



**Town of Arlington
Legal Department**

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To: Arlington Select Board

Cc: Sandy Pooler, Town Manager

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

Date: March 9, 2023

Re: Annual Town Meeting Warrant Articles: 9, 12, 13, 16, 20 and 64

I write to provide the Select Board a summary of the above-referenced warrant articles to assist in your consideration of these articles at your upcoming hearing on March 13, 2023. The Warrant remains in draft form, but articles are presented in anticipated order.

ARTICLE 9 BYLAW AMENDMENT/STENOGRAPHIC RECORD OF TOWN MEETING

To see if the Town will vote to strike or amend Title I, Article 1, Section 4(B) ("Stenographic Record") of the Town Bylaws to remove the requirement to generate a stenographic record of the proceedings of Town Meeting; or take any action related thereto.

(Inserted at the request of the Town Clerk and Town Manager)

This Article, inserted at the request of the Town Clerk and the Town Manager would remove the requirement that a complete stenographic record of the proceedings of the Town Meeting, including all discussion and debate, is made under the direction of the Town Clerk and

made available to the public in no more than sixty days. The subject bylaw also requires that “[a]ny partial record of the proceedings of Town Meeting shall be available to the public when said record is received by the Town Clerk prior to the required time period designated under this Section. See Town of Arlington Bylaws, Title I, Article 1, Section 4(B).

It is expected that the Town Clerk or the Town Manager will outline the reasoning for this proposed bylaw amendment. It is noted that there is no known legal requirement set forth in the Massachusetts statutes governing Town Meetings, M.G.L. c. 39, §§9-18 and c. 43A, that requires a municipality to create or generate a stenographic record of Town Meeting.

If the Board is inclined to endorse this Article, an appropriate motion would be:

VOTED: That Title I, Article I, Section 4 B (“Stenographic Record”) is hereby stricken and removed, so as to read as follows:

**TITLE I
ARTICLE 1
TOWN MEETINGS**

SECTION 4. Duties of the Clerk

A. *Record of Attendance – A record of attendance of Town Meeting Members at all representative Town Meetings shall be made under the direction of the Town Clerk, said record to be available to the public.*

~~B. *Stenographic Record – A complete stenographic record of the proceedings of the Town Meeting, including all discussion and debate, shall be made under the direction of the Town Clerk, said record shall be available to the public no later than sixty (60) days. Any partial record of the proceedings of Town Meeting shall be available to the public when said record is received by the Town Clerk prior to the required time period designated under this Section.*~~

**ARTICLE 12 VOTE/THREE-YEAR MORATORIUM ON THE
INSTALLATION OF ARTIFICIAL TURF ON TOWN LAND**

To see if the Town will vote to adopt a moratorium by bylaw or otherwise, on the construction or installation of any artificial or synthetic turf on any land owned by the Town for a three-year period beginning on May 1, 2023 and ending on May 1, 2026 to allow further study of the cost effectiveness, safety, environmental impact; and further to establish a study group to conduct such study, and set forth the membership of same; or take any action related thereto.

(Inserted at the request of Beth Melofchik and ten registered voters)

This Article is inserted at the request of Beth Melofchik and ten registered voters. It is expected that further details on the rationale for the proposal will be provided by the Article's proponents, but based on the reasoning set forth by proponents of similar moratoriums in other Massachusetts communities, concerns related to the alleged environmental and health hazard of artificial turf may be articulated. Similar artificial turf moratoriums were considered and eventually adopted in Concord (2016 for 3 years), Sharon (2020 for 3 years), and Wayland (2021 for 3 years). The status of such moratoriums and their outcomes may bear further research.

Additionally, or alternatively, the Conservation Commission has been considering regulation of Artificial Turf Fields in resource areas covered by the Wetlands Protection Bylaw and the Wetlands Protection Act. Based on discourse between the Conservation Commission and the Park and Recreation Commission, the Manager recently imposed a funding moratorium on new artificial turf fields (not including the previously approved Arlington High School fields) to provide time for further study and consideration of the issues. As such, the Board may wish to consult the Manager regarding same.

ARTICLE 13

VOTE/APPOINTED TOWN CLERK

To see if the Town will vote to convert the office of Town Clerk from an elected to an appointed position through ballot question or referendum pursuant G.L. c. 41 §1B, home rule legislation, or other suitable method; or take any action related thereto.

