied carbon are minimized.*
- 2. The Net Zero Opt-In Code must cover both commercial and residential construction and both new construction and major renovations.*
- 3. The Net Zero Opt-In Code must --*
  - a. Achieve energy efficiency by prescribing leading standards, such as Passive House, New Buildings Institute, or Living Building standards, to reduce greenhouse gas emissions operational expenses, and grid load.*
  - b. Require primary heating/cooling and other systems to be 100% electric.*

- c. Require buildings to be powered by 100% renewable energy, which can be on- or off-site, generated or purchased, providing associated grid and other emissions are fully offset.*
- d. Effectively address the challenge of minimizing embodied carbon in the use, production and transportation of building materials.*
- e. Require appropriate monitoring, disclosure, and correction to ensure that buildings systems are operating as designed.*
- f. Require the selection of low-impact refrigerants and refrigerant recycling (prohibiting disposal) to limit ozone depletion and carbon emissions.*
- g. Ensure that any exemptions are narrowly defined, fully justified and last only as long as the justification exists. Waivers, if any, should be available in limited instances, based on a clearly defined process.*