



**Town of Arlington
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager
John Leone, Town Moderator

From: Douglas W. Heim, Town Counsel

Date: March 4, 2022

Re: Draft Votes and Comments re: Articles 8, 10, 74 and 76

I write to provide the Board Draft Votes and Comments regarding the above-referenced 2022 Annual Town Meeting Warrant Articles, based upon your prior hearing for same. Please note that additional time is needed for the vote and comment on Article 6. Where existing bylaws are amended by a vote, please note that deleted language will be denoted using "strike-through," while, revised or added language is denoted with underlined text.

**ARTICLE 8 BYLAW AMENDMENT/CIVILIAN POLICE ADVISORY
COMMISSION**

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, concerns, or commendations 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**

Nominating authorities are not required to nominate a member of their own body. 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 compensated employees of the Town, including Arlington Police Department police officers and employees;
- b. **Actively employed *municipal police officers* (defined herein as “peace officers” employed by a municipal police department subject to certification under Massachusetts Law, including “An Act Relative to Justice, Equity and Accountability in Law Enforcement”**
- c. Former Arlington Police Department law enforcement officers; and
- d. 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 the 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 4. 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 5. 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 6. 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.

(5 – 0)

COMMENT: The Select Board unanimously supports the thoroughly researched and carefully developed recommendation of the Police Civilian Advisory Board Study Committee to establish a standing commission which will serve as a civilian resource for the public to file complaints, raise concerns, or recommend commendations about Arlington police officers, as well as a forum examine Arlington policing policies and practices. The purpose of the recommended commission bears highlighting:

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, concerns, or commendations 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.

The Board agrees with the Study Committee that a Civilian Police Advisory Commission with this purpose (and the recommended commission composition, duties and responsibilities of the proposed bylaw to achieve such a purpose) is well-customized to fit the needs of Arlington. Generally, the Arlington Police Department, including its internal investigation of complaints against its officers, has provided very high quality, modern, community-centric policing throughout the Town. However, the Study Committee identified specific areas of community concern, including unfamiliarity with how to file complaints (or commend exemplary officer conduct), confidentiality questions, anxiety about filing complaints against the police with the police, and specific stories where personal trust in the police department was eroded. Germane to these sometimes competing data points, in at least one compelling story relayed to the Study Committee in one of its fourteen (14) listening sessions, the same person reported both highly positive and highly negative experiences with APD officers under differing circumstances.

The Select Board believes that the proposed Civilian Police Advisory Commission will provide a resource for the public and for APD to help reinforce and cultivate confidence, trust, and communication such that the excellent conduct of Arlington police officers is recognized, acknowledged, and encouraged; and the negative conduct of Arlington police officers is conveyed, heard, and addressed. Finally, the Board strongly recommends Town Meeting members and interested parties read the report of the Police Civilian Advisory Study Committee provided to the

Select Board and supporting materials both from the Chief of Police and the Director Diversity Equity and Inclusion, both of whom support this recommended bylaw, which is provided as reference material in this report to Town Meeting.

ARTICLE 10 BYLAW AMENDMENT/ TREE PRESERVATION AND PROTECTION

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.

(5 – 0)

COMMENT: The Select Board unanimously endorses the suite of Tree Protection Bylaw updates recommended by the Tree Committee. In brief, the updates and alterations to the current Tree Protection Bylaw will optimize the Town's efforts to identify, and where possible, discourage unnecessary tree removal and/or damage to trees during construction activities. The proposed changes will:

- Expand the definition of “protected trees” under the bylaw to include smaller trees in diameter;
- Expand the definitions of “demolition” to encompass a wider range of construction activities; and
- Clarify and strengthen 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.

ARTICLE 74

RESOLUTION IN SUPPORT OF THE MASS. FAIR SHARE CONSTITUTIONAL AMENDMENT

VOTED: That Town Meeting hereby resolves as follows:

WHEREAS, the best way to build a stronger economy for all of us is to make sure that we have quality public schools for our children starting with pre-K continuing through affordable public higher education, and a reliable transportation system; and

WHEREAS, students need a well-rounded education, founded on a rich and varied curriculum that includes science, technology, engineering, and math (STEM), music, art, and athletics; and

WHEREAS, the COVID-19 pandemic has only heightened the need for major investments in pre-K through 12 education to help students get on track academically, socially, and emotionally; and

WHEREAS, tuitions and fees at our public colleges are among the highest in the country, and too many students are forced to take on debt that may take years for them to repay and that may consequently limit their ability to afford good housing, raise a family, and otherwise spend and participate in our economy; and