(Inserted at the request of the Town Manager)

This article follows a recommendation of the Town Clerk Study to consider conversion of the position of Town Clerk from elected to appointed. As the Board well knows, the Office of the Town Clerk is presently elected for a three year term, however nearly 120 municipalities in the Commonwealth to opt for appointment of their Town or City Clerk. While the rationale for appointed clerks may vary, common reasons include that the Clerk is chiefly charged with discharging a variety of duties under state law rather than making policy. Meanwhile, the number and complexity of their duties has grown over time. Some communities, such as Brookline in their own recent conversion to an appointed Town Clerk noted that only registered voters of the Town may run for and hold an elected position, while appointed Town clerks may be hired based purely on qualifications, experience, and training from anywhere in the state.

If the Board is inclined to support forwarding this proposal to Town Meeting, a local ballot question would be required to approve any change from elected to appointed. Further, the Town Bylaws and Town Manager Act would require updates similar to amendments made following the conversion of the Treasurer position from elected to appointed. A motion on positive action by the Board would be as follows:

VOTED: That (1), Town Meeting hereby approves the conversion of the Town's elected Town Clerk from an elected position to an appointed position pursuant to G.L. c. 41 sec. 1B; and (2), that in accordance with G.L. c. 41 sec. 1B, the Select Board are hereby requested and authorized to place the following question on the 2024 Annual Town Election Ballot:

"Shall the town vote to have its elected Town Clerk become an appointed Town Town Clerk of the town?"

Yes _____ No _____"

**ARTICLE 16 SPECIAL LEGISLATION/APPOINTMENT OF TOWN MANAGER
OR TEMPORARY TOWN MANAGER**

To see if the Town will vote to authorize and request the Select Board to file Special Legislation to amend the Sections 11 and/or 12 of the Town Manager Act to revise the appointment term of the Town Manager, a Temporary Manager or Manager for Unexpired Term in the event of a vacancy; or take any other action relative thereto.

(Inserted at the request of the Select Board)

This article was inserted by the Board following its recent experience with filling an unexpected Town Manager vacancy early in the term of a Manager contract. At present, the Town Manager Act reads as follows with respect to appointment of a Town Manager and filling temporary or permanent vacancies during a Manager contract cycle:

Section 11. Appointment of Town Manager.

The select board shall appoint, as soon as practicable, for a *term of three years* a Town Manager, who shall be a professionally qualified person especially fitted by education, training and experience to perform the duties of the office, shall have at least three years' experience of significant municipal management or administrative experience, and shall be a citizen of the United States of America. Upon the expiration of such term the select board shall appoint, as soon as possible, but in any event not later than ninety days after the expiration of said term, the town manager's successor. The Town Manager shall be appointed without regard to their political beliefs. The Town Manager may be appointed for successive terms of office. Before entering upon the duties of their office, the Town Manager shall be sworn to the faithful and impartial performance thereof by the chairperson of the select board, or by the Town Clerk, or by a Justice of the Peace. The Town Manager shall execute a bond in favor of the town for the faithful performance of their duties in such sum and with such surety or sureties as shall be fixed or approved by the select board.

Section 12. Temporary Manager or Manager for Unexpired Term.

- (a) The Town Manager may, subject to approval by the Select Board, designate, by letter filed with the Town Clerk, a qualified officer of the town as temporary Town Manager to perform the duties of the manager during their temporary absence or temporary disability, except during removal proceedings. In the event of the failure of the manager to make such designation, the select board shall forthwith, by resolution, designate an officer of the town to perform the duties of, and have the power of, the manager, until the manager shall return or their disability shall cease.

