

**Town of Arlington
Legal Department**

similar requirements asserted by Town or Arlington Public School authorities during the COVID-19 Pandemic. Further details on the nature of this proposed ordinance may adjust such an understanding, but it should be emphasized at the outset that a Town Bylaw may not abridge the laws of the Commonwealth, nor Arlington Public Schools or Board of Health's responsibilities or authorities under state law to set forth the conditions for school attendance or responses to a public health emergency.

For example, 105 CMR 220 sets forth statewide immunization requirements for elementary and secondary education students. Public Schools may set forth such further reasonable requirements as they deem necessary to protect the health and welfare of students. A Town Bylaw may neither relieve the Schools from such duty nor abridge their authority. Similarly, c. 111 sec. 31 authorizes the Board of Health to promulgate reasonable health regulations necessary to protect the public health. This Office is aware of some of the long-standing disagreements as to whether or not certain public health measures are “reasonable,” but Town Meeting may not supplant the Board of Health as the forum for such debates. Finally, the Town Manager and Superintendent are vested with the authority to manage Town and School facilities and may place non-discriminatory conditions upon access and use with some obligation to accommodate religious and medical exemptions well delineated in law.

ARTICLE	VOTE/ESTABLISHMENT OF CIVIC PARTICIPATION STUDY GROUP
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To see if the Town will vote to establish a study group to evaluation current civic participation practices in Arlington, best practices in other communities, and findings of the Community Equity Audit, and to develop strategies that will remove barriers and encourage residents to volunteer and/or run for elected office. The goal of this study group would be to make recommendations to the Select Board, Town Manager, Town Meeting, Town Appointing bodies and the School Committee on topics that include, but are not limited to:

- Existing barriers to civic engagement;
- Volunteer/candidate development, including recruitment, training, and retention;
- Standardized recruitment and appointment practices that prioritize diversity and inclusion;
- The pros and cons of term limits;
- Best practices for advertising open positions;
- Specific policy and bylaw changes needed to achieve and identified improvements.

at the next Annual Town Meeting; or take any action related thereto.

(Inserted at the request of Elizabeth Dray and ten registered voters)

It is my understanding that the proponent of this article is satisfied that the recommendations of the Town's recent Equity Audit call for the establishment of a similar civic engagement body, and as such informally requested withdrawal of the instant article from

consideration. Assuming this understanding is correct; the Board may take a vote of no action and note the petitioner's satisfaction and request.

ARTICLE **SPECIAL LEGISLATION/POLICE OFFICER AGE**
WAIVER **JAMES M. LOONEY**

To see if the Town will vote to waive the age restriction of 32 years old to apply and become an Arlington Police Officer; or take any other action relative thereto.

(Inserted at the request of James M. Looney and ten registered voters)

While this article is not within the format typically received by the Board, the proponent of this article seeks Home Rule legislation to allow him to apply for appointment as a police officer because Civil Service Law (as applied in Arlington), does not ordinarily permit a candidate aged 32 or older to be appointed to the position of police officer or firefighter. Special Legislation is the only avenue by which Mr. Looney may sit for the civil service exam and attempt to gain an appointment. Some members of the Board may recall the arguments for and against supporting such legislation, most recently successful in 2020 relative to a candidate for a firefighter position and 2013 relative to a prospective candidate for a police officer position.

In summary, while there may be individuals aged 32 and over who are capable of performing the strenuous activities required in the positions of police officer and firefighter, these positions are generally been subject to age restrictions on appointment by law for objective reasons. The Town invests significant money and time in training individuals for these jobs and considers such training expenses long-term investments to be recouped over the course of a public-safety career. Moreover, individuals who occupy non-public-safety positions in the public sector with relatively long tenure could seek employment as a police officer or firefighter and, after serving a relatively short time, retire at a much higher pension rate than that to which they otherwise would have been entitled.

On the other hand, the Board has historically supported consideration of each applicant on his or her own merits. Moreover, if this exemption is approved, as they have been from time to time, it would give Mr. Looney only the opportunity to apply and be considered for appointment to the position of police officer. It would not guarantee him the job.

Should the Board be inclined to vote in the affirmative, a motion in support of a Home Rule Petition would substantially similar to the following:

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

“AN ACT TO PERMIT TOWN RESIDENT, JAMES M. LOONEY, TO TAKE THE CIVIL SERVICE TEST FOR THE POSITION OF POLICE OFFICER IN THE TOWN OF ARLINGTON.

Section 1 Notwithstanding the provisions of any special or general law to the contrary including without limitation Chapter 31 of the General laws, the Civil Service law, James M. Looney, a resident of the Town of Arlington is authorized to take the civil Service examination for appointment to the position of Firefighter notwithstanding the fact that he has attained the age of 32.

Section 2 THIS ACT WILL TAKE EFFECT UPON ITS PASSAGE."