WHEREAS, for Massachusetts to compete against other regions around the nation and the globe, we need modern, reliable transportation and safe ways to drive, walk, and bike; safe public transportation that works, and safe roads, bridges, tunnels, and sidewalks; more climate resilient transportation options; and

WHEREAS, we have a large backlog of neglected and structurally compromised bridges, tunnels, roads, and public transportation infrastructure in need of repair; and

WHEREAS, now more than ever to lift our economy into an equitable and long-lasting recovery we need new investments to fix our transportation system and improve our public schools, make public higher education affordable again; and

WHEREAS, our Commonwealth’s highest-income residents—who have seen their collective net worth rise dramatically in recent years—pay the lowest percentage of their annual

earned income in state and local taxes, and have the ability to pay more for the investments we need to build a strong economy;

THEREFORE, let it be resolved that the Arlington Town Meeting supports the proposed Fair Share Amendment to the Constitution of the Commonwealth of Massachusetts that would create an additional predictable, annual tax of four percentage points on annual income above one million dollars and dedicate the funds raised by this tax to quality public education, affordable public colleges and universities, and for the repair and maintenance of roads, bridges, and public transportation.

(5 – 0)

COMMENT: The Select Board strongly recommends this resolution to Town Meeting to consider support the “Fair Share” Constitutional Amendment. While the Board is mindful that neither the Select Board nor Town Meeting can or should weigh in on every statewide ballot question, it is the Board’s overall view that this particular issue merits the opportunity to locally amplify residents’ consideration of the important issues at stake.

In brief, the Massachusetts Constitution prohibits a graduated income tax, and as such, all residents regardless of income level pay the same overall tax rate. The Fair Share Amendment however proposes to amend the state 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. Funds from the surtax would be earmarked specifically for “quality public education and affordable public colleges and universities, and for the repair and maintenance of roads, bridges and public transportation.” All Massachusetts voters will have their opportunity to vote directly on this proposal on the November 2022 statewide election ballot. However, the Board believes that this specific measure is of both statewide and local concern. Thus, in addition to holding the personal support of many Board members, the Select Board as a body unanimously and enthusiastically supports the use of Town Meeting for public education and forum for discourse on this ballot question.

ARTICLE 76

ALEWIFE BROOK IS A VALUABLE NATURAL RESOURCE

WHEREAS, 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) from the MWRA, Cambridge, and Somerville; and

WHEREAS, the MWRA, Cambridge, and Somerville, are in the late stages of completing required benchmarks directed by a series of Court Orders known as the “Boston Harbor Case;” and

WHEREAS, despite meeting many benchmarks and improving water quality in the Boston Metro Area, the Somerville CSO is not yet in compliance and the Alewife Brook is not sufficiently meeting water quality standards following CSO events; and

WHEREAS, contaminated waters from the Alewife Brook can flood onto Arlington lands and houses; and

WHEREAS, the MWRA, Cambridge, and Somerville are required to submit action plans to address these concerns and renew their water quality variance with the Massachusetts Department of Environmental Protection (“MA DEP”) and other state and federal regulatory authorities;

THEREFORE; Town Meeting declares the Alewife Brook to be a valuable natural resource deserving of equal commitment to rehabilitate and restore to the highest water quality standards feasible for wildlife, resident abutters, and recreation; and

FURTHER, that Town Meeting also resolves to encourage and support all Town officials in engaging the MWRA, Cambridge, Somerville, as well as state and federal regulators, legislators, and officials to garner the actions necessary to eliminate CSO discharges into the Alewife Brook and render the Brook a safe resource to live near and beautiful water resource to enjoy for the public.

(5 – 0)

COMMENT: The Select Board strongly urges Town Meeting’s support for this resolution (advanced by “Save the Alewife Brook” organization) which would declare the Alewife Brook as a valuable natural resource, and urge 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.

In short, 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 – have historically been a serious source of local and regional water pollution. The MWRA, along with municipal sources of CSOs like Somerville and Cambridge were charged under orders from the federal court with eliminating or significantly reducing CSO discharges and their negative impacts on water quality. While the MWRA has been highly successful in meeting benchmarks and requirements set by the Court over the course of thirty five years, 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 in recent years even as the MWRA closed many of its CSO sources and completed infrastructure improvements as directed.

Given continued water quality problems in the Alewife, the MWRA, Somerville and Cambridge are still required to maintain “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 begins this year. The MWRA, Cambridge and Somerville must issue an updated “Long Term Control Plan,” 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 Board strongly believes that this resolution is helpful to supporting Arlington’s demand that CSOs be sufficiently addressed in the Alewife and that water

quality standards are met such that the Alewife can be enjoyed by wildlife and the public without exposure to dangerous levels of bacteria and other contaminants.