- (b) When a vacancy occurs in the office of Town Manager for any reason other than for expiration of their term, *the select board shall appoint, as soon as possible, but in any event not later than ninety days after such vacancy occurs, a Town Manager for the balance of the unexpired term.* Such appointment shall, in so far as practicable, be subject to the same conditions and qualifications for the office of Town Manager as set forth in section eleven; *if not so practicable, the select board shall so appoint a qualified officer of the town as acting manager for the balance of the unexpired term.*

To this Office's recollection, the key issue stems from the Manager Act's fealty to a three (3) year Manager Contract term under all circumstances. There are a variety of advantages for both the Board and any prospective and current manager in legislatively proscribing the term of a Town Manager contract. However, where a vacancy occurs early in a term, the Board can find itself in a difficult position of having to quickly make a decision to appoint a Manager for "the balance of the unexpired term" or appoint an "acting manager" for the same period under Section 12(b). In some instances, the Board may wish to take more than ninety (90) days to appoint a successor without having to appoint a town officer as "acting manager for the balance of the unexpired term." In others, either a candidate or the Board may wish to have an appointment for for less than the full unexpired term.

One potential solution may be amendments to afford the Board (and Town officers) more flexibility in the term of a vacancy-driven appointment of "*New*" Manager candidate *and separately a better defined* appointment term for an *Acting Manager* within ninety (90) days if appointing a new manager is not "practicable" as follows:

- 12(b) When a vacancy occurs in the office of Town Manager for any reason other than for expiration of their term, the select board shall appoint, as soon as possible, but in any event not later than ninety days after such vacancy occurs, a Town Manager for a period not longer than the balance of the unexpired term or a new three (3) year contract at the Board's discretion. Such appointment shall, in so far as practicable, be subject to the same conditions and qualifications for the office of Town Manager as set forth in section eleven; if not so practicable, the select board shall so appoint a qualified officer of the town as acting manager for a period of not more than one (1) year from their appointment ~~the balance of the unexpired term, .~~

Such a an amendment would provide for an incremental change, providing more certainty with respect to the period of time the Town would be managed by an internal "acting manager" and

more flexibility with respect to how long it would be appointing any “new” manager following an unexpected cessation of the previous Manager’s term.

A more comprehensive set of amendments could alter the time the Board has to make an appointment in the event of a vacancy and/or the contract term of the Manager generally. However, research may be required to examine how longer or shorter contract terms may impact Manager hiring, retention, and supervision.

ARTICLE 20 ACCEPTANCE OF LEGISLATION/G.L. c. 32B sec. 20 OPEB TRUST FUNDS

To see if the Town will vote accept G.L. c. 32B sec. 20 as amended by Chapter 218, Section 15 of the Acts of 2016, and further establish or amend its Other Post-Employment Benefits Liability Trust Fund and affirm the custodian and trustees of such funds; or take any action related thereto.

(Inserted by at the Request of the Arlington Contributory Retirement Board)

The end goal of the instant article is to allow the Arlington Contributory Retirement Board as our long-standing custodians of Other Post-employment Benefits Liability Trust Fund (“OPEB”) funds¹ to invest such funds with Pension Reserves Investment Management Board (“PRIM”) through the State Retiree Benefit Trust Fund (“SRBTF”) alongside many other municipalities and state entities. The PRIM is not private firm, but rather an entity solely oriented towards the quality management of these types of benefit funds with a proven track record of solid returns with lower risks and fees than investing OPEB funds through private firms. In sum, investment in and through SRBTF/PRIM is a less expensive, lower risk proposition for the management of the Town’s OPEB funds.

In order to access the SRBTF/PRIM, the Town needs to accept c. 32B sec. 20 as amended by the Municipal Modernization Act in 2016. As the Board knows, the Town already adopted a version of an authorization for OPEB Trust Funds naming the Arlington Contributory Retirement Board as the custodian of the Trust. Unfortunately, such legacy authorizations are not

¹ As the Board will recall OPEB funds are essentially the means by which certain non-pension distribution benefits such as health benefits are prefunded for current active employees when they become retirees.

sufficient to join the SRBTF/PRIM. While acceptance of c. 32B sec. 20 calls for the Declaration of Trust and designation of fund custodians, the warrant article before the Board does not propose any change in status to the current designations of the Retirement Board as trustees. Accordingly, if the Board is inclined to approve acceptance, as requested by the Retirement Board, an appropriate motion would resemble the following:

VOTED: That the Town of Arlington hereby accepts General Laws Chapter 32B, Section 20, and establish an Other Post-Employment Benefits Liability Trust Fund (OPEB Fund), effective July 1, 2023.