(Mr. Looney is ____ years old.)

ARTICLE SPECIAL LEGISLATION/REPEAL MBTA PROHIBITION

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation or other Special Legislation to repeal Chapter 439 of the Acts of 1976 "An Act Prohibiting the Massachusetts Bay Transportation Authority for locating a mass transportation facility within a certain distance of the Arlington Catholic High School," or take any action related thereto.

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

The proponent of this article seeks to void special legislation previously sought by the Town and approved by the Commonwealth: Chapter 439 of the Acts of 1976, "*An Act Prohibiting The Massachusetts Bay Transportation Authority From Locating Mass Transportation Facility Within Certain Distance Of The Arlington Catholic High School.*" The law in question reads as follows:

TRANSPORTATION AUTHORITY FROM LOCATING A MASS TRANSPORTATION FACILITY WITHIN A CERTAIN DISTANCE OF THE ARLINGTON CATHOLIC HIGH SCHOOL.

Be it enacted, etc., as follows:

Notwithstanding the provisions of paragraphs (g) and (k) of section three of chapter one hundred and sixty-one A of the General Laws, or any other general or special law to the contrary, the Massachusetts Bay Transportation Authority shall not construct any mass transportation facility, including but not limited to a rapid transit station and parking garage, on any land located within seventy-five yards of Arlington Catholic High School.

For the Board's clarification, sections (g) and (k) of G.L. c. 161A sec. 3 ("Additional Powers of [The MBTA]") read as follows:

(g) To establish transit facilities and related infrastructure, including terminals, stations, access roads, and parking, pedestrian access facilities and bicycle parking and access facilities as may be deemed necessary and desirable. The authority may charge reasonable fees for the use of such facilities as it may deem desirable, or it may allow the use of such facilities free of charge.

(k) To provide for construction, extension, modification or improvement of the mass transportation facilities in the territory of the authority; provided, that any such construction, extension, modification or improvement shall be consistent with the program and plans for mass transportation, as developed by the authority under subsection (g) of section 5, unless specifically authorized by legislation.

I expect Mr. Schlichtman will present further background information and context on the special act in question and rationale for voiding same. It is not immediately clear to this Office for example if the Medford Street Bus Stop across the street from Arlington Catholic is considered a “transit facility” or “related infrastructure,” but the Board may wish to solicit information from relevant Town Departments on the application of the Act. If the Board is ultimately inclined to move positive action, a relatively straightforward home rule petition to the Legislature can repeal the 1976 legislation.

ARTICLE

RESOLUTION/MY BODY MY CHOICE

To see if the Town will vote to resolve that People have a natural and innate authority over their own body; or take any action related thereto.

(Inserted at the request of Mark Kaepplein and ten registered voters)

To this Office’s understanding, this warrant article presents a companion resolution to the proponent’s proposed bylaw, seeking a non-binding resolution of Town Meeting to assert natural rights relative to the Town government and COVID-19 (or related) health policies. However, I expect Mr. Kaepplein will further detail the scope and nature of his intended non-binding resolution.

ARTICLE

RESOLUTION/IMPROVE MBTA SERVICE

To see if the Town will vote to endorse a resolution calling for improvements to service provided to the Town of Arlington by the Massachusetts Bay Transportation Authority; or take any action related thereto.

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

The proponent seeks a resolution of Town Meeting to urge improvement in MBTA service in Arlington. I anticipate that Mr. Schlichtman will further detail the goals and desired impact of such a resolution, including its intended audience.

ARTICLE

RESOLUTION/CHANGE STATE FLAG & SEAL

To see if the Town will vote a Resolution in Support of Changing the State Flag & Seal of Massachusetts:

Whereas the history of the Commonwealth of Massachusetts is replete with instances of conflict between European Colonists and the Native Nations of the region, who first extended the hand of friendship to the Colonist on their shores in 1620, and helped them survive starvation during the settlers' first winters on their land...

(Inserted at the request of the Chadi Salamoun and ten registered voters)

To this Office's understanding, the proposed resolution joins long-standing efforts around the Commonwealth to advocate changing the Flag and Seal of the Commonwealth to amend its depiction of an Algonquian Native American, the Myles Standish sword and motto "Ense Petit Placidam, Sub Libertate Quietem" ("By the Sword We Seek Peace, But Peace Only Under Liberty"). As the Board will recall, in 2021 the Commonwealth passed a resolve to change the flag and seal, appointing the Special Commission on the Official Seal and Motto of the Commonwealth to recommend alterations and/or alternatives. The special commission has already unanimously recommended changing the flag, seal and motto. It was tasked to complete its work by the end of March 2023, but requested an extension of time to make recommendations for new designs. I anticipate the article's proponent will further detail their goals for the resolution, which is stated in full in the body of their article.