AND FURTHER VOTED: That the Town of Arlington establishes an Other Post-Employment Benefits Liability Fund (OPEB Fund) Board of Trustees pursuant to General Laws Chapter 32B, Section 20, with five (5) members consisting of the members of the Arlington Contributory Retirement Board, with each member trustee serving for a term commensurate with the terms as member of such Board.

ARTICLE 64

RESOLUTION/STATE EXTENDED PRODUCER RESPONSIBILITY AND BOTTLE BILL LEGISLATION

To see if the Town will vote to resolve to support advocacy by Zero Waste Arlington at the state level in support of Extended Producer Responsibility legislation; or take any action related thereto.

(Inserted at the request of the Zero Waste Arlington Committee)

This Article was developed and drafted by the Zero Waste Arlington Committee. It is expected that a representative or member of the Zero Waste Arlington 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 Environmental Protection and the Massachusetts Legislature to continue taking timely action to promote a circular economy in Massachusetts to manage excess packaging, single-use products, products designed for disposal, and hazardous products.

The resolution further calls for the enactment of product specific and framework legislation to have producers share in the responsibility for product waste management costs by passing extended producer responsibility laws, including bills currently under consideration,

which will shift costs from municipalities and give producers the incentive to design products to make them easier to reuse and recycle and less toxic.

The text of the proposed Resolution reads as follows:

Resolution in Support of an Extended Producer Responsibility and Bottle Bill

Whereas, local governments must arrange and pay for the management of waste and recycling, and state policies currently make local governments responsible for achieving waste diversion goals; and

Whereas, Massachusetts faces a finite and dwindling amount of landfill space and capacity at waste-to-energy disposal facilities; and

Whereas, municipalities must find alternative ways of managing products banned from disposal or incineration through the MassDEP Waste Disposal Bans using taxpayer funding; and

Whereas, excess packaging, single-use products, products designed for disposal, and hazardous products contaminate recycling streams, increasing costs to municipalities; and

Whereas, local governments do not have the resources to adequately address the contamination rates of recycling streams, nor hard-to-manage and hazardous products; and

Whereas, costs paid by local governments to manage products are, in effect, subsidies to the producers of products designed for disposal or recycling, and hard-to-manage or hazardous products; and

Whereas, there are significant environmental and human health impacts associated with improper and inefficient management of all categories of waste, and the costs of such impacts are externalized with the burden placed on taxpayers; and

Whereas, Extended Producer Responsibility (EPR) is a policy approach in which producers are obligated to pay for and manage the end-of-life collection and disposal/recycling of their products and/or product packaging, reducing costs to municipalities, and which has been shown to be effective at increasing recovery of materials and reducing costs of recycling systems overall; and

Whereas, when the higher costs of responsible management for products are placed on the producer, there is an incentive to design products that are durable, easier to repair and recycle and less toxic; and

Whereas, there has been national support for EPR legislation in the form of resolutions and polices (National Association of Counties, July 2008; National League of Cities, November 2009; US Conference of Mayors, June 2020); and

Whereas, in January 2019, the Massachusetts Municipal Association passed a resolution which supports statewide product stewardship legislation; and

Therefore be it resolved, that by the adoption of this Resolution, the Town of Arlington urges MassDEP and the Massachusetts Legislature to continue taking timely action to promote a circular economy in Massachusetts to manage excess packaging, single-use products, products designed for disposal, and hazardous products; and

Be it further resolved, that the Town of Arlington Town Meeting instructs the Massachusetts Legislature to enact product specific and framework legislation to have producers share in the responsibility for product waste management costs by passing extended producer responsibility laws, including bills currently under consideration, which will shift costs from municipalities and give producers the incentive to design products to make them easier to reuse and recycle and less toxic.

Be it further resolved, that the Zero Waste Arlington committee and the DPW Recycling Coordinator be authorized to send letters to the Massachusetts Municipal Association, MassDEP, the State legislature, and any other local government and to use other advocacy methods to urge support for EPR Framework or product legislation and related regulations when deemed appropriate; and

Be it further resolved, that the Town of Arlington encourages all manufacturers to share in the responsibility for eliminating waste through minimizing excess packaging, designing products for durability, reusability, reparability and the ability to be recycled; using recycled materials in the manufacture of new products; and providing financial support for collection, processing, recycling, or disposal of used materials; and communicating with waste haulers and local governments about end-of-life management of their products and product packaging.